

**NOMINATIONS OF DAVID FABIAN BLACK  
AND EMIN TORO**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

DAVID FABIAN BLACK, TO BE DEPUTY COMMISSIONER, SOCIAL SECURITY ADMINISTRATION; AND EMIN TORO, TO BE A JUDGE OF THE UNITED STATES TAX COURT

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MAY 9, 2019  
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UNITED STATES TAX COURT**

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**THURSDAY, MAY 9, 2019**

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

The hearing was convened, pursuant to notice, at 9:33 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Chuck Grassley (chairman of the committee) presiding.

Present: Senators Crapo, Thune, Portman, Daines, Wyden, Cantwell, Menendez, Carper, Cardin, Brown, Hassan, and Cortez Masto.

Also present: Republican staff: Jeffrey Wrase, Deputy Staff Director and Chief Economist; Nicholas Wyatt, Tax, Infrastructure, and Nominations Professional Staff Member; and Mark Warren, Chief Tax Counsel. Democratic staff: Joshua Sheinkman, Staff Director; Ian Nicholson, Investigator; Sam Conchuratt, Assistant to the Staff Director; and Tom Klouda, Senior Domestic Policy Advisor.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S.  
SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The meeting will come to order.

I am going to put my statement in the record to save time, and I will call on Senator Wyden for his opening statement at this point.

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

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman. These are the issues that we work on closely together, and I look forward to doing that.

We will be meeting today to discuss two important nominations: David Black, nominated to be Deputy Social Security Commissioner; and Emin Toro, nominated to serve as a judge on the United States Tax Court.

I am going to be brief, but a couple of quick comments. With respect to Mr. Black, when you are talking about Social Security, you are talking about a lifeline for 69 million Americans.

For me this is very personal, going back to my days when I was co-director of the Oregon Gray Panthers and ran the legal aid office for the elderly.

Senator Grassley and I talk often about these subjects. We are talking about seniors, people with disabilities, individuals who have earned their benefits after years of paying into the program with each and every paycheck. Every one of those 69 million people, and the generation who will come after them, are counting on those who run the program to maintain a very high level of service.

Because of this committee and the hard work of dedicated advocates for Social Security, the agency's administrative budget has improved recently. Americans do not have to wait as long as they did a few years ago for a hearing on their disability appeal.

But there is certainly more work to do. It is also the case with respect to improving and managing the agency's IT infrastructure.

These are key challenges that Mr. Black is going to have to address. My view is that he is very knowledgeable about the ins and outs of the Social Security Administration.

This morning, while we consider the nomination for the Deputy Commissioner, I also want to be on record as making clear that Social Security has not had a confirmed Commissioner in place since February 2013. That is far too long to have this top position go unfilled. Just like any government agency or any private business, Social Security runs best when it has strong leadership.

In my judgment, the Senate should not confirm a Deputy Commissioner before confirming the Commissioner. Andrew Saul's nomination to serve as Commissioner has been approved by this committee twice. I hope he will be going to the floor soon. I would also note, in terms of going forward on the Senate floor, it would be appropriate to take up the nomination of the Commissioner before taking up the nomination of the Deputy Commissioner.

Last word, with respect to Mr. Toro: the United States Tax Court may not generate a whole lot of conversation at dinner tables, coffee shops, and the Dairy Queens patronized by the chairman and myself, but let us just say it is a really important place, because it is the judicial backbone of the Federal tax code. It is the best opportunity Americans have to dispute tax bills before they have to pay. It keeps them from getting stuck in the slow-moving judicial process.

The Tax Court is a big part of ensuring fairness for taxpayers. I appreciate Mr. Toro's willingness to serve.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Yes.

I am going to call on our colleagues, because they have more important things to do in addition to the important thing of being here. So we will start with Senator Hoeven and then Senator Kramer.

**STATEMENT OF HON. JOHN HOEVEN,  
A U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Thank you, Chairman Grassley and also Ranking Member Wyden. We appreciate it. I am very pleased to be here today and have the honor to introduce Mr. David Black from our home State of North Dakota, who is nominated to be Deputy Commissioner of the Social Security Administration.

Mr. Black is here today with his wife Hollie and three children: Olivia, who is almost 4; Grace, who is almost 2; and William, who is 10 days old. And maybe they could all stand—and if William can stand, that would be really amazing.

I think he may have some other family here as well. I will let him introduce them.

David grew up with his five brothers and six sisters—there is a good North Dakota family, right, five brothers and six sisters, even dozen—in Rugby, ND on the family farm, where his Mom still lives. Our chairman should appreciate that.

Mr. Black earned his undergraduate degree from the University of North Dakota in 1990, his Juris Doctorate from the University of Minnesota Law School in 1996. We do not hold that against him, that he got his law degree from the University of Minnesota.

David has served in the Army since graduating from UND in 1990, including the Judge Advocate General's (JAG) Corps. He is currently a Lieutenant Colonel in the Army Reserves. He has nearly 10 years of experience working at the Social Security Administration, serving under both George W. Bush and in the Obama administration as well.

From 2004 to 2007, he served as Deputy Secretary for the Department of Education's Office of Civil Rights. He left that position in 2007 to become the Social Security Administration's General Counsel, where he served until 2015.

During that time, he was deployed to both Afghanistan and Iraq. In 2010 and 2011, as the Deputy Staff JAG for a three-star Joint Task Force, he earned the Bronze Star Medal.

After departing the Social Security Administration in 2015, David traveled with his wife as she was deployed abroad in the U.S. Air Force, where he had the opportunity to raise his newborn daughter.

David then returned to the Social Security Administration in 2017 to help with the transition. And he stayed on as a senior advisor to the acting career leadership.

Mr. Black exemplifies North Dakota values through his hard work, through his obvious commitment to service of this country—both on his part and on the part of his wife—his commitment to public service, and his commitment to family.

He is an outstanding nominee for this position, and I ask that the committee approve his nomination and do so as expeditiously as possible.

I know my colleague from North Dakota, Senator Cramer, will have some comments as well. And I thank you again, Mr. Chairman and Ranking Member, for your consideration of Mr. Black today.

The CHAIRMAN. Thank you, Senator Hoeven, and you ought to go do whatever else you have to do. You do not have to stay around here.

Senator HOEVEN. I certainly have to stay for Senator Cramer's speech, because it will be very good.

The CHAIRMAN. Senator Cramer?

**STATEMENT OF HON. KEVIN CRAMER,  
A U.S. SENATOR FROM NORTH DAKOTA**

Senator CRAMER. I will also be very short.

Thank you, Chairman Grassley, Ranking Member Wyden, and members of the committee.

I just would associate myself with the comments of Senator Hoeven. We are very proud of David, and clearly he has a servant's heart. That is demonstrated in his biography, his resume, and of course, just in knowing him.

I am not really sure what he does in his spare time, because I do not know how he could possibly have any. But we are just grateful for his willingness to step up in this very important position, and we know he would do a great job. I am, again, just grateful for your willingness to serve.

With that, thank you, and I yield back.

The CHAIRMAN. I am now going to introduce David Black. His wife Hollie has already been referred to, as well as their newborn son. Hollie is an Air Force officer. So we thank Hollie for her service, her defense of freedom.

Mr. Black originally was from Rugby, ND. Maybe he still calls that home. I want to thank Mr. Black for his public service as well.

Our second witness, Emin Toro—since 2003 he has been a partner at the law firm Covington and Burling. Before that, he served as clerk for Justice Clarence Thomas at the Supreme Court.

He has a bachelor of arts degree from Palm Beach Atlantic University and a law degree from the University of North Carolina, Chapel Hill.

We are also joined today by several members of the Tax Court. If they are here, just raise your hand—Chief Judge Maurice Foley, Judge David Gustafson, thank you. Judge Ronald Buch—if I am pronouncing it right. And the two newest members of the tax Court, Elizabeth Copeland, thank you, and Judge Patrick Urda, thank you.

We also recognize the Honorable Karen Henderson, U.S. Court of Appeals for the District of Columbia. I do not see a hand raised, so maybe—oh, you are way back there.

So, Mr. Black, you can make your opening statement and introduce any family and friends you want to, and then we will go to Mr. Toro for family and friends, and then we will ask questions.

**STATEMENT OF DAVID FABIAN BLACK, NOMINATED TO BE  
DEPUTY COMMISSIONER, SOCIAL SECURITY ADMINISTRATION,  
BALTIMORE, MD**

Mr. BLACK. Chairman Grassley, Ranking Member Wyden, members of the committee, thank you for holding this hearing. Thank you, Senators Hoeven and Cramer, for that kind introduction.

Joining me today is my wife Hollie, who is an officer in the U.S. Air Force. Our newborn son William, at 10 days old, is getting his first civics lesson. Our daughters Olivia, who is 3, and Grace, who is 1, are a little older and a little wiser and chose the playground over Dad's testimony.

I am proud to call North Dakota home, because my time growing up on a farm there charted the course for my character. While I grumbled at hauling hay bales in the heat or feeding livestock in the cold, those early experiences taught me priceless life lessons. And I am grateful for them.

My parents instilled in me the importance of honesty, hard work, self-reliance, responsibility, and a commitment to selfless service. This commitment is why I have dedicated most of my career to the military or our civilian government.

I have served for almost 29 years in the military as an enlisted soldier or an officer on both active duty and reserve duty, including deployments to Iraq and Afghanistan. I am currently a Lieutenant Colonel in the U.S. Army Reserve.

My 8 years as SSA's General Counsel during both the George W. Bush and Barack Obama administrations educated me not only about the agency, but also about how its policies and practices play out for Americans who depend on us. Given this insight, in 2016 when I was approached about a transition role at the Department of Education, where I worked from 2004 to 2007, I suggested I could be of more help at the Social Security Administration.

In my 10 years with the Social Security Administration, I have witnessed how important it is for the agency to manage its programs effectively to serve beneficiaries.

My parents raised 12 children on a limited income. So we worked hard to make ends meet. I benefited from programs including Head Start, reduced school lunches, summer jobs for low-income youth, Pell Grants to attend college, and the GI bill. My mom relies on widows' benefits as her only source of income. I understand firsthand the importance of government programs for those who qualify.

If confirmed, I will never lose sight of the significance of SSA's work. Being good stewards of SSA's programs means getting the right amount to the right person on time. The agency must continue its efforts to eliminate payment error, waste, fraud, and abuse, while ensuring that its Social Security programs serve and are accessible to beneficiaries.

In some cases, this might mean we need to discuss program simplification, which SSA employees seek and can make SSA programs easier for the public to understand. The basics of public service must come first: answering calls, reducing wait times in SSA offices, and issuing fair decisions.

The agency needs to evaluate all service channels and bring technology to bear when it can improve public service. The agency must also ensure the privacy and security of the sensitive personal information the American public has entrusted to it.

As SSA's former General Counsel, I served as the Senior Agency Official for Privacy. I know the agency takes seriously its responsibility to protect this information, including ensuring that only the

internal and external people who need appropriate access to SSA sensitive information have it.

In addition to these longstanding tenets of SSA's disclosure policy, the agency must also stay ahead of persistent cybersecurity threats.

I have spoken with Andrew Saul, the nominee for Commissioner of Social Security, about our priorities. We share the same customer service focus and commitment to digging into the facts of challenges with an emphasis on accountability, action, and transparency.

Our priorities not only align with each other, but also reflect issues of great concern to this committee and the American public. I believe in SSA's mission.

If confirmed, I look forward to working with you on these matters. Thank you. I will be happy to answer any questions you have.

The CHAIRMAN. Thank you, Mr. Black.

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

The CHAIRMAN. Now, Mr. Toro.

**STATEMENT OF EMIN TORO, NOMINATED TO BE A JUDGE OF  
THE UNITED STATES TAX COURT, WASHINGTON, DC**

Mr. TORO. Chairman Grassley, Ranking Member Wyden, members of the Finance Committee, it is a privilege and an honor to be here today. Thank you for holding this hearing to consider my nomination to serve as a judge on the U.S. Tax Court. I would also like to express my thanks to the committee staff for their support throughout this process.

I am delighted to have family and friends and colleagues with me here today. I am particularly grateful to my parents, Salih and Lavdie Toro, who from my earliest days taught me to work hard and be kind; to my wife Katie, whose love and support is an immeasurable source of strength; to my children, Juliana, Sebastian, and Emilia, who bring such joy to us; and to my sister Rudina and brother-in-law Jason Powell, whose friendship enriches our lives.

I am grateful to the President for the nomination and the opportunity, if confirmed, to serve our country. When I first came to the United States from Albania as a senior in high school, I had no idea I might one day appear before a committee of the United States Senate as a nominee for a Federal bench.

I was too busy learning how to write research papers to think of such things, but it is a credit to this great Nation that the path to public service is open to all, including those who recently started calling this country home.

Credit also goes to those who, looking beyond my unusual name and an accent, were willing to support my development, both as a lawyer and as a person—people like Judge Karen LeCraft Henderson and Justice Clarence Thomas, who gave me my start in the law; my professors at Palm Beach Atlantic University and the North Carolina School of Law, who made me a better thinker and writer; my colleagues at Covington, who helped me learn how to solve problems and resolve controversies; and my pastors and mentors in West Palm, Durham, and Falls Church, who taught me to have faith and serve others. It is thanks to their efforts and God's grace that I appear before you today.

The opportunity to serve on the Tax Court is exciting for someone who has spent the last 16 years working on tax issues. In that time, I have had the opportunity to resolve controversies with the Internal Revenue Service, serve clients on complicated tax issues in the United States and abroad, and represent clients before the Tax Court.

Through my clerkships at the DC Circuit and the Supreme Court, I saw firsthand how many tax and non-tax cases were litigated. These experiences have given me a strong understanding of our tax laws and the litigation process in tax cases. Through them, I have come to appreciate the key role trial courts play in our judicial system and the hard work required to hear and decide cases.

Legal practice and service in the community have taught me that usually there are two sides to every dispute and that wise decisions require careful listening, thorough evaluation, impartial judgment, and fairness.

My work at Covington and while clerking has also instilled in me a deep commitment to collegiality. I trust that these perspectives will facilitate the workings of the Tax Court, especially given its collegial decision-making process and the need for a uniform application of the law in light of the Court's nationwide jurisdiction.

Finally, my personal background gives me a deep appreciation for the United States Constitution, the American legal system, and the importance of the rule of law. If confirmed by the Senate, I would strive each day, in the words of the judicial oath, to administer justice without respect to persons and do equal right to the poor and to the rich, and in so doing serve the country to which I owe so much.

I look forward to answering the committee's questions.

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

The CHAIRMAN. We have three or four questions we ask every nominee, not just you folks. Each of you will have to respond to these.

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

Mr. BLACK. No, Mr. Chairman.

The CHAIRMAN. Mr. Toro?

Mr. TORO. No.

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

Mr. BLACK. No.

Mr. TORO. No.

The CHAIRMAN. Okay.

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

Mr. BLACK. Yes.

Mr. TORO. Yes.

The CHAIRMAN. Do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. BLACK. Yes.

Mr. TORO. Yes.

The CHAIRMAN. Okay.

I think I told you, Mr. Black, when you were in my office, I hope you respond totally in our first letter, not just acknowledging it, and then a second letter, and then a third letter, and a fourth letter, before you finally get all the answers to our questions.

I mean, that is the way it works around here. And I hope you are an exception.

Mr. BLACK. Mr. Chairman, I recall that conversation, and I am still committed to a “yes.”

The CHAIRMAN. Okay, because oversight is very important.

So a 5-minute round of questioning.

Mr. Black, based on discussions I had with you, I know that you are committed to helping ensure that Social Security will work to reduce various service delivery backlogs. So this is what we hear from our constituents: encountering phones that are busy, long waits to get someone to answer the phone, and they face large backlogs and have to wait hundreds of days for a hearing to determine whether they will be awarded disability benefits. Just some complaints we hear.

So I wondered if you could tell me whether the various service wait times and backlogs can be headed downward and, if not headed in that direction or even if they are, what you could do to reduce them yet further.

Mr. BLACK. Mr. Chairman, thank you for that question. As I mentioned in my opening, not only I personally, but my family has relied on government programs over the years. And so I agree with you, Mr. Chairman, that timeliness is part of quality service to the American public.

So I do have some good news to share that some of these backlogs and wait times are trending downward. When I first came back to the agency in 2017, we had a hearings backlog of 1.1 million cases with an average wait time of over 600 days. We all agree at the agency that that is simply unacceptable.

That backlog is trending down. It is currently under 700,000 cases. And that wait time is still at about 525 days—still unacceptable. However, we see that it continues to trend down, and that is due in large part to the dedicated employees who are handling those workloads.

Our 1–800 number, Mr. Chairman, is not faring as well. Wait times are still significantly long on that 800 number, and that is going to be a priority for myself and Mr. Saul to dig into that issue and find out why that is still an issue—everything from reading the script to looking at how we can bring technology to bear, looking at the retention rates of those particular employees so that we can do more to have a timely response when someone calls into the agency.

The CHAIRMAN. Okay.

Mr. BLACK. What we can do long-term, Mr. Chairman—sustained resources certainly are helpful to the agency. But also, Mr. Saul and I have committed to you that we will dig into the challenges at the agency. We will look at everything anew. I have spent time with the agency.

But if I am fortunate enough to be confirmed, I am coming into the agency in a new position, and I am going to take that seriously. I will dig into all the facts and find out how we can better improve service to the American public.

The CHAIRMAN. Last question: I wonder where things are with Social Security information technology modernization, in general, and what is going on with the disability case processing system in particular.

Mr. BLACK. Mr. Chairman, thank you for that question. As Ranking Member Wyden mentioned in his opening statement, due in large part to this committee and the House Social Security Subcommittee, the agency has gotten additional funding in the last number of years to address our backlogs and to address IT modernization. They take the priority.

Mr. Saul and myself will prioritize IT modernization. We will be good stewards of those funds.

The agency has an IT modernization plan. It is making very good progress on that. The Acting Commissioner, Nancy Berryhill, takes this issue very seriously. She meets with the executives responsible for IT modernization every week. Mr. Saul and I plan to continue with that effort. Simple concept of leadership—where we focus our attention—is where things will stay on track, not only in timelines but in budget.

Chairman Grassley, the disability case processing system—the agency has had failures in that in the past, and we own those mistakes. We have learned from those mistakes, and it is for that reason that the agency leadership has focused so hard on IT modernization. We are going to get this right.

The CHAIRMAN. Senator Wyden?

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

Mr. Black, a couple questions for you. As you know, the chairman and I both supported Andrew Saul to be the Commissioner. He pledged that he would be independent and non-partisan. Let us save some time. Will you pledge this morning to be independent and non-partisan as well?

Mr. BLACK. Yes.

Senator WYDEN. Okay. Very good to have a one-word answer to that. Thank you.

Okay, then let me talk to you about the agency's relations with employee groups. And again, we are aware of your background, your lifetime service to the country, both in the military and the Federal Government. As you know, Social Security has a very dedicated workforce. I mean, people show up every day really passionate about public service and believe in the mission.

Now we both, I think, would agree with the proposition that hiring and retaining dedicated public servants is key. Unfortunately, the Trump administration and the agency have been shooting themselves in the foot by trying to implement executive orders that really gut the role of the Federal labor unions. The executive orders undermine the decades of rights of Federal employees to fair representation in the workplace by imposing arbitrary limits on official time, official travel, and I gather, even the use of office space and equipment.

The Federal District Court in DC struck down a big chunk of the provisions, these executive orders. We are still getting reports that Social Security is deliberately pursuing illegal provisions in ongoing contract negotiations. And my good friend, Senator Cardin, is here. Senator Masto is here. Both of them have been steadfast defenders of Federal employees. The Maryland Senator is sounding the alarm on what I think is just a subversion of these workers' rights.

Now, you previously served as General Counsel of the Social Security Administration. In that capacity, would you have recommended that the agency pursue illegal orders in defiance of a court ruling?

Mr. BLACK. Senator, as the General Counsel, I would have always recommended that the agency comply with the law fully.

Senator WYDEN. So you would not have recommended—this is another good one for a “yes” or a “no.” You would not have recommended that the agency pursue illegal orders in defiance of a court ruling?

Mr. BLACK. No, I would not have.

Senator WYDEN. Okay.

If confirmed, will you push the agency to stop pursuing this legally questionable position?

Mr. BLACK. Senator, as I mentioned in my opening, one of the reasons I wanted to return to the Social Security Administration is that I have a great deal of respect for the agency's mission. And I have a lot of passion for the agency's mission.

It has an amazing culture, and that culture comes from the employees of the Social Security Administration. As you have noted, the vast majority of the Social Security employees are good, hard-working public servants who just want to carry out the mission of the Social Security Administration.

It is not unusual that you will find an employee who has 30–40 years dedicated to this mission. Outside the Department of Defense, I have never been in an organization so dedicated to its mission.

I have a great deal of respect for these employees and the talent and dedication they bring to work every single day to do their job. Similarly, I have a great deal of respect for the role of the—

Senator WYDEN. We are getting a little long here, and let us just kind of recap it.

Great answer on independence. Yes, you will make sure Social Security is independent. Really good answer on the second round that you would not have recommended the agency pursue illegal orders in defiance of a court ruling. And we are trying to get a “yes” or “no” on, if confirmed, will you push the agency to cease pursuing a legally questionable position. Can you answer that?

Mr. BLACK. Yes, I will.

Senator WYDEN. You will push the agency to cease pursuing its legally questionable position.

Mr. BLACK. Yes.

Senator WYDEN. That is a “yes.” Very good. Thank you.

Mr. Chairman, Thank you.

The CHAIRMAN. Of the people who are here, Cardin, Cortez Masto, then it would be Portman and then Thune.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

And let me thank both of our nominees for their willingness to serve.

Mr. Toro, we appreciate your talent coming on to—being willing to serve our Tax Court. We recognize that talent is very much in need in public service, so we thank you for your willingness to serve, and we thank your family, as we know that there are sacrifices that will be made.

Mr. Black, you and I have had a chance to talk, and I appreciate your willingness to continue in public service. And again, I thank your family, including the newest arrival to your family.

I want to follow up. I appreciate your response to Senator Wyden, and I am sorry he had to cut you off on time because of the shortness of time to get a direct answer. But I appreciate what you were saying about the dedicated workforce.

I have the honor of representing the State of Maryland and the Social Security Administration location in Baltimore County with so many dedicated workers, and I am going to talk a little bit about that.

But I want to first underscore a point with your exchange with Senator Grassley. And that is, yes, we are pleased that the backlog is moving in the right direction. That is certainly a good sign. And the wait time is moving in the right direction. And Congress has provided resources to make that a reality.

But with the 1-800 number moving in the wrong direction, I am not surprised, because the teleservice has not gotten the same amount of attention. The field offices are very important, and there have been closures of field offices.

Just to point out one statistic, the number of people visiting our field offices today is comparable to number we had in 2000. So the desire to seek one-on-one type help is very much needed among our constituents. So you said that you are going to pursue the priorities of the mission.

The mission is to serve the public. It is the best in the world in implementing a Social Security system and related programs. Will you be committed to making sure that we have that one-on-one exchange so that our constituents can get the services they need to understand the Social Security laws and to be able to get the appropriate benefits?

Mr. BLACK. Yes, Senator.

Senator CARDIN. That was a “yes” answer. I appreciate that.

So let me move on to the issue that Senator Wyden was talking about on our workers and their rights. It is a dedicated workforce. I am there frequently. They have worked under extremely challenging circumstances, including budget problems and all the related issues.

So what Senator Wyden was getting to—and I very much thank you for your answer—is that our workers are entitled for their voice to be heard. And it needs to be heard directly, but also through their representatives. And that is what the collective bargaining agreements are all about.

Are you committed to working with the workforce, including their representatives, so that we have a team approach to carrying

out the mission at the Social Security Administration and not an adversarial relationship?

Mr. BLACK. Yes, Senator.

Senator CARDIN. I am getting great answers. So I thank you for that.

I want to also just underscore how important it is for us to work together—this committee, members of Congress. Social Security is a critically important program, very popular among the people of this country, for good reason.

The backlogs are too long. The wait times on telephone service are too long. The cutting of field offices is moving in the wrong direction. Confrontational policies with the workforce are not helpful, not just at SSA. But just generally, the Federal workforce is the key to us as a Nation, providing the critical services to our people. And I think you can provide critical leadership at this time to instill that type of respect and admiration for those who are in public service, including our front-line workers.

And I would just urge you to look for opportunities where we can work together—members of this committee, the U.S. Senate, and you—to just instill, at this time when public service is so much being challenged, that we find ways to work together to show our support and appreciation for those who are carrying out this public service.

Mr. BLACK. Yes, Senator. I look forward to that working relationship with the goal to provide better public service for those who really need it.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you.

Gentlemen, welcome. Congratulations on your nominations. Welcome to your families; very excited to see everyone here.

Mr. Toro, let me start with you, because I do not want you to think you are going to be left out here. In your statement you highlighted that wise decisions require careful listening, thorough evaluation, impartial judgment, and fairness. Let me just tell you as a former Attorney General, I agree with you.

Given your tenure as a long-time practicing litigator, what is your understanding of the burden of proof for the taxpayer to provide evidence to the Tax Court?

Mr. TORO. The taxpayer bears the burden of proof. The Commissioner's determinations generally come with a presumption of correctness.

Senator CORTEZ MASTO. And so what is the benchmark of the IRS to provide proof or to disprove evidence in Tax Court?

Mr. TORO. It is the same as in any case. If the taxpayer does bring evidence that shows by a preponderance that the taxpayer's position is right, then the government would have to bring contrary evidence to show that it is not.

But the notice of deficiency, if nothing else comes in, the notice of deficiency comes with the presumption of correctness.

Senator CORTEZ MASTO. Okay.

And this past year, as a result of the government shutdown that we just went through, it is my understanding that the IRS did not

conduct any new audits or pursue any non-automated collections. And I also was under the understanding that many U.S. Tax Court cases were canceled.

What is your understanding of the current backlog and the impact of the shutdown on the Court proceedings?

Mr. TORO. So I think that the Court cases were deferred. So there were trial sessions that were set up during that period where, because of lack of budget, judges could not go to the trial sessions, and those were deferred. So I suspect that the impact on the Court will be a longer time to decision. But there will be a decision on those.

Senator CORTEZ MASTO. So there is a backlog. The courts move through it as quickly as they possibly can.

Mr. TORO. Yes. That is right.

Senator CORTEZ MASTO. Okay. Thank you. I appreciate that.

Mr. Black, first of all, let me just say “thank you” to you and Hollie for your service to our country. I so appreciate you are willing to serve.

I want to associate myself with the concerns that my colleagues represented here with respect to the backlogs at the Social Security Administration as well. I hear it all the time in Nevada. It is the number one issue that I am hearing about.

In fact recently, there was a constituent from northern Nevada who was overpaid by the Social Security Administration, and she began contacting the administration to get it straightened out, to make the repayment, so the overpayments would stop. And I will tell you, it continued on for over a year until my office intervened.

And I think that is the challenge we have. We have a backlog. We have a lack of a workforce. My understanding is, over the last decade there has been a 12-percent decrease in the workforce. Something is going on there.

And so I guess my question to you is—I appreciate your efforts in wanting to address it. But if we are getting a budget from the administration that is zeroing things out—that is what I am seeing. The proposal from the President is to reduce lease space, collocate offices where practicable, and it even mentioned shrinking desk sizes to fit more people in a cramped space.

How are you going to address the backlog and the needs of the American citizens, from seniors to disabled workers, who need these payments in a timely manner? So I guess—have you thought about, as you look at this budget, how you are going to address the concerns of the backlog and what you need to do?

Mr. BLACK. Yes, Senator. I thank you for that question.

I agree with you, to address these backlogs we do need dedicated employees. So the funding from Congress is essential, and you have a commitment from me, and I would say Mr. Saul, the Commissioner nominee as well, that once we get into the agency in our new roles and start digging into the challenges and the facts of those challenges, if we need more funding, we will come to Congress and request it.

Senator CORTEZ MASTO. Thank you.

And I also understand you are looking at a new IT system. Is that correct?

Mr. BLACK. Yes, Senator. I referenced the IT modernization effort. The agency for decades has had a very outdated IT infrastructure based largely in COBOL. So Congress has given us additional funding to address that, and we are hoping that that allows our employees to have the tools they need on the front lines to better serve the American public.

Senator CORTEZ MASTO. Great. Thank you so much.

Again, congratulations on your nominations.

Senator WYDEN [presiding]. Thank you, Senator Cortez Masto.

Senator Carper?

Senator CARPER. Thank you, Senator Wyden.

Mr. Black, Mr. Toro, good morning. Thanks for your willingness to serve in these positions.

Mr. Toro, there are some old people sitting right behind you. It looks like they ought to be in school right now. And do you know any of them?

Mr. TORO. I may.

Senator CARPER. You probably introduced them before I got here. Just introduce them again starting from left, the oldest one.

Mr. TORO. Emilia is my youngest.

Senator CARPER. Emilia. How old is Emilia?

Mr. TORO. How old are you?

Ms. TORO. Nine.

Senator CARPER. Okay.

Is that her sister next to her?

Mr. TORO. No, that is my wife. [Laughter.]

Senator CARPER. I am sorry. What is her name?

Mr. TORO. This is Katie.

Senator CARPER. Katie, how are you?

Mr. TORO. Sebastian.

Senator CARPER. Yes

Mr. TORO. And Juliana.

Senator CARPER. Yes; who is next to your wife?

Mr. TORO. This is Sebastian.

Senator CARPER. Sebastian. Hi, Sebastian. And who is next to Sebastian? Is that his wife? [Laughter.]

Mr. TORO. That is his sister, Juliana.

Senator CARPER. Juliana. Okay. And who is the lady in blue?

Mr. TORO. That is my sister, Rudina.

Senator CARPER. All right. Anybody else in the family—

Mr. TORO. Yes; my brother-in-law and my parents on the side.

Senator CARPER. Anybody here not in the Toro family? [Laughter.]

All right. Mr. Black, do you have anybody sitting back there whom we ought to know about? You probably already introduced them.

Mr. BLACK. Yes, Senator—my wife, Hollie, and our newborn son, William.

Senator CARPER. William?

Mr. BLACK. William, yes.

Senator CARPER. That is great. First child?

Mr. BLACK. No; we have a 3-year-old and a 1-year-old who chose not to attend today, and William—

Senator CARPER. Good move. [Laughter.]

All right. Well, congratulations, mom. And Happy Mother's Day, ladies. It is coming up. Happy Mother's Day.

People ask me why I turned out well in my life. I always say my sister and I picked the right parents. But in truth, we actually picked the right mom. [Laughter.]

All right. That is all I have.

Mr. BLACK. Thank you, Senator.

Senator CARPER. Not really. [Laughter.]

Senator WYDEN. Let's go to Senator Menendez then. [Laughter.]

Senator CARPER. Mr. Black, I understand you have served in uniform.

Mr. BLACK. Yes, Senator.

Senator CARPER. You still do that?

Mr. BLACK. I do. I am still in the U.S. Army.

Senator CARPER. How did you get your commission?

Mr. BLACK. I first enlisted. I was a linguist. And after law school, I had a direct commission as a JAG officer in the Army.

Senator CARPER. Oh, that is great. Well, Navy salutes Army. I am a retired Navy captain. Great to see you. Welcome aboard. Thank you both for being here.

We have a budget deficit this year that is expected to reach \$850 billion—\$850 billion. Next year, I am told, this will be about a trillion dollars.

Our friends at GAO prepare a high-risk list at the beginning of every Congress. They came out with one in February, and in this high-risk list, they noted that we had made, in the last year, about \$140 billion of improper payments.

Improper payments are payments that are, in some cases, overpayments, in some cases underpayments, and in other cases mistaken payments. One of the things that they have noted for us is that we actually make payments from time to time to people who are dead, and some of them have been dead for a long time. I think we actually had a report that said there was a database in the Social Security Administration that said there about 5 million people age 112 or older, all of which is concerning.

I am just going to put on the radar that the Republican Senator from Louisiana, John Kennedy, and I, have introduced legislation to attempt to deal with such improper payments to deceased people. And that is something that we will want to pursue with you and then explore with you. I think it is something that you may want to support.

Mr. Toro, I would ask you to take 60 seconds and tell me something that you really think I should know about you that may not have come up already, and it may not be imminently apparent. Just something I should know about you, we should know about you, that says "I am the right guy for this job." Do not be modest.

Mr. TORO. Well, I have been practicing law for about 16 years, and I had two clerkships before that. And in the 16 years that I have been doing this, I have been having a lot of fun practicing tax law and helping taxpayers comply with their obligations and get good resolutions with the government and resolve disputes. And I would bring that mindset to the new job, if confirmed.

Senator CARPER. Okay.

The other thing is something Ben Cardin was getting into in his questioning, because he has a lot of Federal facilities in Maryland. We have some in Delaware. He visits them, and although he is a busy guy, he makes time to do this since he has a lot of CMS folks and folks in the Social Security Administration.

In the Navy, we believed in walking around and actually showing your face and showing some interest in the people you are leading. Even though these are big organizations, I would urge you to do that. My guess is, you probably would anyway, but I would urge you to do that. Thank you. Good luck.

Senator WYDEN. Senator Menendez?

Senator MENENDEZ. Well, thank you, Mr. Chairman.

Congratulations to both of you on your nominations. And since Senator Carper has gone through all the family pedigrees, I will forgo that.

Mr. Toro, despite many of the promises of the Trump tax bill, the latest tax bill has made the tax code larger and more complicated, leading to a nightmare filing season for millions of Americans.

If confirmed, would you support some leniency to low- to middle-income taxpayers and small business owners who might have made honest mistakes while trying to comply with the new tax code thrown at them a few mere weeks before the start of a new tax year?

Mr. TORO. Senator, I would follow the law on that, and I think the law provides for taxpayers to show reasonable cause and good faith in complying with their tax obligations. And as long as they show that reasonable faith in complying with their obligations, they would not be subject to penalties.

So I would follow the law in doing that.

Senator MENENDEZ. And I appreciate that, but as we know, following the law depends upon what the administration of it is, and interpreting the law in a way within the confines of the law to give that flexibility. And one can decide to enforce it in a way that is not flexible, or one can decide to enforce it in a way that is flexible.

So I am looking to see that, within the context of the law—would you give the flexibility within the law that is available to taxpayers if they show they made an honest mistake?

Mr. TORO. I think I would follow the law, and to the extent the law provides flexibility, I think I would follow that as well.

Senator MENENDEZ. That is not the same as interpreting it in a way in which that which the law gives you the flexibility to do, that you would do.

Mr. TORO. Right; the determinations of reasonable cause and good faith are inherently factual issues. And so to the extent the taxpayer is able to show facts that would fall within the legal standard, I would have no objection to doing that.

Senator MENENDEZ. Well, let us try to help one group of taxpayers. One area of particular confusion deals with eligibility over the section 199A deduction for pass-through businesses.

Many real small business owners have no idea if they qualify or how much they qualify for, while the largest partnerships and pass-throughs employ expensive tax lawyers to take full advantage of this windfall.

So can you explain what types of rental property incomes qualify for the deduction? And if there are categories of rental income that do not qualify, why is this so?

Mr. TORO. I have not studied section 199A in enough detail to give you an answer to that question. I believe the government is preparing regulations to address the 199A. There are, I think, proposed regulations already.

So I could not give you an answer of how the two—

Senator MENENDEZ. Well, would you look at it and give me a written answer for the record?

Mr. TORO. I would be happy to.

Senator MENENDEZ. This is a problem. This is exactly what I am trying to show, that in a tax bill that was thrown together at the last minute, thrust upon taxpayers right before the filing season, there is not enough guidance in order to understand that which you qualify for, do not qualify for, under what circumstances. So, you know, it is unfair to the taxpayers at the end of the day to be put in a situation simply because the administration and Congress at the time passed something without the reasonable time frame for its implementation.

So I would like you to look at that for me and give me a written sense of it.

Mr. BLACK, do you believe the Social Security Administration is meeting its obligation to the 10,000 baby boomers who are hitting retirement age each day?

Mr. BLACK. Senator, as I mentioned in my opening and alluded to in a number of questions, we are not following through on customer service to what your expectations would be or what mine would be. There is definitely room for improvement.

But I can assure you the agency is dedicated to serving those beneficiaries and others.

Senator MENENDEZ. Well, beyond customer service, is it meeting its core obligation to those 10,000 baby boomers who hit retirement age every day?

Mr. BLACK. That is my belief, Senator, yes.

Senator MENENDEZ. You mentioned in your testimony that you have a customer service focus. Can you tell me in one line what you think the one change the Social Security Administration needs to make to improve the customer experience?

Mr. BLACK. To provide more timely and quality service and accurate decisions.

Senator MENENDEZ. Let me ask you the last question. Last fall, the Social Security Administration was criticized by the Government Accountability Office for failing to have policies in place to address the role of the Chief Information Officers for budgeting security and planning purposes. What progress has the Social Security Administration made in terms of addressing the GAO's criticism, and can you give me some specific concrete steps forward?

Mr. BLACK. Senator, I will have to answer that question for the record. I am not in a position at the agency to know where they are in progress on that GAO report, but I will certainly—

Senator MENENDEZ. In your goal to provide greater customer service, I would like to know what it is specifically that is being

done at the agency for this purpose. Obviously, you would have a major role in this regard.

Mr. BLACK. Senator, certainly if confirmed, when I get there, I will personally read that GAO report and check on the status.

Senator MENENDEZ. Thank you both.

Senator WYDEN. Thank you, Senator Menendez.

We are waiting to see if additional colleagues wanted to come. I, on behalf of the chairman—and I join him in this—would like to acknowledge the attendance of Chief Judge Foley and other members of the Tax Court. We understand that you are here. We appreciate your service, and I do not know if you were here at the beginning, but we realize that people in coffee shops from sea to shining sea do not always talk about your work on a daily basis. But it is much appreciated by the chairman and myself.

A couple of other questions as we wait for colleagues. Mr. Black, apropos of the IT situation there at the agency, I understand you were part of the team that has worked on some of the security efforts. Mr. Saul, I thought to his credit, was very interested in those matters as well.

And for people who are following this in something resembling English—and so much of government is like in a completely different, you know, La La Land—I learned when I was director of the Gray Panthers and I ran the legal aid office, unless you really translated matters so that people can get it, it just sort of goes over everybody.

But basically, what you have been in the business of—and I think it is very good and very constructive—is trying to protect people against theft of their personal information, their personal information associated with Social Security. So tell us a little bit about this work, and if confirmed—and you already heard the favorable comments from the chairman and myself. Tell me what your priorities would be with respect to these IT issues, and particularly IT as it relates to security.

Mr. BLACK. Senator, thank you for your question.

As I mentioned in my opening, one of my dual roles as the General Counsel was as the agency's Senior Official for Privacy. And so, like you, I do take the American public's information that they have entrusted to us very seriously. And I am an advocate for their privacy.

Some of the efforts that the agency has made through its IT modernization have been to move to databases that are far more secure, to put in place IT infrastructure that is far more secure and more defensive against cyber-attacks.

The agency has made more efforts to bring in far more qualified people, executive leadership, to work in these areas. And the agency, as part of its IT modernization, is also going to look at modernizing policy in the area of authentication so that we are doing those online transactions and keeping them secure.

Senator WYDEN. What do you think would be, say, the top three threats to the personal information of people on Social Security? I mean, this can be countries. This can be people who have mastered new techniques at cyber and translated that into ripping people off. What are the three big threats in your view?

Mr. BLACK. So, Senator, our CIO certainly would be able to rattle them off. During my period of time with the agency, we have seen those threats change. Depending on how we adapt, the fraudsters quickly adapt to try to continue to defraud.

I think a number of fraud schemes that we have seen more recently can be something as simple as calling one of our beneficiaries, a senior citizen, and telling them that there is a problem with their account.

Senator WYDEN. How does a call like that go, because I think you are absolutely right with respect to the nature of the rip-off artist. What we learned back in the day was that the bad guys always seem to be one step ahead of the good guys. And of course at that point, there were far fewer sophisticated tools. So it has become a lot easier for them. I am convinced there is an offshore problem now. The threats are global now.

What do these calls look like? I mean, give us an example. I am Mr. Jones, and I am home. How did these play out? What would be a typical one?

Mr. BLACK. So for the American public that might be watching, the Social Security Administration will rarely call you and ask for information over the phone without properly—

Senator WYDEN. So that is number one.

Mr. BLACK. That is number one.

Senator WYDEN. First thing people ought to know is Social Security does not call you and try to pry out a lot of personal information on the phone.

Mr. BLACK. And certainly we will not threaten you if you fail to provide that information.

Senator WYDEN. And the people, the rip-off artists, they are not exactly subtle, as I remember it from back in the day about the threats. They pretty much say that unless you cooperate with them, you know, western civilization is going to end and you are going to be one of the first to suffer. I mean, they are pretty straight about that, right?

Mr. BLACK. Yes, our IG, our new IG, has put out a number of bulletins that that is exactly what is happening with some of these calls right now. They are very aggressive. They are very forceful.

So if anyone should have a call like that, they should immediately hang up. It is not the Social Security Administration.

Senator WYDEN. Good.

Well, I would have, normally, additional questions, but my friend and Pacific Northwest colleague, Senator Cantwell—who is very knowledgeable on these issues and the rights of seniors and what we are looking at today—is here, and she is getting settled very quickly.

Senator CANTWELL. Thank you, Mr. Chairman. Thank you for allowing me to ask questions here.

I wanted to ask Mr. Black about Administrative Law Judge issues. Administrative Law Judges perform very important roles for Social Security benefit cases, such as appeals. And it is essential that they remain independent, and not politically influenced in making decisions.

However, in July 2018, the President issued an executive order to reclassify ALJs so they can be selected not through the Office

of Personnel Management. And basically, it gives agencies the ability to hire anybody whom they want instead of using the OPM process.

So that is why I have introduced bipartisan legislation, Senate bill 3387, to restore the ALJs to their competitive service. If confirmed, will you commit to respecting the independence of the ALJs at the Social Security Administration? And what steps would you take to restore them to a competitive service system?

Mr. BLACK. I can unequivocally commit to respecting the independence of our ALJs. When the American public appears before the Social Security Administration for a hearing, they have to have confidence in the fact that they are going to get a fair due process hearing.

Senator CANTWELL. Independent—they can certainly say, “I am independent,” but you expect them to be a professional ALJ?

Mr. BLACK. Yes, Senator.

Senator CANTWELL. Knowledgeable about the subject area that they are overseeing, not having any conflict of interest—these issues are enormously important. They basically are a legal step in the process for a lot of issues for these Social Security beneficiaries. Is that not correct?

Mr. BLACK. Yes, Senator.

Senator CANTWELL. Okay.

So what do you think helps establish that professional legal perspective for ALJs? What are the kinds of criteria that you think meet the criteria for an ALJ in this particular area, Social Security?

Mr. BLACK. So, Senator, my experience with the agency—I think each agency has different criteria that they are looking for in an ALJ. What makes a good ALJ at the Social Security Administration may not necessarily be the same skill set that makes an excellent ALJ at the U.S. Patent and Trade Office.

What I, as agency leader, and I am sure other agencies would look for, are common things that you look for in an attorney: outstanding background, knowledgeable, can quickly learn any new area of the law, ethical, and will guarantee the American public a fair due process hearing.

For the Social Security Administration, we are the face of the agency for a number of individuals, vulnerable populations. So what I would look for in an Administrative Law Judge is someone who has empathy and someone who can be compassionate to someone who is waiting for the disability benefits decision sometimes 600 days or more.

So you have from me, Senator, a commitment that, regardless of the process that is in place, whether it is working through OPM or the agency having to define its own process for hiring ALJs, we are only going to hire the best.

Senator CANTWELL. Thank you, and I did not quite hear the word—well you said “independent” earlier, I think. But what I am concerned about is that agencies, instead of a professional hiring service, are going to get involved in saying, “Oh, this person will agree with us on these issues.”

Basically getting the court, the lawyer to agree with the agency, as opposed to reviewing the issue based on the law and the individual constituents we all are trying to serve.

If I could just switch—I do not know if anybody asked about Social Security field offices and the closures, but Washington seniors, like many people, need access to those benefits and those offices. According to a *Washington Post* article, nearly one in 10 Social Security offices has been closed since 2000. I know in our State, benefit offices in 2012 were closed in the Belltown and International districts, and then merged into one office in the Jackson Federal Building. So this is something that ends up requiring transportation.

So will you commit to reviewing how these field offices are affecting services and how you would prioritize in-service benefits?

Mr. BLACK. Yes, Senator.

Senator CANTWELL. Okay.

Given that many beneficiaries are elderly and lack easy online access, how would you balance in-person and online services?

Mr. BLACK. Senator, I think that balance is important. As I mentioned in my opening, my mother still lives in rural North Dakota. The nearest field office is still an hour commute away.

So I firsthand understand the importance of having that balance, having that physical presence. My mom has gotten pretty good with the iPhone to see the grandkids, but she does not have the Internet in her house. She does not own a computer. And I am sure that she represents other individuals like that across the country.

So we definitely believe in that balance at the agency. But at the same time, we do know people want those online services. So we will be committed to enhancing them and making them more secure for those who want to do—

Senator CANTWELL. Okay.

And just one more, if I could, Mr. Chairman.

The SSA backlog—I do not know if anybody has asked about that yet this morning, but obviously it is a very substantial backlog. Currently 915,000 people are awaiting hearing on their appeal. An average wait time is 598 days.

So SSA has been implementing the CARES Plan to reduce that backlog. And so to me, this is one of the big priorities. I just believe that that waiting time is way too long, given the complexity and challenges that we are facing in the Pacific Northwest with housing and homelessness and everything else. So we just need people to be given an answer and a due process.

If confirmed, what steps will you take to ensure that the CARES Plan to reduce the backlog actually gets initiated and we see the intended results that we are hoping to see?

Mr. BLACK. Senator, I agree with you that those backlogs, those wait times, are unacceptable. The agency has, due in large part to the additional funding that Congress has given, focused on those backlogs and wait times. Myself, Mr. Saul, if confirmed, would continue that aggressive executive focus to bring attention to those issues.

We will review every single business process and find out if there are additional ways to be more efficient, to move more quickly, but

with quality, and as you said, ensure individuals that they have that due process.

Senator CANTWELL. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. I think Senator Cantwell was really getting into these issues with respect to the field offices. And we do have major concerns in the Pacific Northwest. I want to echo her points.

I was just curious. When I am home, I hear a lot about wait times in the field offices. And you know, you look and you see backlogs and the like, and I have been in Social Security offices recently, and when they open up, there is a line around the block. And Mr. Saul touched on this.

And while we wait to see if any other Senators are on their way, I was curious, apropos of Senator Cantwell's questions, what the story was on the wait times. And are we getting those reduced in terms of people's being able to predict, and not just think they are showing up and, you know, they are going to still be standing there when it is time for corn flakes the next morning?

Mr. BLACK. Senator, I cannot give specifics on exact minutes of a wait, but I do know, as Mr. Saul testified last fall, we know it is still a problem. And Mr. Saul and I would be committed to addressing that problem.

I think he accepted your invitation to travel to some of those regional field offices. That is a priority for him and me. I will agree with Senator Carper, who said you have to get out there and walk around. I agree with that.

I think, as I mentioned before, the employees of the Social Security Administration are very dedicated and very good at what they do. I expect that we will get ideas from them on how we can improve some of those wait times. We want to experience it ourselves, see those lines, and talk to folks about how we can improve those wait times.

Senator WYDEN. You are getting a sense of how many Senators care about the importance of your work, and Social Security.

And one of the country's great advocates for seniors and those on Social Security, Senator Brown, has arrived. And let us just recognize him for any questions he has. I know he is trying to get his papers and stuff—

Senator BROWN. Has Senator Cantwell gone already?

Senator WYDEN. Yes.

Senator BROWN. All right. Thank you.

I apologize for arriving late. Thank you both for joining us. Senator Wyden, thank you.

I want to follow up on a question, on an issue—Senator Casey has not been here, apparently, but he and I have been working on this. You have talked about serving in the Social Security Administration, Senior Agency Official for Privacy. I appreciate your work in that regard.

I want to ask you about other administration proposals to monitor the social media accounts of people applying for Social Security disability benefits. This is deeply troubling. It amounts to—say the word—“spying” on the American people. What you can actually determine about a person from their Facebook account is questionable at best and raises serious privacy concerns.

My question is, Mr. Black, is the Social Security Administration spying on the social media accounts of Americans applying for disability benefits?

Mr. BLACK. Senator, I appreciate hearing your concerns directly today. I know that you and Senator Casey have written formally to the Acting Commissioner.

Currently, the agency does not use social media, except for CDI units that are specially trained to look for fraud. The proposal of which you speak—if confirmed, Mr. Saul and I will really want to dig into any proposal on the table. We understand your concerns about privacy.

I would, at a minimum in reviewing any proposal, want to look at the cost-benefit analysis. Is the investment of scarce resources worth any benefit? I would want to look at the business process to address your privacy concerns to see if it is even practical to implement such a policy. And finally, but certainly not least, I would ensure that any proposal would go through formal public rulemaking so that it could be informed by the public and any concerns that they may have.

Senator BROWN. So spying is okay, if the cost-benefit analysis comes out right?

Mr. BLACK. No, Senator. When I say that, it is really looking at—there are so many problems at the Social Security Administration, my concern would be, is this a wise investment?

Senator BROWN. Well, there are so many problems. And a big part of the problem is, there are not enough employees to get people Social Security checks, for Social Security to give them the right amount, so they overpay—where the beneficiary had nothing to do with the overpayment. The—I will not say incompetence, because I think this government in Washington, particularly the past few years, the Republican House and Senate, has underfunded Social Security. So they make more mistakes. So people overpay, and it makes their lives harder.

I think all that is true. But it just seems with scarce resources, dedicating some of those resources to spying on people—and I do not know any other term but spying. If you are looking at somebody who is getting Social Security Disability, or is about to receive it, or is being considered, and you are looking on their social media accounts to find some kind of behavior that Big Brother thinks is inappropriate, that they should not get the money—that is number one.

It is wrong in our name as citizens of this country—I would call it immoral, second. And third, it is a lot of tax dollars that could be used elsewhere. Correct?

Mr. BLACK. Yes, Senator.

Senator BROWN. So tell me exactly what would happen now, if you are confirmed and we move forward, and then you consider using these social media accounts as you examine cases. You are not denying that you are going to move forward and at least look at that, correct?

Mr. BLACK. Senator, I know it is an interest of the administration. I am not familiar with the specifics of any proposal on the table. But I will commit to you today, if confirmed, I will scrutinize

any proposal that might be on the table to see if it is something that the agency should continue to pursue.

Senator BROWN. So you said “administration.” Is this directive or this brilliant idea coming out of—this idea to spy on Americans, is this coming out of the White House?

Mr. BLACK. Senator, I think it was in the President’s budget that the agency would consider this, the use of social media.

Senator BROWN. Could I ask—and Senator Wyden or the chairman—if you decide to move forward on this, would you, either you or the Commissioner, come back here and testify before you do it?

Mr. BLACK. Most definitely. I would commit to doing that personally.

Senator WYDEN. If my colleague would yield.

Senator BROWN. Of course.

Senator WYDEN. I just wanted to make sure that people understood Senator Brown’s important point. What you are talking about is, if confirmed, you want those folks to come back, right?

Senator BROWN. Come back before they—

Senator WYDEN. On a regular basis?

Senator BROWN. Yes, and particularly if they are actually considering moving in this direction to use social media to determine eligibility and medical condition and all the things that go into—and of course, I want you to deny benefits if somebody has been fraudulent. But to use their social media accounts, it is just—I mean, I know *1984* was not written in a time when we had this kind of technology, but I mean, it is *1984* or *Brave New World*, or Yevgeny Zamyatin’s book *We*, or any one of these anti-utopian, dystopian books. I just think we are better than that in this country.

Although, I also did not think we would have a President who is a racist, and a President who thought it was okay to separate families at the border. So maybe I am just living in different times.

Thank you, Mr. Black.

Senator WYDEN. Thank you, Senator Brown.

So I believe at this point we do not have colleagues on either side of the aisle on their way. And so on behalf of the chairman, we want to thank both of you gentlemen for your attendance and participation. We appreciate all the families, appreciate the good people at the Tax Court.

The chairman and I both want to thank Mr. Black and Mr. Toro for their willingness to serve. And on behalf of the chairman of the Finance Committee—he wants to make clear that any member who wishes to submit questions for the record needs to do so by the close of business on Tuesday, May 14th.

And with that, the hearing is adjourned.

[Whereupon, at 10:48 a.m., the hearing was concluded.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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### PREPARED STATEMENT OF DAVID FABIAN BLACK, NOMINATED TO BE DEPUTY COMMISSIONER, SOCIAL SECURITY ADMINISTRATION

Chairman Grassley, Ranking Member Wyden, members of the committee, thank you for holding this hearing.

Thank you, Senators Hoeven and Cramer, for that kind introduction. Joining me today are my wife Hollie, who is an officer in the U.S. Air Force, and our newborn son William, who at 10 days old is getting his first civics lesson. Our daughters Olivia, who is almost 4, and Grace, who is almost 2, are a little older and wiser and chose the playground over dad's testimony.

I am proud to call North Dakota home because my time growing up on a farm there charted the course for my character. While I grumbled at hauling hay bales in the heat or feeding the livestock in the cold, those early experiences taught me priceless life lessons, and I am grateful for them. My parents instilled in me the importance of honesty, hard work, self-reliance, responsibility, and a commitment to selfless service.

This commitment is why I have dedicated most of my career to the military and our civilian government. I have served for almost 29 years in the military as an enlisted soldier and an officer on both active duty and reserve duty, including deployments to Iraq and Afghanistan. I am currently a Lieutenant Colonel in the U.S. Army Reserve.

My 8 years as SSA's General Counsel during both the George W. Bush and Barack Obama administrations educated me not only about the agency, but also about how its policies and practices play out for Americans who depend on us. Given this insight, in 2016 when I was approached about a transition role at the Department of Education where I worked from 2004-2007, I suggested I could be of more help at SSA.

In my 10 years with SSA, I have witnessed how important it is for the agency to manage its programs effectively to serve beneficiaries. My parents raised 12 children on a limited income, so we worked hard to make ends meet. I benefited from programs including Head Start, reduced school lunches, summer jobs for low-income youth, Pell grants to attend college, and the GI Bill. My mom relies on widow's benefits as her only source of income. I understand firsthand the importance of government programs for those who qualify. If confirmed, I will never lose sight of the significance of SSA's work.

Being good stewards of SSA programs means getting the right amount to the right person on time. The agency must continue its efforts to eliminate payment error, waste, fraud, and abuse while ensuring that its Social Security programs serve and are accessible to beneficiaries. In some cases, this might mean we need to discuss program simplification, which SSA employees seek and can make SSA's programs easier for the public to understand.

The basics of public service must come first: answering calls, reducing wait times in SSA offices, and issuing fair decisions. The agency needs to evaluate all service channels and bring technology to bear when it can improve public service.

The agency must also ensure the privacy and security of the sensitive personal information the American public has entrusted to it. As SSA's former General Counsel, I served as the Senior Agency Official for Privacy. I know the agency takes seri-

ously its responsibility to protect this information, including ensuring that only the internal or external people who need appropriate access to SSA's sensitive information have it. In addition to these longstanding tenets of SSA's disclosure policy, the agency must also stay ahead of persistent cybersecurity threats.

I have spoken with Andrew Saul, the nominee for Commissioner of Social Security, about our priorities. We share the same customer-service focus and commitment to digging into the facts of challenges, with an emphasis on accountability, action, and transparency. Our priorities not only align with each other but also reflect issues of great concern to this committee and the American public.

I believe in SSA's mission, and, if confirmed, I look forward to working with you on these matters. Thank you. I will be happy to answer any questions you have.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): David Fabian Black.
2. Position to which nominated: Deputy Commissioner of the Social Security Administration.
3. Date of nomination: April 17, 2018.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: October 17, 1968; Rugby, North Dakota.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):
  - University of North Dakota: August 1987 to December 1990. BA Political Science December 1990.
  - University of Minnesota Law School: September 1993 to May 1996. Juris Doctorate awarded May 1996.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):
  - Econo Lodge, Rugby, North Dakota: Janitor, dishwasher, and maintenance; summer during college 1988, 1989, 1990.
  - U.S. Army: March 1991 to September 1992; active duty for training.
    - March 1991 to May 1991; basic training, Fort Leonardwood, Missouri.
    - May 1991 to April 1992; Defense Language Institute, Monterey, California; Russian linguist training.
    - April 1992 to September 1992; Goodfellow Air Force Base, San Angelo, Texas; classified training.
  - Black family farm: Farmer/laborer, September 1992 to September 1993; Towner, North Dakota.
  - Minnesota Attorney General's office: May 1995 to September 1995, full-time law clerk; September 1995 to May 1996, part-time law clerk; St. Paul, Minnesota.
  - UPS: May 1995–September 1995; part-time laborer (unloading trucks); Minneapolis, Minnesota.
  - Black family farm: Farmer/laborer, May 1996 to January 1997; Towner, North Dakota.

U.S. Army: January 1997 to May 2000; active duty Judge Advocate General's Corps, military attorney; Fort Sam Houston, San Antonio, Texas.

Self-employed/contract attorney: May 2000 to November 2001; San Antonio, Texas. Represented individuals in labor and employment legal actions.

Nelson, Mullins, Riley, and Scarborough: November 2001 to November 2004, associate attorney, employment law; Columbia, South Carolina.

U.S. Department of Education: November 2004 to October 2007, Deputy Assistant Secretary, Office for Civil Rights; Washington, DC.

Social Security Administration: October 2007 to July 2015, General Counsel; Baltimore, Maryland.

July 2015 to January 2017: Unemployed. My wife is active duty military. She was stationed in the United Kingdom. I resigned from my position at SSA in July 2015, moved overseas, and cared for our first child until I returned to SSA in January 2017; Lakenheath, AFB, United Kingdom.

Social Security Administration: January 2017 to present, Senior White House Advisor to the Commissioner of the Social Security Administration; Baltimore, MD.

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

In addition to the military and civilian Federal service listed above, I have been a member of the U.S. Army Reserves since July 1990. I enlisted in the Army in July 1990 and was a member of the 134th Military Intelligence, BN at Fort Snelling, Minnesota from July 1990 until I accepted my commission as an officer in January 1997. When I left active duty as a military attorney in May 2000, I transferred into the U.S. Army Reserves as a military attorney. I was a member of the active U.S. Army Reserves until I transferred into the Ready Reserve in November of 2016.

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

While I was an associate for Nelson, Mullins, Riley, and Scarborough, the firm assigned me to work in house with the company Safety Kleen to provide in-house employment law advice.

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

Truman National Security Project, Defense Council member: 2013 to present.

American Bar Association: 2001–2004.

North Dakota, Texas, North Carolina, Minnesota, and South Carolina Bar Associations: Membership tracks with license to practice law when on active status.

13. Political affiliations and activities:

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

None.

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

None.

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

None.

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

Phi Beta Kappa Society.

Military Awards: Parachutist Badge; Armed Forces Reserve Medal with 10 year Device—Bronze; Armed Forces Reserve Medal with M Device; Army Reserve Component Overseas Training Ribbon; Army Service Ribbon; Non-Commissioned Officer Professional Development Ribbon (2nd award); Global War on Terrorism Service Medal; National Defense Service Medal (2nd award); Army Reserve Components Achievement Medal (3rd award); Army Achievement Medal (2nd award); Army Commendation Medal (3rd award); Iraq Campaign Medal; Afghanistan Campaign Medal; Bronze Star Medal.

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

Law school journal article: "So You Want to Invest in Russia: A Legislative Analysis of the Foreign Investment Climate in Russia." University of Minnesota Journal of Global Trade, 1995.

"Employment At-Will in South Carolina, Going, Going, Gone?" South Carolina Bar Employment and Labor Law Section Newsletter, 2003.

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

None.

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

I believe that I am qualified to serve as the Deputy Commissioner of Social Security for the following reasons. I have substantial work experience in the agency and a passion for the agency and its mission. I served as SSA's General Counsel from 2007–2015 and recently returned to the agency in January of 2017 as a senior advisor to the Acting Commissioner. I also have substantial work experience in administrative law and policy. Furthermore, I have substantial management experience. Finally, I have a strong commitment to public service as evidenced by my 27 years in the U.S. Army, both on active duty and the reserves as well as over 12 years of Federal service at both the Department of Education and the Social Security Administration.

### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

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

Yes.

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

No.

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

No.

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

Yes, I would like to serve out my full term.

### **C. POTENTIAL CONFLICTS OF INTEREST**

1. Indicate any current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could in-

volve potential conflict of interest in the position to which you have been nominated.

None.

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

None.

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

None.

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

Throughout my time at SSA, I have worked closely with the agency ethics officials to avoid any potential conflicts of interest. If confirmed, I will continue to work closely with agency ethics officials and the Office of Government Ethics to avoid any potential conflicts of interest.

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

Provided to the committee.

#### **D. LEGAL AND OTHER MATTERS**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time?

No.

2. Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

No.

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

In 1996 I pled guilty to a misdemeanor charge of driving under the influence. The arrest was in February of 1996. The charge was filed in the 4th Judicial District of Minnesota, Hennepin County, MN Clerk of Court, 300 S. 4th Street SE 201, Minneapolis, MN 55415.

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

In 2007, while I was the Deputy Assistant Secretary of the Office for Civil Rights at the Department of Education, an employee filed a discrimination complaint based upon religion. I was named as a responsible management official as his 2nd-level supervisor. The claim was filed with the EEOC; however, it was dismissed by the EEOC without a hearing. While serving as the General Counsel of the Social Security Administration, I was named as a responsible management official (4th line supervisor) in two claims of discrimination based upon age. The claims were related to promotions or assignment of work. Neither of the cases went to a formal investigation, but I did attend several ADR sessions to resolve the concerns of the employees involved.

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

In 1996 I pled guilty to a misdemeanor charge of driving under the influence. The arrest was in February of 1996. The charge was filed in the 4th Judicial District of Minnesota, Hennepin County, MN Clerk of Court, 300 S. 4th Street SE 201, Minneapolis, MN 55415.

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

I have no additional information to offer that I believe the committee would consider important.

#### E. TESTIFYING BEFORE CONGRESS

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

Yes

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

Yes.

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#### QUESTIONS SUBMITTED FOR THE RECORD TO DAVID FABIAN BLACK

##### QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* You served as Social Security's General Counsel from October 2007 until July 2015. Social Security certainly needs legal talent, since some of its decisions end up being subject to legal challenges, and some of its proposed rules are carefully examined by the legal community, among others. I wonder if there are any lessons that you learned from your prior work as General Counsel at Social Security about how the agency can better plan, coordinate, and use taxpayer resources efficiently.

*Answer.* Support components like the Office of the General Counsel (OGC) may benefit from more exposure to the rest of the agency with an eye toward ensuring OGC is knowledgeable about and involved in an issue before the issue becomes a crisis. As SSA's General Counsel, I encountered instances when before we could provide advice we had to dig through inconsistent answers to factual questions, because the data is often fragmented and hard to access absent complicated and untimely processes. Mr. Saul and I will have to discuss how to posture the agency to be more proactive, ensure components are invested in each other, improve data collection and availability, and reduce stovepipes without introducing confusion about areas of responsibility.

*Question.* Social Security's Office of Inspector General has expressed concerns about the quality of Social Security's long-term planning and vision. In fiscal year 2015, Social Security published its "Vision 2025" report. But, the Inspector General said that it does not include specific measurable goals. And, it doesn't outline strategies needed to implement its proposed vision. Social Security sometimes undertakes some big projects where it isn't always clear to at least some of us on this committee how we can track whether the agency is on track to meet its goals. It isn't always clear how we should measure whether a project is succeeding or not. An example I'd offer is the Disability Case Processing System. While I think Social Security's responsiveness has improved of late, I wonder if you will commit to working to ensure that we in Congress can keep track of how your projects are going.

*Answer.* Yes. If confirmed, Mr. Saul and I will work to be transparent about the progress we are making—and the challenges we face—on major projects or initiatives.

*Question.* According to a recent SSA-funded survey, Americans' knowledge of the workings of Social Security programs have declined in recent years, which could be adding to wait times at field offices and on the SSA 800 phone line as beneficiaries seek help to clarify how programs work. In addition, when Social Security curtailed its mailing of Social Security statements back in 2011, reported earning corrections

significantly increased, if I am not mistaken. How do you think the agency could help Americans better understand Social Security?

*Answer.* My understanding is that for many Americans, the Social Security programs are not something they fully contemplate until the time comes when they need them. SSA has a responsibility to make information about its programs clear and easy to understand, but to consider also how it can do so effectively and accessibly. The agency has a number of online tools including the Retirement Estimator and the Social Security Statement, and educational programs. As mentioned in the President's budget, the agency is looking at ways to modernize the Social Security Statement and its online tools to improve the public's understanding of its programs. If confirmed, Mr. Saul and I would review these current activities to assess what does and does not move the literacy needle so that we can target what works. I understand that Americans place significant trust in agency employees' expertise about its programs, which drives direct contact. We will also need to consider how to make SSA's programs user-friendly in terms of their complexity.

*Question.* Social Security Disability Insurance determinations rely on an official jobs list to determine whether or not individuals can perform any job that exists in the national economy. Yet, that official jobs list has not been updated for decades. While the list includes outdated jobs such as "telegram messenger," there do not seem to be jobs related to what have become significant sources of employment, such as jobs related to the Internet. Do you believe it is important to update Social Security's jobs listings and working on a better way to periodically update the listings?

*Answer.* Yes, I agree that the occupational source should be updated. The agency has worked with the Department of Labor's Bureau of Labor Statistics on an occupational requirements survey to collect occupational information for use in the disability adjudication process. The Bureau of Labor Statistics recently completed its third year of data collection and has begun a 5-year refresh cycle, to ensure that the data remains current. If confirmed as Deputy Commissioner, I will make this initiative a priority and I will closely follow and assess the agency's progress.

*Question.* I have heard that, even today, in the midst of IT updating at the Social Security Administration, the agency has no way to research whether an individual notice mailed to Americans causes an increase or decrease in field office traffic, since current systems do not allow for agency staff to sort on a "customer" across records. Is this true? And, if so, do you believe that there would be utility in trying to determine whether mailing of notices correlates with field office traffic?

*Answer.* I am not specifically familiar with what data the agency may (or may not) currently collect about whether a notice increases or decreases field office traffic. However, it is fair to say that SSA systems have historically evolved in a stand-alone fashion to solve an immediate problem or address a new policy or workload. Thus, while individual systems may interact with each other, they are not always fully integrated. As I understand, the agency's current direction on IT modernization is to create a person-centric approach to information, so that SSA's various systems not only communicate with each other, but also strive to store all information about a person's transactions with the agency in a centralized manner. I agree that there is utility in having management information that would help the agency improve service delivery. If confirmed, Mr. Saul and I will look into this area.

*Question.* From my experiences interacting with the Social Security Administration (SSA), most SSA are dedicated and diligent people who work hard to take care of the needs of the people they serve. However, I have heard that agency practices could make it hard for managers in the field to ensure that Americans are fairly served. For example, I have heard that, after patiently waiting in a long waiting in a long line at a SSA field office, some claimants are expected to talk by phone to a claims representative who is teleworking from home. Are you aware of any constraints on SSA that would impede attainment of a balance between field office staffing and teleworking that provides the best outcome for beneficiaries?

*Answer.* To more fully answer your question, I will need to learn more about what is happening and how it affects public service, and I will look into this if confirmed. I recognize the potential benefits of telework when it allows for at least the same level of public service as intended by the Telework Act. I am aware that employees who telework enjoy that opportunity, and I support a positive work experience. However, I agree that we must find balance and use telework and other tools as solutions to best serve the public.

*Question.* As you are aware, SSA must provide support for a large number of other Federal programs, including sharing of the Death Master File, Medicare, Med-

icaid, e-Verify, the Help America Vote Act, some Veteran's benefits, and so on. Some of this work may come with significant administrative costs to SSA. If confirmed, what efforts would you take to better quantify this work, assess agency effectiveness in providing these services, and "charging" other agencies or stakeholders for the fair market value of providing these services?

Answer. The agency may use its funds only as authorized under titles II and XVI of the Social Security Act. To the extent that the agency carries out work for other purposes, SSA may be legally required to seek reimbursement for such non-mission work. If confirmed, I will ensure that the Office of the General Counsel is advising the agency to assess necessary charges for providing such services, and I will work with agency officials to improve the agency's ability to track non-mission work.

*Question.* If confirmed, will you commit to working with Congress to improve communications with the Social Security Administration with respect to budget inputs into the agency and measures of agency output that can be easily and consistently tracked over time?

Answer. Yes.

*Question.* The Social Security Administration has a variety of "demonstration projects" going on, to test possible programmatic changes for effectiveness. However, it is not always clear that the projects have completion times, projected milestones, or consistent measures by which to gauge whether milestones are met. Lacking end dates, the risk is that such projects can effectively morph into public policy. Do you think that demonstration projects should have an end date? If so, what actions would you take to ensure that projects are set up with appropriate metrics for measurement of success or failure, timelines, projected milestones to reach, and actual end dates?

Answer. I believe that demonstration projects should yield meaningful information for policymakers in Congress. If confirmed, I will look closely at SSA's demonstration projects, and I will aim to review possible proposals before they leave the agency to ensure that projects are designed with appropriate metrics, milestones, and completion dates.

*Question.* Questions arose during your confirmation hearing in the committee regarding potential integration by SSA of social media in disability determination. Currently, adjudicators in the Social Security Administration use social media information in evaluations of some beneficiary claims when there is a report of investigation containing social media information from a Cooperative Disability Investigations unit. Other than that, at present, disability examiners do not look at social media, as I understand things. I do not wish, in this question, to discuss one way or another whether disability adjudicators should utilize social media instruments. I do wonder, however, if you are aware of whether or not disability insurance claimants have used social media information in making their claims for benefits.

Answer. I do not know whether or how many claimants use social media information in making their claims for benefits. While SSA's rules do not specifically refer to social media, I would assume it is possible that a claimant might submit some type of social media information as evidence from a nonmedical source.

*Question.* I want to follow up on my question at your confirmation hearing regarding the Disability Claims Processing System, known as DCPS, that has been under development by the Social Security Administration (SSA) since June of 2008. This committee has closely monitored DCPS since a failed first attempt to build DCPS cost taxpayers \$356 million. The second attempt to develop DCPS, known as DCPS2, began in July 2015, with cumulative program spending through fiscal 2018 having reached more than \$483 million. Further, in testimony during Fall 2018 before the Ways and Means Social Security Subcommittee, SSA stated it needs at least \$177 million more in funding and cannot guarantee that it can fully replace the existing systems without even more taxpayer funding. The lack of progress of DCPS2 has been documented through ongoing reports by the Office of Inspector General (OIG).

Further, I have heard some concerns about SSA possibly impeding or blocking States from making fair comparisons of DCPS and commercial off-the-shelf alternatives. As you know, the Fiscal Years 2018 and 2019 Labor, Health and Human Services, Education, and Related Agencies appropriations report included language directing SSA to take the necessary actions that would permit States the ability to select from all available options in the modernization of their case processing systems.

As documented by the OIG in their report, Congressional Response Report: Use of the Disability Case Processing System as of May 2018, SSA's own Risk Management Plan acknowledged the risk of SSA's potential inability to convince DDS users of the value and advantage of DCPS negatively affecting DDS adoption rates.

How would you ensure that States' interests are adequately accommodated with respect to system choice and your thoughts about the risk that DCPS adoption rates by DDSs will fall below SSA's expectations?

Answer. The Disability Case Processing System (DCPS2) is part of an enterprise-wide integration of electronic case processing systems across SSA offices and components, as well as State Disability Determination Services (DDS). As a common national system, DCPS2 will yield substantial benefits to the government and citizens. These benefits include more efficient case processing, improved citizen service, reduced administrative costs, ease in sharing of workloads across processing sites, more consistent policy-based decisions through case analysis tools support, and nationally implemented software enhancements and modifications.

Regarding accommodation of States' interests, development of DCPS2 emphasizes a primary focus on DDS user input in every aspect of product development. Therefore, numerous DDS personnel across the Nation are driving the progress and development of DCPS2 on a daily basis. The ongoing, nationwide DDS input into DCPS2 product development and user experience will culminate in a product built by users to suit their case processing needs. DCPS2 product development is scheduled to complete in September 2019. To date, DCPS2 is currently deployed to 21 of 52 DDSs, with an additional 27 DDSs that have requested and are being scheduled to deploy DCPS2 in calendar years 2019 and 2020.

If confirmed, I will ensure that States' interests continue to be heard, correctly considered, and appropriately acted upon.

#### QUESTIONS SUBMITTED BY HON. TIM SCOTT

*Question.* You've been at the SSA since nearly the start of this administration, and you've likely observed my efforts in the past few years to direct the agency to build a sophisticated anti-fraud SSN verification system to assist in combating synthetic I.D. fraud, which disproportionately impacts children. These efforts culminated in the enactment of my Protecting Children From Synthetic Identity Theft Act, which was signed into law as section 215 of S. 2155 last Congress. I am hopeful that implementation of this legislation can move forward efficiently, given the severity and urgency of the challenge we're attempting to address—particularly for young Americans. The longer it takes to get this system up and operational, the more fraudsters will be able to victimize people by committing synthetic ID fraud. If confirmed, how will you oversee the implementation of this law to ensure that implementation is carried out in the most expedient manner possible?

Answer. The agency should work to implement legislation enacted by Congress as efficiently as possible. I understand that agency executives have been meeting with representatives from the banking industry, as well as with privacy experts, to ensure that the agency is appropriately meeting the requirements of the legislation. I understand the major challenge is scaling the system to handle possibly hundreds of millions of verifications annually while ensuring only appropriate disclosure of personally identifiable information. If confirmed, I will work closely with those agency officials who are responsible for implementation, and will be keep you posted on our progress.

*Question.* As has been the history with the legacy Consent-Based SSN Verification service that my law replaces, users of the system have provided the funding to build and maintain it through user fees and enrollment fees. In keeping with this, the new law directs SSA to collect in advance half the costs needed to implement the new requirements from industry. If confirmed, what steps will you take to ensure your agency does not impose a cost on users so prohibitively high as to make the system—and Congress's goal of protecting consumers from fraud—unfeasible?

Answer. Since enactment of this legislation, I know the agency has spent considerable time looking at how to efficiently implement a new electronic system to perform electronic SSN verifications with financial institutions. In addition, as mentioned above, agency executives have been meeting with representatives from the banking industry, as well as with privacy experts. However, the agency's aging IT infrastructure does limit, to an extent, its ability to expand upon existing systems to meet new statutory requirements. That is why the agency has been working on

a 5-year IT modernization initiative, which, when completed, would allow for more expeditious implementation of new legislative mandates. If confirmed, I intend to spend a great deal of time making sure the agency carries forward its IT modernization plan as efficiently and as cost-effectively as possible.

*Question.* If confirmed, you will be assuming a senior leadership role at one of the most important Federal bureaucracies in the Federal Government. In the past, however, this agency has struggled to work efficiently and to embrace modernization and necessary change. With my law, Congress is pushing SSA to move beyond its old way of doing business and instead modernize to provide services needed by a diverse and sophisticated constituency. I am concerned that an adherence to legacy policies and procedures could get in the way of implementing section 215, perhaps even running contrary to the clear intent of Congress. How will you ensure implementation will follow the law that my bipartisan colleagues and I enacted?

*Answer.* I agree that this legislation presents an opportunity for the agency to improve the process by which it provides identity verification services to the financial industry. In the same way that modernization of the agency's legacy IT infrastructure will improve service in benefit-paying programs, modernization such as that provided in the legislation opens opportunities to improve the verification service it provides to external parties. In addition, as former General Counsel at the agency, I agree that it is of the utmost importance that the agency carefully implement legislation according to the letter of the law and the intent of Congress.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* You mentioned in your testimony that the "basics of public service must come first," such as answering calls and reducing wait times. Additionally, the Office of the Inspector General at the Social Security Administration identified improving customer service as one of the top management challenges for fiscal year 2019.

If confirmed, what will you do to address the current customer service deficiencies at the Social Security Administration?

*Answer.* The OIG is correct to flag this area. I understand that SSA has many competing priorities—answering phones and timely serving people in its offices should always be at the top. Mr. Saul and I need to evaluate resources and how they are currently being used. We need to find out what data we have and what that data says about service channels to inform our decisions on modernizing policies, how we deliver service, and improving wait times across service channels. I also want to look at data about retention particularly in lower graded jobs where employees may be able to find better paying jobs in the private sector or even leave for opportunities at other agencies. To fix the problem, we need to understand the problem. We also need to hear from agency employees, unions, Congress, and advocates about their experiences.

*Question.* Today, the Social Security Administration relies heavily on its IT infrastructure, which includes telephone services, videoconferencing, and the Internet. With the continuous growth of retirees and beneficiaries, the projected workload will only increase. The Social Security Administration is currently implementing its IT modernization plan with a commitment to replace outdated core systems with technologies related to artificial intelligence, predictive analytics, mobile connectivity, and the cloud.

What is your strategy to reduce IT operating costs and modernize the agency's IT infrastructure while remaining within budget?

*Answer.* The agency initiated a 5-year IT modernization plan in FY 2018 to improve its IT infrastructure and increase its technical flexibility to adapt to future demands and workloads. Congress has provided dedicated funding in support of that plan. As I understand it, as the agency modernizes its IT infrastructure, it expects to improve its claims taking process, improve the quality of the data used to make decisions on eligibility and payment, and improve communications with beneficiaries and recipients. In addition, a major objective of the agency's IT modernization plan is to reduce IT and other operating costs by adopting modern technologies. As Mr. Saul testified last Fall, we believe that improving the agency's IT is a strategic priority and, if confirmed, I will work closely with Mr. Saul to assess the agency's current IT modernization plan, make appropriate adjustments (as needed), and ensure the plan's completion.

*Question.* Additionally, what cybersecurity plans do you have to ensure the safety of all Americans' information?

*Answer.* Improving cybersecurity is critical for any Federal agency, but certainly for an agency like SSA. I understand that threats in this area are always evolving and that SSA must remain vigilant to protect against cyber-attacks. The agency works closely with the Office of the Inspector General, the Department of Homeland Security, and others in constantly evaluating its cybersecurity readiness. In addition, in recent years, the agency has placed an emphasis on bringing in experts to handle cybersecurity and evolving its IT infrastructure and practices to better protect against cyber-attacks and the loss of personally identifiable information. If confirmed, Mr. Saul and I will dig into this critical area to assess the agency's cybersecurity posture and plans and, as necessary, make adjustments.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* Why do you believe you are the right person to be Deputy Commissioner of Social Security?

*Answer.* I have dedicated the majority of my adult life to public service, both in the military and our civilian government. This includes 8 years as SSA's General Counsel during both the George W. Bush and Barack Obama administrations. My experience at SSA has educated me not only about the agency, but also about how its policies and practices play out for Americans who depend on us. I have witnessed how important it is for the agency to manage its programs effectively to serve beneficiaries.

*Question.* If confirmed, what duties do you expect will be assigned or delegated to you by Mr. Saul (should he be confirmed)?

*Answer.* Mr. Saul and I have discussed managing the agency as a team. If confirmed, given my experience at the agency and knowledge of the agency's programs, I will take an active role in operational issues with an eye towards improving the service, experience, and outcomes for the American public.

*Question.* Will you commit to maintain the field office option for our constituents who need or prefer to meet with a real person?

*Answer.* As Mr. Saul testified last year, the agency needs to have the right balance of services for beneficiaries. I appreciate the current need to maintain local offices where beneficiaries can access face-to-face services. At the same time, given the increasing public expectation for and acceptance of online services, the agency needs to continue to enhance its online services, while also investing in a more robust suite of online services.

*Question.* As the Social Security Administration continues to develop a new hiring process for Administrative Law Judges, will you commit to develop a process that selects individuals based solely on merit and without considering their political affiliations or connections?

*Answer.* Yes.

*Question.* If confirmed, do you pledge to this committee and to the American public that you will discharge your duties in an independent and non-partisan manner?

*Answer.* Yes.

*Question.* When you served as General Counsel of the Social Security Administration, would you have recommended the agency pursue illegal executive orders in defiance of a court ruling? If confirmed, will you push the agency to cease pursuing its legally questionable position concerning labor unions and management relations?

*Answer.* As General Counsel, I would not have provided advice that was not legally defensible. If confirmed, I will advise Mr. Saul and guide the agency to act in accordance with the law, and would not pursue any unlawful course of action.

*Question.* If you and Mr. Saul are both confirmed, how do you plan to eliminate the backlog of disability hearings without neglecting customer service?

*Answer.* As I understand, the agency has made considerable progress, as the disability hearings backlog has gone from a high of over 1.1 million pending at the end of fiscal year 2016, to less than 700,000 in April 2019 and is on track to eliminate the backlog in 2021. While service has improved, any wait times above the 270-day

goal is unacceptable, and Mr. Saul and I will be focused on continuing to implement the agency's backlog reduction efforts.

As you point out, the agency must also be mindful of maintaining and improving its customer service in other areas, including in its field offices, processing centers, and teleservice centers. We will have to strike the right balance in moving forward to maintain and improve service in all areas. To that end, if confirmed, I will look closely at SSA's budget and its numerous workloads to better ensure resources are targeted appropriately and spent wisely. As Mr. Saul testified last Fall, we will work to improve service and to make the right decision as early as possible in the process. If Mr. Saul and I determine that based on our budget, we are not able to address certain workloads, we will be transparent with Congress about this.

*Question.* If you are confirmed, how will you ensure that Americans' data and personal information are protected from all forms of cyber-attacks at every stage of SSA's business operations?

*Answer.* Improving cybersecurity is critical for any Federal agency, but certainly for an agency like SSA. I understand that threats in this area are always evolving and that we need to remain vigilant to protect against cyber-attacks. The agency works closely with the Office of the Inspector General, the Department of Homeland Security, and others in constantly evaluating its cybersecurity readiness. In addition, in recent years, the agency has placed an emphasis on bringing in experts to handle cybersecurity, and it is evolving its IT infrastructure and practices to better protect against cyberattacks and the loss of personally identifiable information.

*Question.* What are your views on staffing front-line positions, including management, in SSA's field offices and teleservice centers?

*Answer.* I do not think there is a one-size-fits-all approach that would work at SSA. That being said, ideally the agency should have as many front-line employees as are needed to ensure that it provides quality service.

*Question.* What is your plan for ensuring SSA provides a quality workforce in terms of hiring, training, and retaining staff while at the same time being faced with restricted or reduced budgets?

*Answer.* I think there are several factors to consider. There may be a perception that Federal service is not as attractive as it once was; however, SSA's mission is so clear and easy to embrace and almost everyone has a personal story about the agency. I mentioned in my testimony that we need to be open to policy simplification. In some areas, SSA's program policies may be too complex for employees to implement well, for the public to understand, and for IT to automate easily. SSA employees raise these concerns and are aware of the inefficiencies that can arise from program complexity, and I believe we should pay close attention to what employees would seek to change.

*Question.* What will you do to make sure claimants are better informed about the SSDI claims process?

*Answer.* I would like to understand more about any specific concerns regarding the extent to which claimants are uninformed about the SSDI claims process. The agency maintains a lot of information on its website about claiming disability benefits and, in addition, claimants can seek information about the claims process on the agency's 800 number or in field offices. The agency can look for ways to improve its communications with the public, but it would be helpful to understand the nature of the concerns. If confirmed, I will work with your staff to get more information on this issue from your perspective.

*Question.* What steps would you take to restore the balance between support for field office activities and online service?

*Answer.* I appreciate that SSA needs to be responsive to people who want to come in person, people who find a call more comfortable and convenient, and people who want to do as much as they can online on their own. Balance is the right word. Another important word is resources. SSA can only meet service goals if it has sufficient resources and Congress has been helpful in recent years. But even with that support, Mr. Saul and I will have to pick where we do and do not spend money. We can certainly look for areas where resources can be rerouted to the frontlines, work with SSA's IG to identify waste, and objectively review and improve current service channels. To the extent SSA is able to simplify its programs, it will create opportunities to improve automation, make notices clearer, and reduce the need for

people to have to make contact with the agency while also making SSA staff more efficient.

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QUESTION SUBMITTED BY HON. THOMAS R. CARPER

*Question.* As I discussed at your nomination hearing, I've been working on curbing improper payments for some time. In Fiscal Year 2017 the government made about \$140 billion in improper payments, so we clearly have a lot of work ahead to reduce wasteful spending. I was pleased to see in your testimony that you believe the "agency must continue its efforts to eliminate payment error, waste, fraud, and abuse."

One way I believe the Social Security Administration (SSA) can achieve this goal is by allowing all appropriate Federal agencies to have access to the SSA's death database to ensure program integrity. Preventing improper payments to deceased individuals would save the Federal Government millions of dollars and, in certain instances, help agencies better administer their programs.

SSA currently uses a narrow definition of "benefits-paying agencies," which results in SSA's full death file being shared with only eight Federal agencies. Due to this narrow definition, the SSA is not sharing the most complete, accurate, and timely death data widely across the Federal Government and several agencies such as the Department of Justice and the Department of the Treasury's "Do Not Pay" Business Center (which screens Federal payments before they go out the door to ensure they are not improper) do not have access to the SSA's full death file, increasing the likelihood of improper payments being made to deceased individuals.

If confirmed, will you commit to reviewing SSA's definition of "benefits-paying agencies"?

*Answer.* SSA collects and maintains death data in order to administer the Social Security and SSI programs. The majority of this death data comes from the States. SSA pays the States for the States' death information, and must follow both its agreements with the States and the Social Security Act in weighing any request to share State death information with external parties. If confirmed, I will commit to reviewing SSA's legal and policy framework for sharing information with external parties, including death information.

On a related note, I understand the President's budget includes a legislative proposal that would authorize the agency to share State death information with Treasury's Do Not Pay portal.

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QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* Last August, Judge Ketanji Brown Jackson issued a decision reversing the executive orders relating to union collective bargaining agreements. Prior to that decision, SSA was particularly aggressive as compared to other Federal agencies in its enforcement of these executive orders, having reduced official time, confiscated union equipment, and locked union members from their spaces. In the face of that ruling, SSA has continued this harsh treatment of its union-represented employees in their collective bargaining agreement negotiations.

Should you be confirmed, how will you ensure that SSA remains fair and balanced in its relations with its Federal employee unions?

*Answer.* SSA's primary mission is to provide optimal service to the American public. To that end, it is important for SSA to have constructive and fair engagement with the unions. If confirmed, I will advise Mr. Saul and guide the agency to act in compliance with the Federal Labor-Management Relations Statute and all applicable laws.

*Question.* Should you be confirmed, will you follow the judge's decision striking the executive orders (EOs) and ensure that elements of these EOs are not memorialized in collective bargaining agreements with SSA's employees?

*Answer.* If confirmed, Mr. Saul and I will guide the agency to comply with all applicable laws.

## QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

*Question.* SSA has evaluated monitoring the social media accounts of Americans who receive disability benefits to help determine eligibility for these benefits. Such invasive proposals go against the original intent of SSDI and would seemingly represent an irresponsible use of SSA's limited funding.

Do you support the use of monitoring social media to determine initial eligibility and ongoing eligibility for SSI or SSDI? If so, describe the parameters under which you would recommend the agency would use social media data when making eligibility and continuing eligibility decisions.

If you support the use of monitoring social media for initial and ongoing eligibility for SSI and SSDI, provide a rationale for using social media information, including ensuring the data is reliable, guidelines for how to interpret the information, and how the information should be used in conjunction with the medical information provided by physicians and other health care professionals.

Do you support diverting funds allocated to reduce wait times for SSI and SSDI eligibility decisions to be used for social media monitoring? If yes, provide a rationale why funds should be diverted from efforts to reduce wait times. What level of funding would you recommend be used for social media monitoring of applicants and current recipients of SSI and SSDI?

*Answer.* I appreciate the concerns that you and others have raised about the possible use of social media in determining eligibility for SSA's disability programs. Though I am not yet fully immersed in the issue, as an initial matter, I believe there are privacy questions about the use of social media information in making disability determinations, and I have questions about the utility of social media information in evaluating disability claims. If confirmed as Deputy Commissioner, I will take a hard look at the utility of using social media in the disability adjudication process. In addition, the agency would seek public input before finalizing any particular policy.

I would note that social media information is being used by Cooperative Disability Investigations (CDI) units, which are led by SSA's Office of the Inspector General. These units play a role in combating fraud and abuse within SSA's disability programs and, as part of the Bipartisan Budget Act of 2015, Congress has supported the expansion of the CDIs to cover all 50 States. As I understand, the CDI units, when they already have some evidence to support a possible allegation of disability fraud, may use social media information to further assess the possibility that fraud has occurred. These units have law enforcement resources that are trained in using investigative tools in the course of their investigation. I believe such use of social media by trained CDI units, led by the Office of the Inspector General, may be effective.

*Question.* SSA is responsible for several key Medicare functions, including providing basic education about when and how to sign up for Medicare and processing Medicare enrollment. Increasingly, people new to Medicare are delaying retirement beyond age 65. Without adequate, advance notification, these individuals often lack sufficient information on when and how to sign up for Medicare. The consequences of enrollment missteps, particularly in Medicare Part B, can be significant and may include lifetime late enrollment penalties as well as lengthy gaps in coverage.

Will you commit to an evaluation of SSA's processes and procedures for educating individuals approaching Medicare eligibility about basic Medicare enrollment rules, including how Medicare benefits coordinate with other forms of insurance, Part B enrollment periods and coverage start dates and eligibility for and enrollment in Medicare low-income support programs?

Will you commit to working with my office to identify opportunities to strengthen notification and resources for individuals nearing Medicare eligibility?

How would you ensure that SSA will appropriately balance online educational initiatives pertaining to Medicare enrollment with both paper mailings and in-person assistance?

Will you provide information to my office about the resources made available by the Centers for Medicare and Medicaid Services to SSA to carry out the agency's functions related to Medicare, including those related to enrollment and the administration of low-income programs? And, will you provide information on any additional resources the agency might need to improve upon those functions?

Answer. As Mr. Saul testified last fall, if confirmed, we will work with Congress and the Administrator of CMS on ways to better educate the public about Medicare enrollment.

*Question.* Created through Federal law, equitable relief is an administrative process that allows people with Medicare to request relief from SSA in the form of immediate or retroactive enrollment into Part B and/or the elimination of a Medicare Part B Late Enrollment Penalty (LEP). It is my understanding that SSA does not currently collect or retain information on equitable relief cases, including the number of cases processed, the outcomes of these requests or information on the basis for these requests.

Will you commit to collecting basic, State-by-State data on equitable relief cases (including the number requested, the outcome of the requests, and the basis for requests) and ensure that data is made available to my office?

Will you ensure this data collection process includes information on current and former marketplace enrollees who seek time-limited equitable relief, a process recently extended by CMS through September 30, 2019?

Will you provide my office with information on how SSA manages, processes and decides equitable relief requests?

Will you provide information to my office on the extent to which SSA trains field office staff regarding cases of equitable relief and special enrollment periods?

Answer. As Mr. Saul testified last fall, I will review the data SSA collects and maintains to determine whether it addresses your data requests.

*Question.* SSA is in the process of adding the reconsideration step back into the disability appeals process in 10 States, including Pennsylvania. According to SSA's own analysis, roughly 20,000 Pennsylvanians may have to go through this additional step and could see their wait time increase as a result in the first year alone. Wait times in Pennsylvania and across the Nation are already unacceptably long, and action must be taken to ensure no group is forced to wait longer as a result of SSA pushing forward with this change.

On May 9, 2019, I sent a bipartisan letter with a number of my colleagues to Acting Commissioner Berryhill requesting Congress be frequently updated on the impacts of these changes. It is essential that policymakers are able to tell immediately whether wait times are worsening for any individuals applying for disability benefits and that SSA take immediate corrective action if this does occur.

Will you commit to providing us with regular updates and data on the impacts of the changes being made to the disability application process in Pennsylvania and nine other States?

Answer. Yes.

*Question.* If SSA sees that the addition of the reconsideration step is worsening wait times for any group of applicants, can you commit to taking immediate action to reverse such an increase in wait times?

Answer. I will be direct and transparent with the Congress about the anticipated effects of policy or process changes on claimants and beneficiaries. In addition, I commit to engaging in a dialogue about possible or intended changes to policies or processes. It may be that certain changes would result in short-term outcomes that may not appear beneficial but that, in the longer term, improve the administration of the programs and, ultimately, decrease wait times for claimants or beneficiaries.

*Question.* Prior to the U.S. Supreme Court's affirmation of the constitutional right to marry for same-sex couples in *Obergefell vs. Hodges*, discrepancies between the recognition of same-sex marriage among the States and the Federal Government created confusion. During this period, SSA needed to decide how to address claims from same-sex couples residing in States that had not yet recognized same-sex marriage. Following the ruling, SSA also had to decide how it would respond and how quickly it would respond.

Prior to the ruling in *Obergefell vs. Hodges*, were you involved in the decision-making process concerning how to address discrepancies between States and the Federal Government regarding recognition of same-sex marriages? If yes, what role did you play and what position did you recommend SSA take?

Answer. After the Supreme Court decided *United States v. Windsor* on June 26, 2013, the Department of Justice (DOJ) coordinated with Federal agencies to imple-

ment the decision. Over the following 2 years, SSA worked closely with DOJ as SSA revised its policies in light of *Windsor* and the numerous changes to State law resulting from the litigation that followed *Windsor*. That litigation, which more broadly challenged the constitutionality of State law bans on same-sex marriage, resulted in the Supreme Court's 2015 decision in *Obergefell*. Staff in SSA's Office of the General Counsel under my direction provided legal advice to SSA regarding the changes to SSA's policies that were required by *Windsor* and subsequent litigation, served on the intra-agency *Windsor* workgroup that drafted revised instructions for agency approval, and coordinated SSA's implementation of *Windsor* and subsequent litigation with DOJ.

*Question.* After the ruling in *Obergefell vs. Hodges*, were you involved in the decision-making process concerning how to change SSA practices in response to the ruling? If yes, what role did you play and how did you recommend SSA respond?

*Answer.* The Supreme Court decided *Obergefell* on June 26, 2015, at approximately the same time as I left my position as SSA's General Counsel. I was not involved in SSA's decision-making process regarding its implementation of *Obergefell*.

*Question.* SSA has endured years of budget cuts and freezes that have taken their toll on the agency's ability to serve the American public. Over the last decade, SSA has seen staff numbers fall and a significant number of field offices close. This has impacted SSA's ability to provide high-quality service at a time when the agency's workload is growing rapidly.

How would you prioritize front-line service at SSA field offices and teleservice centers to ensure that the agency is able to respond to the needs of a growing beneficiary population?

Will you commit to being transparent and forthcoming with Congress about the level of administrative funding SSA needs to meet all of its statutory obligations and maintain essential front-line services?

*Answer.* Yes. As Mr. Saul testified last year, I believe in efficient, timely, and accurate service, and protecting taxpayer funds through effective management of the Social Security programs. If confirmed, I will look closely at SSA's budget and its numerous workloads to better ensure resources are targeted appropriately and spent wisely. If we find that additional resources are warranted, we will be transparent with Congress.

*Question.* SSA has expended significant resources developing MySSA and is continuing to prioritize expanding overall online services. While this can help SSA manage its growing workload if implemented correctly, many Americans may not be able to utilize online services or may prefer applying for benefits or having their questions answered at a field office or over the phone. In many rural areas of Pennsylvania, in particular, access to broadband Internet is limited.

What steps would you take to balance between support for field office activities and online service and ensure that expansion of online services does not come at the expense of in-person services?

*Answer.* As Mr. Saul testified last year, the agency needs to have the right balance of services for beneficiaries. I appreciate the need to maintain local offices where beneficiaries can access face-to-face services. At the same time, given the increasing public expectation for and acceptance of online services, the agency needs to continue to maintain and enhance the services that are available online. As more people use SSA's online services, especially for more straightforward transactions, field office employees would have greater availability to handle issues that are more complex and to serve individuals who are unable to access online services.

*Question.* Will you commit to working to keep Social Security field offices open and to maintaining the critical in-person services provided by these field offices?

*Answer.* Yes.

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PREPARED STATEMENT OF HON. CHUCK GRASSLEY,  
A U.S. SENATOR FROM IOWA

Today, the Finance Committee will hear from two nominees.

David Black has been nominated by the President to be Deputy Commissioner of the Social Security Administration, where he is currently working as the White

House Senior Advisor. Mr. Black spent nearly 9 years at Social Security, between 2007 and 2015, as the agency's General Counsel.

Mr. Black is well-qualified for the position of Deputy Commissioner. And I'm pleased that we seem to be making progress in getting a confirmed Deputy Commissioner and a confirmed Commissioner in place at Social Security.

Social Security has not had a confirmed Commissioner since February of 2013.

As this committee knows, we have acted in committee to favorably approve President Trump's nominee for the Commissioner position, and I trust that his nomination will be taken up in the full Senate in the near term.

Social Security is a large agency, paying out more than \$1 trillion in benefits. Its administrative budget is above \$12.25 billion.

The programs that the Social Security Administration oversees are also large. Last year, Social Security paid benefits to around 63 million people. That includes retirees, dependents, survivors, and disabled workers.

Somewhere around 175 million people paid payroll taxes into Social Security on their earnings.

Despite the success we had in 2015 in averting benefit cuts in the Social Security Disability Program, Social Security overall remains on an unsustainable fiscal path. Its combined trust funds are projected to be exhausted in just 16 years or less, depending on the estimates that you use.

Everything that I have seen indicates that Mr. Black will work to protect taxpayer resources and ensure that Social Security's benefit programs will run as efficiently and as effectively as possible. And that's what hardworking American taxpayers deserve.

And let me say that I want to see that Social Security programs are put on a sound financial footing so they succeed for the American people.

We will also hear from Emin Toro, who has been nominated to be a judge on the U.S. Tax Court. The Tax Court is very important because it provides taxpayers a venue to resolve tax disputes with the IRS before actually having to pay the amount in question. Though based in Washington, DC, the Tax Court does not require taxpayers to travel to DC, but holds sessions in cities across the country throughout the year. The schedule posted to the Tax Court webpage for the fall shows sessions set to be held in 47 cities. There aren't many courts that make an effort to bring the courtroom to you.

Taxpayers need to know that they are treated fairly and have a chance to make their case to an impartial judge in a disagreement with the IRS. The Tax Court gives all taxpayers, from large corporations to individuals, a chance to make their arguments in an independent forum and know they have received a fair hearing. The Tax Court is particularly important to individuals who cannot afford expensive attorneys to help them resolve their issues with the IRS. I applaud the efforts that the Tax Court takes to help these taxpayers representing themselves work through the process and receive a full and fair hearing of their cases.

Thank you both for your willingness to serve, and now I turn to Ranking Member Wyden.

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PREPARED STATEMENT OF EMIN TORO, NOMINATED TO BE A  
JUDGE OF THE UNITED STATES TAX COURT

Chairman Grassley, Ranking Member Wyden, and members of the Finance Committee, it is a privilege and honor to be here today. Thank you for holding this hearing to consider my nomination to serve as a judge on the United States Tax Court. I would also like to express my thanks to the committee staff for their support throughout this process.

I am delighted to have family, friends, and colleagues with me here today. I am particularly grateful to my parents Salih and Lavdie Toro, who from my earliest days taught me to work hard and be kind; to my wife Katie, whose love and support is an immeasurable source of strength; to my children Juliana, Sebastian, and Emilia, who bring such joy to us; and to my sister Rudina and brother-in-law Jason Powell, whose friendship enriches our lives.

I am grateful to the President for the nomination and the opportunity, if confirmed, to serve our great country. When I first came to the United States from Albania as a senior in high school, I had no idea I might one day appear before a committee of the U.S. Senate as a nominee for a Federal court. I was too busy learning how to write research papers to think of such things. But it is a credit to this great Nation that the path to public service is open to all—including those who only recently started calling this country their home.

Credit also goes to those who, looking beyond an unusual name and an accent, were willing to support my development, both as a lawyer and as a person—people like Judge Karen LeCraft Henderson and Justice Clarence Thomas, who gave me my start in the law; my professors at Palm Beach Atlantic University and the University of North Carolina School of Law, who made me a better thinker and writer; my colleagues at Covington, who helped me learn how to solve problems and resolve controversies; and my pastors and mentors in West Palm Beach, Durham, and Falls Church, who taught me to have faith and serve others. It is thanks to their efforts and God’s grace that I appear before you today.

The opportunity to serve on the Tax Court is exciting for someone who has spent the last 16 years working on tax issues. In that time, I have had the opportunity to resolve client controversies with the Internal Revenue Service, advise clients on complicated tax issues in the United States and abroad, and represent clients before the Tax Court. Through my clerkships at the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Supreme Court, I saw first-hand how many tax and non-tax cases were litigated. These experiences have given me a strong understanding of our tax laws and the litigation process for tax cases. Through them I have come to appreciate the key role trial courts play in our judicial system and the hard work required to hear and decide cases.

Legal practice and service in the community have taught me that usually there are two sides to every dispute and that wise decisions require careful listening, thorough evaluation, impartial judgment, and fairness. My work at Covington and while clerking has also instilled in me a deep commitment to collegiality. I trust that these perspectives will facilitate the workings of the Tax Court, especially given its collegial decision-making process and the need for a uniform application of the law in light of the Court’s nationwide jurisdiction.

Finally, my personal background gives me a deep appreciation for the U.S. Constitution, the American legal system, and the importance of the rule of law. If confirmed by the Senate, I would strive each day, in the words of the judicial oath, to “administer justice without respect to persons, and do equal right to the poor and to the rich,” and in so doing serve the country to which I owe so much.

I look forward to answering the committee’s questions.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Emin Toro.  
Family in Albania call me “Besnik,” which is an Albanian translation of “Emin.” Also, I have sometimes used Emin S. Toro, where “S.” stood for my father’s name “Salih,” a common practice for stating a person’s name in Albania.
2. Position to which nominated: Judge, United States Tax Court.
3. Date of nomination: April 10, 2018.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: November 10, 1974; Tirana, Albania.
6. Marital status (include maiden name of wife or husband’s name):
7. Names and ages of children:

8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):
  - Asim Vokshi School (Tirana, Albania), 1989–1992, no degree received.
  - The King’s Academy, 1993, high school diploma granted June 1993.
  - Palm Beach Community College, 1995, no degree received.
  - Palm Beach Atlantic University, 1993–1997, bachelor of arts, *summa cum laude*, granted May 1997.
  - University of North Carolina, Chapel Hill, 1997–2000, Juris Doctor, with highest honors, granted May 2000.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):
  - Intern, Templeton and Co. (West Palm Beach, FL), 1996–1998.
  - Summer associate, Robinson, Bradshaw, and Hinson, P.A. (Charlotte, NC), Summer 1998.
  - Summer associate, Pepper Hamilton (Washington, DC), Summer 1998.
  - Research assistant, UNC School of Law (Chapel Hill, NC), Spring 1999.
  - Summer associate, Cleary, Gottlieb, Steen, and Hamilton (New York, NY), Summer 1999.
  - Law clerk to the Honorable Karen L. Henderson, U.S. Court of Appeals for the District of Columbia Circuit (Washington, DC), 2000–2001.
  - Associate, Covington and Burling LLP (Washington, DC), 2001–2002.
  - Law clerk to the Honorable Clarence Thomas, Supreme Court of the United States (Washington, DC), 2002–2003.
  - Associate and partner, Covington and Burling LLP (Washington, DC), 2003–present.
10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):
  - None.
11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partners, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):
  - Chair of the board of trustees, Rivendell School (Arlington, VA), 2017–present.
  - Member of the board of trustees, Rivendell School (Arlington, VA), 2015–present.
12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):
  - Member, New York Bar, 2001–present.
  - Member, District of Columbia Bar, 2001–present.
  - Fellow, American College of Tax Counsel, 2017–present.
  - Vice chair, Continuing Legal Education Committee, ABA Tax Section, 2012–present.
  - Appointments to the Tax Court Committee, ABA Tax Section, 2014–present.
  - Nominating Committee, ABA Tax Section, 2016–present.
  - Secretary, Taxes Committee, International Bar Association, 2015–2017.
  - Vice chair, Taxes Committee, International Bar Association, 2017–present.
  - The J. Edgar Murdock American Inn of Court, 2011–present.
  - Taxes Committee, International Bar Association, 2007–present.

ABA Tax Section, special assistant to the vice chair, government relations, 2006–2007.

ABA Tax Section, 2006–present.

North Carolina Law Review, articles editor and staff member, 1999–2000.

History Club, International Club, and Challenge Bowl team, 1994–1997.

The Falls Church (Anglican) (Falls Church, VA), 2002–present.

McLean Presbyterian Church (McLean, VA), 2001–2002 (regular attendee).

Church of the Good Shepherd (Durham, NC), 1998–2000.

Berean Baptist Church (West Palm Beach, FL), 1994–1997.

13. Political affiliations and activities:

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

None.

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

None.

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

Campaign for Election of Justice David Stras, Minnesota Supreme Court, 2012, \$250.

Covington and Burling LLP Political Action Committee, \$125 monthly since August 1, 2009.

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

Fellow, American College of Tax Counsel, 2017–present.

Recognized by Chambers USA—Tax, Legal 500 US—Tax, and Washington DC Super Lawyer.

Winner of scholarship by Taxation Committee of the International Bar Association to attend the 2008 IBA Annual Conference based on paper that analyzed new arbitration procedures contained in certain tax treaties and the OECD model treaty entitled “Avoiding Double Taxation Through Binding Arbitration: A Comparative Review” (May 19, 2008).

The University of North Carolina School of Law (Chapel Hill, NC).

Dean’s list, all semesters, ranked 1/222.

Edgar S.W. Dameron, Sr. Scholarship (scholarship for outstanding performance in law school).

Certificate of Merit (for highest grade in section): Corporate Finance, Spring 2000; Mergers and Acquisitions, Spring 2000; Securities Regulation, Spring 2000; Antitrust, Fall 1999; Banking, Fall 1999; Corporate Tax, Fall 1999; International Business Transactions, Fall 1999; Business Associations, Spring 1999; European Perspectives on the Law, Fall 1998; Law and Economics, Fall 1998; Property, Spring 1998; Research, Reasoning, Writing, and Advocacy, Spring 1998; Torts, Spring 1998; Criminal Law, Fall 1997; Property, Fall 1997.

Gressman and Pollitt Award for Outstanding Oral Advocacy, Spring 1998.

Palm Beach Atlantic University (West Palm Beach, FL).

Outstanding University Graduate, 1997 (selected #1 graduate in class).

Outstanding Graduate of the Rinker School of Business and Outstanding Accounting Student, 1997.

Recipient of the Society of Colonial Wars History Award, 1997 (for best history student).

Outstanding Freshman Supper Honors Scholar, 1994.

Recipient of The Frederick M. Supper Honors Scholarship (full academic scholarship for 4 years).

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

“Examination and Appeals,” in *Practical Guide to U.S. Transfer Pricing* (Robert T. Cole ed., Matthew Bender 3rd ed. 2015 and 2017 update) (co-authored with Reeves C. Westbrook and Sam Maruca).

“Supplemental Unemployment Benefits Subject to FICA Tax, Supreme Court Holds,” March 25, 2014, *Inside Compensation* (co-authored with Robert Newman), [https://www.insidecompensation.com/2014/03/25/supplemental-unemployment-benefits-subject-to-fica-tax-supreme-court-holds/?\\_ga=2.1578737.1554069257.1526433414-557148540.1519933775](https://www.insidecompensation.com/2014/03/25/supplemental-unemployment-benefits-subject-to-fica-tax-supreme-court-holds/?_ga=2.1578737.1554069257.1526433414-557148540.1519933775).

“U.S. Seeks Supreme Court Review of Decision That Severance Pay for Layoffs Is Not Subject to FICA Tax,” June 3, 2013, *Inside Compensation* (co-authored with Robert Newman), [https://www.insidecompensation.com/2013/06/03/u-s-seeks-supreme-court-review-of-decision-that-severance-pay-for-layoffs-is-not-subject-to-fica-tax/?\\_ga=2.71338004.622033976.1527537754-557148540.1519933775](https://www.insidecompensation.com/2013/06/03/u-s-seeks-supreme-court-review-of-decision-that-severance-pay-for-layoffs-is-not-subject-to-fica-tax/?_ga=2.71338004.622033976.1527537754-557148540.1519933775).

“An Opportunity to Support U.S. Customs Valuations,” *International Tax Review*, June 2012 (co-authored with David Grace and Mateo Caballero).

Comment, “Of Courts and Rights: Constitutionalism in Post Communist Albania,” 25 *North Carolina Journal of International Law and Commercial Regulation* 485 (2000).

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

I have not given any formal speeches, but have participated in bar association panels and other similar public events, which are listed below.

“To Litigate or Not To Litigate? Strategic Considerations in Deciding Whether, When, and Where To Go to Court in Latin America,” June 15, 2017, co-chair of panel at the 10th Annual U.S.-Latin America Tax Planning Strategies.

“The Terrible Two: Why Tax Reform and Transfer Pricing Are Keeping Tax Directors Awake at Night,” April 26, 2017; panelist at CBIT’s 32nd Annual Spring Tax Day.

“Tax Controversy: Handling Inspections, Audits, and Litigation in an Electronic Environment,” June 9, 2016, co-chair of panel at the 9th Annual U.S.-Latin America Tax Planning Strategies.

“Binding Arbitration: A Comparative Overview,” June 23, 2016, ANEFAC Monterrey meeting in Washington, DC.

“The Impact of BEPS on APAs and Dispute Resolutions,” May 14, 2016, panelist at 6th International Tax Retreat, Maisto e Associati.

“Align Transfer Pricing Outcomes With Value Creation: Action Items 8–10,” April 28, 2016, co-presenter at TEI 2016 U.S. International Tax Seminar—BEPS Is Now.

“Assistance in Tax Matters and Alternative Dispute Resolution Methods,” December 3, 2015, co-chair of panel at “The New Era of Taxation: The Keys to Providing Legal Advice on Tax Law in a Rapidly Changing World” IBA Conference in Mexico City.

“Recent Trends in the Negotiation and Application of Tax Treaties in Latin America,” June 12, 2015, co-chair of panel at the 8th Annual U.S.-Latin America Tax Planning Strategies.

“Primer on Tax Treaties,” January 31, 2015, panelist at ABA Tax Section mid-year meeting in Houston, TX.

“Navigating Tax Treaties: Getting and Keeping Treaty Benefits in Uncertain Times,” November 3, 2014, panelist at Tax Executives Institute 2014 Annual Conference.

“Global Trends—Recent Experience in Tax Audits,” October 22, 2014, co-chair of panel at the Annual IBA Conference in Tokyo, Japan.

“Fear of flying or just worried about your co-pilot? Working cross border and in association with lawyers from other jurisdictions,” October 21, 2014, panelist at the Annual International Bar Association Conference in Tokyo, Japan.

“Treaties: A New Balance? Have Governments Become More Focused on Preventing Fiscal Evasion Than Avoiding Double Taxation?,” June 6, 2014, co-chair of panel at the 7th Annual U.S.-Latin America Tax Planning Strategies.

“Do I Need an Expert?,” May 22, 2014, panelist at Tax Executives Institute IRS Audits and Appeals Conference.

“Managing and Resolving Bilateral Tax Disputes,” March 18, 2014, panelist at ABA Tax Section 2nd Annual International Tax Enforcement.

“Cutting Your Losses: Where Did All My NOLs Go?,” October 10, 2013, co-chair of panel at the Annual International Bar Association Conference in Boston.

“Trends in Interpretation and Application of Double Taxation Treaties in Latin America,” June 14, 2013, co-chair of panel at the 6th Annual U.S.-Latin America Tax Planning Strategies.

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

I have dedicated my professional career to helping clients understand their Federal tax obligations. In more than 15 years of practice, I have had the opportunity to resolve numerous client controversies with the Internal Revenue Service and to advise clients on complicated tax issues in connection with their operations in the United States and abroad. I have also represented clients before the United States Tax Court. During my clerkships at the United States Court of Appeals for the District of Columbia Circuit and the United States Supreme Court, I had first-hand experience with litigation in many cases, involving both tax and non-tax matters. These experiences, as well as studies during and after law school and participation in the activities of The J. Edgar Murdock American Inn of Court (organized by the United States Tax Court), have given me a strong understanding of our tax laws and the litigation process for tax cases. Through them I have come to appreciate the key role trial courts play in our judicial system and the hard work required to hear and decide cases.

In addition, legal practice and service in the community have taught me that usually there are two sides to every dispute and that wise decisions require careful listening, thorough evaluation, impartial judgment, and fairness. These characteristics are essential to a proper judicial temperament. My personal temperament is aligned with these requirements and, I believe, would be an asset to the United States Tax Court.

Furthermore, life at Covington and while clerking has instilled in me a deep commitment to collegiality. In my view, results are better and the work product stronger when colleagues cooperate toward a common goal. I trust that this perspective will facilitate the workings of the United States Tax Court, particularly given its collegial (rather than individual) decision-making process and the need for a uniform application of the law in light of the Court's nationwide jurisdiction.

Finally, my personal background gives me a deep appreciation for the United States Constitution, the American legal system, and the importance of the rule of law. If confirmed by the Senate, I would strive each day, in the words of the judicial oath, to “administer justice without respect to persons, and do equal right to the poor and to the rich,” and in so doing serve the country to which I owe so much.

## **B. FUTURE EMPLOYMENT RELATIONSHIPS**

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

Yes, although I anticipate continuing my involvement with bar associations and volunteering on the board of trustees of Rivendell School.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.  
No
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.  
No.
4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.  
Yes.

### C. POTENTIAL CONFLICTS OF INTEREST

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

If my investments, obligations, liabilities, or other personal relationships give rise to potential conflicts of interest, I will resolve such conflicts consistent with the rules of the United States Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. § 455, including recusal.

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

I am not aware of any existing conflicts. During the last 10 years I have represented clients before the Internal Revenue Service and the U.S. Department of the Treasury in several matters. I have also provided advice and counseling to clients in connection with Federal income tax issues. Should any matters in which I have been involved give rise to litigation before the United States Tax Court in the future, I will resolve any possible conflict of interest consistent with the rules of the United States Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. § 455, including recusal.

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

From time to time during the last 10 years, I have provided technical assistance to colleagues at Covington whose practice involves advocacy before Congress. I have not, however, personally appeared before Congress.

In representing clients before the Internal Revenue Service and Treasury, a lawyer as a matter of course makes arguments supporting his or her client's position. In a broad sense, such arguments are intended to "affect the administration and execution of law or public policy" with respect to that particular client. In that broad sense, my legal practice over the years could be viewed as affecting the administration and execution of Federal income tax law and policy.

In addition, in a narrower and more specific sense, in response to the Internal Revenue Service's request for comments on the potential application of the proposed Schedule UTP disclosure requirements to partnerships and other pass-through entities, my colleagues Elizabeth A. Bell and Jeremy D. Spector and I submitted a comment letter (dated June 14, 2010) on behalf of a group of interested partnerships that shared the Service's goal of improving the fair and effective administration of the tax system. A copy of the letter is enclosed.

4. Explain how you will resolve any potential conflict of interest, including any that are disclosed by your responses to the above items.

I will adhere to all of the ethics rules applicable to judges of the United States Tax Court and, when required by the rules of the United States Tax Court, the

Code of Conduct for United States Judges, or 28 U.S.C. § 455, recuse myself from participating in matters that give rise to any conflict of interest.

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

Not applicable.

#### D. LEGAL AND OTHER MATTERS

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

No.

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

No.

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

No

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

No.

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

None.

#### E. TESTIFYING BEFORE CONGRESS

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

Yes.

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

Yes.

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COVINGTON AND BURLING LLP

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June 14, 2010

Internal Revenue Service  
CC:PA:LPD:PR (Announcement 2010-9)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station, NW  
Washington, DC 20044

**Re: Application of Proposed Schedule UTP to Partnerships**

Dear Sir or Madam:

We write in response to the request for comments on the potential application of the proposed Schedule UTP disclosure requirements to partnerships and other pass-through entities. We represent a group of interested partnerships that share the Service's goal of improving the fair and effective administration of the tax system. While we understand the Service's objective of increasing audit efficiency and its belief that it can achieve this objective through the use of Schedule UTP, we are concerned that extending the Schedule's filing requirements to include partnerships will impose an undue burden on partnerships, will contradict the policy considerations set out by the Service in support of Schedule UTP, and may result in duplicative reporting.

We therefore recommend that the Service continue to exclude partnerships from the disclosure requirements of proposed Schedule UTP in future tax years. As explained below, this approach achieves the best balance between providing the Service the information that it believes it needs for efficient tax administration and limiting the burden imposed on taxpayers. Only in the event that this recommendation is rejected and the Service decides to expand the reporting regime, we urge that any requirement that partnerships file Schedule UTP be limited to cases in which a partnership itself has potential income tax liability.

**1. Proposed Schedule UTP**

On January 26, 2010, the Service issued Announcement 2010-9,<sup>1</sup> which proposed that business taxpayers with total assets in excess of \$10 million be required to disclose to the Service uncertain tax positions for which they have recorded a reserve under Financial Accounting Standards Board Interpretation No. 48<sup>2</sup> ("FIN 48") or other similar accounting standards. FIN 48 requires a taxpayer to assess the impact of its tax positions on its audited financial statements. A "tax position" is a decision that can result in a reduction of income tax payable, a deferral of income tax otherwise currently payable, or a change in the ability to realize deferred tax assets. The term "tax position" includes other positions and decisions as well, including the classification of an entity as a pass-through or tax-exempt entity.<sup>3</sup>

Announcement 2010-9 contemplated that taxpayers within its scope would be required to include in their returns a schedule that would provide a concise description of each uncertain tax position and the maximum amount of potential federal tax liability that would be due if the position were disallowed. Announcement 2010-9 also noted that taxpayers are already required by FIN 48 to account for uncertain tax positions.<sup>4</sup>

On March 5, 2010, in Announcement 2010-17,<sup>5</sup> the Service indicated that the schedule contemplated by Announcement 2010-9 would apply to returns relating to tax years beginning in 2010.

On April 19, 2010, the Service issued Announcement 2010-30,<sup>6</sup> a draft of Schedule UTP,<sup>7</sup> and draft Instructions for Schedule UTP<sup>8</sup> (the "Instructions"). The Schedule and Instructions require a corporation that files Form 1120, 1120 F, 1120 L, or 1120 PC to file the Schedule if (1) the corporation has assets equal to or exceeding \$10 million, (2) the corporation issues or is included in an audited financial statement, and (3) the corporation has one or more tax positions that must be reported on the Schedule.<sup>9</sup> The Schedule requires the reporting of federal income tax positions for which the corporation or a related party has recorded a reserve in an audited financial statement or for which no reserve has been recorded based on an ex-

<sup>1</sup>2010-7 I.R.B. 408 (February 16, 2010).

<sup>2</sup>Financial Accounting Standards Board, "Interpretation No. 48—Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" (June 2006). FIN 48 has since been codified at FASB ASC 740-10, pursuant to FAS 168, "The FASE Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles." All references to FIN 48 in this comment letter refer to FIN 48 as codified.

<sup>3</sup>FASB ASC 740-10-65-2.

<sup>4</sup>2010-7 I.R.B. at 408-09.

<sup>5</sup>2010-13 I.R.B. 515 (March 29, 2010).

<sup>6</sup>2010-19 I.R.B. 668 (May 10, 2010).

<sup>7</sup>*Id.* at 669-71.

<sup>8</sup>*Id.* at 672-80.

<sup>9</sup>*Id.* at 673.

pectation to litigate or an IRS administrative practice.<sup>10</sup> Announcement 2010–30 notes that the Service will not require pass-through entities to file a Schedule UTP for the 2010 tax year.

Pass-through entities themselves are not required to record a reserve with respect to the tax liability of their owners. However, the Instructions make clear that if a Schedule filer—*i.e.*, a corporation—records a reserve for a tax position taken by a partnership in which the filer holds an interest, the filer must disclose that position.<sup>11</sup>

**2. Partnerships Should Continue To Be Excluded From the Requirement To File Schedule UTP**

We agree with the Service’s decision to exempt partnerships from the requirements to file the Schedule for the 2010 tax year. We further recommend, consistent with the policy considerations underlying Announcement 2010–9, that partnerships not be required to file the Schedule for future tax years.

**(a) Requiring Partnerships To File the Schedule Would Impose a Large Collective Burden While Providing the Service Almost No Useful Information.**

Over 3 million partnerships file federal income tax returns.<sup>12</sup> Although partnerships have been subject to FIN 48 reporting requirements since December 2008, almost none of them record reserves under FIN 48. FIN 48 has little practical impact on the vast majority of partnerships because income tax liability based on the activities of a partnership is a liability of its partners, not of the partnership.<sup>13</sup> Partnerships themselves are typically not subject to federal income tax liability, and thus will not record reserves related to income tax positions.

While it is conceivable that partnerships might have entity-level income tax liability exposure, such exposure is extremely rare. Specifically, under FIN 48, the term “tax position” includes an entity’s status, such as its status as a partnership.<sup>14</sup> A partnership’s status could be uncertain if the partnership could potentially be considered a publicly traded partnership under Section 7704 or if an election to be treated as a partnership under Treas. Reg. §301.7701–3 could be considered defective. This issue is unlikely to arise for all but a handful of partnerships, and we are unaware of any other issues that would expose a partnership to entity-level federal income tax liability.

Mandating that partnerships file Schedule UTP after 2010 would force the more than 3 million partnership filers to evaluate whether they meet the criteria for filing, which would also require an investigation of any related party’s audited financial statements. Thus, even though only the rare partnership will have an income tax reserve and actually need to file Schedule UTP, every partnership would need to expend resources to determine *whether* it is subject to the Schedule UTP filing requirements. Imposing such an obligation on partnerships would result in a very large collective burden for the sake of receiving an exceedingly limited amount of information.

**(b) Requiring Partnerships To File the Schedule Would Contradict the Policy Considerations Set Out by the Service in Support of Schedule UTP.**

Requiring that all partnerships engage in a Schedule UTP analysis would run counter to the limited-burden rationale offered by the Service in support of the Schedule UTP. As Announcement 2010–9 noted, the scope of disclosures to be included in the Schedule is limited to those uncertain tax positions the evaluation of which is already mandated by FIN 48 or similar accounting standards.<sup>15</sup> This was

<sup>10</sup> *Id.* at 672.

<sup>11</sup> *Id.* at 679.

<sup>12</sup> IRS Statistics of Income, Selected Returns and Forms Filed or To Be Filed by Type During Specified Calendar Years, available at <http://www.irs.gov/taxstats/article/0,,id=175902,00.html>.

<sup>13</sup> Financial Accounting Standards Board, Accounting Standards Update No. 2009–06, Implementation Guidance on Accounting for Uncertainty in Income Taxes and Disclosure Amendments for Nonpublic Entities 1 (September 2009); *see also, e.g.*, FASB ASC 740–10–55–226; I.R.C. § 1(h)(10) (defining partnerships as “pass-through” entities).

<sup>14</sup> FASB ASC 740–10–65–2.

<sup>15</sup> 2010–7 I.R.B. at 408–09.

intentional. The objective was for the Service to obtain additional information without demanding additional analysis from taxpayers.

During his speech to the New York State Bar Association Taxation Section explaining the motivations behind Announcement 2010-9, Commissioner Shulman emphasized that the Service does not “think we’re going to be adding substantial new work burden on taxpayers because these taxpayers are already required to establish tax reserve for uncertain tax positions. . . . So this is work that is already being done.”<sup>16</sup> Other IRS officials have echoed the burden-limiting aspects of the proposal in various contexts. For example, Chief Counsel Wilkins has stated that the IRS intends to rely on accounting processes already in place and is not developing “a new, IRS-written filter for issue identification,”<sup>17</sup> and Large and Mid-Size Business Division Commissioner Maloy has observed that Schedule UTP reporting is merely “factual”—that is, if a taxpayer makes a reserve decision, it must simply disclose that decision.<sup>18</sup>

As described above, the burden that would be placed on partnerships if they were subject to the new disclosure rules would be out of proportion with any benefits that the Service might obtain from the little information that would be reported as a result of such disclosure.

***(c) Requiring Partnerships To File the Schedule May Result in Duplicative Reporting.***

As Commissioner Shulman has noted, taxpayers are legitimately concerned about Schedule UTP imposing redundant reporting requirements.<sup>19</sup> Requiring partnerships to disclose tax positions regarding their partners could result in duplicative reporting. Many tax positions taken by partnerships are already captured by the Schedule as currently drafted. For example, a corporate partner is required by the Schedule and Instructions to disclose its tax positions related to partnerships in which it holds an interest, along with the EINs of the partnerships.<sup>20</sup> Requiring a partnership to also report this same information would be duplicative. Moreover, such a disclosure requirement would impose an additional and unnecessary burden, contrary to the IRS policy described above. Finally, and significantly, it would exceed the scope of FIN 48, which applies only to partnerships’ entity-level federal income tax positions.

\* \* \*

In summary, while we understand the Service’s interest in gathering information that it believes could lead to a more efficient audit process for the Service, we submit that requiring partnerships to file Schedules UTP would not advance that objective in a meaningful fashion. Moreover, such a requirement would, in the aggregate, impose significant burdens on a large number of entities while providing few, if any, of the benefits that the Service expects to obtain from Schedules UTP. We therefore recommend that partnerships be excluded from the requirement to file Schedule UTP.

***3. If Partnerships Are Required To File the Schedule, the Requirement Should Be Limited to Partnerships With an Income Tax Liability Exposure.***

If the Service rejects our recommendation, any extension of the application of the Schedule UTP to partnerships should be restricted to those tax positions that expose a partnership itself to federal income tax liability. A broader application of the Schedule, such as requiring a partnership to report a tax position that potentially affects only partner-level liabilities, would require additional analysis that is not currently undertaken at the partnership level. As noted above, partnerships are required under FIN 48 to record reserves only for tax positions that affect their own tax liabilities (such as positions regarding the partnership’s status as a pass-through entity). Moreover, directing a partnership to report tax positions that might

<sup>16</sup> Douglas H. Shulman, Commissioner, Internal Revenue Service, Address at the New York State Bar Association Taxation Section Annual Meeting (January 26, 2010).

<sup>17</sup> William Wilkins, Chief Counsel, Internal Revenue Service, Remarks at KPMG LLP Tax Governance Institute (March 2, 2010).

<sup>18</sup> Heather Maloy, Commissioner, Internal Revenue Service Large and Mid-Size Business Division, Remarks at American Bar Association Section of Taxation May Meeting (May 7, 2010).

<sup>19</sup> Douglas H. Shulman, Commissioner, Internal Revenue Service, Remarks at the Tax Executives Institute’s 60th Midyear Conference (April 12, 2010).

<sup>20</sup> 2010-19 I.R.B. at 679. Example 1 of the draft instructions, which discusses a corporation’s reporting of its partnership’s tax position, illustrates this relationship. *Id.* at 674.

be relevant to its partners would require the partnership to reevaluate its positions from its owners' perspectives, which may be tied to different materiality thresholds. Such an expansive application of the disclosure requirements would be entirely inconsistent with the policy considerations, and specifically the intent to limit additional burdens, underlying Announcement 2010-9. Thus, while still imposing an undue burden on most partnerships, narrowly tailoring any additional reporting obligation of partnerships to reach only tax positions that implicate entity-level reserves would at least limit this burden.

\* \* \*

Thank you for your consideration of our views. We would be pleased to provide more information in support of these comments or to be available for discussion of the comments if that would be helpful.

Sincerely,  
 Elizabeth A. Bell  
 Jeremy D. Spector  
 Emin Toro

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QUESTIONS SUBMITTED FOR THE RECORD TO EMIN TORO

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

PRO SE PLAINTIFFS

*Question.* If confirmed as a judge to the United States Tax Court, you will be responsible for resolving difficult tax controversies brought before you in large and small cases. Judges for the U.S. Tax Court travel around the country and hear cases in 75 cities. Oftentimes, volunteer tax practitioners provide assistance to unrepresented taxpayers or *pro se* taxpayers as they navigate the process of petitioning the IRS. These cases are often small businesses, innocent spouses, or low-income tax payers.

As a judge for the U.S. Tax Court, what role would you play to ensure that cases for *pro se* plaintiffs are being adjudicated in a fair and timely manner?

*Answer.* The question addresses a critical issue. More than 75 percent of cases in the United States Tax Court are brought by taxpayers who represent themselves, often referred to as *pro se* taxpayers. For nearly 40 years, the Tax Court has worked with bar associations, legal services organizations, and law schools to provide representation to *pro se* taxpayers. As a result of these efforts, 134 low income taxpayer clinics have been established around the country and are available in each of the 74 cities in which the Tax Court holds trial sessions. In addition, nine calendar call programs run by bar associations are available to assist *pro se* taxpayers during calendar calls. The Tax Court advises *pro se* taxpayers of these opportunities three times during the course of a case: (1) when the petition is filed, (2) when the notice of trial is issued, and (3) 30 days before the calendar call. Furthermore, on May 10, 2019, the Tax Court adopted an order permitting practitioners before the Court to enter an appearance limited to a date or dates during a scheduled trial session, which should further facilitate the representation of *pro se* taxpayers during a trial session. If confirmed, I would support these programs and encourage *pro se* taxpayers to avail themselves of the resources they provide. I would also encourage them to use the very helpful forms and videos found on the Court's website. Moreover, to the extent *pro se* taxpayers still decide to represent themselves, I would treat them, and all litigants, with respect, explaining how the Tax Court works and offering them an opportunity to have their concerns heard by a fair and impartial judge. I would also work hard to narrow the disputes between the parties and, after careful consideration, rule expeditiously on any disputes that the parties cannot resolve themselves.

NEW TAX LAW

*Question.* If confirmed as a judge to the United States Tax Court, you will be responsible for interpreting how our tax laws apply for a wide variety of plaintiffs from multinational corporations with large numbers of lawyers serving as counsel to small businesses and individuals who often appear before the court as plaintiffs *pro se*. As the Internal Revenue Service reviews and publishes new regulations to implement the 2017 tax bill, differences are emerging regarding the interpretation

of these tax provisions. Some of issues may result in possible future litigation. And the U.S. Tax Court will be in a position to help settle interpretation of many issues arising from the 2017 tax bill.

As a judge for the U.S. Tax Court, what role would you give to legislative intent, conference report language, or statements from members of Congress as you interpret and apply the previously unlitigated tax law?

Answer. Because the United States Tax Court is a trial court with national jurisdiction, appeals from its decisions are heard by 12 courts of appeals. Thus, in resolving a particular dispute before them, Tax Court judges must be aware of, and apply, binding authority from the court of appeals that would hear an appeal from that case, in addition to precedent from the U.S. Supreme Court. Courts of appeals take different views on the proper use of conference report language or statements from members of Congress. In keeping with my obligation to apply the law faithfully and impartially, I would follow the applicable precedent from the U.S. Supreme Court and the circuit court of appeals to which the case would be appealed on this issue.

#### ADMINISTRATIVE PROCEDURE ACT

*Question.* The Administrative Procedure Act sets the standard for the way that Federal Government agencies propose and establish regulations. Currently, there is discussion about how the Administrative Procedure Act applies to tax guidance, rulings of deficiency, and other determinations.

What is your opinion on the application or applicability of the Administrative Procedure Act with respect to temporary regulations and informal IRS guidance, such as notices, revenue procedures, revenue rulings, and private letter rulings?

Answer. The application of the Administrative Procedure Act (“APA”) in particular circumstances turns on whether a specific agency action falls within the rules set out in the statute. For example, the APA requires agencies to provide notice and an opportunity for comment with respect to a “proposed rule making.” The statute defines “rule making” as the “agency process for formulating, amending, or repealing a rule,” 5 U.S.C. § 551(5), and a “rule,” in relevant part, as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency” (5 U.S.C. § 551(4)). Thus, application of the notice and comment requirements of the APA to tax guidance turns on whether such guidance constitutes a “rule” within the definition of the APA.

A decision on the application of the APA to the various types of guidance noted in the question requires complex analysis. In deciding cases that might come before me, if confirmed, I would carefully consider the relevant law as well as additional briefing by the parties before reaching a conclusion on the proper application of the APA to a particular item of regulatory guidance.

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#### PREPARED STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

This morning the Finance Committee meets to discuss two important nominations. David Black is nominated to serve as Deputy Social Security Commissioner, and Emin Toro is nominated to serve as a judge on the United States Tax Court. Let me start with Mr. Black’s nomination.

When you talk about Social Security, you’re talking about a lifeline for 69 million Americans. They’re seniors, people with disabilities, and other individuals who’ve earned their benefits after years of paying into the program with each and every paycheck. Every one of those 69 million people—and the generations who will come after them—are counting on those who run the Social Security program to maintain a high level of service.

Because of this committee and the hard work of dedicated advocates for Social Security, the agency’s administrative budget has improved recently. Americans don’t have to wait as long as they did a few years ago for a hearing on a disability appeal, but there’s a lot more work to do. That’s also the case with respect to improving and managing Social Security IT infrastructure.

Those are among the key challenges Mr. Black will need to address if he's confirmed. He's a qualified nominee who knows the ins and outs of the Social Security Administration.

This morning, while we consider this nomination for SSA Deputy Commissioner, I also want to remind the committee that Social Security has not had a confirmed Commissioner in place since February 2013. Bottom line, that's far too long for the top position to go unfilled. Just like any government agency or any private business, SSA runs best when it has strong leadership with a vision for how to improve. In my judgement, the Senate should not confirm a Deputy Commissioner before confirming the Commissioner.

Andrew Saul's nomination to serve as Commissioner has been approved by this committee twice. I hope he's able to get on the job soon. I also note that, in terms of going forward on the Senate floor, it would be appropriate to take up the nomination of the Commissioner before taking up the nomination of the Deputy Commissioner.

Now onto Emin Toro's nomination for the U.S. Tax Court. The U.S. Tax Court may not generate a whole lot of conversation over America's dinner tables, but it is the judicial backbone of the Federal tax code. It's the best opportunity Americans have to dispute tax bills before they have to pay, and it keeps them from getting stuck in slow-moving courts when issues come up. The Tax Court is a big part of ensuring fairness for taxpayers, and serving as a judge is a tough job that requires a lot of time on the road. So I appreciate Mr. Toro's willingness to serve.

I want to thank both of the nominees here today, and I look forward to questions.

