

**NOMINATIONS OF ERIK A. HOOKS,  
HON. MICHAEL KUBAYANDA,  
LAUREL A. BLATCHFORD, HON. EBONY M. SCOTT,  
AND DONALD W. TUNNAGE**

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**HEARING**

BEFORE THE

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

FIRST SESSION

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NOMINATION OF ERIK A. HOOKS TO BE DEPUTY ADMINISTRATOR,  
FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF  
HOMELAND SECURITY, HON. MICHAEL KUBAYANDA TO BE A  
COMMISSIONER, POSTAL REGULATORY COMMISSION,  
LAUREL A. BLATCHFORD TO BE CONTROLLER, OFFICE OF FEDERAL  
FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET,  
HON. EBONY M. SCOTT AND DONALD W. TUNNAGE TO BE ASSOCIATE  
JUDGES, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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**NOMINATIONS OF ERIK A. HOOKS,  
HON. MICHAEL KUBAYANDA,  
LAUREL A. BLATCHFORD,  
HON. EBONY M. SCOTT, AND DONNALD W.  
TUNNAGE**

**THURSDAY, NOVEMBER 18, 2021**

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

The Committee met, pursuant to notice, at 10:15 a.m., via Webex and in room SD-342, Dirksen Senate Office Building, Hon. Gary Peters, Chairman of the Committee, presiding.

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

**OPENING STATEMENT OF CHAIRMAN PETERS<sup>1</sup>**

Chairman PETERS. The Committee will come to order.

Today, we are considering five nominations: Erik Hooks, to be Deputy Administrator of the Federal Emergency Management Agency (FEMA); Michael Kubayanda, to serve a second term as a Commissioner on the Postal Regulatory Commission (PRC); Laurel Blatchford, to be Controller of the Office of Federal Financial Management (OFFM), within the Office of Management and Budget (OMB); and Ebony Scott and Donald Tunnage who are both joining us remotely, to be Associate Judges on the Superior Court for the District of Columbia.

Welcome to each of you and to your friends and family members joining us here today. Congratulations on your nominations, and thank you for all of your previous service and for your willingness to take on these very important new roles. These are all very different positions, but each is critically important to the Federal Government and to our nation's capital.

I am pleased that we are considering highly qualified nominees for each of these roles, and in particular, for several roles that have been vacant for far too long. FEMA has been without a Senate-confirmed Deputy Administrator for nearly 2 years, and OMB has not had a Senate-confirmed Controller in almost 5 years.

Additionally, the D.C. Superior Court is struggling with high vacancy levels. There are currently 14 Associate Judge vacancies on the court, and I am glad we have two nominees to the Superior

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<sup>1</sup>The prepared statement of Senator Peters appear in the Appendix on page 37.

Court here today, and I hope to see several other seats filled shortly.

Thank you again for your willingness to serve and for being with us today. I look forward to hearing from each of the nominees.

I recognize Ranking Member Portman for his opening comments.

#### **OPENING STATEMENT OF SENATOR PORTMAN<sup>1</sup>**

Senator PORTMAN. Thank you, Mr. Chairman, and I want to commend the nominees for stepping up to serve the public, both in the Federal Government and the D.C. Government.

Mr. Hooks, you come to us with more than 30 years of public service in law enforcement and public safety in North Carolina. I think your firsthand experience working with FEMA, which is the leading emergency management, Federal level, but also doing that at the State level is critical background for someone tapped to help lead the agency.

I am sure you saw that in the latest legislation, the infrastructure legislation, there is a \$1 billion funding for the Building Resilient Infrastructure and Communities (BRIC) program. I think this is a good program, and I think it will make your job a lot different, and ultimately will help the taxpayer and certainly citizens who live in areas that are prone to natural disaster, because it lets you mitigate disasters before they strike. If confirmed, it is my hope that you will use your State experience to ensure that BRIC is used in a strategic way, for exactly those purposes, to target those regions with the highest vulnerabilities to disasters.

Commissioner Kubayanda, the Postal Regulatory Commission is a small but mighty group, I think 75 people, but it plays a very important role in promoting transparency and accountability in the postal system. We rely on it, including examining the Postal Service's financial data, monitoring its service performance, and ensuring they follow the law when setting prices. Over the past 2 years, as you know, the importance of the Postal Service to the nation's supply chain has stood out, and the Postal Service faces, obviously, a difficult situation as First-Class Mail, which has traditionally sustained the institution, has continued to decline. So it is a time of change.

I know this is your second nomination to the Postal Regulatory Commission. You have already served as a Commissioner for nearly 3 years and the Chairman since last January. I look forward to hearing your thoughts on the nation's postal system, as well as its challenges, and what you are looking forward to for the future.

Ms. Blatchford, I enjoyed our conversation over the telephone. As you know, I think this is an incredibly important position, the Controller in the Office of Federal Financial Management, OMB. I think it is one of the most important positions in the Federal Government, as the Federal Government addresses the significant economic and other issues that face our country. As a former OMB director, I was very reliant on the person in this position, and I understand it is important to our Federal Government's proper functioning.

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<sup>1</sup>The prepared statement of Senator Portman appears in the Appendix on page 38.

It is so important that Congress actually placed specific qualifications on the position, and it is established in the U.S. Code under 31 U.S.C. Section 504, the Controller is required to possess a “demonstrated ability and practical experience in accounting, financial management, and financial systems; and extensive practical experience in financial management in large governmental or business entities.”

I look forward to discussing how you meet these requirements for the position of Controller, and if you are confirmed, I look forward to working with you on improving transparency in the Federal Government’s and better access for all taxpayers to the accountability that comes from more information.

To Judge Scott and Mr. Tunnage, thank you for being here today as the Committee considers their nominations to be associate judges on the D.C. Superior Court. Both of you have spent essentially your entire careers in public service, as I see, and I appreciate your willingness to serve as judges on the D.C. court.

Congress has a unique relationship with the D.C. justice system, as outlined in the Home Rule Act. As you know, there are important issues facing D.C., including rising crime, that all of us are aware of. There have been significantly more homicides, assaults, and armed robberies this year than there were at the same time last year, as an example. It is one reason we need impartial and qualified judges on the D.C. Superior Court to ensure timely justice for all parties. I look forward to discussing this and other issues with Judge Scott and Mr. Tunnage.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.

It is the practice of this Committee to swear in witnesses, so if each of our witnesses will stand, including our witnesses that are joining us via Zoom, would rise and raise your right hands.

Do you swear that the testimony that you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOOKS. I do.

Mr. KUBAYANDA. I do.

Ms. BLATCHFORD. I do.

Judge SCOTT. I do.

Mr. TUNNAGE. I do.

Chairman PETERS. You may be seated.

Our first nominee is Erik Hooks, nominated to be Deputy Administrator of FEMA. Mr. Hooks has more than 30 years of public safety experience, including serving as Secretary of Public Safety and Homeland Security Advisor (HSA) for the State of North Carolina.

As Secretary, Mr. Hooks led North Carolina’s largest department, which includes the State’s Emergency Management Agency, Office of Recovery and Resilience, the North Carolina National Guard, and several law enforcement agencies.

Prior to his tenure as Secretary, Mr. Hooks served for 28 years in North Carolina’s State Bureau of Investigation (SBI), where he held several leadership roles, including Assistant Director of the Professional Standards Division and head of the Threat Assessment and State Asset Investigations Unit.

Welcome, Mr. Hooks. You may proceed with your opening remarks.

**TESTIMONY OF ERIK A. HOOKS<sup>1</sup> TO BE DEPUTY ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. HOOKS. Good morning, Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee. My name is Erik A. Hooks, and it is a privilege to appear before you today as the President's nominee to the position of Deputy Administrator for FEMA. I am honored to have been nominated by President Biden for this important emergency management leadership role.

I am humbled by the opportunity to appear before this Committee and thank you for considering my nomination. If confirmed, I look forward to working with Secretary Mayorkas, Administrator Criswell, and the entire team at FEMA and the Department of Homeland Security (DHS) on building a more resilient and prepared nation.

I would like to thank my wife of almost 30 years, Muriel, and our son, Brandon, who have sacrificed along with me in my deep commitment to public service and a career in public safety.

I would also like to acknowledge the committed men and women of FEMA, our military, Federal, State, and local emergency management and public safety partners, who work tirelessly to protect and lead recovery efforts from multiple hazards across our great nation. If confirmed, it would be my sincere privilege to again work alongside these resolute public safety professionals.

I spent over 30 years serving the State of North Carolina, first as a Special Agent and a senior leader with the State Bureau of Investigation for over 27 years. Then in January 2017, the Governor of North Carolina appointed me to serve as the Secretary of Public Safety and Homeland Security Advisor for North Carolina. Over the last 4 years in that role, I led North Carolina's disaster mitigation, response and recovery efforts as the State navigated an increasing number of natural disasters.

I had the privilege to lead approximately 27,000 sworn and civilian public safety professionals as well as approximately 12,000 National Guard soldiers and airmen. I provided cabinet-level leadership to the North Carolina Division of Emergency Management and its Homeland Security Section, the North Carolina National Guard, the North Carolina Office of Recovery and Resilience (NCORR), the North Carolina State Highway Patrol, the North Carolina Alcohol Law Enforcement Division, the North Carolina State Capitol Police, the Division of Adult Correction and Juvenile Justice, the Governor's Crime Commission, and support divisions within the Department of Public Safety.

I was ultimately responsible for leadership coordination of homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection, response and recovery for emergencies, disasters, and acts or threats of terrorism.

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<sup>1</sup>The prepared statement of Mr. Hooks appear in the Appendix on page 40.

As the leader of North Carolina's State Administrative Agency for Homeland Security Grant Funds, I administered Federal funds to State, local and Tribal entities across North Carolina. I also chaired the North Carolina State Emergency Response Commission and through a talented team of professionals, coordinated law enforcement counterterrorism prevention, preparedness and response training on a statewide basis, resulting in a cohesive team response by both law enforcement and emergency first responders to acts of terrorism or a terrorist threat.

I recently served on the Executive Committee of the National Governors Homeland Security Advisors Council, and I am a member of the International Association of Chiefs of Police (IACP).

Today we face a multitude of challenges which must be successfully navigated through a proactive and collaborative effort to ensure FEMA can deliver needed critical services to the Nation. During my tenure as the North Carolina Secretary of Public Safety we responded to numerous disasters, including a number of State-declared disasters as well as Presidentially declared disasters. My public service experience prepares me for the position of FEMA Deputy Administrator.

I believe for us to create and maintain a true culture of prevention, protection, and preparedness, we must work collaboratively, across all levels of government and segments of society, to ready our nation for the many hazards we face and to ensure our nation's resiliency from catastrophic events is at the highest level possible.

If confirmed, it would be my honor to serve our nation by helping all communities reduce the risks associated with future disasters, while assisting disaster survivors across the country. I am committed to work tirelessly and with a deep sense of purpose to ready the Nation for catastrophic disasters, build a culture of preparedness, and reduce the complexity of FEMA.

With your consent, I would be honored to serve the American people. Thank you for your time and attention concerning my nomination and I look forward to answering any questions you may have.

Chairman PETERS. Thank you, Mr. Hooks, for your opening comments.

Our next nominee is Michael Kubayanda, who is nominated to serve a second term as a Commissioner on the Postal Regulatory Commission. Mr. Kubayanda has served on the Commission since January 2019, after being unanimously confirmed by the Senate. He served as the Commission's Vice Chairman from August 2019 through the end of 2020, and has served as Chairman since January 2021.

Prior to joining the Commission, Mr. Kubayanda has served as a board member and privacy officer for the digital health startup, and before that he held multiple roles with the U.S. Postal Service Office (USPS) of Inspector General (IG), including overseeing research on technical issues and postal economics, and serving as Director of Government Relations.

Welcome, Mr. Kubayanda. You may proceed with your opening comments.

**TESTIMONY OF THE HONORABLE MICHAEL KUBAYANDA<sup>1</sup> TO  
BE A COMMISSIONER, POSTAL REGULATORY COMMISSION**

Mr. KUBAYANDA. Good morning, Chairman Peters, Ranking Member Portman, and Members of the Committee. Thank you for inviting me to testify regarding my nomination to the Postal Regulatory Commission. I have been honored to serve as a Commissioner since January 2019, and as Chairman since January 2021, a period in which the postal system has undergone significant changes.

The Postal Service has served its mission of binding the Nation together during the COVID-19 pandemic. Postal workers kept Americans connected, allowed businesses to reach their customers, enabled citizens to safely receive supplies, and helped carry out elections. On the other hand, customers reported woeful performance in some areas, and the quantitative evidence confirmed this.

During this difficult period, the Commission has carried out its mission of providing transparency and accountability. The Commission produced two Annual Compliance Determinations on time during the pandemic, overseeing service and financial compliance. We have also issued major rulemakings on a bipartisan basis, including the 10-year review of the ratemaking system, and updates to our rules on accounting and cost allocation.

In addition, we have increased the Commission's focus on customer experience (CX) by probing the Postal Service's performance against CX metrics, including those adopted from the private sector.

Over the years, the Commission has mastered the annual compliance cycle established under 1970 and 2006 legislation. While these tools are proven, they may not be entirely adequate for our present situation and the speed of commerce today. For example, the high-profile service problems in the 2020 holiday season occurred in fiscal year (FY) 2021. They will be addressed in the 2021 annual compliance determination, but that will not be out until March 2022. So that is 15 to 16 months after the problems originally occurred.

The Commission is capable of providing transparency through more relevant and timely analyses. Working with my colleagues, I am doing everything in my power, and within the Commission's authority, to make sure we provide them.

Our traditional tools for providing accountability and transparency must be updated with a data-centric, customer-centric, and citizen-centric approach. This modernization is guided by bipartisan legislation approved by this Committee and the needs of the moment. It is also modeled on the success of other parts of the government such as the Postal Service's Office of Inspector General (OIG).

The Commission is currently implementing the OPEN Government Data Act. Pursuant to this law, the Commission will soon hire its first Chief Data Officer (CDO) and establish a Data Governance Board to make data available to the public in machine readable formats and manage data as a strategic asset to the Nation. The Commission is also reorganizing its staff to launch a small data analytics group to examine the postal network, address

<sup>1</sup> The prepared statement of Mr. Kubayanda appears in the Appendix on page 102.



bottlenecks, and conduct specialized studies of postal costs. This team will build on our prior work identifying pinch points in the postal network through the Commission.

Pending internal approvals, the Commission is also working on new data visualization approaches, such as a beta version of a service performance dashboard on our website. Dashboards can provide more understandable and timely insights into service performance, and eventually financial performance as well. The proposed beta dashboard is the result of work performed in-house by our enterprising staff with no additional investment.

These are modest steps on a small scale but they are necessary in modernizing postal regulation.

To support this approach, the Commission has expanded its technological capabilities. We have hired information technology (IT) and cybersecurity experts and are moving to cloud computing to support security and long-term cost savings. The Commission has also applied to the Technology Modernization Fund (TMF) to bolster these efforts.

Strategic use of data and technology can update the Commission's traditional mission of transparency and accountability. It allows the Commission to benefit from better-informed inputs from a broad range of stakeholders and provides discipline and focus for the exercise of our core responsibilities.

Through this data-centric, customer-centric, and citizen-centric approach, I hope the Commission can contribute to a virtuous cycle, continue to make this corner of the government more responsive, and adapt postal regulation to improve services to American citizens and businesses. I hope to return to the Commission to help it execute on this approach.

Thank you for considering my nomination and I look forward to answering your questions.

Chairman PETERS. Mr. Kubayanda, thank you for your opening remarks.

Our next nominee is Laurel Blatchford, nominated to be Controller of the office of Federal Financial Management within the Office of Management and Budget. Ms. Blatchford has over 20 years of nonprofit and government leadership experience, including servicing as the Chief of Staff of the Department of Housing and Urban Development (HUD) and Executive Director of the Hurricane Sandy Task Force, where she guided the implementation of disaster resilience funding across New York and New Jersey.

She is currently a Managing Director at Blue Meridian Partners, a nonprofit and philanthropic organization that invests in economic and social mobility nationwide. Prior to joining Blue Meridian, she served as President of Enterprise Community Partners, a national nonprofit focused on affordable housing and community development.

Welcome, Ms. Blatchford. You may proceed with your opening remarks.

**TESTIMONY OF LAUREL BLATCHFORD<sup>1</sup> TO BE CONTROLLER,  
OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF  
MANAGEMENT AND BUDGET**

Ms. BLATCHFORD. Thank you. Chairman Peters, Ranking Member Portman and Members of the Committee, thank you for the opportunity to appear before you today as President Biden's nominee for Controller, Office of Federal Financial Management, in the Office of Management and Budget. I am deeply humbled to have been nominated for this important role and would be honored to have the chance to serve the American people, if confirmed.

I want to thank my husband of 21 years, Bernie Kluger, and our two children for their love and support. I know he and they are watching alongside many friends, family members, and colleagues. Thank you all for your love and support.

I sit before you today because I am, at heart, a public servant. This calling comes directly from my parents. My father, Edward Blatchford, was an accomplished teacher and school administrator whose leadership and vision impacted the lives of many kids and their families. My mother, Claire, is also an educator and community leader who has shared the challenges and blessings of her own lived experience as a deaf woman to help others in countless ways. Their lives of purpose and service have had incredible impact on those around them, and I am deeply grateful for their example.

I started my own public service career as a young paralegal in the Manhattan District Attorney's Office, investigating organized crime. Since then, my path has taken me from working on a wide range of projects in the New York City Mayor's office, for Mayor Michael Bloomberg, to a leadership role in the largest local affordable housing and community development agency locally in the country, to then serving as Chief of Staff at the United States Department of Housing and Urban Development and as Executive Director of the Hurricane Sandy Task force, to continued service in the nonprofit world, where I served as President of Enterprise Community Partners. Along the way, I have had the honor of working on a wide range of issues including 9/11 recovery, our ongoing housing crisis, the many management challenges facing HUD, and recovery from natural disasters including Hurricane Katrina, Superstorm Sandy, and more recent storms and wildfires.

Across these different roles, one clear lesson has shone through: no matter how brilliant the idea, or how much money we were able to invest, the success of every project I have ever been involved with has depended on how the work is done. I have seen time and time again that strong implementation—with transparency, with efficiency, with consistency, and with strong partnerships—is essential to success, especially in the public sector. Great ideas without great execution are not enough.

If confirmed as Controller, I would bring my track record of delivering results to the unique and unprecedented challenges and opportunities we are facing right now as a country. Just as I have done before, I am eager to serve and bring my energies and capabilities to ensuring that the Federal Government works more effectively and efficiently for the American people, and specifically that

<sup>1</sup> The prepared statement of Ms. Blatchford appears in the Appendix on page 175.

our considerable financial resources and investments are deployed, tracked, and spent as well as possible.

I would be especially excited to serve alongside the talented and hardworking career and political staff at the Office of Management and Budget, some of whom I had the privilege of working with and knowing during my prior Federal service. If confirmed, I would be honored to join this team, to lead OFFM, and to work closely with leaders across the Federal family and with Congress to ensure that we accomplish our shared goals.

Thank you for the chance to appear before you today, and I look forward to your questions.

Chairman PETERS. Thank you. Next we will have a video from Congresswoman Eleanor Holmes Norton to introduce our final two nominees, Ebony Scott and Donald Tunnage, who are both nominated to be Associate Judges on the Superior Court for the District of Columbia.

**OPENING STATEMENT OF THE HONORABLE ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. Holmes NORTON. Chairman Peters and Ranking Member Portman, I appreciate the opportunity to introduce Ebony Scott and Donald Tunnage to be Associate judges on the Superior Court of the District of Columbia. Both bring the experience and credentials to be excellent judges.

Ms. Scott currently serves as a magistrate judge on the D.C. Superior Court, having been appointed in January 2020. Prior to being a magistrate judge, Ms. Scott served as the Deputy Director of the D.C. Mayor's Office of Legal Counsel (OLC). In that position, she provided legal advice to the mayor and the D.C. agencies. Prior to that work, Ms. Scott was a general counsel of the D.C. Office of Human Rights, where she oversaw the day-to-day operations of the Legal Division. Ms. Scott has also served as Assistant Attorney General (AAG) and Acting Section Chief in the Office of the D.C. Attorney General's Housing and Community Justice Section.

Prior to her public service work, Ms. Scott worked in private practice for almost 5 years, as a civil litigator, and served as a law clerk for the D.C. Court of Appeals. She has also served as an Adjunct Professor of Law at the American University College of Law. Ms. Scott is a graduate of the American University Washington College of Law and University of Rochester.

I am also pleased to introduce Donald Tunnage to be an Associate Judge on the D.C. Superior Court. Mr. Tunnage is a career attorney in the Civil Rights Division of the United States Department of Justice (DOJ). In this position, Mr. Tunnage has spent two decades enforcing such important civil rights laws as the Fair Housing Act and the Civil Rights Act. Mr. Tunnage has received special achievement awards and is a three-time recipient of special commendation for outstanding performance.

During his time with the Department of Justice, Mr. Tunnage was an Assistant State Public Defender—pardon me, not during his time but before his time with the Department of Justice, Mr. Tunnage was an Assistant State Public Defender in Florida, litigating criminal appeals on behalf of indigent individuals.

A magna cum laude graduate of Morehouse College and a graduate of Duke University Law School, Mr. Tunnage also holds a master's in public policy from Harvard Kennedy School of Government.

I appreciate the Committee moving these nominees, and I look forward to working with you to end the vacancy crisis.

Chairman PETERS. Welcome Judge Scott and Mr. Tunnage. Judge Scott, you may proceed with your opening remarks.

I think you are on mute right now, Judge.

Mr. Tunnage, we will go to you. Judge Scott, we understand it is the recording studio is having the issue, not you. We will see if Mr. Tunnage, let's hope your sound is working, if you want to proceed with your opening remarks.

**TESTIMONY OF DONALD W. TUNNAGE<sup>1</sup> TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. TUNNAGE. Thank you. Good morning. Chairman Peters, Ranking Member Portman, and Members of this Committee, thank you for the opportunity to appear before you today. I am deeply grateful to you and your dedicated Committee staffers for considering my nomination.

I would also like to extend my gratitude to all the members of the Judicial Nomination Commission and specifically its chair, the Honorable Emmet G. Sullivan, for recommending me, and I thank President Joseph Biden for nominating me to be an Associate Judge of the Superior Court of the District of Columbia. I extend also my gratitude and appreciation to Congresswoman Eleanor Holmes Norton for her very kind introduction. I am most appreciative of her support.

This nomination and the opportunity to appear before you today are easily the highest honors of my professional career. I sit before you today buttressed by the support of my extended family, classmates, close friends, and colleagues. Through unwavering support, they have mentored, supported, and encouraged me in life and throughout my career.

I offer special mention to my husband, Juan Ruiz Rojas, whose commitment and dedication form the fulcrum that allows me to successfully balance, work, family and co-parenting our 4-year-old son, Alec. Guiding and being a loving, caring parent and Papa to Alec is the eternal commitment in my life.

My mother, Linda Walker, a formerly retired public-school educator who returned to her career in education, because it is more accurately her life's calling, is watching with great enthusiasm and unbridled love and support from Fort Lauderdale, Florida. I also would like to offer special recognition to my late father, a veteran of the United States Army and a retired public-school educator who was known affectionately as Don. I am my father's namesake, and his unconditional and unswerving support uplifted and motivated me during his lifetime, while the memory of his unconditional love has been a personal and private comfort since his passing.

The entirety of my professional career has been in pursuit of fair process and equal treatment. Since 2000, I have had the honor and

<sup>1</sup> The prepared statement of Mr. Tunnage appears in the Appendix on page 224.

privilege of serving as a career trial attorney in the United States Department of Justice, where I have represented the United States in enforcing statutes that ensure full and fair participation of all citizens in life material activities such as housing, employment, and the constitutional right to be secure in their persons and effects.

During my two-decades career as a Justice Department trial attorney, I have appeared in Federal districts courts in more than ten States and I have dutifully executed and served under five Presidential administrations.

Prior to joining the Justice Department, I served as an assistant public defender, where my advocacy was for trial proceedings that were fair and constitutionally compliant.

In my professional experience, I have practiced as a defense counsel, a civil litigator, criminal prosecutor. I have appeared in State appellate courts and Federal district courts. In each role and every appearance I have advocated for equality under law and procedural fairness. If I am granted the honor of confirmation, those will be my guideposts as I seek to ensure fair and impartial administration of justice.

In closing, I would like to restate my sincere gratitude, Mr. Chairman, to you and every Member of the Committee for considering my nomination, and I look forward to answering any questions you may have of me.

Chairman PETERS. Thank you, Mr. Tunnage, for your comments. Judge Scott, you are recognized for your opening comments.

**TESTIMONY OF THE HONORABLE JUDGE EBONY M. SCOTT<sup>1</sup> TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Judge SCOTT. Thank you, Chairman Peters. Are you able to hear me now?

Chairman PETERS. Loud and clear.

Judge SCOTT. OK. Fantastic. I am used to these technical glitches at this point.

Thank you again. Good morning to you, Chairman, and to Ranking Member Portman, and thank you for holding this hearing today as well as the Committee staff. Thank you to Congresswoman Eleanor Holmes Norton for her kind remarks. They are sincerely appreciated.

I would like to thank the Judicial Nomination Commission and its chair, the Honorable Emmett Sullivan, for recommending me to the White House, and I would like to especially thank President Joseph Biden for this tremendous honor of this nomination.

As Maya Angelou has said, I come as one, but I stand as 10,000. I did not travel the road that led me here today alone. I would like to thank and acknowledge my Court family, in particular, the Chief of the Superior Court of the District of Columbia, Chief Judge Anita Josey-Herring, and my mentor, Chief Judge Anna Blackburne-Rigsby, of the District of Columbia Court of Appeals, for their immeasurable support. I am truly fortunate to have the support not only of my colleagues present and past, but of my

<sup>1</sup>The prepared statement of Judge Scott appears in the Appendix on page 247.

friends and family members, too many to name, many of whom are watching virtually, and all of whom I am deeply grateful to.

I would like to recognize my husband, and thank my husband, my soulmate, in fact, Jon Scott. His love has been enduring, and his encouragement and understanding has been absolutely endless.

I would like to recognize my maternal grandmother, Gladys Slaughter, and my grandfather, who I affectionately refer to as Grandpapa. They are both watching from my hometown of Buffalo, New York. Thank you for your support, and most importantly your love.

I would like to recognize my father-in-law, John Henry Scott, and my mother-in-law, JoEllen Scott, who along with many others, I suspect, are watching from my second home in Greenville, South Carolina. I would also like to recognize my husband's mother, Dorothy Harris Scott, who passed away in 1996. Although I never had the pleasure or the honor of meeting my husband's mother, her spirit is with me, and I honor her memory today.

I would like to now tell you a little bit about my background. My mother, Darnetta Adamson, who is watching from home, is, quite frankly, my hero. My mother had me as a teenager, and even though she had many hurdles to cross as a result of being a teenage mother, she always modeled for me grace, hard work, humility, and strength. As I have told my mother many times over the years, the pride that wells up in her when she looks at me is the same pride that wells up in me when I look at her. Thank you, Mom.

My father, Dewitt Oliver, who we lost at a very young age to Coronavirus Disease 2019 (COVID-19), at the very beginning of the COVID pandemic, was also a source of strength for me and a man of dignity and valor, having served our country as a Marine. Likewise, my paternal grandmother, Elizabeth Morse, who we lost just a few months after my father, was also a source of strength and encouragement. My grandmother instilled in me the pursuit of excellence, which I have carried with me every step of my career, including in my current role as a Magistrate Judge on the Superior Court.

Since my appointment to the bench as a Magistrate Judge, I have presided over the court's high-volume civil calendars, dutifully applying the law to the facts, and serving the court, most importantly with respect. Prior to my service on the court I was a civil trial attorney and Assistant Attorney General for the Office of the Attorney General for the District of Columbia, and I brought a variety of matters in the Superior Court over the course of 9 years. I also served as a generalist and worked on administrative and personnel matters affecting local and governmental employees and District agencies.

I began my career as a Judicial Law Clerk to the Honorable Chief Judge Anna Blackburne-Rigsby on the D.C. Court of Appeals, and I regularly regard that clerkship as the arc of my career.

I can assure the Committee that my broad range of professional experience has well-equipped me to be a prepared, thoughtful, and fair Associate Judge, should I be confirmed. I truly love this city, and have built my personal and my professional life here. It would be an honor of a lifetime to continue to give back to a city that has given me so very much.

I look forward to answering the Committee's questions. Thank you.

Chairman PETERS. Thank you, Judge Scott.

We now have three questions that the Committee asks of every nominee, and I am going to ask each of our nominees to answer briefly with just a yes or no to these questions. We will start with Mr. Hooks and then work down the panel, then we will go online. Judge Scott, we will have you start on that.

First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office which you have been nominated? Mr. Hooks.

Mr. HOOKS. No, sir.

Mr. KUBAYANDA. No, sir.

Ms. BLATCHFORD. No.

Judge SCOTT. No, Senator.

Mr. TUNNAGE. No, Senator.

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

Mr. HOOKS. No, sir.

Mr. KUBAYANDA. No, Mr. Chairman.

Ms. BLATCHFORD. No, Senator.

Judge SCOTT. No, Senator.

Mr. TUNNAGE. No, Senator.

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

Mr. HOOKS. Yes, sir, Mr. Chairman.

Mr. KUBAYANDA. I do.

Ms. BLATCHFORD. Yes. Of course.

Judge SCOTT. Yes, Senator.

Mr. TUNNAGE. Yes, Senator.

Chairman PETERS. Great. Thank you.

Mr. Hooks, this first question is for you. FEMA's disaster response efforts have unfortunately, historically been plagued by disparities affecting individuals from underserved communities, including individuals from rural and low-income communities as well as individuals with disabilities.

FEMA's 2020 National Advisory Council, which was led by the chief of the Texas Division of Emergency Management found, and I quote, "By perpetually assisting larger communities that already have considerable resources, the smaller, less-resource-rich, less affluent communities cannot access funding to appropriately prepare for a disaster, leading to inadequate response and recovery and little opportunity for mitigation," end of quote.

This Committee is working to address this issue right now, to ensure that all Americans, no matter where they live, no matter who they are, have access to equitable disaster recovery. So my question for you, Mr. Hooks, first I would love to hear your thoughts on this matter, and I want to know, yes or no, and any detail you want to provide, that if confirmed, you will commit to working with me

on this issue and making sure that FEMA is indeed prioritizing equity in all of its programs and in all of its activities.

Mr. HOOKS. Yes, sir. Thank you for the question, Mr. Chairman. It is extremely important that FEMA serve all communities that are eligible for services. Oftentimes those communities that can afford it the least, and those underserved communities, are the ones that suffer the most damage in the consequences from disastrous acts or catastrophes due to nature and other circumstances.

Through the last few years I think that both the Federal Government and State and localities have really increased the view of looking at all programs through a lens of equity, and if confirmed, I look forward to contributing to that thought process and certainly support the view that all communities should be served, as evidenced by opening statement.

I also have wide experience with this in North Carolina, and we have some very thriving, robust communities such as in the Charlotte and Raleigh area. But we also have some very rural communities as well, and I have certainly seen firsthand the devastation that disasters have taken a toll on those communities. I bring with me a set of experiences and partnerships that I believe that I can bring a strategic viewpoint to those, if confirmed in the position of Deputy Director to FEMA.

Chairman PETERS. Great. Thank you.

Mr. Kubayanda, as the Postal Service's regulator, the Postal Regulatory Commission plays a key role in monitoring whether the Postal Service is meeting its on-time delivery goals and holding it accountable to these standards of service, as you know very well.

How have you worked to hold the Postal Service accountable for its service performance, and if confirmed for another term how will you continue to advance transparency and accountability for customers?

Mr. KUBAYANDA. Thank you for the question, Mr. Chairman. The Postal Regulatory Commission has very well-established processes for holding the Postal Service accountable. Through the annual compliance process we oversee the Postal Service's compliance, and I think we have done an excellent job over the years of finding the issues in the postal network and building toward a system of transparency and accountability in the postal system.

As we go forward, I think there are some measures, new steps that we can take to improve transparency in the postal system, and there are really three related initiatives that we have going on in that area of transparency. One is an Open Data Initiative, also a Data Analytics Initiative, and also a Data Visualization. These are all small-scale initiatives that I think we have a chance to eventually scale up in order to hold the Postal Service more accountable.

We are currently implementing compliance with the OPEN Government Data Act, which includes bringing on a chief data officer, and that will allow us to look at Postal Service service performance over time to create some standardization of data and make data available to the public and to stakeholders in machine-readable formats. I think what that can do is allow us to get better-informed inputs from stakeholders into our compliance processes and hold the Postal Service accountable. Also, that standardization will help make us more organized in terms of our use of data as well.



I think all those can contribute to kind of modernizing our standard compliance efforts.

Chairman PETERS. Ms. Blatchford, as you know, the Payment Integrity Information Act of 2019 (PIIA) passed out of this Committee and is a landmark step to ensuring that the Federal Government reduces improper payments and cuts down on waste, fraud, and abuse in the Federal program and the benefits delivery from the Federal Government.

My question for you is, if you are confirmed as the Controller what will be your top priorities for accelerating implementation of this act and improving the government's ability to stop improper payments?

Ms. BLATCHFORD. Thank you very much for this question. It is an incredibly important topic, given the amount of money that is being currently invested in supporting our recovery from this pandemic.

I am very much aware that the Payment Integrity Information Act was passed and that the implementation of that is underway. If confirmed, I would look forward to working with the OFFM and the teams to understand where the gaps might be. Again, my guess is because of the size of the investment that we are making collectively there are real areas to strengthen and to focus.

Another thing I would say, I have seen time again in my work, thinking about the Hurricane Sandy Task Force here, moving money quickly into communities in these moments is very important, but it has to be balanced with a focus on payment integrity. The best way to do that, I think in particular, is to focus on prevention, right, the reduction at the beginning of the payment cycle. So that would really be my primary focus. Catching waste, fraud, and abuse later, later down the chain, is important, but I think certainly the best way to do that is to lean into that prevention.

I know that there are a number of tools that have been developed by OMB, in partnership with the Chief Financial Officers (CFO) Council and other members of the oversight community to really ensure that the tools are out there to allow agencies to focus as much as possible on prevention of improper payments as a part of that. I look forward to working with you, if confirmed, on that.

Chairman PETERS. Thank you. Ranking Member Portman, you are recognized for your questions.

Senator PORTMAN. Great. Thank you. Mr. Hooks, I want to talk a little about what FEMA's role is in terms of resilience, and I noted that as head of the North Carolina Department of Public Safety you have a lot of experience with natural disasters.

I mentioned earlier that we have recently passed this legislation that was signed into law this week that provides another \$1 billion in funding for the Building Resilient Infrastructure Communities program, basically pre-disaster mitigation to ensure that the taxpayer money is better spent by mitigating some of these potential disasters and helping potential victims avoid the devastation of a hurricane, as you have had in your State, or tornado, or floods, or fires, and so on.

Have you worked with BRIC? Do you have any experience with them?

Mr. HOOKS. Yes, sir. Thank you, Ranking Member Portman. Thank you for the question. Through our very experienced emergency management team in North Carolina, North Carolina has pretty successfully navigated the early rollout of the BRIC program. It is my view that with sustainable funding the BRIC program can be really transformative to the States, and consequently to the Nation. BRIC program focuses on a very necessary tool that we should be utilizing more, and that is mitigation. I think it is well accepted that the investment of every \$1 in mitigation can save us \$6 on the back end.

We have stood up a robust protocol to address the BRIC funding in North Carolina that not only operates at the State level but really partners with FEMA. Our FEMA Integration Team (FIT), that was the first in the Nation, in North Carolina, has been instrumental to our success, and also the buildout of the Office of Recovery and Resiliency to work with our local communities to help build a more resilient North Carolina and ultimately a more resilient nation.

Senator PORTMAN. Good. Again, conceptually it is a great idea. A relatively new program, as you know. Since 2020, about \$1.5 million has gone out, so it is out there, and I am glad you are working with it. I hope, should you be confirmed, that you will work with us to even improve the program further and probably some lessons from North Carolina would be helpful in that. Would you commit to do that?

Mr. HOOKS. Yes, sir, Ranking Member Portman. I certainly commit to working with you and your staff as well as FEMA leadership to address any challenges and break down any barriers that we have to be successful.

Senator PORTMAN. Good. This Committee has spent a lot of time on helping to push back against the hateful attacks on religious organizations, other nonprofits. We have this program that we put together called the Nonprofit Security Grant Program (NSGP), and we have made preparedness grants there available over the last several years. This year we actually doubled the funding to \$180 million, split evenly between the urban areas and the States.

Are you aware of this program? Have you used it in North Carolina?

Mr. HOOKS. Yes, sir. Again, thank you for the question, Ranking Member Portman. As the State administrative agent as well as the Homeland Security advisor, I had signoff authority on the development of those grants as far as the administration in the State of North Carolina. We were successful in North Carolina at bringing not just the emergency management entity, which the money would flow through from FEMA, but bringing law enforcement and intelligence resources in partnership with those communities so that we could adequately protect faith-based institutions through this process. Again, we have navigated that program pretty successfully in North Carolina.

Senator PORTMAN. As you may know, some States have used it more effectively than others. North Carolina has been pretty aggressive in using it. It sounds like my State of Ohio has certainly been successful in figuring out ways to put it to work. We are glad

you support it, and we look forward to working with you on ensuring that the funding we are providing is spent most effectively.

With regard to the Controller position, Ms. Blatchford, we talked about this in person so you know where I am coming from. You have a great deal of expertise and experience in the housing sector, as an example, but you are not up for HUD Secretary. You are up for another job, which again is one that is just a hard-core financial management, auditing, accounting job. I mentioned earlier the U.S. Code and what it requires this job to have, and, you know, demonstrated ability and practical experience in accounting, financial management, and financial systems, extensive practical experience in financial management in large governmental or business entities.

I know you do not have a certified public accountant (CPA), but regarding accounting do you have any practical experience as this calls for, or ability in accounting?

Ms. BLATCHFORD. Thank you very much for that question, Ranking Member Portman, and thank you for the conversation yesterday. I am glad to continue that conversation today. I do not have training in accounting, but I would just pull back a bit to say a couple of things about why I do think that I am qualified for this role.

First, as an experienced nonprofit and government leader of large teams I have, by definition and by necessity, deeply involved myself in financial management, everything from budget development and execution, financial management of systems, enterprise risk management, auditing. And so just have learned, to the point that you made about practical experience, have learned that I can deeply engage myself in those details as needed.

But I also have learned to rely on the expertise of those around me. I think most leaders know that you do not have every technical skill in your toolkit but often you can rely on your team for the areas that you might not have or that you need to complement. Everything I have heard about the OMB and OFFM teams is that they are extraordinary and would be supportive in that particular area.

I would also say I think this is a question about what we need as a country right now, and I think, from my perspective, I would bring the strategic vision and the ability to support and work with the technical experts on my team, but really drawing on the expertise and the experience I have had of navigating the inputs from accounting, the inputs from financial management, to make the right decisions for the organization that I am working for.

I look forward to, if confirmed, working with you to make sure that we are really addressing all of those concerns.

Senator PORTMAN. Again, I have a hard time squaring what the requirements are, and again, having known that position, and it is true that as a leader you rely on others. But the reason the statute was written that way, and knowing the job, having the expertise and experience is really important for the leader.

Not surprising, and I talked to you about this on the phone, but can you explain the Federal Credit Reform Act and how you see this impacting how various Federal credit programs calculate their leverage?

Ms. BLATCHFORD. It is my understanding that the Federal Credit Reform Act is a set of decisions in terms of current and proposed programs. That evaluation is made by the Budget Review Division (BRD) within OMB, that sits outside of OFFM. But as we discussed yesterday, I understand where you are coming from on this larger question, and had some experience working on this when I was at HUD, with the FDA balance sheet.

I would look forward, if confirmed, to working with you, the BRD team, and others at OMB to address any concerns you might have about current or future programs as it relates to that reform act.

Senator PORTMAN. Thank you. My time has expired. Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.

Senator Carper, you are now recognized for your questions.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thanks, Mr. Chairman. To our witnesses and our nominees who are before us today, a warm welcome to you.

Before I proceed to my questions, I want to take a moment to highlight that we have two D.C. Superior Court nominees before us, Judge Scott and Mr. Tunnage. Before I was fortunate enough to be elected to the U.S. Senate, I was Governor of Delaware for 8 years and spent a fair amount of time nominating, selecting people to serve on the Delaware bench, which despite the fact that we are a little State there, has a national, even international reach. I gave a lot of time and thought to the kind of people I nominated to serve on the bench in Delaware, and who ultimately did and some still do.

I think we have before us today vacancies on the D.C. Superior Court that have been vacant for 3 years, and in another case, more than 5 years. I think that is abhorrent. I think that is disgraceful. It is on us in the Senate, and it is on the current Administration and especially the previous administration. I like to say justice denied is justice delayed, and the idea that we have excellent nominees that have been sent to us for consideration by the District of Columbia and we are just sitting on them for years is awful. I am glad that Mr. Chairman brought these nominees before us today and I hope that they will get our approval.

One of the reasons why I pushed for several years for D.C. Statehood is because I think if we are not going to allow a State, a district like District of Columbia, which has more people than several of our States and pays a lot of taxes, has a lot of people serving in the military, and then we get the traditional noms and we just sit on them for years, it is just one more reason why we should consider the legislation that a number of us are proposing, and that is D.C. Statehood.

OK. That is a story for another day, but I did not want to miss it.

Secretary Hooks, great to have you with us. My wife is a native of North Carolina so we think of you as a distant, distant relative. She loves North Carolina and her roots are still there.

You heard me say the other day, I think it was yesterday when we met I talked about leadership, and most importantly the suc-

cess of any organization I have ever been a part of, whether it was the Navy or helping to run

Delaware or serving in the U.S. Senate, it is always leadership. In order for an organization to be successful in achieving its mission, that is what is important. Dedicated, committed, enlightened leadership is the key.

Mr. Secretary, as the Secretary of Public Safety in North Carolina I understand you have led nearly 40,000 civilian employees, which is about the size of the civilian workforce in Delaware, including educators. But anyway, nearly 40,000 civilian employees and National Guard soldiers and airmen, and you were responsible for coordinating emergency management functions statewide.

Reflecting on this experience and other leadership roles you have held throughout your distinguished career in public safety and law enforcement, what are some of the hallmarks of an effective leader, in your judgment, particularly when it comes to coordinating emergency preparedness and response efforts across multiple levels of government? Please, go ahead.

Mr. HOOKS. Thank you, Senator Carper. It was an honor to speak with you yesterday as well.

I am a firm believer that leadership can translate across many domains, both the State and to this position as Deputy Administration, if confirmed. One of the things that I think is a hallmark of an effective leader is making the time and effort to commit the investment in the people that are carrying out that mission. I view both the staff that I had in North Carolina and the potential staff that I may have, if confirmed at FEMA, as part of the critical infrastructure.

The most important aspect of any organization are the people that make up that organization. Programs are important. Funding is certainly important. But we have to invest in those individuals to ensure that they have a culture where they feel that they can thrive, that they can grow, and that they can be successful. Leaders have to invest in those individuals, often at the demise of their own, self-interests, because I do believe that that shared sacrifice that these people make to secure our nation and preserve our freedoms in North Carolina are extremely important and they should be recognized for that.

We want to create a climate, a culture of success, and promote diversity and inclusion at all ranks, and let them know that they are valued for the contributions that they make to the success of our Nation.

Senator CARPER. Great. Thank you for that response, Mr. Secretary.

I want to turn now, if I could, to Mr. Kubayanda. Very nice to see you. I call you Mr. Chairman. The Postal Regulatory Commission, as some of us recall in Congress, created the independent U.S. Postal Service in 1970, also creating a five-member Postal Regulatory Commission to serve as the independent regulator of the Postal Service and to ensure transparency, to try to ensure accountability of postal operations.

The PRC has oversight authority of the postal rate setting and mail delivery performance and issues. Regular reports come to us, focused on the Postal Service activities, its finances, its sustain-

ability. Mr. Kubayanda, you have now been overseeing that mission with PRC during your time as Chairman. I would just ask, why is it important that the Commission have a full slate of Senate-confirmed Commissioners?

Mr. KUBAYANDA. Thank you, Senator Carper, for that question. It is critical that we have a full slate of confirmed Commissioners. Prior to me joining the Commission we had an empty slot for some time, and with really major rulemakings on the table, including the 10-year review of the rate-making system, which is absolutely critical for the financial foundation of the entire postal system.

With the full slate, one of the things we are able to do is quickly turn to that issue and accomplish that. I think it is one of the biggest rulemakings in the 50-year history of the Commission. I would also add that a full slate of the Governors of the Postal Service is also critical.

I think it is absolutely a foundational issue that we have all those slates full and are able to tackle a lot of the critical issues facing the postal system.

Senator CARPER. Thanks very much. My time is about to expire so I thank you for your service on the Commission and your willingness to continue to serve in this role.

The last thing I would say, I started off by mentioning how some of these judicial vacancies in the District of Columbia have existed 3, 4, or 5 years, which is abhorrent. We also are in a situation where the District of Columbia I think has a AA-plus credit rating, and here we are, and we have to approve their budget. They should be approving ours. Here we are, weeks and months into overtime in terms of actually producing our own budget, and still struggling with the debt ceiling issue.

I think that is just one more reason why the idea of giving the District of Columbia the kind of opportunities and responsibilities that they should have in our legislation, my legislation. One more reason why it should be considered.

Thank you. Again to our nominees, we are grateful that you are here, particularly the judicial nominees. Very impressive credentials. Thank you.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Carper.

Senator Hassan, you are recognized for your questions.

#### **OPENING STATEMENT OF SENATOR HASSAN**

Senator HASSAN. Thank you, Mr. Chairman, and I want to thank you and Senator Portman for holding this hearing and a special thank you to all of our nominees and to your families for being willing to take on these important positions.

Mr. Hooks, I want to start with a question to you. Our new bipartisan infrastructure law includes a provision that I developed to create a new State and local cybersecurity grant program. FEMA will administer the program, drawing on subject matter expertise from the Cybersecurity and Infrastructure Security Agency (CISA).

Mr. Hooks, if confirmed as Deputy Administrator what steps will you take to ensure that this grant funding will quickly and effectively get to entities that need it, including in my State of New Hampshire?

Mr. HOOKS. Thank you, Senator Hassan. Cybersecurity and our critical infrastructure are extremely important as we face challenges both domestically and internationally. If confirmed, I look forward to working specifically within FEMA but also external to FEMA, with our sister agency at CISA and with the broader Department at DHS, along with our local and State partners to fully implement the authorizations that are carried forward.

I look forward to familiarizing myself particularly with the particular nuances of it and understanding full congressional intent. That would be one of the first things that I always look to do in evaluating a program and how we should roll it out and then seeing how I can execute on the partnerships that are needed to address this—we cannot really call it an emerging threat anymore. It has been with us. But this persistent threat that is extremely important to the safety of our Nation.

Senator HASSAN. I appreciate that very much. Even in a small State like New Hampshire we are seeing cyberattacks at various levels, against various entities, and I really look forward to working with you to strengthen our resources here and really strengthen our cyber defenses.

Ms. Blatchford, the Federal Government's reliance on outdated and obsolete technology harms our ability to deliver services to the American people, threatens our cybersecurity, and also drives wasteful spending. One way to curb wasteful spending on these old systems is through better cooperation and communication between agencies chief information officers (CIO) and chief financial officers to ensure that there is a coordinated process for determining technology needs and acquisition processes.

How can the Office of Federal Financial Management, under your leadership, work to improve cooperation and communication between chief information officers and chief financial officers to save taxpayer dollars?

Ms. BLATCHFORD. Thank you, Senator. It is an important question and I appreciate it. I have seen, in my time in government and the nonprofit sector that that is really true. Those legacy systems pose enormous risks to effective service delivery, good customer experience, and, of course, to security.

So as you know, OFFM plays a lead role in bringing together the CFOs from different agencies, and so I would imagine leaning into that role to really elevate this issue in importance. It is my understanding, as well, that that interagency role plays an important part of it is busting silos, getting people to communicate, working through these issues. Based on my experience doing that in the task force and in other contexts, I would really want to lean in and do that.

I also think the partnership across OMB and across the Executive Branch is going to be critical, because, as you said, it is not just the CFOs. It is also the CIOs. That synergy and that relationship is something I would work with the CFO Council and other CFO colleagues to address, if confirmed.

Senator HASSAN. That is great, and I would just add that I think one of the things that the CFO community needs to work with, with the chief information officers, is understanding the length of time it can take to modernize technology this way, and we really

have to make sure that our financial systems are working in a way that really can accommodate long-term planning and change. I look forward to further working with you on that.

To Mr. Hooks, I want to go back to a different issue at FEMA, because the agency has struggled with serious problems relating to sexual harassment of its employees. A 2020 survey conducted by the Rand Corporation found that approximately 20 percent of FEMA employees reported experiencing sexual harassment at the agency.

If confirmed as Deputy, what steps would you take to combat sexual harassment at FEMA?

Mr. HOOKS. Thank you, Senator, for the question. As I stated earlier, I believe that in order for any agency or department to be successful you have to have great investment in the individuals, where they can thrive in a culture of excellence, so that they feel that they are a part of it, and they have the opportunities. That translates very cleanly over into addressing any issues of sexual harassment.

I am up to the challenge, if confirmed, to meet that issue head-on. There is absolutely no place in any part of society for anyone to be made to feel less than and moving forward when they are trying to serve their country or carrying out any other job.

I have a history, through my work both in the SBI and as Secretary of ensuring that we have a workforce that is valued, that women, in particular, have those opportunities, and then as the Secretary of Public Safety, I had one of the most incredible workforce dynamics in a field that is generally dominated by male professionals, in that General Counsel and Chief Deputy Secretaries were females, and it set the tone.

I would lead by example, and I have had a brief discussion with Administrator Criswell. She and I are firmly on the same ground of moving forward to ensure that everyone has an opportunity to thrive and work in a culture of excellence at FEMA and that sexual harassment will not be tolerated to any degree.

Senator HASSAN. Thank you for that commitment. I really appreciate it.

Now I want to turn to Mr. Kubayanda, because, sir, in its attempts to become more finally stable the U.S. Postal Service proposed delaying delivery times for first-class packages, commonly used by pharmacies and banks, for example, to send lightweight products inexpensively. These delays would affect roughly a third of first-class package volume and cause delays on essential items that people in my State of New Hampshire certainly rely on.

In September, the Postal Regulatory Commission issued an advisory opinion on this proposed change and found that the Postal Service's proposal to delay service would not substantially affects its overall financial condition, contrary to the stated goals of the proposal. What options or alternatives do you think the Postal Service could instead pursue to improve its financial condition without compromising service?

Mr. KUBAYANDA. Thank you for the question, Senator. I think that the Commission has issued two advisory opinions on attempts to change service standards, and I think both reached that conclu-



sion, that the savings on offer were meager compared to what the Postal Service hopes to achieve.

I think that the Postal Service has a number of steps they can take. I think some of these steps to cut costs over time might require some up-front investment, for example, modernization of the vehicle fleet. They have an extremely old vehicle fleet with poor quality, and they have been known to catch on fire, and then also the efficiency is very low. I think that is something where up-front investment, capital investment, can lead to some savings down the line.

We just approved a new rate-making systems for the Postal Service, and I think that it is an opportunity to kind of stabilize postal finances, or at least move the ball forward and improve postal finances. I think that is something they can capitalize on.

I think, long-term, there are opportunities for efficiency through information technology, reconsidering how to utilize their extensive network of physical facilities to distribute mail more efficiently. One of the things we are launching is a data analytics group to look at issues within the postal network, including whether it is aligned in the most efficient manner and looking at possible bottlenecks and pinch points within that network, where the Postal Service might stand to improve.

I think there are opportunities for incremental improvements over time.

Senator HASSAN. Thank you very much. I realize we have gone over time, Mr. Chair, so I appreciate the extra time. I look forward to working with you on these issues. Thank you.

Chairman PETERS. Thank you, Senator Hassan.

Senator Scott, you are recognized for your questions.

#### **OPENING STATEMENT OF SENATOR SCOTT**

Senator SCOTT. I want to thank Chairman Peters and Ranking Member Portman for holding this hearing and congratulate each of you for your nominations, and thank you for your willingness to serve.

Mr. Hooks, thanks for the call we had. It is my understanding that certain States are asking to be reimbursed 100 percent and retroactively for their COVID-19 costs. Are you aware of this? Do you think States ought to be treated differently with regard to their COVID expenses, and do you think it is appropriate that the Federal Government take over and pay 100 percent of costs in disasters?

Mr. HOOKS. Sure. Thank you, Senator Scott, and thank you for the opportunity to speak with you yesterday.

As a State Administrative Agent coming from a State it is certainly natural for every State to want to receive additional compensation or receive 100 percent cost share. It has to be a balance.

FEMA programs are designed to have some cost share element to them, and I understood that as a State Representative that also advocated for my State. I certainly understand there has to be a balance. Each catastrophe or disaster is unique. There have been certainly 100 percent reimbursement on some items that deal with COVID, and I do understand the need. But I do understand the

need for FEMA to have consistency in its programs, but at the same time meet disaster survivors where they are.

If confirmed, I look forward to working with you and your State and any other State that has those concerns about whether or not the 75 percent match, which is traditional, is being addressed appropriately at FEMA and that those regulations are being interpreted. I look forward to knowing what headway Administrator Criswell has already made on this matter, because I know it has been a concern to you.

Senator SCOTT. Do you think if States do not have any skin in the game they are going to watch the money?

Mr. HOOKS. I believe, sir, that we all have a role to play, and that states, and in North Carolina we certainly had skin in the game. It is also added with the complexity that a lot of local communities may not have the financial wherewithal of some other communities.

I think that with honest conversation and with never making promises that you are certainly not able to keep and not authorized by legislation to keep, that we can effectively move forward and address those issues. But we have to encourage States that they have to have some skin in the game.

Senator SCOTT. Over the last year, the Disaster Relief Fund (DRF) has been redistributed to fund areas not related to disaster emergency management. Do you think it is appropriate that they use FEMA disaster relief funds for non-disaster purposes? I mean, do you think that is ever appropriate?

Mr. HOOKS. Thank you for the question, sir. I am not specifically familiar with the reference that you make there. However, I do believe that FEMA and any other organization has an obligation to expend funds as they are authorized and are permitted by law.

Senator SCOTT. I think we talked about what I watched in the debris pickup, how if a local agency, or a local municipality had a contract, it might be for \$78.50 a cubic yard, and if the Corps of Engineers picked it up it was the same company, \$72. Do you think that is ever appropriate?

Mr. HOOKS. Sir, I think that each State and the Federal Government has to encourage the use of advanced contracts, particularly with debris pickup, so that you can have some consistency and a level set what the cost management of that should be. I think that goes a long way into people raising or upticking prices as well. I think that there should always be internal controls and limitations on what should be charged for disaster recovery.

Senator SCOTT. We talked a little bit about the National Flood Insurance Program (NFIP), and what is fascinating to me is that the Federal Government runs a program that is, like my State, we are a four-to-one donor State since the program has been implemented, and without doing surveys they raised the flood insurance cost on many of our citizens in the last 10 years, and they appear to be doing it again. At the same time, FEMA does not appear to be a partner to try to help us get more private flood insurance, which would help Floridians save money, so we are basically paying for flood insurance in other States. Do you think that is appropriate?

Mr. HOOKS. Senator, I certainly heard your concern yesterday and that is certainly on my radar screen. Flood insurance, in and of itself, is a tremendous tool, a frontline tool to reduce the cost of individual recovery from disasters such as flooding. If confirmed, I look forward to working with you and your staff on any challenges that you see and whether or not the appropriate balance is being struck in the implementation of programs and whether or not this is an issue of authorization or interpretation on anyone's part.

Senator SCOTT. Do you think it is important that FEMA work with the private sector to allow the private sector to grow, so FEMA does not have to have as big a program, with regard to flood insurance?

Mr. HOOKS. Sir, I believe that we all have a role to play, both the private sector as well as government in disaster mitigation and recovery efforts. Without being specific to the scenario that you laid out, I believe that great communication and great observance to what the congressional intent is for programs, be adhered to, to move us forward.

Senator SCOTT. How are you going to deal with political pressure from, whoever—it does not matter which party does it—to tell you, “Oh, in my State you have to give us a bigger match than in another State?” How are you going to deal with political pressure in these? I mean, it is not a little bit of money. We are talking about billions and billions of dollars.

Mr. HOOKS. Yes, sir. Thank you for the question. I am not uncaring or lack any empathy for the disaster that anyone faces. However, I took my first oath of office over 30-something years ago, and that oath bound me to follow the law as it has been given. I will continue to do that in any program that is rolled out with congressional approval.

I lean to my oath in those difficult times, and I understand the pressures and the advocacy from individuals concerning wanting to do what is best for their State or their community.

Senator SCOTT. Thank you, Chairman Peters.

Chairman PETERS. Thank you, Senator Scott.

Senator Padilla, you are now recognized for your questions.

#### **OPENING STATEMENT OF SENATOR PADILLA**

Senator PADILLA. Thank you, Mr. Chair. Mr. Hooks, I appreciated very much our opportunity to meet and chat yesterday. As we discussed in my office, repetitive catastrophic wildfires have unfortunately become the new normal, not just across California but throughout the western United States. While we are working to address this issue by allocating an unprecedented amount of funding for mitigation work through the Bipartisan Infrastructure bill that was signed by the President this last Monday, and the soon to be completed Build Back Better bill, the speed by which these funds are typically distributed is simply too slow.

Mr. Chairman, I ask to enter into the record a recent Washington Post article that highlighted the case of Grass Valley, California.<sup>1</sup>

<sup>1</sup>The Washington Post article referenced by Senator Padilla appears in the Appendix on page 272.

Chairman PETERS. Without objection.

Senator PADILLA. Thank you. In this particular case highlighted in the article, which I also shared with you, Mr. Hooks, local officials near Mount Olive Road and the area around it was at an extreme wildfire risk. In 2018, they actually applied for a FEMA grant to clear dry brush, thin trees, and mitigate that fire risk. Yet, by 2021, they were still waiting on a decision when the River Fire ripped through the Mount Olive Road area of Grass Valley and destroyed 140 structures.

Now according to the same Post article, and their research, of the \$11 billion that FEMA has allocated for mitigation over the past decade, only \$1.5 billion has actually been spent. The research found that counties are made to wait an average of 7 years to complete their FEMA-funded projects, and during those waits applicants for fire mitigation, specifically, experienced an average of three more major wildfires. So they know it is dangerous, they know the threat is coming, and they are impacted while they are forced to wait.

And most disappointing of all, the research found that FEMA is about half as likely to fund grants for rural areas, poorer counties, and communities that are made up of predominantly minority residents. They face longer delays in getting grants approved. In California these are often exactly where the vast majority of destructive wildfires take place and have devastating impact.

I know that has been a long preamble but important for the record. Mr. Hooks, my question is this. Obviously, these delays, you would agree, are unacceptable. What steps will you take, if confirmed, to shorten the time it takes for FEMA to reach a decision on grant applications and move the money out the door?

Mr. HOOKS. Thank you, Senator Padilla. It was certainly a pleasure to meet with you. From my own experiences I certainly know that disaster relief never comes fast enough for the people who are suffering, and people have been impacted by wildfires in the western United States, and we have not had that experience to the same degree that you have certainly experienced in California.

If confirmed, I look forward to learning about what challenges FEMA has had as far as moving individuals through this program, approving and/or denying assistance, and one of the things that I think that, I believe we always should do is that as programs grow that you have to build the capacity and the capability to deliver those programs. I look forward to learning from Administrator Criswell and other senior leaders in FEMA as to whether or not, as the money has increased to address these and has been appropriated, have we built the capacity to deliver on those.

FEMA has a goal of reducing the complexity of FEMA, and I certainly, as a recipient of grant funding and navigating that process, agree with that forward thinking. I look forward to evaluating, along with the Administrator, and bringing a set of fresh eyes as to whether or not how we have been successful. Also I am very mindful, as you have stated here, is that communities that often can afford it are most often impacted. When we look at programs through the lens of equity, sometimes the length of recovery negatively impacts that equity.

I look forward to working with you and your staff as well as the FEMA staff to address those issues from that perspective.

Senator PADILLA. Thank you. We certainly look forward to the follow-up. And on that point of equity that you just mentioned, as I mentioned, in the takeaways from the Washington Post article, how do you envision working with traditionally disadvantaged communities to make sure that they are treated more equitably, whether it is in the timeliness of their grant applications, consideration of those grant applications, approvals versus denials, et cetera?

Mr. HOOKS. Again, thank you for the question, Senator. I believe that the use of technical assistance, both at the Federal level and encouraging that at the State level, where you have that expertise, both at the Federal and the State level, to go into those communities, States really have to understand the communities within their jurisdiction. The Federal Government, even though we are supporting the disaster from a little bit further away, have to understand the needs of those communities as well.

So again, effectively utilizing those broad partnerships, being really intentional about those community impacts, and I am certainly in tune with that. We have experienced that in North Carolina, where communities, often minority communities, recover less well because of the difficulty in navigating processes to get the appropriate funding.

Senator PADILLA. Thank you. My last question, quickly, Mr. Chairman. My colleague, Senator Scott, asked how you might respond to pressures from higher-ups in the administration, regardless of political party—I am glad he pointed that out—to maybe afford larger grants, rewards to some States versus others. I would ask the same question, slightly differently. How would you respond to any pressures from higher-ups in the administration, regardless of party, if the agency seemed to be pressured to not award grants that, from a technical standpoint, seem to be justified?

Mr. HOOKS. Sure. Thank you, Senator. I do not go into the job with that being the expectation, but again—

Senator PADILLA. Nobody should.

Mr. HOOKS [continuing]. But I do lean toward, just as I said before, lean toward my oath, the deep understanding of the program and what the congressional intent on how to deliver those programs, and also looking at whether or not those programs are meeting the needs of the community. If there is a gap in whether or not those programs, as authorized, are not meeting the needs of the community I would be the first to work with Administrator Criswell as well as with this Committee and any other congressional body to make the appropriate adjustments.

Pressure is natural because disasters certainly begin and end locally. I understand the need for disaster survivors to recover, and there is a lot of emotion attached to it. But we have to have the appropriate authorities, both to award and to appropriately consider those communities that have not previously received awards.

Senator PADILLA. California thanks you for that response and I thank you for that response.

Thank you, Mr. Chair.

Chairman PETERS. Thank you, Senator Padilla.

Senator Ossoff, you are recognized for your questions.

**OPENING STATEMENT OF SENATOR OSSOFF**

Senator OSSOFF. Thank you, Mr. Chairman, and thank you to our panel. Congratulations on your nominations.

My first question, please, is for you Mr. Hooks. I have been consistently focused on necessary investments and preparations to improve coastal resilience in coastal Georgia to prepare, for example, communities in and around Savannah, Georgia for the anticipated storm surge, coastal flooding, and high wind events associated with more intense tropical storms.

Mr. Hooks, first, will you commit please, if confirmed, to traveling to coastal Georgia, sitting down with Mayor Van Johnson and other leaders in and around Savannah, Georgia, as well as the rural communities, for example, across from and around Cumberland Island, to discuss what can be done to improve coordination between local governments and FEMA in preparation for the next storm season?

Mr. HOOKS. Thank you, Senator. Thank you for the question. Storm surge and other issues that impact our coast are certainly very problematic, both in Georgia as they were in North Carolina, and I do commit to visiting wherever I can and talking with you and community leaders as I can through this process, to get a greater understanding of what challenges they may have and to ensure that FEMA is meeting the needs of all communities.

Senator OSSOFF. Thank you so much. I would like also your comments on what steps, in your view, FEMA can take to ensure that low-income and minority communities, for example, the Gullah-Geechee community in coastal Georgia, who typically bear the brunt of natural disasters and severe storm events, are better prepared and receive equal and fair treatment from national disaster management authorities?

Mr. HOOKS. Again, thank you for the question. I do believe that mitigation is the appropriate way forward, and there has been an increased focus on mitigation. In order for mitigation to occur there has to be a deep understanding of not just the topography and the weather patterns of a particular area but the needs of that community.

I believe that all entities that are involved in disaster response and recovery have a role to play. The community has to come forward with what their challenges are. States have to understand what those challenges are, and that partnership, again, has to be relayed and executed with FEMA as a Federal partner, to get a deep understanding.

In North Carolina, we benefited from having the FEMA integration team, which was on the ground with our emergency management, that could network and get a deeper understanding of those communities and provide a great way forward to some of those rural communities. But you have to be intentional and you have to be willing to collaborate at all levels of government and with local communities to positively impact those communities.

Senator OSSOFF. Thank you, Mr. Hooks. When you come down to coastal Georgia I am looking forward to welcoming you. I hope, as well, that you will consider meeting with community leaders, for

example, Dr. Mildred McLain of Harambee House and others who are engaged daily in the business of helping prepare their communities for events like major tropical storms. Are you open to having those meetings during your visit, Mr. Hooks, with key civil society leaders and local advocates, church leaders who are helping communities prepare for natural disasters?

Mr. HOOKS. Yes, sir. Thank you for the question. I am certainly amenable to meet with individual leaders for communities. That has been my history, to learn what the challenges are and to meet folks where their need exists.

Senator OSSOFF. Thank you.

Mr. Kubayanda, my final question for you, please. The level of frustration among Georgians about the delays in postal delivery are extremely high. The frustration is extremely high. So what steps, if confirmed, will you take, please, sir, to accelerate the delivery of mail and ensure the timely delivery of mail and packages by USPS for the people of Georgia?

Mr. KUBAYANDA. Thank you, Senator, for the question. The Commission has a really important role to play in the traditional divide between the Postal Service as they handle the direct operations and we handle oversight. That oversight and compliance responsibility has certainly increased in importance over the last couple of years with the increasing delays in mail service.

As I mentioned earlier, we are implementing a number of measures around the use of data to increase our focus on service problems. This includes an open data effort that will allow us to kind of harness all the information that we have on the postal system, get it out in the hands of outside experts and analysts in machine-readable formats which will, I think, allow us to get better informed inputs about what is going on in the postal system and improve our oversight. I think it will allow us to incrementally nudge the system forward and create some improved results.

We are also creating a small data analytics unit with similar intent, to look at issues within the postal network, see if we can get to drill down on the root causes of what is causing the delays. This builds on prior work that the Commission has done to identify pinch points in the network that are slowing down mail. I think this is an effort that we can scale up. There are some interesting developments in the world of data analytics that I think we can take advantage of to become more sophisticated in that, and as I said, get better inputs from the public.

Another way that we are hoping to provide increased transparency and accountability is I think simplification of data and visualization of data. We are working on approach such as dashboards, so your average consumer will be able to go to our website, view what is going on in the postal network in an easily understandable way, to improve transparency.

Senator OSSOFF. With my remaining time, Mr. Kubayanda, I have heard in particular from constituents in Columbus, Georgia, in Macon, Georgia, and in Albany, Georgia, about mail delays. Will you please commit to working with my office and being available to communicate with local leaders in Columbus, Macon, and Albany, to get to the bottom of those delays and accelerate mail deliv-

ery, ensure timely mail delivery for folks in Columbus, Macon, and Albany?

Mr. KUBAYANDA. Absolutely. I will commit to that, Senator.

Senator OSSOFF. Thank you very much. I yield back, Mr. Chairman.

Chairman PETERS. Thank you, Senator Ossoff.

Senator Hawley, you are now recognized for your questions.

#### **OPENING STATEMENT OF SENATOR HAWLEY**

Senator HAWLEY. Thank you very much, Mr. Chairman, and congratulations to the nominees. Thank you for being here.

Mr. Hooks, I would like to start with you if I could, and I want to start by raising an issue that I have been talking about for 2 years now on this Committee as it relates to FEMA, and that is the need for greater transparency in the FEMA process, particularly after there has been a disaster in the State when it comes to awarding individual assistance, when it comes to working with local residents.

I am thinking, in particular, in my State, in the State of Missouri, in 2019, we had historic flooding, as you probably know about in the State—that was true of many Midwestern States—historic flooding in my State. Unfortunately we had many residents who were, of course, out of their homes. They were out of their businesses, off their farms in this case—this was in northern and central Missouri—and their experience with FEMA was not a pleasant one. They could not figure out what the rules were. They could not figure out who to talk to. We had residents who were awarded assistance and then had it retracted from them, while they are still out of their homes. They said, “You do qualify. Here is the assistance. Oh wait, no, no. Give it back to us. You do not actually qualify.”

This is totally unacceptable, and at a minimum FEMA needs to commit to being more transparent, needs to commit to doing a better job on the ground in informing residents in disaster areas what assistance is available, what FEMA can do to help them, who the contacts are, and where they can get information. Of course, to make sure that when assistance is needed it gets to the people who need it and it has not been withdrawn. The rug is not pulled out from under them.

So can you commit to me that you will work with me, if you are confirmed, on these transparency issues, on these informational issues, for my constituents in the State of Missouri but, for that matter, for everybody who needs it, everywhere FEMA serves?

Mr. HOOKS. Yes, sir, Senator Hawley. Thank you for the question and raising the concern. I certainly can commit, if confirmed, to work with you and any other Senator on the challenges that you face.

FEMA has, as a stated goal, to reduce the complexity of FEMA, and I believe that as FEMA does that—and I look forward, if confirmed, to get a greater understanding about what progress they have made to do that, that we can ultimately reduce any situation where we find ourselves having to call back money, because after somebody has been victimized by a storm and we have met them



on their worst day, we do not want to contribute to the angst that they already have.

Senator HAWLEY. Thanks for that answer. What steps do you envision taking to make FEMA and the FEMA process, particularly as it relates to assistance, less complex, more transparent, more up-front for those who are desperately in need?

Mr. HOOKS. Again thank you. One of the most overriding things that comes to my mind right now is that—and I am sure this process is ongoing already with Administrator Criswell there in advance of me—is to review the programs. I think that any program should not just stand in and of itself. There should be a constant review and constant process of improvement to both see whether or not we are meeting the congressional intent and whether or not we are meeting the needs of those individuals that it is designed to serve.

Then I would also, for me I would also lean in heavily to look at what the capacity and capability FEMA has to be on the ground, to ensure that there is a great understanding as to how these programs are to be rolled out. That connection with the State is extremely important. The State has an extremely important role as far as understanding those local communities, and FEMA has to understand the impact that storms and floods have on those local members in that community so that we can understand that they may not have documentation readily available and that we can help them navigate through technical assistance and perhaps FEMA integration teams to help them navigate sometimes what is very complex issues.

Senator HAWLEY. Very good. Thank you for that. Let me ask you this. Will you commit, if you are confirmed, to making sure that you do everything within your power to see that FEMA's resources and its aid is distributed strictly on the basis of need, that it goes to those who need it, that it goes to those who are in danger, who are out of their homes or otherwise qualify for it, and that it is not distributed based on any other factor? Can you commit to that?

Mr. HOOKS. Sir, I certainly can commit to ensure that any programs that I am responsible for or responsible for having input to are addressed equitably and meet the congressional intent. So yes, sir.

Senator HAWLEY. Good. I raise this issue because the Senate has considered substantial legislation recently in which my friends on the other side of the aisle have tried to impose what they call equity requirements on the distribution of government funds, sometimes on the basis of race or other categories that, frankly, are treated, under Federal law, where our Federal law and our Federal Constitution says you cannot target aid on the basis of race. You cannot target aid on the basis of gender. It is supposed to be done on the basis of need. It is supposed to be done on the basis of race-neutral, race gender terms.

That has been our constitutional law for many years, and I am frankly worried about a situation in which we see FEMA giving resources, pursuing some sort of social agenda when people in my State, whatever their racial background, wherever they are geographically in my State, whether they are in urban areas or rural areas or the middle of the State or the north of the State, I do not

care where. But if they are in need, I want to make sure FEMA is responsive to them, that FEMA is working with them, and that FEMA is not distracted by some other agenda that does not actually have something to do with helping people who are in the midst of a disaster.

Can you commit to me that you will help FEMA keep focused on its mission to help those, particularly in the midst of a disaster, to get the aid that they need and to get the response that they need, wherever they live, whatever their background is, whatever their personal circumstances may be.

Mr. HOOKS. Thank you, Senator. I can commit to work tirelessly to ensure that all FEMA programs reach the intended recipients as specified by law.

Senator HAWLEY. Very good. Mr. Kubayanda, let me turn to you here, just briefly in the time that we have remaining. I want to raise an issue that is important to me about postal service in rural communities. My State has many, many rural communities, the State of Missouri. I grew up in a rural community. It is important to me that we make sure that the Postal Service continues to fulfill its mission to deliver the mail to those rural communities, to make sure that the lifeline that the Postal Service represents to those rural communities—and by the way, in my State that is north, south, east and west. We have rural communities all over the State, in every area of the State, and I want to make sure that the Postal Service continues to provide the services that those communities rely on.

Let me ask you specifically about what I think is an important piece of legislation that I am proud to co-sponsor with the Chairman, which is the Postal Service Reform Act. I think it is important, and this act would help to make sure that we secure 6-day service, protect rural delivery, and ensure that every American, including those in rural communities, have reliable and uninterrupted access to the mail.

I wonder if you have had an opportunity to review this legislation and if you support it.

Mr. KUBAYANDA. I am familiar with the legislation and I think it would be a very positive step. It is long overdue, frankly, and I think it would be a step forward.

I am a former resident of both Joplin and St. Louis, as a child, and so I am familiar with a lot of those issues in rural Missouri myself, and I think this legislation will help advance the ball in terms of addressing those issues.

Senator HAWLEY. Good. Thank you very much for that. My time has expired. I might have another question or two for you in this vein, but I appreciate that. Thanks to all of you for being here, and thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Hawley.

Senator Rosen, you are now recognized for your questions.

#### **OPENING STATEMENT OF SENATOR ROSEN**

Senator ROSEN. Thank you, Chair Peters, Ranking Member Portman, and for all the nominees here today your commitment to serve your country. I am going to get right after it, building upon some things that Senator Padilla and I know others have spoken

about, wildfires and FEMA assistance, because this year we have seen over 49,000 wildfires burn over 6.5 million acres of land, including several in Nevada like the Tamarack and Caldor Fires.

FEMA has several programs to assist communities, both before and after wildfires, particularly in the Fire Management Assistance Grant (FMAG). That program has been vital for many communities as they recovery.

However, I have been hearing from our State constituents that the current criteria for FMAG is too restrictive for rural communities. These areas may be smaller in population but they rely heavily on the land for their livelihood, from mining to ranching, outdoor recreation, and so without assistance from FEMA it is much harder for these communities to quickly respond and recover from a wildfire.

Mr. Hooks, if confirmed, will you work with me to re-evaluate, possibly change the FMAG formula to make it more accessible to rural communities like mine when we are facing, of course, increasing threats due to wildfires and drought?

Mr. HOOKS. Thank you for your question, Senator. If confirmed, I do commit to work with you and your staff about learning the challenges that you particularly face in Nevada and any other State, as far as our programs and whether or not it is a capacity or capability or whether or not there is some additional reauthorization or some work that needs to be done. I do commit to work with you on the concerns that you have brought forward.

Senator ROSEN. Thank you. I look forward to that, because we need to find maybe some new ideas to assist our more remote, frontier communities as well.

Now I would like to move on to something else that really impacts Nevada, which is our Urban Area Security Initiative (UASI) grants. I want to talk to you about our Urban Area Security Initiative, which really protects the city of Las Vegas and surrounding communities and the critical infrastructure that supports our tourism economy.

Recently FEMA undertook what the agency, on its website, calls the, and I am going to quote here, "comprehensive, coordinated, and collaborative review," end quote, of UASI risk methodology including soliciting feedback from stakeholders to develop modifications to the methodology.

I am really pleased to see this because we know the threats continually change and we need to be adapting along with it. I am pleased to see this, as Administrator Criswell committed to me when we spoke earlier, that FEMA would be meaningfully involved in examining UASI's methodology.

We have to be sure that for Nevada the purpose of UASI, to enhance our preparedness, our capabilities in high-threat, high-density areas like the city of Las Vegas and other cities like that are really protected.

We were able to double the UASI grant when I was in the House of Representatives, from \$2.5 million to \$5 million. The funding has remained steady since. But it is not a lot of money compared to what some of the larger coastal cities receive, and Las Vegas depends on that money to keep residents safe and our over 50 million tourists a year safe.

Mr. Hooks, if you are confirmed, will you ensure that cities like Las Vegas can count on at least level funding for UASI, either by using the fiscal year 2020 numbers? If we end up using the—sorry, I got it wrong. We do not want to use the 2020 numbers. Las Vegas was shut down because of the pandemic. We want to rely on the numbers from 2019, because the pandemic, of course, was an anomaly, and we want to be sure that we have level funding going forward.

Our security and safety should not suffer because of COVID-19 closures, and so can you commit to me to work with us, all of us who get UASI grants, on being sure that the numbers are reflective of 2019 and not what happened in 2020, due to the pandemic?

Mr. HOOKS. Yes. Thank you, Senator. Thank you for the question. I do have great experience working with the UASI program as the State Administrative Agent and Homeland Security Advisor of North Carolina. We also had a UASI in Charlotte, North Carolina, as well. If confirmed, I look forward to seeing how FEMA is evaluating that process, and again, I know that Administrator Criswell is very much on top of this as she has arrived in her position as the lead, ahead of me is coming there as her Deputy, if confirmed, during this process.

I look very much forward to working with you on the challenges that impact the UASI funding because they are critical to maintaining the safety of our States and ultimately our Nation.

Senator ROSEN. I totally agree with you, and we do know, of course, that the threats are ever-expanding, diversifying, cyber threats and the like. How often do you think the metrics should be reviewed and updated for the UASI grants? As we move forward, looking at these formulas, how often should they be reviewed, updated, and be sure that they are working for every community that they will need to protect?

Mr. HOOKS. Again, thank you for the question, Senator. As far as formal updates, coming from external from FEMA I cannot specifically say how often they should be updated, but I believe that as threats emerge and different threats take place that there should be a constant process of review, because we have new threats that are emergent, both domestically and internationally, and we also have additional infrastructure being built every day. We have to constantly evaluate that, and FEMA cannot do that alone. FEMA has to do that in conjunction with our sister agency of CISA, has to do it with our sister agency of the U.S. Secret Service (USSS), and many other partners, the Federal Bureau of Investigation (FBI) and many other intelligence agencies as well as the military to get a firm grasp on what the threats are and to address, from an all-hazards approach. So that process is always ongoing, even if the formal evaluation does not regularly change, because you do not want to change programs every other month or so. But it has to be a dynamically changing review.

Senator ROSEN. Thank you. I see my time has just about expired so I am going to submit a question for the record about extreme heat. Las Vegas is the fastest-warming city in the country. That creates a lot of disaster issues, particularly for our rural, low-income, underserved communities, and I would like to have a con-

versation with you about the impacts of extreme heat and how FEMA can help us there.

Thank you, Mr. Chair.

Chairman PETERS. Thank you, Senator Rosen.

We had a question for Judge Scott and Mr. Tunnage. The D.C. Superior Court handles, as you know, a very high volume of cases, and vacancies on the bench have created a considerable backlog of cases. I think Members of the Committee would like to hear from each of you that if confirmed, how will you manage your caseload efficiently while also ensuring that each person that comes before you has a meaningful opportunity to be heard?

We can start with Judge Scott, if you could answer that question first, and then Mr. Tunnage answer it, I would appreciate it.

Judge SCOTT. Thank you, Chairman, for the question. As you mentioned and as others have mentioned, the D.C. Superior Court has quite a few vacancies. Currently there are approximately 15 vacancies on our court, and I suspect that more will come because of the retirements of my colleagues.

Certainly, Chairman, the Committee scheduling these hearings and the nominees being confirmed will certainly assist with the backlog as the court will have more able bodies to deal with the pending cases. Also, although the court has continued to operate during the pandemic, hearings in our division of the court were handled virtually and jury trials were suspended. I am happy to report, Senator, that jury trials in both our Civil and Criminal Divisions are being scheduled, and in my perspective this will certainly address the current backlog.

In terms of what I can do, it begins, quite frankly, in the courtroom. What I can do, and should I have the honor of being confirmed, is to hold attorneys and even those pro se litigants who come before me accountable. That means setting deadlines very early in my cases and holding the parties accountable to those deadlines. I know that there is concern about requests for continuances, and I can assure the Committee and my colleagues on the court that I would set early deadlines. I would require parties to request continuances well before the hearing or the trial at issue, and be prepared to respond to any questions that I may have regarding the continuances.

Last, Chairman, it is very important that I myself am prepared. I can commit to do what I have been doing as a magistrate judge, and that is to take the bench having read the case, having read the procedural posture, and being very familiar with the issues before me so that I am not the reason for delaying.

Senator, I am confident that with these items that I mentioned the court can address the backlog and I can assist with decreasing the backlog. Thank you.

Chairman PETERS. Thank you, Judge Scott. Mr. Tunnage, your answer please.

Mr. TUNNAGE. Thank you, Mr. Chairman. I would like to start by saying I agree with Judge Scott. First, I think the primary obligation—well, the first obligations is for me to be prepared, and I think that also ties into the second part of your question regarding litigants being fully heard.

Part of my preparation, if I am fortunate and granted confirmation as an Associate Judge, would be to actually fully hear all litigants, and part of fully hearing all litigants is reviewing and reading and analyzing submission of all parties without favor or bias.

I think the one thing that I could do to help any backlog would be to hit the ground running. I think that my training and my experience as a career attorney in the Justice Department has brought exposure in Federal district courts throughout the country where I have seen trial judges in quite a few jurisdictions, and I have seen what works and what does not. I have seen what works really well. I think I could bring those experiences and those practice experiences to bear if I were fortunate to be confirmed.

Finally, I do think that because of the national emergency brought on by the COVID virus the Justice Department, and the criminal justice system in general, had to adapt and actually continue its services. I think there were procedures that were implemented during that emergency that actually have increased efficiency in the courts, and I would like to continue those if I am confirmed as a judge, to help ease the backlog by moving cases more quickly and some hearings more expeditiously.

Chairman PETERS. Thank you. I would like to take an opportunity to thank each of our nominees once again for being here before the Committee, congratulate each of you on your nominations and your willingness to take on these very tough jobs. I also want to thank you for your thoughtful answers to questions from Members of this Committee.

All five nominees have made financial disclosures<sup>1</sup> and provided the required responses to biographical<sup>2</sup> and pre-hearing questions<sup>3</sup> submitted by this Committee. Without objection, this information will be made part of the hearing record,<sup>4</sup> with the exception of the financial data,<sup>5</sup> which is on file and available for public inspection in the Committee offices.

The hearing record will remain open until 12 p.m. tomorrow, November 19th, for the submission of Statements and questions for the record.

This hearing is now adjourned.

[Whereupon, at 12:11 p.m., the hearing was adjourned.]

<sup>1</sup>The information for Mr. Hooks appear in the Appendix on page 43.

<sup>2</sup>The information for Mr. Kubayanda appear in the Appendix on page 106.

<sup>3</sup>The information for Ms. Blatchford appear in the Appendix on page 177.

<sup>4</sup>The information for Judge Scott appear in the Appendix on page 225.

<sup>5</sup>The information for Mr. Tunnage appear in the Appendix on page 249.

# A P P E N D I X

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**Chairman Peters Opening Statement As Prepared for Delivery  
Full Committee Hearing: Nominations of Erik A. Hooks to be Deputy Administrator, Federal  
Emergency Management Agency, U.S. Department of Homeland Security; the Honorable  
Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A.  
Blatchford to be Controller, Office of Federal Financial Management, Office of Management  
and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior  
Court of the District of Columbia**

**November 18, 2021**

Today, we are considering five nominations:

Erik Hooks, to be Deputy Administrator of the Federal Emergency Management Agency, or “FEMA,” Michael Kubayanda, to serve a second term as a Commissioner on the Postal Regulatory Commission, Laurel Blatchford, to be Controller of the Office of Federal Financial Management, within the Office of Management and Budget, and Ebony Scott and Donald Tunnage who are both joining us remotely, to be Associate Judges on the Superior Court for the District of Columbia.

Welcome to each of you and to your friends and family members joining us today. Congratulations on your nominations, and thank you all for your previous service and for your willingness to take on these important new roles.

These are all very different positions, but each is critically important to the federal government and to our nation’s capital.

I am pleased that we are considering highly-qualified nominees for each of these roles, and in particular, for several roles that have been vacant for far too long.

FEMA has been without a Senate-confirmed Deputy Administrator for nearly two years, and OMB has not had a Senate-confirmed Controller in almost five years.

Additionally, the D.C. Superior Court is struggling with high vacancy levels, there are currently 14 Associate Judge vacancies on the court. I am glad we have two nominees to the Superior Court here today, and I hope we will soon see several of these seats filled.

Thank you again for your willingness to serve and for being with us today. I look forward to hearing from each of the nominees.

Opening Statement – As Prepared  
**Ranking Member Rob Portman**  
Homeland Security & Governmental Affairs Committee

*Nominations of  
Erik Hooks to be Deputy Administrator, FEMA, DHS  
The Honorable Michael Kubayanda to be a Commissioner, PRC  
Laurel Blatchford to be Controller, OFFM, OMB  
Ebony Scott and Donald Tunnage to be Associate Judges, Superior Court  
of the District of Columbia*

Thursday, November 18, 2021

Thank you, Chairman Peters.

Welcome to all of our nominees. Thank you for your willingness to serve in the Federal and DC governments.

Mr. Hooks, you come to us with more than 30 years of public service in law enforcement and public safety in North Carolina. Your firsthand experience working with FEMA, leading emergency management at the state level is critical background for someone tapped to help lead federal emergency management.

The recently enacted Bipartisan Infrastructure Investment and Jobs Act included \$1 billion for FEMA's BRIC program. BRIC, short for the Building Resilient Infrastructure and Communities program, is relatively new but an example of the critical role FEMA plays in mitigating disasters before they strike. If confirmed, it is my hope that you use your state experience to ensure BRIC is used in strategic ways to target regions with the highest vulnerabilities to disasters.

Commissioner Kubayanda, the Postal Regulatory Commission is small with a staff of around 75 people, but it plays an important role promoting transparency and accountability in the postal system. The Commission examines the Postal Service's financial data, monitors its service performance, and ensures the Postal Service follows the law when setting prices. Over the past two years, the importance of the Postal Service to the nation's supply chain has stood out. The Postal Service, however, faces a difficult situation as First-Class Mail, which traditionally sustained the network, continues to decline.

Commissioner Kubayanda, this is your second nomination to the Postal Regulatory Commission. You have already served as a commissioner for nearly three years and the Chairman since last January. I look forward to hearing your thoughts on the nation's postal system, its challenges, and its future.



Ms. Blatchford, the position of Controller in the Office of Federal Financial Management, Office of Management and Budget is one of the most critical positions at OMB, particularly as the federal government addresses the significant economic and health issues across our country. As a former OMB Director, I know how important OMB and OFFM are to our Federal government's success.

The Controller position is so important that Congress placed specific qualifications for the position in U.S. Code. Under 31 U.S.C. § 504, the Controller is *required* to possess a "demonstrated ability and practical experience in accounting, financial management, and financial systems; and extensive practical experience in financial management in large governmental or business entities." I look forward to discussing with you how you meet these requirements for the position of Controller. If confirmed, I look forward to working with you in a bipartisan way to improve the transparency of the Federal government's spending across agencies and improve access to government accountability across the Executive Branch.

I also thank Judge Scott and Mr. Tunnage for being here today as the committee considers their nominations to be associate judges on the D.C. Superior Court. Both of you have spent essentially your entire careers in public service, and I appreciate your willingness to serve as judges for the D.C. community. Congress has a unique relationship with D.C.'s justice system, as outlined in the Home Rule Act. And there are important issues facing D.C., including rising crime. There have been significantly more homicides, assaults, and armed robberies this year than there were at the same time last year. This is one reason among others why we need impartial and qualified judges on the D.C. Superior Court to ensure timely justice for all parties. I look forward to discussing this and other issues with Judge Scott and Mr. Tunnage.

**Opening Remarks of Erik A. Hooks  
Nominated to serve as Deputy Administrator,  
Federal Emergency Management Agency  
U.S. Senate Committee on Homeland Security and Governmental Affairs  
November 18, 2021**

Good morning, Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee. My name is Erik A. Hooks, and it is a privilege to appear before you today as the President's nominee to the position of Deputy Administrator for FEMA. I am honored to have been nominated by President Biden for this important emergency management leadership role.

I am humbled by the opportunity to appear before this Committee and thank you for considering my nomination.

If confirmed, I look forward to working with Secretary Mayorkas, Administrator Criswell, and the entire team at FEMA and the Department of Homeland Security on building a more resilient and prepared nation.

I would like to thank my wife of almost 30 years, Muriel and our son, Brandon who have sacrificed along with me in my deep commitment to public service and a career in public safety.

I would also like to acknowledge the committed men and women of FEMA, our military, federal, state, and local Emergency Management and Public Safety partners, who work tirelessly to protect and lead recovery efforts from multiple hazards across our great nation. If confirmed, it would be my sincere privilege to again work alongside these resolute public safety professionals.

I spent over 30 years serving the state of North Carolina, first as a Special Agent and a senior leader with the State Bureau of Investigation for over 27 years. Then in January 2017, the Governor of North Carolina appointed me to serve as the Secretary of Public Safety and Homeland Security Advisor for North Carolina. Over the last four years in that role, I led North Carolina's disaster mitigation,

response and recovery efforts as the state navigated an increasing number of natural disasters.

I had the privilege to lead approximately 27,000 sworn and civilian public safety professionals as well as approximately 12,000 National Guard soldiers and airmen.

I provided cabinet level leadership to the NC Division of Emergency Management and its Homeland Security Section, The NC National Guard, The NC Office of Recovery and Resilience, The NC State Highway Patrol, The NC Alcohol Law Enforcement Division, the NC State Capitol Police, The Division of Adult Correction and Juvenile Justice, the Governor's Crime Commission, and support divisions within the Department of Public Safety.

I was ultimately responsible for leadership coordination of homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection, response and recovery for emergencies, disasters, and acts or threats of terrorism.

As the leader of North Carolina's State Administrative Agency for Homeland Security Grant Funds, I administered federal funds to state, local and tribal entities across North Carolina. I also chaired the North Carolina State Emergency Response Commission and through a talented team of professionals, coordinated law enforcement counterterrorism prevention, preparedness and response training on a statewide basis resulting in a cohesive team response by both law enforcement and emergency first responders to acts of terrorism or a terrorist threat.

I recently served on the Executive Committee of the National Governors Homeland Security Advisors Council, and I am a member of the International Association of Chiefs of Police.

Today we face a multitude of challenges which must be successfully navigated through a proactive and collaborative effort to ensure FEMA can deliver needed critical services to the Nation. During my tenure as the North Carolina Secretary of Public Safety we responded to numerous disasters, including a number of state

declare disasters as well as presidentially declared disasters. My public service experience prepares me for the position of FEMA Deputy Administrator.

I believe for us to create and maintain a true culture of prevention, protection, and preparedness; we must work collaboratively across all levels of government and segments of society to ready our nation for the many hazards we face and to ensure our nation's resiliency from catastrophic events is at the highest level possible.

If confirmed, it would be my honor to serve our nation by helping all communities reduce the risks associated with future disasters, while assisting disaster survivors across the country. I am committed to work tirelessly and with a deep sense of purpose to ready the nation for catastrophic disasters, build a culture of preparedness, and reduce the complexity of FEMA.

With your consent, I would be honored to serve the American people. Thank you for your time and attention concerning my nomination and I look forward to answering any questions you may have.

REDACTED

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Deputy Administrator, Federal Emergency Management Agency	July 28, 2021

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Erik	Adrian	Hooks	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 512 N Salisbury St		
City: Raleigh	State: NC	Zip: 27603	City: Raleigh	State: NC	Zip: 27604

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<small>Check if Maiden Name</small>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<b>Birth Year and Place</b>	
<b>Year of Birth</b> (Do not include month and day.)	<b>Place of Birth</b>
1967	Fayetteville, North Carolina

<b>Marital Status</b>					
Check All That Describe Your Current Situation:					
<b>Never Married</b>	<b>Married</b>	<b>Separated</b>	<b>Annulled</b>	<b>Divorced</b>	<b>Widowed</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Spouse's Name</b> (current spouse only)			
<b>Spouse's First Name</b>	<b>Spouse's Middle Name</b>	<b>Spouse's Last Name</b>	<b>Spouse's Suffix</b>
Muriel	Marie	Hooks	

<b>Spouse's Other Names Used</b> (current spouse only)							
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>	<b>Check if Maiden Name</b>	<b>Name Used From</b> (Month/Year) (Check box if estimate)	<b>Name Used To</b> (Month/Year) (Check box if estimate)	
Muriel	Marie	George		X	10/1962 <span>Est <input type="checkbox"/></span>	08/1989 <span>Est X</span>	
Muriel	Marie	Demby			08/1989 <span>Est X</span>	01/1992 <span>Est <input type="checkbox"/></span>	
Muriel	Marie	George		X	01/1992 <span>Est <input type="checkbox"/></span>	04/1992 <span>Est <input type="checkbox"/></span>	

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

## 2. Education

List all post-secondary schools attended.

<b><u>Name of School</u></b>	<b><u>Type of School</u></b> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<b><u>Date Began School</u></b> (month/year) (check box if estimate)	<b><u>Date Ended School</u></b> (month/year) (check box if estimate) (check "present" box if still in school)	<b><u>Degree</u></b>	<b><u>Date Awarded</u></b>
North Carolina State University	University	08/2003 <small>Est</small> <input type="checkbox"/>	05/2005 <small>Est</small> <small>Present</small> <input type="checkbox"/> <input type="checkbox"/>	MA	05/2005
North Carolina State University	University	08/1985 <small>Est</small> <input type="checkbox"/>	12/1988 <small>Est</small> <small>Present</small> <input type="checkbox"/> <input type="checkbox"/>	BA	12/1988
		<small>Est</small> <input type="checkbox"/>	<small>Est</small> <small>Present</small> <input type="checkbox"/> <input type="checkbox"/>		
		<small>Est</small> <input type="checkbox"/>	<small>Est</small> <small>Present</small> <input type="checkbox"/> <input type="checkbox"/>		

### 3. Employment

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

<b>Type of Employment</b> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<b>Name of Your Employer/Assigned Duty Station</b>	<b>Most Recent Position Title/Rank</b>	<b>Location</b> (City and State only)	<b>Date Employment Began</b> (month/year) (check box if estimate)	<b>Date Employment Ended</b> (month/year) (check box if estimate) (check "present" box if still employed)
State Government (Non-Federal Employment)	State of North Carolina Department of Public Safety	Secretary	Raleigh, NC	01/2017 <input type="checkbox"/> Est	08/2021 <input type="checkbox"/> Est
State Government (Non-Federal Employment)	North Carolina State Bureau of Investigation	Special Agent in Charge	Raleigh, NC	08/1989 <input type="checkbox"/> Est	01/2017 <input type="checkbox"/> Est
Local County Government (Non-Federal Employment)	Wake County Juvenile Restitution Program	Work Supervisor	Raleigh, NC	04/1989 <input type="checkbox"/> Est	07/1989 <input type="checkbox"/> Est
Private Employer (Non-Federal Employment)	Darryl's Restaurant / Gilbert-Robinson, Inc	Utility Attendant	Raleigh, NC	05/1989 <input type="checkbox"/> Est	07/1989 <input type="checkbox"/> Est
Unemployment	N/A	N/A	N/A	10/1988 <input checked="" type="checkbox"/> Est	05/1989 <input checked="" type="checkbox"/> Est
Private Employer (Non-Federal Employment)	Racine World Wide Security	Security Officer	Raleigh, NC	03/1988 <input type="checkbox"/> Est	09/1988 <input type="checkbox"/> Est
State Government Internship (Non-Federal Employment)	Wake County District Attorney's Office	Intern	Raleigh, NC	01/1988 <input type="checkbox"/> Est	04/1988 <input type="checkbox"/> Est
Unemployment	N/A	N/A	N/A	11/1988 <input checked="" type="checkbox"/> Est	01/1988 <input type="checkbox"/> Est
Private Employer (Non-Federal Employment)	Best Products	Sales Consultant	Raleigh, NC	09/1987 <input checked="" type="checkbox"/> Est	11/1988 <input checked="" type="checkbox"/> Est
Unemployment	N/A	N/A	N/A	08/1986 <input checked="" type="checkbox"/> Est	09/1987 <input checked="" type="checkbox"/> Est
Private Employer (Non-Federal Employment)	Pizza Hut	Cook	Raleigh & Fayetteville,	10/1985 <input checked="" type="checkbox"/> Est	08/1986 <input checked="" type="checkbox"/> Est



			NC		
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In periods where dates overlap, I held both jobs simultaneously. Additionally, listed periods of unemployment occurred while I was a full-time student, immediately after college graduation, or prior to a planned internship.

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

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Est</u> <input type="checkbox"/>	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)	<u>Est</u> <input type="checkbox"/>	<u>Present</u> <input type="checkbox"/>
State Emergency Response Commission	Chairman	01/2017	<input type="checkbox"/>	08/2021	<input type="checkbox"/>	<input type="checkbox"/>
Governor's Crime Commission	Ex-Officio Member	01/2017	<input type="checkbox"/>	08/2021	<input type="checkbox"/>	<input type="checkbox"/>
State Reentry Council Collaborative	Chairman	11/2017	<input type="checkbox"/>	04/2021	<input type="checkbox"/>	<input type="checkbox"/>
North Carolina Task Force for Racial Equity in Criminal Justice	Member	06/2020	<input type="checkbox"/>	08/2021	<input type="checkbox"/>	<input type="checkbox"/>
Sexual Assault Evidence Collection Kit Working Group	Chairman	06/2018	<input type="checkbox"/>	01/2019	<input type="checkbox"/>	<input type="checkbox"/>
NC Education Training and Standards Commission	Ex-Officio Member	01/2017	<input type="checkbox"/>	08/2021	<input type="checkbox"/>	<input type="checkbox"/>
UNC TV Board of Trustees	Ex-Officio Member	07/2019	<input type="checkbox"/>	08/2021	<input type="checkbox"/>	<input type="checkbox"/>

#### **4. Potential Conflict of Interest**

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's Designated Agency Ethics Official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I signed and transmitted to the

Department's Designated Agency Ethics Official, which I believe has already been provided to this Committee. I am not aware of any other potential conflicts of interest.

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

In my role as the Secretary of Public Safety in North Carolina, I worked with the Governor and North Carolina General Assembly on public safety agency legislation and State Appropriations legislation.

## **5. Honors and Awards**

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

### **Academic Honors**

Alpha Kappa Delta Honor Society – 1988 NC State University Student

### **Professional Honors**

Advance Law Enforcement Certification – State of North Carolina - 2011

Distinguished Civilian Service Medal – NC National Guard - 2021

Order of the Long Leaf Pine – NC Governor - 2021

30 Year Service Award – State of North Carolina - 2019

Director's Award – United States Secret Service - 2021

Director's Award – NC Emergency Management - 2021

Commander's Award – NC State Highway Patrol - 2021

Leadership and Service Award – NC State Bureau of Investigation - 2021

Extra Mile Award – NC Department of Transportation - 2021

Professional Appreciation Award – NC Association of Police Chiefs -2021

Certificate of Achievement – FEMA Region IV - 2021

### 6. Memberships

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

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

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
FBI National Executive Institute Associates	2019 – Present	Member
International Association of Chiefs of Police	2005 – Present	Member
Governors Homeland Security Advisory Council	January 2017 – August 2021	Executive Committee Member
North Carolina Police Executives Association	2005 – August 2021	Member

### 7. Political Activity

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

No.

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

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

N/A

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

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

N/A

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

### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide

the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

N/A

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been

**nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.**

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Department of Public Safety Leadership Conference	Public Safety Leaders	March 30, 2021
State Highway Patrol Excellence Awards	North Carolina Highway Patrol	November, 2021
Department of Public Safety Badge of Excellence Awards	Public Safety Professionals	November, 2020
Racial Equity Community Forum	Fayetteville State University, North Carolina	October 22, 2020
North Carolina Corrections Conference	Adult Corrections Professionals	August 6, 2020
Highway Patrol Graduation	Public Safety Professionals and Families	June, 2020
Alcohol Law Enforcement Supervisors' Meeting	Public Safety	June 25, 2020
Leadership Address	North Carolina National Guard Military Commanders	February 22, 2020
Highway Patrol Promotion	Public Safety Professionals and Families	February 22, 2020
North Carolina Wing Conference Address	Civil Air Patrol	February 8, 2020
Dr. Martin Luther King Program	Mt. Herman AME Church	January 18, 2020
Public Safety at Faith-Based / School Facilities	Mt. Zion Baptist Church	January 11, 2020
Public Safety and Valuing Staff	North Carolina Correctional Association	November 20, 2019
State Highway Patrol Excellence Awards	North Carolina Highway Patrol	November 20, 2019
Department of Public Safety Badge of Excellence Awards	Public Safety Professionals	November, 2019



School Safety Summit	Educators, Mental Health and Criminal Justice Professionals	August 12, 2019
Keynote Address	Emergency Management Conference	May 29, 2019
Vietnam Veterans Commemoration	Retired and Current Military	April 1, 2019
School Safety and School Justice Partnerships	Criminal Justice and Education Professionals	May 3, 2018
355 <sup>th</sup> Birthday Address to North Carolina National Guard	YouTube <a href="https://youtu.be/PD2Aces5VLk">https://youtu.be/PD2Aces5VLk</a>	March 13, 2018
Prison Safety	Presentation to Joint Oversight Committee on Justice and Public Safety of the North Carolina General Assembly	January 25, 2018

To the best of my abilities, I have taken steps to recall and report the formal speeches and testimony I have delivered in the last five years and listed the results of my search above.

In my role as Secretary of Public Safety of the State of North Carolina, I frequently delivered remarks to public safety professionals, including criminal justice, mental health, corrections, and law enforcement personnel. These remarks were generally informal and delivered without the benefit of notes or text. If I identify additional speeches or remarks which are responsive to the Committee's question during the course of this process, I will provide copies to the Committee.

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

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




### **9. Criminal History**

**Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?**

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

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

N/A

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
- 2) Firearms or explosives: **Yes / No**
- 3) Alcohol or drugs: **Yes / No**

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: **Yes / No**

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: **Yes / No**

- J) Were you incarcerated as a result of that sentence for not less than one year: **Yes / No**
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: **Yes / No**
- N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

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

N/A

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

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

In my capacity as North Carolina Secretary of Public Safety, I was routinely named in lawsuits directed against the Department. Those suits generally do not relate to my individual decisions or actions, but rather to actions ascribed to the Department as an entity, of which I was the most senior official. No adjudicating body has made a finding of wrongdoing against me personally.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
April 8, 2020	North Carolina Supreme Court	The ACLU of North Carolina, Disability Rights NC, Emancipate NC, Forward Justice, the National Juvenile Justice Network	Emergency suit asking the NC Supreme Court to order Governor Cooper to meaningfully reduce the prison population in light of the COVID-19 pandemic.	The government of North Carolina reached a settlement with plaintiffs to release 3,500 inmates who did not pose a threat to public safety. In exchange, the plaintiffs agreed to drop their lawsuit. As Secretary of Public Safety, I was named in my official role in the suit, and was charged with implementing the state's portion of the settlement agreement.

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

As head of the parent agency for the Division of Adult Corrections, I was named in my official capacity in the lawsuit listed above. This lawsuit did not result in any adverse final rulings against the agency, but did result in a voluntary settlement between the State of North Carolina and the plaintiffs. I thought it best to include the suit in this form given the significant media attention it received, and my official role in executing the settlement agreement between the state and the plaintiffs as Secretary of Public Safety.

### **11. Breach of Professional Ethics**

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

N/A

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

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

At age 20, I was released from Best Products by a store manager in relation to procedural compliance. I disagreed with the decision but did not contest the release.

**12. Tax Compliance**

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

**REDACTED**

**REDACTED**

**13. Lobbying**



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

No.

#### 14. Outside Positions

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

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

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

#### 15. Agreements or Arrangements

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

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

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

N/A

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

#### **16. Additional Financial Data**

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

**REDACTED**

REDACTED

SIGNATURE AND DATE

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

Erik G. Hooks

This 13<sup>th</sup> day of October, 2021

**REDACTED****UNITED STATES OFFICE OF  
GOVERNMENT ETHICS**

August 9, 2021

The Honorable Gary C. Peters  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Erik A. Hooks, who has been nominated by President Biden for the position of Deputy Administrator, Federal Emergency Management Agency, Department of Homeland Security.

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

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

Sincerely,

**DAVID APOL**  
Digitally signed by DAVID  
APOL  
Date: 2021.08.09 16:17:07  
+0400

David J. Apol  
General Counsel

Enclosures **REDACTED**

July 22, 2021

Joseph B. Maher  
Designated Agency Ethics Official  
U.S. Department of Homeland Security  
2707 Martin Luther King, Jr. A venue, SE  
Washington, DC 20528

Dear Mr. Maher:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Administrator for the Federal Emergency Management Agency of the Department of Homeland Security. It is my responsibility to understand and comply with commitments outlined in this agreement.

#### SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to

recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state, and local government.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

## SECTION 2 – RESIGNATIONS

I plan to retire from my position with the North Carolina Department of Public Safety on or about August 1, 2021. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after my retirement, I will not participate personally and substantially in any particular matter involving specific parties in which I know that the State of North Carolina is a party or represents a party, unless I am first authorized to participate, pursuant to at 5 C.F.R. § 2635.502(d).

Following my retirement, I will continue to participate in the State Employees Retirement System of North Carolina, a defined benefit pension plan. Because I will continue to participate in this entity's defined benefit plan, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the state of North Carolina to provide this contractual benefit to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2), such as the exemption for participants in state or local pension plans allowing participation in certain particular matters of general applicability at 5 C.F.R. § 2640.201(c)(2).

Following my retirement, I am also entitled to continue purchasing health insurance for both myself and my spouse through the North Carolina State Plan for State Employees, with a portion of the coverage paid for by the State. Therefore, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the state of North Carolina to provide this benefit, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Following my retirement, I will also receive a Special Separation Allowance for North Carolina Law Enforcement Officers from the State of North Carolina through January 2029. For as long as these payments continue, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the state of North Carolina to provide these payments, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

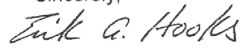
## SECTION 3 – SPOUSE EMPLOYMENT

My spouse is employed by Wake County Public Schools, in a position for which she is paid based on days in service. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for as long as my spouse continues to work for Wake County Public Schools, I will not participate personally and substantially in any particular matter involving specific parties in which I know Wake County Public Schools is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – PUBLIC POSTING

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

Sincerely,

A handwritten signature in black ink, appearing to read "Erik A. Hooks". The signature is written in a cursive, slightly slanted style.

Erik A. Hooks

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Erik Hooks to be  
Deputy Administrator, Federal Emergency Management Agency,  
Department of Homeland Security**

**I. Nomination Process and Conflicts of Interest**

1. Did the President or the Secretary of the Department of Homeland Security (DHS) give you specific reasons why you were nominated to be the next Deputy Administrator of the Federal Emergency Management Agency (FEMA), and if so, what were they?

Yes. In their statements regarding my nomination, the Secretary expressed the belief my background and leadership experience would be of value to the department. Administrator Criswell expressed similar confidence, and a belief our shared partnership would form a cohesive leadership team for FEMA.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Deputy Administrator? If so, what are they, and to whom were the commitments made?

No, other than my honest commitment to work tirelessly to serve our nation.

4. Are you aware of any business relationship, dealing, or financial transaction that can result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

In connection with the nomination process, I have consulted with the Office of Government Ethics and DHS's Designated Agency Ethics Official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have signed and which was transmitted to the Department's Designated Agency Ethics Official, and which was provided to this Committee. I am not aware of any other potential conflicts of interest.



5. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained or contracted with regarding this nomination, including any amounts paid in fees or otherwise.

I have not retained or contracted with any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity regarding this nomination.

## **II. Background of the Nominee**

6. Why do you want to serve as Deputy Administrator of FEMA?

I have dedicated my adult life to public service and public safety, spending 32 years of service in North Carolina. If I am confirmed, the role of Deputy Administrator of FEMA will provide a further opportunity where my passion and purpose intersect, and where I can put the skills and experience I have built to use in serving our nation and all communities as we seek to prepare for catastrophic events, mitigate threats, save lives, and build a more resilient nation.

7. What specific background, experience, and attributes affirmatively qualify you to be Deputy Administrator of FEMA?

I am dedicated public servant, having well over 30 years of law enforcement and public safety experience. I spent 27 years with the North Carolina State Bureau of Investigation, where I rose to the rank of Assistant Director in 2005. In that role, I built my credentials and background in law enforcement, learning to collaborate with other state agencies and local communities, as well as with leadership in my own agency, to lead the Department, focus on results, and bring about justice for North Carolinians.

Following that role, I served in various leadership capacities prior to my appointment as the North Carolina Secretary of Public Safety in January 2017. From January 2017 until August 2021, I served as North Carolina's Secretary of Public Safety and the State's Homeland Security Advisor. In those roles, I served as the sole representative on the governor's cabinet for the state's emergency management, homeland security, law enforcement, and corrections responsibilities. I led the largest state government agency in North Carolina, executing on a multi-billion-dollar budget; leading approximately 27,000 sworn and civilian public safety professionals as well as approximately 12,000 National Guard soldiers and Airmen.

I provided cabinet-level leadership to the North Carolina Division of Emergency Management and Homeland Security Section, the NC National Guard, the NC State Highway Patrol, the NC Alcohol Law Enforcement Division, the NC State Capitol Police, the Division of Adult Correction and Juvenile Justice, the NC Office of Recovery and Resilience, the Governor's Crime Commission, and support divisions within the Department of Public Safety.

My background has prepared me well for the demands of the Deputy Administrator role at FEMA. I was responsible for leadership coordination of homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection, response and recovery for emergencies, disasters, and acts or threats of terrorism.

I provided executive-level and on the ground leadership to the entities within the department of public safety during major storms, as well as the COVID-19 pandemic response to support communities across North Carolina. This included North Carolina Storm of Record Hurricane Florence, which left 17 billion dollars of damage in its wake in the state. And I took on critical fiscal responsibilities as North Carolina's State Administrative Agent administering federal funds to state, local and tribal entities across North Carolina.

I have also worked to ensure that our response to the pandemic didn't leave families behind. In providing executive leadership to the North Carolina Office of Recovery and Resilience (NCORR), my department established the Housing Opportunities and Prevention of Evictions (HOPE) Program in response to the Covid-19 Pandemic. The HOPE program has provided hundreds of millions of dollars to assist renters who were financially impacted by the pandemic in meeting their rental and utility payment obligations.

Through a highly professional team, I was responsible for coordinating law enforcement counterterrorism prevention, preparedness and response training on a statewide basis, resulting in a cohesive team response by both law enforcement and emergency first responders to acts of terrorism or a terrorist threat. My extensive public safety background allowed me to leverage this diverse experience to enhance safety and security for the protection of lives and critical infrastructure.

I chaired the North Carolina State Emergency Response Commission from January 2017 to August 2021. I also serve on the Executive Committee of the National Governors Homeland Security Advisors Council.

I am a proud graduate of North Carolina State University, with an undergraduate degree in Political Science with a concentration in Criminal Justice as well a master's degree in Liberal Studies with a focus in Organizational Management and Research. I am also graduate of the Administrative Officers Management Program at NC State University. Additionally, I successfully completed the FBI National Executive Institute, and the Commandant's National Security Program at the US Army War College. My educational background reflects my lifelong passion for public safety, and for leading and building effective organizational structures to meet the ever-changing demands of our communities when it comes to preparing for, and responding to, all manner of hazards.

8. Please describe:

- a. Your leadership and management style.

My preferred leadership style is intentional and collaborative. This approach helps build synergy for comprehensive solutions to complex issues, promotes teamwork and prepares other leaders within the organization for success. Whereas this is my preferred approach, in each leadership role I have held, the ultimate responsibility for decisions made lies with me. If confirmed as Deputy Administrator, I am fully prepared to make sound and decisive leadership decisions within the framework of my legal authorities for the best interest of the American public. My leadership style lends itself to be decisive and engaged with internal and external stakeholders, while always assessing the legal and moral responsibilities of my leadership position.

b. Your experience managing personnel.

From 2017 to 2021, I led the largest state government agency in North Carolina, executing on over an approximately \$2.1 billion budget; leading approximately 27,000 sworn and civilian public safety professionals as well as approximately 12,000 National Guard soldiers and Airmen. During my tenure as the Secretary of Public Safety I led and directly managed 13 top executive-level Emergency Management, Public Safety and military leaders. I have directly managed public safety personnel since 1999 and have consistently managed personnel across a broad spectrum of public safety and emergency management domains.

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

As the Secretary of the North Carolina Department of Public Safety, I led a cadre of personnel positions on approximately 27,000 sworn and civilian public safety professionals, as well as approximately 12,000 National Guard soldiers and Airmen.

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

As Secretary of Public Safety, acting upon the emergency powers of the Governor, with a dedicated team of leaders, I led North Carolina through the preparation, response, and recovery efforts related to Hurricane Florence (North Carolina's storm of record). Florence caused death and destruction of approximately 17 billion dollars—all of which was painful for our state. With that said, "Team North Carolina" saved thousands of lives and provided timely emergency services across our great state to ensure that the toll was not higher.

Second, during my tenure as the Secretary of Public Safety, I transformed the Division of Emergency Management's Homeland Security Section from a Homeland Security Grant Processing section to a vibrant and operational entity fully engaged in the intelligence community, cyber security protection and response, critical infrastructure assessments and response, school safety, and civil disturbance coordination efforts of our state, in concert with federal agencies such as FEMA and DHS.

I led the North Carolina Department of Public Safety as we built capacity and capabilities in other critical areas as well. The North Carolina Office of Recovery and Resilience (NCORR) was established in the Department of Public Safety under my leadership, in the aftermath of Hurricane Florence to streamline long-term recovery programs statewide and help rebuild resilient communities. Today, NCORR administers programs that support homeowner recovery, affordable housing, mitigation, strategic buyouts, local government grants and loans, as well as rent and utility assistance for individuals financially impacted by the COVID-19 pandemic. As Secretary of Public Safety, I brought in an outstanding female leader with tremendous federal experience with HUD as the Chief Operating Officer, and tasked her with working alongside my nationally-recognized Emergency Management Director to build out the office and programs with the full support of the Governor and other state leaders.

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

As the Secretary of Public Safety and Homeland Security Advisor for North Carolina, I shouldered a high level of responsibility to keep approximately 10.5 million people safe from both natural and man-made disasters. I worked diligently throughout my tenure to ensure my senior leaders and I were carrying out this responsibility to the greatest extent possible. As a leader, loss of life should always be impactful and often feels like failure. So even though we maintained solid emergency management plans, exercised for pandemics, have solid partnerships in place, and saved countless lives through intentional and diligent work, we have tragically lost approximately 18,000 lives to COVID-19 in North Carolina.

I know I was not completely successful in convincing a number of public safety personnel and first responders to take potentially lifesaving vaccines to protect themselves and the communities they served. There still remains a significant amount of distrust in minority communities concerning government's involvement with medicine, based on a real history of atrocities committed by the state in North Carolina and other parts of the South. I also learned a significant portion of minority and majority communities have too easily gravitated toward misinformation about vaccines, promulgated by untrusted and possibly malicious sources. I learned, like many others, how distortion of the vaccines' importance and efficacy online has played a significant part in vaccine refusal, leading to an increased death toll. I personally was vaccinated publicly and broadcast that fact throughout our social media and press channels, as well as spoke directly to its efficacy and safety—but the messaging was not enough to convince some in my own organization to get vaccinated.

What I can confidently say is that the failure to fully vaccinate all North Carolinians was not due to lack of effort and commitment. If confirmed as Deputy Administrator, I will bring with me the lessons I have learned regarding vaccine hesitancy and uptake, and will work to ensure that our programs effectively integrate these lessons in order to save lives.

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

I had the fortune of working directly for Governor Cooper from January 5, 2017, until my retirement from state service on August 1, 2021. As such, I was able to provide significant input into matters related to public safety and emergency management prior to the Governor making decisions on courses of action.

In the early 2000's, during my tenure at the State Bureau of Investigation I disagreed with a senior management practice of not ensuring promotional review boards were comprised of racially and gender diverse members if the applicant pool did not have a qualified minority in it. I advocated the position that the review board process is an essential management function, and that individuals representing race and gender minorities should participate as reviewers and evaluators irrespective of the makeup of the candidate pool. I was successful in changing the practice, and though the homeland security discipline has a long way to go, particularly when it comes to women and racial minorities in leadership roles, I believe that this work helped to lay the foundation for additional gains in diversity in public safety throughout the remainder of my tenure in the state.

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

I absolutely seek out dissenting views and encourage constructive criticism from members of the teams I lead. I believe this practice promotes open dialogue, a fuller understanding of the problems we face, and helps to generate more comprehensive solutions to complex issues. During my tenure as the Secretary of the Department of Public Safety, I empowered my senior leaders to present dissenting views and engage in constructive critical dialogue with me. One specific example presented itself in 2020 around discussions on releasing convicted offenders from prison due to the COVID-19 pandemic.

As another example, in 2019, information was reported up to me as the Secretary of Public Safety through the North Carolina Highway Patrol that a contracted employee serving as a proctor for the written test for sworn trooper promotions may have compromised the promotional process by releasing promotion scores and rankings to certain members and candidates of the patrol, prior to the promotional list officially being posted. At the request of the Commander of the Highway Patrol and me, the North Carolina State Bureau of Investigation conducted a criminal investigation and the Highway Patrol conducted and administrative internal probe into matter. The issues surrounding this breach generated significant media interest, public interest, and interest by state legislators.

Beyond the conduct of the individuals involved, the Commander of the Highway Patrol and I had to consider whether the entire promotional process for the year had been compromised and whether we could promote the troopers, who had been waiting on the list for several months, in good faith.

I called together a group of senior leaders to include the Commandeer of the Highway Patrol, my General Counsel, and two of my Chief Deputy Secretaries for a series of meetings to consider the findings of the criminal investigation and the internal affairs probe. We had to discuss and debate potential HR ramifications, legal challenges to any promotions granted, as well as the reputation and integrity of the State Highway Patrol. There were a host of concerns shared, perspectives and dissenting opinions offered as I actively engaged with trusted members of my senior staff.

We ultimately determined that while there was a breach of confidentiality the promotional list was still valid. The approximate 80 troopers were ruled eligible for promotion and their career progressions were not interrupted. The proctor is no longer affiliated with the Highway Patrol of Department of Public Safety. The responsibility of the Highway Patrol promotional process was moved to The Professional Standards Section to protect the integrity of future processes. Throughout the ordeal, I sought out dissenting views and encouraged critical dialogue with my subordinates.

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

In April 2020, due to the impacts of COVID-19 in prisons in the state, I used my authority under North Carolina statute to authorize the Extended Limits of Confinement (ELC) program, under which select incarcerated individuals were allowed to continue serve their remaining sentence outside of correctional facilities, under the supervision of community corrections officers.

This was NOT an early release from a sentence, nor commutation. In fact, there were strict rules regarding the program. To be considered for the program, offenders had to meet strict criteria and could not pose a threat to public safety, and those who violated the boundaries of their extended confinement could be charged with escape. The initial eligible offenders were pregnant and older offenders with underlying health conditions.

As with many policy decisions relating to incarcerated individuals, the program received significant media coverage. With that said, regardless of the potential political response, I felt that it was important to do what we could to decrease the risk of death or serious illness to incarcerated individuals, while maintaining our high standard of public safety.

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

You must demonstrate to your staff your commitment to them as individuals, your shared belief in service, and your willingness to expend the time and energy to the broad scope of responsibilities you have as a leader and the agency has serving our communities and protecting of nation.



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

No.

### III. Role of the Deputy Administrator of FEMA

16. What do you consider to be the mission of FEMA? What are FEMA's principal strengths and weaknesses in its ability to accomplish that mission?

FEMA's mission is publicly stated: "To help people before, during and after disasters". FEMA plays vital role in preparing all communities to address a myriad of natural and manmade hazards. FEMA also has an essential role in homeland security as it helps ensure the continuity of government and a more resilient nation. One of FEMA's principal strengths is its broad coordination authority, which provides the agency with a solid framework to bring partners to the table to address the many potentials hazards our nation may face.

In terms of strengths and weaknesses, FEMA faces challenges and potential weaknesses with an overloaded workforce. As we face ever-evolving threats and hazards, FEMA's mission demands continue to grow. And while the men and women of FEMA are no stranger to demanding conditions, staffing issues, particularly shortages, can certainly impact the ability to carry out its mission if left unaddressed.

17. What do you anticipate will be your role and responsibilities if confirmed as FEMA Deputy Administrator?

I fully anticipate providing additional professional and effective leadership to this important agency within the Department of Homeland Security. If confirmed as Deputy Administrator, I anticipate my role as serving as a trusted advisor to the Administrator, and fostering a superior culture of service, respect and collaboration with agency staff, federal, state, local, and tribal territorial partners, and the broad scope of diverse communities within our nation. I further anticipate serving as a true partner with members of Congress to problem solve and seek solutions to the various challenges faced in our nation's emergency preparedness and response.

18. In your view, how do the roles and responsibilities of the FEMA Deputy Administrator differ from the roles and responsibilities of the FEMA Administrator?

I understand the FEMA Administrator maintains a forward-facing public leadership role interfacing with the President, the Secretary, Congressional leaders, state, local, tribal and territorial leaders, and agency staff to direct, communicate, and fulfill the mission of

FEMA. The Deputy Administrator's role, in my view, will be more inward facing, ensuring all operations of FEMA are operating at a high level of efficiency and effectiveness. I anticipate acting upon the appropriate authority of the Deputy as authorized by the Administrator, and advising her in decisions regarding the agency. I also anticipate being involved in the full spectrum of responsibilities to provide full range of support to the Administrator in providing executive level courses of action.

19. If confirmed, what do you expect will be your immediate and longer-term priorities for FEMA? What do you hope to accomplish during your tenure?

If confirmed, one of my immediate priorities will be to learn as much as I can regarding the organization's operations, current challenges and areas of success, and evolving culture under the leadership of Administrator Criswell. I will seek to speak with as many FEMA employees as I can, as well as those in leadership positions, to understand what issues our workforce faces. I would like to focus on addressing motivational issues such as morale and concern with staff burnout, both of which can impact short-term success and dramatically inhibit addressing longer-term priorities, which I see as reducing the complexity of navigating FEMA programs and creating a true culture of preparedness and resilience in our nation.

I will work with internal and external stakeholders to assess FEMA's achievements as compared with its strategic plan, based on its vision of America being a prepared and resilient nation and underpinned by FEMA's strategic goals of building a culture of preparedness, readying the nation for catastrophic disasters, and reducing the complexity of FEMA programs.

If confirmed, I want to work to ensure FEMA has the appropriate infrastructure and motivated, professional staff to carry out the full spectrum of its mission. I also want to ensure FEMA continues to be a well-respected and reliable force for our nation as it continues to face a myriad of threats and hazards.

#### **IV. Policy Questions**

##### *FEMA Management & Workforce*

20. What changes or improvements do you believe need to be made to FEMA's existing regulations, policies, and practices?

Recognizing that different SLTT governments have had varying experiences with FEMA, if confirmed, I look forward to assessing existing regulations, policies, and practices impacting both the internal workforce and external operations to determine what may need to be modified or substantially redirected.

21. What do you see as FEMA's most important management challenges, and what steps will you take to address these challenges if confirmed?



Based on what I have learned, FEMA does face significant management challenges concerning the recruitment and retention of professional management staff, as well as an increased operational tempo due to the increased frequency of responses in service to our country. If confirmed, I commit to learning about the specific challenges negatively impacting the workforce, and will not shy away from dealing directly with negative culture issues within the agency. I will work along with Administrator Criswell to create an environment where employees are engaged, accountable and recognized for the outstanding contributions they make to secure our nation. I will also seek to move forward with best practices for increasing the available workforce within the agency.

22. FEMA recently published the *Culture Improvement Action Plan and Pub 1 – We Are FEMA*, with a focus on eradicating sexual harassment, creating an environment free of misconduct, and promoting core values such as compassion, integrity, fairness, and respect. FEMA also recently created the Office of Professional Responsibility that holds FEMA employees accountable through investigations of misconduct.

- a. What additional changes, if any, in culture and leadership tone at FEMA are needed, and what would you do to make progress in these areas?

I support the initiatives outlined above. If confirmed, I will seek to ensure staff recognizes these measures are valued improvements to create a true culture of prevention, protection, preparedness, and recovery and not a burdensome requirement. I commit to utilizing my experiences, my life's journey, and whatever talents I have to positively impact the workplace.

- b. What steps have you taken as the Secretary of the North Carolina Department of Public Safety to ensure that the Department provides its employees with a discrimination- and harassment-free workplace?

As the Secretary of Public Safety, I embraced diversity and inclusion as an important organizational value. I reviewed and enacted departmental policies affirming employees should be free from discrimination and have a harassment-free workplace. In more concrete terms, I sought to improve the NCDPS culture by hiring and promoting a well-rounded and diverse leadership team to guide the actions of our several thousand employees. I annually reviewed the Department's EEO Plan to ensure its compliance with State guidelines, and held leaders directly accountable for improving diversity in our public safety workforce and in the delivery of programs to communities in North Carolina.

- c. If confirmed as FEMA Deputy Administrator, what steps would you take to ensure that FEMA provides those workplace conditions?

If confirmed as Deputy Administrator, I will continue to lead by example. My approach will be to foster professional environments where the rich diversity

of our communities can thrive. I will also encourage and hold leaders directly accountable for improving diversity in our agency workforce and in the delivery of programs to communities all across the nation.

23. What do you believe is the role of the FEMA Deputy Administrator in encouraging diversity across the FEMA workforce?

If confirmed, my role along with the Administrator will be to lead on this critical issue, fully recognizing diversity must also encompass inclusion and access to opportunity for our valued staff. The agency's efforts to improve and celebrate diversity in its workforce must never be relegated to a siloed program, but instead must be an essential thread in the staffing and services provided to all communities.

24. FEMA's workforce has been called on to respond to an increasing number of natural disasters in recent years and led the federal government's COVID-19 response. What do you believe the FEMA Deputy Administrator can do in mitigating employee burnout in the Agency?

I believe the FEMA Deputy Administrator can do several things to mitigate burnout within the agency. If confirmed, I will bring a set of fresh eyes and experience to the challenges the workforce faces. I believe the Deputy Administrator position is well postured to encourage and motivate the workforce around the important mission FEMA has to positively impact lives, while understanding and working to address where in the agency staffing shortages exist.

25. With the demands on FEMA and FEMA's workforce continuing to grow as we face more extreme weather events; do you have thoughts on how FEMA's staffing numbers or models will need to change in the future?

As FEMA has taken on more responsibilities to address the many hazards we face, staffing levels must be assessed accordingly. Staffing levels are akin to critical infrastructure and the deployment of resources must meet the needs of the taskings placed upon the agency. If confirmed, I hope to work closely with Congress, including this committee, to ensure that FEMA has appropriate resources in order to carry out its many missions. Additionally, I hope to focus on mitigation and resiliency efforts that may "smooth out" the need for FEMA responses by ensuring communities are more resilient against, and better prepared for, increasingly dangerous storms and other events.

#### *COVID – 19*

26. How will your experience as the Secretary of the North Carolina Department of Public Safety inform your approach to COVID-19 response at FEMA, if confirmed? Do you think States have the responsibility to obtain and maintain a certain level of preparedness for

future pandemics? If so, what are some of your ideas to rethink how to achieve pandemic readiness at the state, local, tribal and territorial levels?

As the Secretary of Public Safety, I served as the State Coordinator for North Carolina's response to the COVID-19 Pandemic Emergency Response with the expert guidance of the NC DHHS Secretary, and under the leadership of Governor Cooper. By and through to the combined response of the NC Division of Emergency Management, the North Carolina National Guard, and the NC Department of Health and Human Services, we coordinated with FEMA Region 4 to ensure supplies, funding, human resources and ultimately vaccines were accessible within our state. We established a Federal Mass Vaccination site with FEMA and military personnel, including the North Carolina National Guard, to enhance vaccine operations in North Carolina with a discerning eye toward equity. We worked closely and collaboratively with FEMA as true partners fighting against this deadly virus.

States certainly have a responsibility to obtain and maintain a high level of preparedness for future pandemics. States must maintain supplies of PPE, including regularly rotating supplies within hospital systems to ensure the viability of unexpired supplies. With the lessons learned from the COVID-19 pandemic, all states should review their pandemic response training and preparedness for a multi-hazard event with hospitals and health care workers. State legislatures and policy makers must ensure they are in tune with economic realities required for their states to respond to a pandemic, and have available resources available to Governors and Emergency Management Directors. With that said, respiratory pandemics do not recognize state lines, and a coordinated federal response is necessary in order to support state and local level efforts to protect their populations, including by securing the domestic PPE supply chain, standing up and staffing vaccination sites, surging federal resources to hotspots, and working with the private sector to spur development of needed treatments.

27. FEMA is helping distribute COVID-19 vaccines and other critical supplies across the country. If confirmed, what steps will you take to address and prevent COVID-19 health disparities and ensure that resources such as COVID-19 vaccines are distributed equitably?

Equity has rightfully become a centerpiece of COVID-19 vaccine distribution in North Carolina. If confirmed, I will engage in ongoing assessments to determine whether FEMA programs to support COVID-19 response are focused on equitable access and equitable delivery of services and programs to typically underserved communities. I will promote diversity and inclusion so those additional voices at the table can participate in the engagement of FEMA programs, and I will support mass vaccination initiatives to reach underserved communities.

I will also advocate for greater communication with underserved communities about the efficacy of the vaccines to attempt to address the lack of trust with medical services, and disinformation that may be contributing to vaccine hesitancy. I will encourage vaccine clinics at direct access areas for where underserved communities lack transportation and other resources.

28. What role, if any, do you believe FEMA should play in combatting misinformation related to vaccine development and safety to alleviate concerns and ensure the widest possible participation in the vaccination program?

As the former lead federal agency for pandemic response, FEMA played a role in combatting misinformation concerning vaccine development and safety. As a core part of its everyday mission, FEMA maintains broad partnerships with governors and Emergency Management Directors and should leverage messaging about vaccine safety much in the ways they do with safety messages during natural disasters. FEMA training and assistance materials should contain accurate messaging about vaccines. FEMA leaders should be encouraged to engage to work collaboratively with other governmental and nongovernmental entities, to include faith-based entities to provide true and accurate information around lifesaving vaccines.

29. Do you think it is important for FEMA to incorporate lessons learned from its COVID-19 response to update federal policies, plans, and guidance on future public health emergencies?

Certainly. Every event provides an opportunity to learn, adapt and improve for future events as FEMA should continually look to improve processes for the good of the American people. If confirmed, I look forward to working with Congress and stakeholders to understand their experiences with COVID-19 response, and to identify shortcomings and opportunities for future pandemic response efforts.

*Response and Recovery*

30. What do you see as the proper role of FEMA in response and recovery from disasters, both man-made and natural?

FEMA plays an essential role in response to and recovery from disasters whether due to man-made or natural causes. I believe disaster response and recovery should be locally executed, state managed, and federally supported. FEMA has a planning and grant making role in pre-response with hazard mitigation funding and resilience planning. FEMA has a vital coordination role during disaster response when state resources are insufficient to meet the challenges of a disaster. Finally, FEMA continues to play a support role after a catastrophic event, assisting communities recover from the disaster through grants and direct recovery efforts.

31. What are your goals and priorities for FEMA's response and recovery programs? What, if any, changes do you believe need to be made to FEMA's response and recovery programs?

My goal and priority for FEMA's response and recovery programs is to ensure they are meeting congressional intent concerning as well as meeting the true response and recovery needs of the nation, through a lens of equity. If confirmed, I will work with internal and external stakeholders to assess where response and recovery programs are aligned with FEMA's strategic goals of building a culture of preparedness, readying the nation for catastrophic disasters, and reduce the complexity of FEMA.

I have not made any in-depth assessments as to how FEMA's response and recovery programs should be improved, but if confirmed I look forward to better understanding their strengths, as well as the challenges they face. However, from my experience as the Secretary of Public Safety, if confirmed I want to improve timelines for reimbursements and grant awards to SLTTs and to ensure FEMA Regions are providing consistent messaging and guidance to our local partners. In order to fairly address these issues and appropriately set expectations, I would have to gain a better understanding of FEMA's capacity issues and staffing in certain areas.

32. Do you believe FEMA should have different regulations, policies, and/or practices for response to and recovery from catastrophic disasters than for less destructive disasters?

Each event brings unique challenges to the forefront for various communities. While FEMA must adhere to the statutory and regulatory frameworks governing response and recovery, the agency also must be nimble enough and empowered to meet the unique needs of SLTTs and underserved communities based on their capabilities when disaster strikes, whether it is catastrophic or a less-destructive incident that nevertheless requires recovery and response in a given community.

33. In recent decades, FEMA's disaster response efforts have been plagued by racial and socioeconomic disparities. If confirmed, what steps would you take to ensure that FEMA assistance is equitably provided across communities?

I believe leadership at FEMA plays an essential role in ensuring that FEMA serves all eligible communities equitably. Lower income and minority communities are often most adversely impacted by devastating events such as natural disasters and COVID-19. Consequently, when state resources are insufficient to meet the response and recovery needs of communities, FEMA has a role in reliably responding to the need, without exacerbating existing inequities.

If confirmed, I am capable and ready to amplify the message to our state local and territorial partners regarding the importance of equity. I will challenge our staff to test assumptions across the organization to determine if we are maximizing our ability to deliver our programing and services in the most equitable manner possible. I will commit time and attention to understanding what internal and external challenges exist which may inhibit equitable assistance across various communities, and to overcoming those challenges wherever possible.

34. Last Congress, the *Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020* was introduced to establish an Office of Equal Rights and Community Inclusion (OERCI) within FEMA. Would you support efforts to establish an office within FEMA dedicated to improving access to assistance for underserved communities across the country?

If confirmed, I commit to working with this committee and Congress more broadly to ensure FEMA has the needed authorities and resources to promote and achieve greater equity in its programs, including establishing such an office, if appropriate.

*Federal Disaster Costs and Programs*

35. What steps would you take to decrease the federal government's future fiscal exposure to disasters and extreme weather?

Recognizing that every dollar invested in mitigation funding can avoid six dollars of future cost, if confirmed, I look forward to working with the Administration and Congress on initiatives such as the BRIC program and strategic mitigation efforts to enhance the federal government's posture and mitigate the government's future fiscal risk. In addition, I would increase attention to the National Flood Insurance Program (NFIP) in order to better understand the challenges and opportunities that program faces, including encouraging private flood insurance protection in areas that may not be designated as a flood zone.

36. How can FEMA improve its support to state, local, Tribal, and territorial (SLTT) governments to ensure they are prepared to meet their emergency management responsibilities?

I believe that advocacy for mitigation funding, building more resilient communities, enhanced partnerships with HUD on application processes, the expansion of FEMA Integration Teams could further improve preparedness with state, local, Tribal, and territorial (SLTT) governments.

Technical assistance via FEMA Integration Teams can be of great value to SLTTs. I know this firsthand from my experience as Secretary of Public Safety, where I was in a position to accept the very first FEMA Integration Team (FIT) in the nation into North Carolina. Working with this team has deepened North Carolina's partnerships and increased our expertise, and therefore advanced emergency management in North Carolina.

As FEMA administers its broad range of preparedness grants, FEMA can collaborate not only with Emergency Management Directors, but also State Homeland Security Advisors and State Administrative Agents to ensure on behalf of governors that relevant stakeholders are equally aware of programs and practices. This way forward can be achieved to a greater degree with the bi-partisan National Governor's Association and the National Governors Homeland Security Advisors Council, in addition to the high level of communication FEMA has in place with the National Emergency Management Association (NEMA).



37. How would you strike a balance between maintaining effective working partnerships with SLTT governments and being a good steward of taxpayer dollars by holding SLTT governments accountable for monitoring subgrantees?

Some of the keys to good working partnerships while maintaining oversight are open and honest communication, providing clarity and simplified grant processes, and promoting collaborative, as well as independent grant auditing and oversight. Intentional collaboration is essential to maintaining effective working partnerships. Ideally, across the board, SLTTs will come to view FEMA not just as a funding resource, but as proven and trusted partner, which also has the required fiscal responsibility of appropriately monitoring federal expenditures.

38. How would you enhance transparency and ensure the proper use of public funds in contracting and subcontracting?

If confirmed, one of my first steps will be to familiarize myself with what processes and controls FEMA currently has in place as it relates to contracting and oversight of funds. I will commit to working with Congress to ensure the appropriate disclosure of information is carried out in accordance with law.

39. FEMA put out a draft rule for comment that updates the per-capita indicator for a major disaster. As you may know, this indicator, which currently helps FEMA measure whether a State needs supplemental federal assistance, was not adjusted for inflation for more than a decade. What are your views on whether or not this indicator helps control the federal government's fiscal exposure? Should this indicator be regularly adjusted?

The periodic review of disaster declaration criteria and factors to help manage the federal government's fiscal appropriations is appropriate. However, this must be carried out with caution and collaboration with the external stakeholders to ensure that any proposed rules adequately account for the financial realities of a jurisdiction (particularly during the ongoing global pandemic), and whether a jurisdiction has suffered multiple impacts from various disastrous events. The COVID-19 pandemic has stressed resources for SLTTs in unprecedented ways and any changes to federal assistance must take into the current demands on available fiscal resources.

#### *Climate Change*

40. Do you believe that man-made climate change has contributed to the growth in the frequency, magnitude, and financial impact of natural disasters in recent years? If yes, please explain how FEMA can use this information to improve preparedness. If no, please explain why not.

I do believe the scientific evidence that climate change has contributed to the growth, frequency, magnitude and consequently the fiscal impact of natural disasters. FEMA

should seek to continuously educate itself around the impacts of climate change, including by using predictive model indicators to inform FEMA policy decisions and strategies for mitigation and FEMA strategies to build more resilient communities.

41. What importance do you give to solar and other renewable energy sources in creating resilient infrastructure? What role does FEMA have in determining state and local energy sources and approaches?

Solar and renewable energy sources are important tools for communities in creating resilient infrastructure. FEMA's role in hazard mitigation planning and risk assessment activities can substantially inform states on approaches they can take to pursue renewable energy sources and creating resilient infrastructure. Grant funding administered by FEMA through the BRIC program can be transformative to some communities, provided they meet the criteria for resilient infrastructure projects. The criteria for these projects most certainly can spur innovations due to solar and renewable energy resources.

42. How will you balance competing demands and limited resources to best respond to the sustained effects of climate change and acute emerging threats?

As with any situation where you have competing demands and limited resources, you have to develop the particular problem statement; determine the nature and scope of the demands and available resources; define priorities with the most significant priorities being those bearing on life safety; and develop viable courses of action to be considered to address the situation. In the long term, if the resources are not sufficient to meet the response needs and lack long term resilience and future mitigation needs, you have the obligation to share that information and seek additional resources.

#### *Hazard Mitigation and Disaster Resilience*

43. How do you evaluate the current state of national preparedness for emergencies and disasters, including the capabilities of individuals and communities?

FEMA requires SLTT governments to complete the Threat and Hazard Identification and Risk Assessment (THIRA) and the Stakeholder Preparedness Assessment. FEMA also publicly indicates the National Risk and Capability Assessment as a key component of its National Preparedness System. Although perhaps imperfect, FEMA has a framework for assessing National Preparedness. I believe additional coordination with the intelligence community, CISA, SLTTs, private sector can advance the assessment further.

With that said, fully evaluating the current state of national preparedness for emergencies and disasters, including the capabilities of individuals and communities, has significant challenges. I do not believe current assessment tools adequately assess individual preparedness of our population. Additionally, approximately 85% of the country's critical infrastructure is owned and controlled by the private sector, not federal or state governments.



44. What do you see as the proper role of FEMA in mitigation against disasters, both man-made and natural?

FEMA has the appropriate role in developing and administering grant funding, educating state, local, Tribal, and territorial (SLTT) governments concerning mitigation. FEMA has an appropriate role in helping communities reduce risk. Recognizing hazard mitigation investments provide a great return on investment, FEMA appears to be well postured to help identify priorities with SLTTs.

45. What can FEMA do to help states, localities, and individuals better assess and mitigate their own disaster risk?

Providing sustainable partnerships, guidance, education, and the application of FEMA's National Risk Index tool can help states and localities better assess and mitigate their own risk. In addition, training and guidance relating to hazard mitigation and other types of grant funding, such as the BRIC program, are critical in order for communities to understand their options, apply in a timely manner, and succeed in securing federal support.

46. How could FEMA better design pre-and post-disaster mitigation grant programs to increase incentives for states, localities, businesses, and individuals to invest in disaster resilience?

All organizations should seek opportunities to better design programs to increase participation. Specifically, FEMA could assess whether it needs updated and consistent guidance to incentivize states and localities to invest in disaster resilience. To build a culture of resilience, FEMA should seek where possible to reduce the complexity of grant applications, as well as the time it takes for a community to receive funds for completed projects, from grant application. In my experience as Secretary of Public Safety, communities will seek to build on successful investments that come to fruition in a short amount of time. If confirmed, I will work with staff to ensure FEMA is providing clear and consistent guidance, and to determine whether FEMA has sufficient capacity to effectively carry out its programmatic functions in a timely manner.

47. The Safeguarding Tomorrow through Ongoing Risk Mitigation (STORM) Act of 2020, which was signed into law early this year, authorizes FEMA to enter into agreements with state and Tribal governments to make capitalization grants for the establishment of hazard mitigation revolving loan funds. What steps would you take, if confirmed, to ensure effective implementation of this program, once funding is appropriated?

If confirmed, I would advocate for enhanced, proactive engagement and outreach with state Emergency Management Directors, state Homeland Security Advisors, Governors, and community leaders through meetings, town halls and targeted messaging to establish effective outreach concerning the authorization of the STORM Act, and what it means for communities. If confirmed, I look forward to learning what assessments FEMA has made of its capabilities and staffing to effectively deliver programming, and to learning what

actions FEMA has undertaken to educate and encourage SLTTs to evaluate if this program offering may be a good fit for their community.

48. If confirmed, what additional steps will you take to ensure that the Building Resilient Infrastructure and Communities (BRIC) program delivers on the intent of Congress to reform and revitalize mitigation efforts throughout the country?

If confirmed, I will seek to understand more fully how FEMA has interpreted Congressional intent in creating the BRIC program. I commit to work collaboratively with Administrator Criswell and other entities throughout the organization to follow through on any appropriately recognized areas of improvement from communication to program delivery.

49. Do you believe that FEMA, when it designed the BRIC program, transformed the Pre-Disaster Mitigation Program or simply applied a new name to a previously established program? What has your experience been with the BRIC program? Are there ways you think it could be improved?

With continuous funding, the intent of the BRIC is not just a laudable goal; it also can be an essential step forward to building a more resilient nation.

My experience with the rollout of the BRIC program in North Carolina was essentially positive, given the number of award projects submitted by North Carolina that were ultimately successful. I believe North Carolina had a generally positive experience with the BRIC program due to a variety of factors. First, North Carolina has been intentional about building back more resilient communities after suffering catastrophic storms in Hurricane Matthew in 2016, and Hurricane Florence in 2018. Second, the North Carolina Office of Recovery and Resilience (NCORR) was established in the Department of Public Safety as a sister agency of the North Carolina Emergency Management Division. These two agencies work in tandem to meet the extensive challenges in long term recovery. As such, they have built a great understanding of the socio-economic conditions in various communities and understand the important thread of resilience. In addition, expert resilience officers and other experts served as a part of the management team for NCORR, contributing even greater depth of experience and knowledge to the state's bids for BRIC funding. Third, North Carolina has a well partnered FEMA Integration Team. Fourth, we ensured we had a thorough understanding of the program rules and requirements. Fifth, we created technical assistant teams at the state level to assist local partners in developing projects. Finally, we created vetting gates at the state level to ensure strong projects would be presented to FEMA which met the criteria required for the program.

With that said, North Carolina did experience some delays after gaining initial approval from FEMA Headquarters on projects. Some BRIC projects face delays as they are processed after approval by HQ at the regional level. The concern that I have heard, which I

would like to learn more about if confirmed, is whether FEMA has sufficient capacity and human capital to fully execute on the new grant program.

50. Many states, including entire FEMA Regions, did not receive any funds in the competitive portion of the BRIC program for FY 2021.

- a. In your view, was the rollout sufficient to meet the demands of SLTTs and prepare SLTTs to participate in the BRIC program?

I think there are varying opinions as to whether the rollout was sufficient to meet the demands of SLTTs and prepare SLTTs to participate in the BRIC program based on how successful SLTTs were at receiving grant awards.

- b. What would you have done differently to maximize outreach and enhance participation in the BRIC program?

As I noted above, North Carolina had a positive experience with the BRIC program, partially due to the FEMA Integration Team located in the state, as well as expertise within NCORR based on institutional knowledge from FEMA. If confirmed, I would want to make sure these resources were equally available to all states vying for BRIC funding. In addition, perhaps enhanced communication, more technical assistance workshops, and ensuring FEMA has the human resources to process grants in a consistent manner could help maximize outreach and enhance participation in the BRIC program.

- c. What do you think FEMA should do to ensure communities from across the country, especially those representing underserved communities, are receiving BRIC mitigation funds for competitive projects?

I believe joint engagement by FEMA and SLTTs with those underserved communities should be a key priority. The offering of educational information, technical assistance to all levels of local government could assist with those communities identifying appropriate projects for consideration.

51. The National Flood Insurance Program (NFIP) has been on the Government Accountability Office's (GAO's) high-risk list since 2006. If confirmed, what steps would you take to address this problem?

If confirmed, I will collaborate with the Administrator and appropriate entities to address the issues leading to the National Flood Insurance Program (NFIP) being on the Government Accountability Office's (GAO's) high-risk list for such an extended time?

52. Do you think it is important for state and local hazard mitigation plans to incorporate considerations on things like vulnerable communities, a changing climate, and nature-based mitigation solutions?

It is extremely important for state and local hazard mitigation plans to incorporate considerations on things like vulnerable communities, a changing climate, and nature-based mitigation solutions.

#### *Grants*

53. The largest share of DHS's budget authority is provided to FEMA to carry out its mission; however, the DHS Inspector General and other government watchdogs have identified problems with FEMA's management of its grant programs.

- a. If confirmed, what initial actions would you take to improve FEMA's management of its grant programs?

If confirmed, I commit to learning what FEMA has already done to improve its grants programs. In addition, I would seek to review DHS IG reports and other products to understand the challenges FEMA faces, and any open recommendations, and work with FEMA's leadership team to identify necessary steps in order to address shortcomings.

- b. If confirmed, will you commit to conducting a full review of open DHS Office Inspector General (OIG) recommendations and directing program offices to work with the DHS OIG on closing outstanding recommendations?

Yes, I support the appropriate reviews and program offices working with the OIG on closing outstanding recommendations.

54. Do you believe the preparedness grants administered by FEMA are meeting their intended statutory and policy goals? What are some ways that FEMA can incentivize and ensure state and local governments invest in sustainment and maintenance, and that these grants are not used for those purposes but for investment in innovation and the ability to meet emerging threats and risk?

As a general principle, all grants administered by FEMA should meet their intended statutory and policy goals. FEMA can clarify guidance where needed and ensure appropriate oversight for investment in innovation to meet emerging threats. If confirmed, look forward to learning what challenges FEMA faces and what opportunities exist for improvement.

55. Do you believe that FEMA does an adequate job of collecting data on grant effectiveness and using risk-based formulas to determine appropriate funding levels and awards for preparedness grants?

Collecting data is an important part of measuring the efficiency and effectiveness of grant programming. I do not have full insight on all data collected by FEMA at this point. If confirmed will be well positioned to make the appropriate inquiries to help further ensure appropriate risk-based formulas are utilized to determine appropriate funding levels and awards for preparedness grants.

56. Do you believe there are policy differences between FEMA regions that result in different reimbursements across regions and states? If so, how would you address this?

I am not specifically aware of there being policy differences between FEMA regions that result in different reimbursements across regions and states. If confirmed I would be interested in determining if this is indeed the case, whether there are significant variances of policy interpretation across regions, or whether any perceptions of differences in reimbursements are due to other reasons.

#### *Cybersecurity*

57. Please describe your understanding of FEMA's responsibilities for cybersecurity, both federal and non-federal.

Cyber attacks and cyber security must be a major part of both federal and non-federal emergency planning. FEMA's responsibilities with regards to cybersecurity are outlined in the National Cyber Incident Response Plan, and FEMA is the lead federal agency for coordinating the response to physical impacts of a cyber incident. FEMA also is tasked with providing guidance to SLTTs through continuity guidance circulars. FEMA partners with CISA within the department of Homeland Security to help prepare SLTTs for increased cyber threats. Additionally, FEMA administers grant funding, training for SLTTs to mitigate cyber threats.

58. What do you view to be the most significant current and potential cybersecurity threats to emergency preparedness and the execution of FEMA's emergency management plans?

A significant current and potential cybersecurity threat to emergency preparedness and execution of FEMA's Emergency Management plans would be a successful cyber attack during a dynamic disaster and state of emergency. Our current communications systems, as well as the ability to obtain, transport and distribute resources in a timely manner, are heavily dependent on technologies that rely on connectivity.

59. If confirmed, what will be your immediate and longer-term priorities to improve FEMA's cybersecurity posture?

If confirmed, I will immediately learn what protective measures FEMA has in place to protect its own systems and infrastructure in the event of cyber incident or cyber attack, as well for the agency's own continuity and resilience planning. A longer-term priority is to ensure FEMA is well positioned with CISA and the intelligence community to remain well postured in fending off any cyber attacks from a variety of potential adversaries.

60. What specific strategies and policies would you pursue to ensure that SLTT governments are utilizing FEMA resources to bolster their cybersecurity postures?

Constant communication and policies geared toward bolstering cyber posture of SLTT's must be featured within partnerships FEMA maintains with state and local governments. Current policy requires states and localities to utilize 7.5% of State Homeland Security Program funds from FEMA toward addressing cybersecurity threats, and I am supportive of this current requirement.

61. In recent years, there have been multiple privacy incidents that involved FEMA oversharing disaster survivors' personally identifiable information (PII) with contractors that did not have a need for that data. What would you do to ensure FEMA is protecting the PII of disaster survivors?

The inappropriate release of personally identifiable information (PII) can be a serious threat to individual security as well as financial wellbeing. If confirmed, I will stress the importance of security and accountability at all levels of the organization. I will work to understand what caused the issues and what steps have been taken to mitigate such actions in the future. I commit to working within the organization to ensure we are adhering to best practices for data security and promote proactive testing of our IT and contracting systems to ensure FEMA is protecting the PII of disaster survivors.

## V. Accountability

### *Whistleblower Protections*

62. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.

- a. Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

While the complaints I handled may not fit the federal statutory definition of "whistle blower" complaints, I have a long history of ensuring accountability through the personnel and criminal professional standards processes at the North Carolina State Bureau of Investigation and through executive oversight of EEO, Internal Audit and Office of Special Investigations processes as the Secretary of the North Carolina Department of Public Safety. Appropriate confidentiality, investigative integrity, and the proper handling of whistleblower complaints are essential features of good

government, empowering and protecting honest employees, mitigating insider threats, and abating corrupt behavior.

- b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at FEMA?

If confirmed, I would follow established protocols, procedures, and all applicable laws to ensure that individuals did not face retaliation and that their claims were thoroughly investigated.

- c. If confirmed, what steps will you take to ensure that whistleblowers at FEMA do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately?

I commit to using the legal authorities and the available resources at my disposal to help ensure whistleblowers at FEMA do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately.

*Cooperation with Inspectors General*

63. What is your view of the role of the DHS Office of Inspector General (OIG)? Please describe what you think the relationship between FEMA and the OIG should be. If confirmed, what steps would you take to establish a working relationship with the Inspector General?

The OIG is an appropriately separate entity but should be embraced as a value-added partner for FEMA to help ensure FEMA is working at a high level of efficiency and effectiveness. If confirmed, I intend to proactively reach out to the OIG as I meet with other senior leaders within DHS. I will attempt to get a thorough understanding of the OIG's historical perspective on FEMA operations and cooperation with OIG requests. I will engagement with the OIG from all senior leaders at FEMA so they can gain greater understanding of the OIG's perspectives, gain feedback, and ensure the culture exists for a positive relationship with the OIG as it carries out its necessary and welcomed functions for DHS.

64. If confirmed, do you commit to ensuring that all recommendations made by the DHS Inspector General to FEMA are reviewed, responded to, if necessary, and, unless the agency justifies its disagreements with the recommendations, implemented to the fullest extent possible within a reasonable time period?

Yes.

65. If confirmed, do you commit without reservation to ensuring DHS OIG receives timely access to agency records and to interview agency employees?



Yes.

66. If confirmed, what steps will you take to ensure all FEMA offices and employees cooperate fully and promptly with OIG requests?

If confirmed, I will use the leadership authority at my disposal to set an example for FEMA employees and officers regarding the importance of cooperation with OIG requests. In addition, I will strive to make clear the importance to FEMA's operations of independent oversight and recommendations.

*Cooperation with GAO*

67. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests to FEMA for information, including for records, meetings, and information?

Yes.

68. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO?

Yes.

69. If confirmed, what steps would you take to facilitate and encourage timely cooperation by federal agencies with GAO?

If confirmed, I will use the leadership authority at my disposal to set an example for FEMA employees and officers regarding the importance of cooperation with GAO requests. In addition, I will strive to make clear the importance to FEMA's operations of independent oversight and recommendations.

70. If confirmed, what steps will you take to ensure all FEMA offices and employees cooperate fully and promptly with GAO requests?

If confirmed, I will lead from the front to ensure all staff recognize the value of the GAO, and will promote the idea of pursuing best practices to accomplish our mission at FEMA. If confirmed, I will also review FEMA policy to ensure there is no ambiguity about cooperating with GAO.

**VI. Relations with Congress**

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



Yes.

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

Yes.

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

Yes.

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

If confirmed, I will ensure the appropriate stakeholders receive the requests and ensure the agency has appropriate tracking mechanisms in place for tracking and following up on congressional requests. In addition, I will promote a culture of cooperation with oversight bodies throughout the agency.

75. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request?

Yes.

76. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us?

Yes.

#### **VII. Assistance**

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

Yes, these answers are my own. I relied on my own experiences and insights, publicly available information, and sought and received information from DHS staff which I was free to incorporate or refuse.

I, Erik A. Hooks, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Erik A. Hooks  
(Signature)

This 6<sup>th</sup> day of November, 2021

**Senator James Lankford  
Post-Hearing Questions for the Record  
Submitted to Erik Hooks**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

- 1) *On FEMA's Expanding Mission:* FEMA's mission seems to be rapidly expanding with the agency's role at the border, in-taking refugees, providing funeral assistance, supplemental payments for lost wage, and potentially taking on new grant authorities for cyber security. What is your interpretation of FEMA's mission and what would you define as a disaster or emergency under the agency?

**Answer:** FEMA's mission is publicly stated: "To help people before, during and after disasters." FEMA's authorities to carry out that mission flow from Congressional authorization, including appropriations that are signed into law. These laws include the Stafford Act, Post-Katrina Emergency Management Reform Act (PKEMRA), annual appropriations legislation, and others.

Through these Congressionally provided authorities, FEMA plays a vital role in preparing all communities to address a myriad of natural and man-made hazards. FEMA also has an essential role in homeland security as it helps ensure the continuity of government and a more resilient nation. In addition, one of FEMA's principal strengths is its broad coordination authority, which provides the agency with a solid framework to bring partners to the table to address the many potential hazards our nation may face. If confirmed, I commit to ensuring that all of FEMA's activities are carried out in a manner consistent with the law.

- 2) *On FEMA Houses of Worship:* In January of 2018, FEMA issued an updated Public Assistance Program Policy Guide (PAPPG) that clarifies that private nonprofit houses of worship are eligible for public assistance through FEMA if they have: 1) damages arising from disasters declared on or after August 23, 2017 or 2) an application for assistance that was pending before FEMA as of August 23, 2017 that FEMA has not finally resolved. Specifically, the update to the PAPPG add as eligible "Activities of community centers or houses of worship open to the general public, without regard to their secular or religious nature." Further, FEMA has removed from the PAPPG language stating that facilities used primarily for religious activities are not eligible. To be eligible, a HOW must be owned or

operated by a private nonprofit organization and, as a non-critical PNP facility under the Stafford Act, it must apply to the Small Business Administration for a loan.

Similarly Congress spoke to this issue in the Bipartisan Budget Act of 2018. Congress specifically said that “A church, synagogue, mosque, temple, or other house of worship, educational facility, or any other private nonprofit facility, shall be eligible for [assistance for repair, restoration and replacement of damaged facilities under the Stafford Act], without regard to the religious character of the facility or the primary religious use of the facility. No house of worship, educational facility, or any other private nonprofit facility may be excluded from receiving contributions under paragraph (1)(B) because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.”.

1. Are you aware that Houses of Worship are eligible?
2. Will you commit to upholding the law and keeping the 2018 policy in place to ensure that Houses of Worship, many of which assist FEMA in responding to emergencies and disasters will remain eligible for public assistance?

**Answer:** Community organizations, including houses of worship, are an important part of the fabric of many Americans’ everyday lives, and they are often a key partner in assisting communities after a disaster. If confirmed, I commit to fully upholding the law in relation to assistance to houses of worship, as well all other FEMA activities.

- 3) *On Disaster Grant Coordination:* If confirmed, what will you do to work with other disaster grant programs to ensure assistance is timed in the most effective manner to states and local government? For example, Hazard Mitigation Grant Program funding isn’t realistically available until 12 months after the event, while CDBG-DR and CDBG-MIT are on separate tracks. Coming from state leadership, how do you hope to take your experience on this issue and relay reforms?

**Answer:** One of my highest priorities, if confirmed, is to reduce the complexity of FEMA programs. In my previous role as North Carolina Secretary of Public Safety, I found that strong partnerships between federal, state, local, tribal, and territorial partners—built and tended to on blue sky days, well before disaster strikes a community—were critically important to the state’s success in securing grant funds for which it was eligible. In addition, technical assistance via FEMA Integration Teams can be of great value to SLTTs. I know this firsthand from my experience as Secretary of Public Safety, where I was in a position to accept the very first FEMA Integration Team (FIT) in the nation into North Carolina. Working with this team has deepened North Carolina’s partnerships and increased our expertise, and therefore advanced emergency management in North Carolina. If confirmed, I commit to prioritizing communication and partnerships with states to solicit feedback and work to reduce complexity of grants wherever possible, while maintaining accountability.

- 4) *On Wildfire Response:* What can FEMA do to ensure better cross agency coordinate with wildfire response? According to my state, large wildfires in Oklahoma often impact lands

used for farming and ranching, however those damages, including damage to grazing lands, miles and miles of fencing, etc., do not qualify for FEMA assistance since they would be covered by USDA programs that may or may not be funded. Therefore, we have a difficulty getting FEMA individual assistance approved because homes may be heavily spaced and the quantity of burned homes may be low, but the overall damage impact may be millions of dollars.

**Answer:** I understand well that wildfires have caused increasing devastation in recent years, including in Oklahoma. While I have not dealt specifically with wildfires in my previous roles in North Carolina, I am a strong supporter of enhancing existing partnerships between FEMA and partners in the federal family to reduce complexity and ensure that eligibility rules are clear and consistent, and that applicants do not fall through the cracks. For example, as I mentioned in my pre-hearing questionnaire, based on my experience standing up the North Carolina Office of Resilience and Recovery, I am a strong believer in the importance of enhanced partnerships between FEMA and HUD in order to help streamline application processes and reduce complexity. If confirmed, I commit to working with your office and others in Congress to better understand your concerns and work to improve coordination between FEMA and USDA and other federal partners wherever possible.

**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Erik Hooks**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

1. In the summer of 2019, the Museum Fire burned north of Flagstaff, AZ. This fire posed a great enough threat to the community that FEMA approved a Fire Management Assistance Grant. As part of the post-fire hazard mitigation work, the community received approval for a grant to install an alluvial fan that would improve flood control operations and limit risk to communities below. Two years after the fire, construction still has not begun, and monsoonal rains on the burn scar, created multiple flash flooding events, in the communities waiting for protection from the installation of the alluvial fan. If confirmed, what steps will you take to review and address the administrative burden associated with FEMA's grants so that communities can more quickly recover from disaster events and adequately prepare for future events?

**Answer:** All organizations should seek opportunities to better design programs to increase participation. Specifically, FEMA should assess whether it needs updated and consistent guidance to incentivize states and localities to invest in disaster resilience. To build a culture of resilience, FEMA should seek where possible to reduce the complexity of grant applications, as well as the time it takes for a community to receive funds for completed projects, from grant application.

In my experience as North Carolina Secretary of Public Safety, communities seek to build on successful investments that come to fruition in a short amount of time. If confirmed, I will work to ensure FEMA is providing clear and consistent guidance, and to determine whether FEMA has sufficient capacity to effectively carry out its programmatic functions in a timely manner. I would also be happy to work with you and your office to understand the specific issues associated with recovery from the Museum Fire.

2. The Urban Area Security Initiative (UASI) is important to Phoenix, and it is important to Arizona. Under the leadership of Secretary Mayorkas, a review of all preparedness grants is underway to ensure that the United States is utilizing these programs wisely. I agree that we need to make sure that we are constantly increasing resilience and preparedness – not just maintaining the status quo. However, the threats we face have shifted over the last 20 years, and we need to make sure that the federal government is responding to the needs of

our communities and not trying to fit them into boxes predetermined by agencies. If confirmed, will you commit to ensuring that any update to UASI, and the entire suite of preparedness grants, includes robust consultation with affected communities?

**Answer:** Partnerships with state, local, tribal, and territorial governments, built on blue sky days and not just when disaster strikes, are crucial in the development and implementation of grant programs, including preparedness grants. If confirmed, I commit to seeking a briefing on the results of the Department's evaluation of preparedness grants, and I look forward to working with your office to understand and address any gaps in current consultation with communities.

3. As the North Carolina Secretary of Public Safety, you led the response to truly catastrophic storms. In addition, you doubtlessly had to respond to events with more localized impact. As FEMA works to update the per-capita indicator, I want to make sure that these smaller scale events do not fall through the cracks. From your background at the state level, can you highlight some roadblocks your office faced in getting federal support for these more localized emergency events, how you believe FEMA can provide better services in these situations, and, if confirmed, will you commit to working with me to make sure we do not lose sight of these smaller scale events?

**Answer:** Small scale disasters can be just as devastating as large scale storms and disasters to those who are affected. As the North Carolina Secretary of Public Safety, it was part of my job to ensure the preparedness, resilience, and recovery of all sizes of communities, to all manner of disasters and hazards. And as I stated during my confirmation hearing, not every area is a Charlotte or a Raleigh, and smaller, more underserved communities may not have access to the same scale of resources as larger cities which may be covered by UASI. If confirmed, I commit to working closely with you and your office to gain a greater understanding of your concerns as they relate to FEMA assistance for smaller scale events, and to working to address those issues.

**Opening Statement of Michael M. Kubayanda**

**Nominee, Postal Regulatory Commission**

**November 18, 2021**

Good morning Chairman Peters, Ranking Member Portman, and members of the Committee. Thank you for inviting me to testify regarding my nomination to the Postal Regulatory Commission.

I have been honored to serve as a Commissioner since January 2019, and as Chairman since January 2021, a period in which the postal system has gone through significant changes.

The Postal Service has served its critical mission of binding the nation together during the pandemic. Postal workers kept Americans connected, allowed businesses to reach their customers, enabled citizens to safely receive supplies, and helped carry out elections. On the other hand, customers reported woeful performance in some areas, and the quantitative evidence confirmed this.

During this difficult period, the Commission has ably carried out its mission of providing transparency and accountability. The Commission produced its Annual Compliance Determinations on time during the pandemic, overseeing service and financial compliance by the Postal Service. We have also issued major rulemakings on a bipartisan basis, including the "10-year review" of the ratemaking system, and updates to the analytical principles that underlie Postal Service accounting and cost allocation. In



addition, we have increased the Commission's focus on customer experience (CX) by probing the Postal Service's performance against CX metrics adopted from the private sector.

Over the years, the Commission has mastered the annual compliance cycle established under 1970 and 2006 legislation. While these tools are proven, they may not be entirely adequate for our present situation and the speed of commerce today. For example, high profile service problems in last year's holiday season – November and December of 2020 – occurred in fiscal year 2021. They will be addressed in the FY 2021 annual compliance determination, which will be published in March 2022. That is 15 to 16 months after the problems occurred.

The Commission is capable of providing transparency through more relevant and timely analyses. Working with my colleagues, I am doing everything in my power, and within the Commission's authority, to make sure we provide them.

#### **A Data-Centric, Customer-Centric, and Citizen-Centric Approach to Postal Regulation**

Our traditional tools for providing accountability and transparency must be updated with a data-centric, customer-centric, and citizen-centric approach. This modernization is guided by bipartisan legislation approved by this Committee and the needs of the moment. It is also modeled on the success of other parts of the government such as the Postal Service's Office of Inspector General.

The Commission is currently implementing the OPEN Government Data Act, part of the Foundations for Evidence-Based Policymaking Act of 2018. Pursuant to this law, the Commission will soon hire its first Chief Data Officer and establish a Data Governance Board to make data available to the public in machine readable formats and manage data as a strategic asset to the nation. The Commission is also reorganizing its staff to launch a small data analytics group to examine the postal network, address bottlenecks, and conduct specialized studies of postal costs.

Pending internal approvals, the Commission is considering new data visualization approaches, such as a “beta” version of a service performance dashboard, on our website. Dashboards can provide more understandable and timely insights into service performance, and eventually, financial performance. The proposed “beta” service dashboard is the result of work performed in-house by our enterprising staff with no additional investment. The “beta” dashboard should be on our website before the end of this calendar year.

These are modest steps undertaken on a small scale due to the Commission’s lack of resources and essentially flat funding since 2006, but they are necessary steps in modernizing postal regulation.

To support this modernized approach, the Commission has expanded its technological capabilities. We have hired IT and cybersecurity experts with experience at larger agencies. We are also transitioning to cloud computing to support security, flexibility, long-term cost savings, and scalability. The Commission has applied to the Technology Modernization Fund to bolster these efforts.

Strategic use of data and technology updates the Commission's traditional mission of transparency and accountability. It allows the Commission to benefit from better informed inputs from a broader range of stakeholders and provides discipline and focus for the exercise of our core responsibilities.

Through this data-centric, customer-centric, and citizen-centric approach, I hope the Commission can contribute to a virtuous cycle, continue to make this corner of the government more responsive, and adapt postal regulation in order to improve services to American citizens and businesses. I hope to return to the Commission to help it execute on this approach.

Thank you for considering my nomination and I look forward to answering your questions.

###

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
<u>Commissioner, Postal Regulatory Commission</u>	<u>October 19, 2021</u>

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Michael	Mwinkum	Kubayanda	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 901 New York Avenue, Suite 200		
City: Arlington	State: VA	Zip: 22201	City: Washington	State: DC	Zip: 20268

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1973	London, United Kingdom

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

<i>Spouse's Other Names Used (current spouse only)</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	Check if Maiden Name	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

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

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Georgetown University	University	Est 08/2012 <input type="checkbox"/>	Est Present 10/2014 <input type="checkbox"/>	MA	10/2014
Graduate Institute, Geneva	University	Est 06/2014 <input type="checkbox"/>	Est Present 07/2014 <input type="checkbox"/>	Certificate	07/2014
Northwestern University	University	Est 08/1995 <input type="checkbox"/>	Est Present 05/1998 <input type="checkbox"/>	JD	05/1998
The Ohio State University	University	Est 09/1991 <input type="checkbox"/>	Est Present 06/1995 <input type="checkbox"/>	BA	06/1995

### 3. Employment

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

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Government	Postal Regulatory Commission	Chairman	Washington, DC	01/2019 <input type="checkbox"/> Est	Present <input type="checkbox"/> Est
Non-Government	access.mobile International, Inc.	Privacy Officer, Board Member	Denver, CO	Board 02/13 <input checked="" type="checkbox"/> Est Privacy Advisor/Officer 10/2015	01/2019 <input type="checkbox"/> Est 01/2019 <input type="checkbox"/> Est
Self-Employment	Intelus Advisors, LLC	Principal	Columbus OH	12/2016 <input checked="" type="checkbox"/> Est	Present (Dormant since 01/2019 per ethics agreement with the Postal Regulatory Commission) <input type="checkbox"/> Est
Federal Government	USPS Office of Inspector General	Director of Government Relations	Arlington VA	01/2011 <input type="checkbox"/> Est	10/2015 <input type="checkbox"/> Est
Federal Government	House of Representatives Committee on Oversight and Government Reform	Counsel	Washington, DC	05/2009 <input type="checkbox"/> Est	01/2011 <input type="checkbox"/> Est
Non-Government	CJ Strategies	Associate	Washington, DC	03/2009	05/2009
Federal Government	US Postal Service	Government Relations Representative, Policy and Strategy Development	Washington, DC	06/2004	03/2009
Non-Government	Copeland, Lowery & Jacquez	Associate	Washington, DC	04/2000	05/2004

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

N/A

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>

#### **4. Potential Conflict of Interest**

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

I do not anticipate conflicts. If confirmed I will, however, continue to monitor the issues related to the relationships below and work with counsel to prevent any actual conflicts.

The company with which I was previously affiliated, access.mobile International, Inc., received support from Microsoft, primarily in the form of in-kind contributions, training, and advice from business and technical experts. Microsoft provided this support through its BizSpark program in Africa and the United States. Microsoft does not have any regulatory issues before the Commission, although it is a federal contractor and the Commission does utilize its products.

In 2014, while finishing an MA at Georgetown University through evening courses, I applied for and received a fellowship sponsored by Google. The fellowship placed recipients at nonprofit organizations working on technology issues, and I served with the Internet Education Foundation, analyzing and setting up events related to privacy, digital copyright in the United States and Europe, and other technology issues. Google/Alphabet does not have business before the Commission but is a major federal contractor.

In 2017 and 2018, I served as an unpaid advisor, primarily on privacy issues, to the Fashion Innovation Alliance, a trade association and consultancy focusing on issues at the



intersection of technology and fashion. The Alliance has not had any business before the commission and has not been involved in postal issues, but given the importance of electronic commerce to the fashion industry, it is conceivable that some of its members would have a future interest in postal matters.

If confirmed, I would continue to monitor these matters, raise and discuss potential conflicts with ethics counsel as appropriate, and if necessary and appropriate, recuse myself from consideration of relevant matters.

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

N/A

#### **5. Honors and Awards**

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

Google Policy Fellow

Six awards for service at the US Postal Service

Kappa Alpha Tau- National Journalism Honor Society

#### **6. Memberships**

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

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

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
International Association of Privacy Professionals	March 2011 – Present	Member
DACOR	September 2018 to Present	Member
Smart Columbus Meetup Group	May 2017 to June 2018	Member
Internet Law and Policy Foundry	September 2014 to 2017	Co-Founder and Fellow

### 7. Political Activity

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

No

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

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

N/A

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

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

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Joe Biden	\$400	2020


### 8. Publications and Speeches

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

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
How to Keep Smart Cities Data Safe	International Association of Privacy Professionals	August 21, 2017
Towards a Postal Service Intellectual Property Strategy	USPS OIG	December 18, 2013
Public-Private Partnerships: Best Practices and Opportunities for the Postal Service	USPS OIG	June 24, 2013
Revisiting the CPI-Only Price Cap Formula	USPS OIG	April 12, 2013
A Possible Pilot Collaboration Between Rural Telecom Providers and the Postal Service	USPS OIG	February 8, 2013

Parallel Tracks?: Lessons from the Railroad Industry	USPS OIG	August 32, 2012
Make Way for --.post", August 1, 2011	USPS OIG	August 1, 2011
Give USPS a viable trust-fund payment schedule (Op Ed written for Congressman Edolphus Towns)	Federal Times	November 14, 2010
Information Communications Technology and the Health Sector: Opportunities and Challenges in Sub-Saharan Africa	Network for the Improvement of World Health	July 2006
Learning From the Governor: Why Democrats Should Build on the Legacies of Howard Dean's Insurgent Campaign	DC Democratic State Committee	Winter 2003/2004 Magazine (Est. Dec. 2003).

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

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Opening and Closing Statements, Hearing, Nature of Service Case ("N-Case"), in Advisory Opinion Proceeding	Postal Regulatory Commission/Public, Stakeholders (Online)	June 9, 2021
Panel on Long-term view on the postal sector and relevant public policies: global perspectives	Copenhagen Economics Postal & Delivery Conference (Online)	May 11, 2021
Postal Regulatory Commission and Postal Service Throughout the Pandemic	Online, Recorded Speech to the National Association Postal Supervisors (NAPS)	April 18, 2021

Postal Regulatory Commission and My Approach to Serving	Postal Regulatory Commission, Women in Logistics and Delivery Services	October 31, 2019
Postal Regulatory Commission and its Upcoming Work	Renaissance Hotel, Crystal City, National Postal Policy Council	September 10, 2019
Postal Regulatory Commission and My Approach as a New Commissioner	Embassy Suites Alexandria, Association for Postal Commerce	June 4, 2019
Panel Discussion: How Government-Dictated Changes to the Postal System Will Impact You	Washington Court Hotel, Washington, DC, American Catalog Mailers' Association	April 8, 2019
Nomination Hearing <i>October 3, 2018</i>	Senate Homeland Security and Governmental Affairs Committee (HSGAC)	October 3, 2018

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

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Panel Moderator: "Can Europe Force Search Engines to Censor Information You're Looking for on the Internet? Assessing the Right to be Forgotten"	Rayburn Building. Internet stakeholders and policy analysts. (Part of Google Policy Fellowship with the Internet Education Foundation)	August 8, 2014
Oral discussion of white paper on public-private partnerships	National Academy of Public Administration	August 29, 2013
Oral presentations of two papers on economic regulation ("Revisiting the CPI-Only Price Cap" and industry restructuring ("Parallel Tracks"))	Annual Eastern Conference, Advanced Workshop in Regulation and Competition, Rutgers University Center for Research in Regulated Industries	May 17, 2012

## 9. Criminal History

**Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?**

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

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

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



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

### 10. Civil Litigation and Administrative or Legislative Proceedings

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

No

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

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

No

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


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

N/A

### 11. Breach of Professional Ethics

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

No

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

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

No

### 12. Tax Compliance

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

**REDACTED**

REDACTED

**13. Lobbying**

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

No

**14. Outside Positions**

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

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

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

**15. Agreements or Arrangements**

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

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

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

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

#### **16. Additional Financial Data**

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

**REDACTED**

REDACTED

SIGNATURE AND DATE

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

Michael Kutyske

This 20th day of Oct, 20 21

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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November 9, 2021

The Honorable Gary C. Peters  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Michael Kubayanda, who has been nominated by President Biden for the position of Commissioner, Postal Regulatory Commission.

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

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

Sincerely,

**DAVID APOL**

Digitally signed by DAVID  
APOL  
Date: 2021.11.09 22:53:52  
+05'00'

David J. Apol  
General Counsel

Enclosures

**REDACTED**



November 2, 2021

David A. Trissell  
General Counsel and Designated Agency Ethics Official  
Postal Regulatory Commission  
901 New York Ave., Suite 200  
Washington, DC 20268-0001

Dear Mr. Trissell:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner at the Postal Regulatory Commission. It is my responsibility to understand and comply with commitments outlined in this agreement.

#### SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state and local government.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

#### SECTION 2 – EMPLOYMENT RELATED COMMITMENTS

I am the sole proprietor and Principal of a consulting firm, which does business as Intelus Advisors, LLC. Upon confirmation, Intelus Advisors, LLC will continue to cease engaging in any business, including providing consulting services to access.mobile International, Inc. and all other clients. During my appointment to the position of Commissioner, Intelus Advisors, LLC will remain dormant and will not advertise. I will not provide any services for the firm, except that I will comply with any requirements involving legal filings, taxes and fees that are necessary to maintain the firm while in it is in an inactive status. As Commissioner, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Intelus Advisors, LLC. In addition, pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided services to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 502(d).

#### SECTION 3 – PUBLIC POSTING

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

Sincerely,

Michael Kubayanda

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Michael Kubayanda to be  
Commissioner, Postal Regulatory Commission**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to serve an additional term as a Commissioner on the Postal Regulatory Commission (“PRC” or “the Commission”)?

No

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Commissioner of the PRC? If so, what are they, and to whom were the commitments made?

During my confirmation process in 2018, I committed to this Committee that I would focus on analytical rigor and customer experience in this position. I have made the same commitment in speaking internally at the Commission and with postal stakeholders, specifically in speeches to gatherings of the Association for Postal Commerce, the National Postal Policy Council, the National Association of Postal Supervisors, and Women in Logistics and Delivery Services.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I am not aware of any conflicts. As I assumed my position with the Commission in 2019, I worked with the Commission’s Office of General Counsel and the Office of Government Ethics to identify potential issues and signed an ethics agreement in which I pledged to resign from certain nongovernmental positions if confirmed, and to avoid participating as a Commissioner in any matter in which I have a financial interest. I have adhered to this agreement.

Throughout my prior nomination process I raised a few potential issues that I would monitor if confirmed, and I will continue to do so. I received an academic fellowship sponsored by a major technology company that does not have interests pending before the Commission, to my knowledge. Separately, the startup with which I am associated

was part of a startup program providing grants and in-kind contributions from another major technology company. The technology company does not have any pending requests or petitions interests before the Commission.

I have served as an unpaid advisor to an advocacy and knowledge sharing organization in the fashion technology space. The organization does not presently and has not had interests before the Commission.

While none of these matters present a conflict at this time, I would continue to monitor these matters for any potential conflicts if confirmed. I would raise any issues with the Commission's ethics counsel and if necessary recuse myself from any Commission business. I would follow the Commission's guidelines regarding recusal and dealing with any impact on the Commission's work.

5. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained or contracted with regarding this nomination, including any amounts paid in fees or otherwise.

N/A

## **II. Background of the Nominee**

6. Why do you want to serve an additional term as a Commissioner of the PRC?

I have an extensive background in the postal sector, working with the relevant government agencies, in oversight in the House of Representatives, and interacting with many experts and stakeholders. At this time, we appear to be at an inflection point in the sector with respect to market conditions, regulation, and public policy. This inflection point is a result of financial losses related to a long-term decline in traditional letter mail volume and an increase in package volume with the growing importance of e-commerce. In addition, the COVID-19 pandemic highlighted the importance of the Postal Service in binding the nation together at a time when it was safer for many Americans to conduct business transactions remotely rather than in person. For most Americans, last mile delivery is one of the key points at which supply chain issues affect them. The Postal Service and the ecosystem around it are facing difficult challenges and risks, but have opportunities as well.

I believe the Commission has a role in strengthening regulation in a way that produces positive results as we move through this inflection point. At the Commission, we are working to implement a data centric, citizen centric, and consumer centric approach to regulation through closely related, complementary initiatives. We are in the process of hiring our first Chief Data Officer in order to lead implementation of the OPEN Government Act, which was part of broader legislation drafted and approved by this Committee. This initiative will allow the Commission to organize and standardize its data, make it available to the public and stakeholders in machine readable formats, and improve the usability of data for internal analysis as well. In addition, the Commission is

launching a data analytics division to improve the sophistication of its analytics efforts in areas such as network optimization and understanding bottlenecks in the postal network. Furthermore, we are initiating efforts in data visualization, such as dashboards to make service and financial data easily accessible and understandable for stakeholders, Congress, and the general public.

I do believe I can add value to this ecosystem by bringing to bear my experience in the sector, insights into adjacent industries, and most importantly, by bringing together the best minds in government and the private sector to help forge sustainable solutions.

7. What specific background, experience, and attributes qualify you to be a Commissioner of the PRC?

I am a subject matter expert on postal issues with several years of relevant experience in the legislative and executive branches. I have served on the Commission for nearly three years, and have been the Chairman since January 2021. I previously held oversight roles at the USPS Office of Inspector General (OIG) and the House Committee on Oversight and Government Reform. I have gained insights on a variety of regulatory and strategic issues and in this complex policy area, I have an understanding of how to find additional clarifying information. In the House, I advised the Committee Chairman on postal reform legislation, and worked in a bipartisan and bicameral fashion to support passage of legislation to stabilize the Postal Service's finances. At the USPS OIG, I worked in a research group in coordination with some of the sharpest economists and analysts in the industry to produce insightful reports that I believe could help lay the groundwork for stronger postal policy and oversight in the coming years. Performing this intensive work with outstanding colleagues provided not just expertise, but perspective on matters such as rate regulation, universal service, and the impact of technology, network design, retail issues, reform of other network industries, and many more issues affecting the Postal Service.

In a legislative affairs role, I also supported the USPS OIG's practice of providing accurate, timely, and useful information to Congress. I helped to update and standardize these efforts, coordinating with the Inspector General, Deputy Inspector General, audit and investigative units, and General Counsel to ensure Congress consistently received timely, responsive, and high-quality products and responses from the USPS OIG. I worked with colleagues to utilize technology and adapt knowledge management techniques to strengthen the USPS OIG's understanding of the broad postal ecosystem and ensure that the USPS OIG was incorporating the latest insights and information from this ecosystem. Over the years, I have built cordial and productive relationships with personnel at the relevant oversight and policymaking bodies involved in postal affairs as well with many stakeholders.

I have also gained some experience and knowledge in adjacent and complementary industries and issues, including the Internet and transportation. As a network industry, the postal system shares economic, strategic and regulatory characteristics with some of these adjacent and complementary industries. The Postal Service also relies on other network

industries (such as air and ground transportation, and computer hardware and software), and provides key inputs in retail and electronic commerce. Demand for postal services is partially derived from demand in these other areas, while competition from electronic communications options has been a key factor in the financial stress on the Postal Service.

While working with a cloud and mobile focused startup prior to joining the Commission, I had a front row view of how increasing standardization and modularization of technology resources (through the development of business models such as “software as a service,” “infrastructure as a service,” and “platforms as a service;” application programming interfaces; and open source software and product development) have supported rapid advances in product design and deployment, as well as nearly constant iteration to test ideas and improve customer experience. It’s not clear that all parts of the postal sector are moving at the same pace as private sector entities to leverage these developments. I believe these insights can be useful as we work to understand how the Postal Service fits into a modern technology-driven economy, and how the combination of these factors impact citizens and consumers.

8. Please describe:

a. Your leadership and management style.

My leadership and management style emphasizes collegiality, flexibility, and commitment to excellence. I seek out colleagues and staff who are motivated and talented and work to ensure that my team reflects my key work values: enjoying the work experience and to producing excellent results. I prefer relatively flat organization structures that encourage dialogue and teamwork rather than hierarchical and rigid structures. I believe that a lack of internal communication and open discussion and analysis can lead to errors that cascade across regulatory and business systems.

b. Your experience managing personnel.

The Commission had 74 employees through most of FY 2021, and I oversee 63 of them – the Commissioners and their personal staff members do not report directly to me. Prior to joining the Commission, the largest group I had managed included 10 to 12 staff members. . More typically, I managed teams of 3-5 staffers and consultants for specific projects, such as when I worked in the USPS OIG’s research group. For some specific projects, such as regulatory compliance projects in the private sector or hearing preparation in the public sector, I have coordinated the work of 10-20 team members, working as a project leader rather than a permanent administrative manager.

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

I am the chief executive officer of the PRC, which has 74 employees, 63 of whom are under my supervision.

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

As Chairman, I have worked to drive a greater focus on information technology and data, and embed these practices in the Commission's work. Throughout 2021, I have worked with the Commission's Secretary and Chief Administrator to apply the Commission's limited resources to upgrade our technology and transition to cloud services, improving our cybersecurity posture following attacks on federal agencies and other organizations earlier this year. We have also added highly skilled and experienced personnel as Chief Information Officer and Chief Information Security Officer to guide these efforts.

After joining the Commission in January 2019, I worked with my colleagues to finalize the new regulation on the price cap. This proceeding was perhaps the most significant work in the Commission's history, and had started in December 2016. My personal staff and I contributed to the Commission's discussion over technical and legal issues, and helped to drive the process towards its conclusion, with a further notice of proposed rulemaking and a final rule, after the process had been stalled for some time.

I have also helped to drive further inclusion of customer experience (CX), which is among the Commission's responsibilities, into the Commission's work. Through our inquiries in the annual compliance process, we increased the focus on CX metrics adopted from the private sector such as Net Promoter Score (NPS) and Customer Effort Score (CES) to measure customer experiences across the Postal Service's various customer touchpoints. Our research and inquiries confirmed that the Postal Service is adopting such practices as using social media to help identify and resolve customer problems, setting the groundwork for the Commission to conduct deeper dives into this data to understand how the Postal Service is meeting the needs of its customers and where it is falling short. While this work is in its early stages, we are developing a foundation for a more sophisticated understanding of CX, and potentially a virtuous cycle in which the Commission's oversight helps to drive improvement in the experiences of customers and citizens.

I have also established an internal structure that allows the Commission to steadily scale up its work in open data and data analytics. The Commission is in the process of hiring its first Chief Data Officer to lead implementation of the OPEN Government Data Act, which will involve standardization and organization of the Commission's data for internal and external users. The Commission is also launching a data analytics division to focus on sophisticated analysis of systemic issues in the postal network. These are early steps in the direction of a more data-driven approach, and the Commission is currently applying for funding support from the Technology Modernization Fund to scale up investments in these areas.

I have also built an elite personal staff of experts in economics, finance, law, public policy, customer experience, and communications and helped to recruit outstanding career staff to the Commission. The Commission's early data initiatives have drawn interest from very talented experts in analytics and postal issues, creating an opportunity



to add to our talented team. I am excited that multiple former colleagues from the USPS OIG, which has a reputation for excellence and rigor, have joined us at the Commission.

While working at the USPS OIG, I led teams that developed rigorous, technical reports on subjects such as price regulation, intellectual property, and public private partnerships. These projects involved organizing teams of technical experts and producing technically sound, yet digestible work products. The results informed USPS OIG leadership and improved the organization's understanding and knowledge base, as well as helping to inform and improve the debates regarding vexing technical issues.

As a board member and advisor to a startup, I helped to devise and implement strategies that allowed the company to expand from its base in emerging markets and enter the United States healthcare market by successfully navigating due diligence hurdles to acquire clients in the compliance-centric U.S. healthcare field.

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

When I worked for the House Oversight and Government Reform Committee, I took a role in shepherding a bipartisan postal reform bill, H.R. 22, through final passage. After working closely with colleagues in the House and Senate and coordinating with stakeholders, we were unable to get a comprehensive bill through Congress. We did however, work with the Budget and Appropriations committees to come up with an alternative that lowered the Postal Service's Retiree Health Benefit Fund payment sufficiently to allow the Postal Service to meet its obligations at the start of the Great Recession. This measure was not an adequate alternative to a comprehensive postal reform law.

One lesson I learned is to persevere – the legislative process provided many minor successes and setbacks. Most of them were not permanent and I learned to work closely with colleagues to keep finding ways to move forward. Another lesson was to seek expert advice – the fallback solution that ended up becoming law was developed after numerous very difficult conversations and extensive research into the complicated federal budget process. A House expert on federal budget matters and the budget rules provided excellent guidance, which I relayed to my colleagues on both sides of the aisle in the House and Senate, and which eventually shaped the alternative path. I also learned that on occasion, there is a window in which legislative or regulatory solutions can be both developed and implemented, and it is important to work with colleagues and stakeholders on a bipartisan basis to take advantage of those windows.

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

When I started working in the OIG's government relations office, I was tasked with offering suggestions for revising its relevant processes. Among my first suggestions to the IG were revisions to the office's hearing preparation processes, based on my



experiences working on Capitol Hill. Because the IG was a highly experienced witness with a proven framework for hearing preparation, my suggestions were not adopted directly. Eventually, rather than addressing the issue through large scale reforms, I was able to work with my superiors to implement smaller changes within the existing processes that improved our hearing preparation. These incremental changes were more acceptable to the IG and helped to resolve the issues that had caused me to propose more sweeping reforms.

While working with a startup, I did not have an explicit disagreement with my superiors, but had to work to explain why the organization needed to use limited resources on a cloud security platform. Working with the technical team, I developed detailed risk analyses explaining how such a platform would simplify regulatory compliance. The organization's leaders quickly grasped the value of such a step and we worked to vet potential providers. The eventual shift to a new cloud security platform enhanced security and regulatory compliance, and actually saved the startup valuable funds, as the move enabled a change in underlying cloud infrastructure.

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

I believe that constructive disagreement is absolutely critical in effective organizations, especially in a policy arena characterized by billions of dollars in annual losses, fast-changing market conditions, inadequate strategic frameworks, and a policy foundation that needs to be updated. When I hired my personal staff at the Commission, I told each of them that I expect them to raise areas of disagreement with me early. My four member personal team represents an extraordinary diversity of political, and ideological viewpoints with expertise in economics, finance, law, public policy, legislative affairs, customer experience, and communications.

My first hire as a Commissioner was an outstanding economist who immediately brought a well-tailored skill set for the work done by the Commission. As my senior economic and political advisor, early in my tenure she brought to my attention a flaw in the formula used in the early stages of building a complicated model for a major regulatory initiative. After reviewing the issue, my initial reaction was that the formula was adequate. My staffer continued to advocate with me to have the Commission's central career analytical staff revisit the issue. After additional discussions, I was able to see the flaw in the formula. My staff member raised the issue with the Commission's career staff, who recognized the problem and fixed the formula. The formula ended up being part of a major order issued by the Commission, and is now policy. This policy is on a better foundation because of the actions of our staff and willingness to raise difficult issues in a constructive manner.

This episode is emblematic of the approach I attempt to implement on a daily basis: getting robust, honest feedback from highly capable staff, utilizing contrasting perspectives and skills, and steadily improving the foundation of our regulatory system. While there are several influences on this approach, my time with the USPS OIG with its

well-respected leadership and staff was perhaps the most influential for me and I continue to utilize what I learned in that environment.

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

I have significant experience in postal policy and one of the most difficult issues has been the price cap. Addressing the needed changes in the price cap was a very difficult step politically and the Commission certainly did not choose the path of least resistance. The PAEA clearly required the Commission to evaluate this issue thoroughly, determine if changes were needed and if so, to develop and implement them. After joining the Commission, I worked with my colleagues on a bipartisan basis, and worked very closely with staff to make the necessary changes, which reflected years of stakeholder input.

In the summer of 2021, the Commission issued an advisory opinion as requested by the Postal Service on its plan to reduce service standards for certain mail categories including some First Class Mail. Generally the Commission operates by consensus and this is critical, and certainly my preferred approach. For this advisory option, however, I wrote a separate opinion. My concern was partly about the conclusions in the majority opinion, but more so regarding the process used to reach the conclusions. In my estimation, the law clearly requires the Commission to analyze certain issues (regardless of the conclusion), and it is critical for the Commission's role as a government institution to conduct such analyses in a rigorous manner. Regardless of the outcome or conclusion, the Commission serves an important role in highlighting critical analytical issues as part of its mission of providing transparency and accountability of the postal system. I explained this approach in my opinion, and I believe in the second advisory opinion the Commission issued in 2021 (which was issued with a single unanimous opinion) the process we used allowed us to be more thorough and address all of the key analytical points raised by the Postal Service's request and the input received throughout the case.

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

The primary tool for building credibility and trust is communication. It is critical that staff trust each other and their leaders, and it helps to know what a leader values and that the leader believes in their skills and abilities.

The pandemic has presented a challenge in communication with staff, and we are working on using technology and alternative approaches to overcome this challenge. For example, over the summer I joined the Commission staff in a series of informal "brown bag" discussions over WebEx. These small group sessions were enlightening for me, as I learned more about the skills and interests of staff beyond our senior executives, and they allowed staff to learn about my priorities and style.

Another key issue that helps with credibility and trust is building an exceptional talent base. When staff members encounter excellent colleagues throughout an organization, it encourages them to work together, learn from each other and "raise the bar" in terms of

their daily approach to their work. Similarly, I think it is important to carefully consider the substantive input and feedback provided by high quality, expert staff, regardless of agreement with the input. This sends a message that the staff's knowledge and abilities are respected and will be valued as the organization tackles major issues.

The hierarchical approaches that are common in government and focus primarily on senior executives might make sense in larger organizations, but are likely inappropriate for a small organization (such as the Commission) with a highly trained professional staff. Strict hierarchies and siloes are wasteful in such an environment, as they reduce opportunities for meaningful feedback and knowledge transfer. This viewpoint is heavily influenced by my experience at the USPS OIG, which emphasized the recruitment of exceptional talent, analytical rigor, and a relatively flat structure which stimulated interaction and communication.

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

No

16. Please describe your responsibilities during your tenure as a Commissioner for the PRC to date. What do you believe are your greatest accomplishments?

As a Commissioner, my primary responsibilities include shaping and approving major rulemakings; approving negotiated service agreements, approving periodic compliance reports; conducting outreach with stakeholders; voting on whether requested price changes for market dominant mail follow the law; approving changes to foundational cost and accounting principles; voting on proposals to move products between the Market Dominant and Competitive categories; adding or removing products for Postal Service product lists; and managing my personal staff. As Chairman, I added responsibilities of being chief executive of the agency, including managing the career staff of the PRC, overseeing administrative elements of the agency, including IT and compliance, overseeing budgets, and overseeing outreach to Congress and stakeholders.

My accomplishments at the PRC include:

- Assembling an outstanding personal staff with expertise in corporate and public finance, economics, law, public policy, and customer experience.
- Assisting in recruiting experienced and dynamic career staff to the agency.
- Embedding customer experience principles into our annual compliance work; focusing on metrics adapted from the private sector including Net Promoter Score and Customer Effort Score, in order to make regulatory compliance responsive to customer needs.
- Initiating a systematic and structured review of the Commission's approach to NSAs, including a detailed examination of the financial models underlying them.

- Contributing to the development and finalization of the final rule in the 10-year review of the postal ratemaking system, including the postal price cap.
- Designing and implementing a data transparency, visualization and analytics initiatives to modernize agency output using a data centric, customer centric, and citizen centric approach.
- Overseeing the PRC's transition from on premise software to cloud based (SaaS) services for purposes of compliance and improving its cybersecurity posture.

### III. Role of the PRC and its Commissioners

17. Please describe your view of the Commission's core mission and an individual Commissioner's role in achieving that mission. Please also comment on the specific role of the Commissioner designated as Chairman.

The Commission's mission is to ensure transparency and accountability of the Postal Service and to foster a vital and efficient universal mail system. In meeting its mission the Commission is tasked with establishing and from time to time revising a modern system for ratemaking and classification; consulting and advising the Postal Service on service standards and certain operational matters; and also reviewing complaints related to rates, classification, and services.

An individual Commissioner's role is to provide rigor and insight within the Commission and in the Postal System as a whole. I believe providing accurate information to Congress is part of fulfilling this role.

As Chairman, I added responsibilities of being chief executive of the agency, including managing the career staff of the PRC, overseeing administrative elements of the agency, including IT and compliance, overseeing budgets, and overseeing outreach to Congress and stakeholders.

18. What do you believe are the most important responsibilities of the PRC, and what is your opinion of how those responsibilities have been fulfilled?

The most important responsibilities of the PRC are establishing, revising, and implementing pricing regulations; providing accountability and transparency for service and operational issues; and providing complaint mechanisms for aggrieved parties. The Commission has done well in these areas, and has noticeably accelerated its progress in recent years with serious efforts to address price regulation of both Market Dominant and Competitive products. These subjects are multilayered and highly technical and there is always room to continue improving. I believe more strategic and focused use of data can bolster our oversight efforts and further promote transparency.

19. In your view, what are the major challenges facing the PRC?

From an operational standpoint, the Commission is facing a significant workload in reviewing NSAs, dealing with complaints and appeals, and handling highly technical regulatory revisions with a limited staff. The Commission lacks resources, especially relative to the size of the Postal Service. The Postal Service is an \$80 billion organization, while the Commission is a \$17 million organization, with a relatively small team to meet these challenges. The Postal Service has three times as many lawyers at its headquarters than the Commission has total employees. In addition the industry as a whole, including the Commission, must step up its efforts to recruit early career talent to support an excellent group of experts who have retired or are nearing retirement. The PRC also needs to modernize its regulatory approach as the postal industry continues to change and is largely influenced by ecommerce and new entrants who are more sophisticated about data and technology. This modernization, however, is difficult with the Commission's current limited resources.

20. What do you believe should be the PRC's top three priorities over the next five years?

First, rate regulation - reviewing and monitoring implementation of rate regulation for Market Dominant products (the price cap) and Competitive products (minimum contribution to institutional costs). Second, tracking the quality and continuing provision of universal service in light of the changing economy, technological advancements, and the specific issues affecting rural and poor communities. The Commission's data initiatives will be critical to shining a light on these issues. Advising Congress in these respects is critical. Third, maintaining and expanding the base of talent for the Commission. This is a looming problem in the postal sector as it is in the rest of the federal government.

21. Generally, what approaches do you advocate that the PRC take in regulating the Postal Service and why?

As the industry undergoes major changes, I believe continuing to enhance the quality of analysis and providing accurate, timely, and helpful information to Congress is particularly important. The emphasis on data will result not just in compliance with open data laws, but can also have benefits for the Commission's regulatory approach and organizational culture.

#### *Speed and Timeliness*

The current approach to regulation can suffer from the lag between the time when problems occur and when they are addressed in the annual compliance process. The PRC does receive public data throughout the year, but that data often sits in PDF or Excel files on the Commission's website, where its explanatory power is largely untapped. As the PRC improves at collecting, processing, and analyzing data, using visualization tools such as dashboards also helps keep people informed on postal issues closer to the time when issues are occurring.

#### *Incentives and Accountability*

Transparency potentially provides a form of incentive for the Postal Service to comply with its own standards with regard to service and to follow legal and regulatory requirements. With respect to how the Postal Service relates to its customers, this use of data is consistent with the vision for the Postal Service in the 1970 and 2006 reform laws as a universal service provider that is part of the government and serves all Americans, but is subject to market discipline (even for Market Dominant products) as it is required to be self-sustaining, and thus to secure repeat business from its customers. Businesses must ensure that they are serving their customers well enough to have them engage in further transactions. Making postal data on service performance and customer experience readily available and understandable in a timelier manner is another step towards greater accountability.

*Regulatory Discipline and Focus*

Postal issues have been in the headlines throughout the pandemic, as Americans have relied on the postal system, but high-profile service issues have continued to draw concern. As the Postal Service's regulator, it is important that the PRC is responsive to problems in the system. The PRC must also stay focused on its core regulatory role as political debates continue regarding the Postal Service. A data-centered regulatory approach helps to provide discipline and focus for the Commission's oversight efforts as it responds to the high-profile service issues. The new analytics team is intended to provide data-driven insights into problems in the postal network, while the open data initiative will allow users inside and outside of the Commission to access standardized, understandable data that will help the Commission identify problem areas to target for regulatory oversight.

22. The PRC's regulatory responsibilities require robust input from the public and postal stakeholders. What is your approach to effectively engaging postal customers?

Postal stakeholders are generally sophisticated participants in the postal regulatory process and are more than capable of contributing when it is in their interest to do so. The primary key to engaging this community is to demonstrate that their input is heard. The Commission should engage with the facts and arguments set forth by postal stakeholder in its orders and reports – whether agreeing with them or not – to demonstrate the real and very valuable contribution the stakeholders' input has on the Commission's decision-making. In my brief time on the Commission, stakeholder input has frequently helped me understand issues more completely and to ask better questions. When we, as a Commission, can demonstrate this, we encourage stakeholders to contribute even in cases when their interests are less acute.

Neither the Commission nor its role in postal regulation is well known by the public. The Commission's most public 'face' is its website, which is dated and difficult to navigate. In addition, the most interesting and relevant information on our website is buried deep within reports and formal legal proceedings. In my brief time as Chairman, we have



begun issuing press releases highlighting the most relevant and informative charts and tables from our reports. This step is, however, a first step only.

We have begun an effort to modernize our “docket” system. Our current docket system is embedded in our website greatly complicating efforts to update either. By modernizing our docket system, we can not only make it easier for the public to understand and comment on cases before the Commission, we can also update our website to make it more accessible to those unfamiliar with the Commission’s work and easier to find desired information. This is a significant project given the Commission’s small budget. We have requested funds from Congress and the Technology Modernization Fund to complete this work.

In addition, I believe the best way to engage the public is to communicate the information and analysis available to the Commission in a way that is both easy to understand and informative. In 2021, most people have experience with sophisticated – and often elegant – data visualization tools that communicate complicated information in easy to understand graphics and charts. For this reason, we are working on postal service performance dashboards that will clearly and easily communicate information the Commission already receives and analyzes, but is currently only available within difficult to understand legal filings and lengthy end of the year reports. It is my goal to release a ‘beta’ or initial version of these dashboards shortly, and improving and expanding these dashboards will be a priority for me if I am reconfirmed.

23. If confirmed, how will you coordinate and communicate with PRC staff to accomplish the PRC’s goals?

As Chairman, I am the principal executive officer and direct all administrative functions of the Commission. As Commissioner, I am one of five votes in approving orders and reports of the Commission.

In directing the executive and administrative functions of the Commission, I encourage collaboration with and between the senior staff of the Commission on all major decisions. This involvement not only informs my decision-making, but also ensures all perspectives within the Commission are heard. In addition, I have held small group meetings with all of the Commission’s staff. These meetings have enabled even the most junior Commission staff to ask questions and have open conversations with me about the administration of the Commission. If renominated, I will continue to hold these meetings. I expect staff to work hard and produce great work, and in return, it is my responsibility to ensure staff understand their voices are heard and inform the administration of the Commission.

In 2022, we will draft a new strategic plan for the Commission. It is my intention to engage all of the Commission’s staff in this process to ensure that there is broad agreement on the plan and that the plan is relevant to the day-to-day work of the Commission.

As one of five leaders on the substantive rulings of the Commission, my consistent direction to staff has been to produce their best technical and legal analysis and not to attempt to anticipate the preferences of the Commissioners. It is only by engaging with the best analysis that the Commissioners can make the most informed decisions. Therefore it is vital to consistently provide feedback that encourages high-quality analysis and doesn't simply reward staff for telling us what we want to hear.

In order to improve the Commission's output, I am encouraging and scheduling more frequent opportunities for Commissioners and their immediate staffs to engage with the Commission's professional staff. This ensures that Commissioners better understand cases before the Commission earlier in the process and also ensures that the Commission's staff are exploring all of the relevant questions in a given case. While this is an adjustment in the Commission's prior practice, I believe it will result in faster and better informed decisions by the Commission through greater collaboration between the Commissioners and the professional staff.

24. The PRC's workforce handles broad responsibilities such as technical and data analysis, managing public input, and ensuring system security. What is your approach to maintaining a talented workforce?

The Commission is only as strong and professional as its staff. Recruiting and retaining high quality professionals is a top priority of mine. A significant percentage of our staff consist of highly-trained economists and lawyers whose services are in great demand and our compensation and benefits structure reflects this. However, appropriate compensation is not sufficient by itself to attract and retain great talent. Belief in the mission and knowing that your work contributes to the mission and is valued are keys to job satisfaction as are professional development and advancement opportunities. I strive to provide this sense of purpose and career opportunities for the Commission staff, beyond our senior executives.

One key is making sure the Commission stays relevant as the postal and shipping world continues to modernize. The Commission's staff review and analyze large data sets regarding service and finances. The results of their highly professional work are often tucked away in long reports and technical legal orders. This year we began highlighting relevant graphics and charts from our flagship reports in our press releases and on our webpage. We are currently working on adding data visualizations such as dashboards to our website that will allow non-expert audiences to easily understand our staff's work and analyses. We are also adding the staff and technical capability to make our data easier to access so that outside groups and interested parties can find new ways to present this data. The USPS OIG is now using the Commission's data to present service data in a map format. I believe our staff are and will continue to be energized to see their work being used by the Commission and others in new and exciting ways, reaching wider audiences, and having a bigger impact.

In addition to compensation and providing a sense of purpose, it is important to make sure the workplace is welcoming and affirming for a diverse workforce. As a small



Commission, we have a single consolidated administrative office that handles everything from HR to IT, led by our Commission's Secretary. The Commission's Secretary briefs me on diversity and inclusion matters, and we make sure that we address these issues. It is also very important to me to actively cultivate a culture where staff are comfortable raising concerns and where staff know that their concerns will be listened to and acted on appropriately.

25. What lessons, if any, can the PRC learn from the work of other regulatory agencies in the United States and postal regulators in other countries?

The PRC can and must learn from other regulatory agencies. Price regulation in the postal sector borrows heavily from regulation in electricity and telecommunications. We should study these experiences. The practice in the postal sector of revisiting the price cap from time to time, written into the PAEA, is a best practice from other regulated industries.

The postal sector interacts closely with other areas of the economy, including various forms of transportation and electronic communications. The PRC has limited expertise in these other industries, but must remain cognizant of their impact on competition, costs, reliability, and service performance in the postal world. In some other countries, regulators combine expertise in postal and these other sectors, particular telecommunications, and may have further insights into how the sectors interact and the effects on customers.

Since joining the Commission, and further since becoming Chairman, I have interacted with regulatory experts such as the National Association of Regulatory Utility Commissioners and with regulators from other countries. This area is a high priority for me. As the Commission's workload has increased and outpaced its resources, it has reduced participation in workshops and conferences. We are advocating for greater resources, and one use of additional funding would be to take advantage of educational opportunities that would bolster the skills of our staff and allow the agency to be more responsive to fast changing conditions domestically and internationally.

26. The Commission is an independent agency. How do you understand that obligation of independence? How does such independence affect your approach to the evaluation and decision of cases?

Commissioners are chosen based on technical qualifications, professional standing, and demonstrated expertise in relevant fields. An independent commission must act in accordance with these values, rather than political considerations or the interests of particular stakeholders.

27. As the mailing and shipping industries evolve over the next 10 years, how do you believe the role of the PRC will change?

The mailing and shipping industries are evolving quickly and in a way that should be noticed by policymakers and regulators, and will require some evolution by these government entities. Like other sectors of the economy, mailing and shipping is increasingly incorporating and being influenced by technology. Several of the newer players in this sector are hybrid digital-physical companies, combining large quantities of data, application programming interfaces (APIs), customer-centric user interfaces, and sophisticated digital marketing and user experience approaches with physical warehouses and distribution centers, growing workforces, robotics, and other hallmarks of the logistics world. While ordinary Americans may still walk into their post office to mail an item, they might be doing so in their capacity as small business people coordinating on large Internet platforms, in addition to traditional transactions such as mailing a postcard to family or friends. The Postal Service is slowly adjusting to this new environment, with programs such as Informed Visibility and Informed Delivery.

In this environment, I believe the PRC, like other regulators, will need to update its approach. The data initiatives that I have discussed in these answers are an example of how I think the role of this agency will change over the next decade. In addition to traditional activities such as issuing regulations and holding hearings, the PRC will have an important role in providing timely, accurate, and digestible information to the market. This will support better input from stakeholders and ordinary citizens, provide additional incentives serve customers well, and make the postal ecosystem and its regulatory system more sophisticated and data-driven, at least in an incremental fashion.

#### IV. Policy Questions

##### *Postal Ratemaking*

28. On November 30, 2020, the PRC adopted final rules to modify the system for regulating rates and classes for Market Dominant products. The Postal Accountability and Enhancement Act of 2006 (PAEA) required the PRC to review the Market Dominant rate and classification system 10 years after enactment to determine if the system achieved the PAEA's nine objectives, including predictability in rates and adequate revenues, considering the 14 factors established by Congress. The PAEA allowed the PRC to make modifications or adopt an alternative system as necessary to achieve the objectives. What is your view of the PRC's role in carefully balancing the objectives and factors for the ratemaking system?

Balancing the objectives and factors of 39 U.S.C. § 3622 is the foundation of the design of the system of rate regulation. The objectives and factors effectuate Congress's broad policy goals for the ratemaking system, including the price cap, with the details of regulatory implementation as the role of the Commission. The structure of this section of the statute indicates that the objectives are a primary consideration, but with nine objectives and 14 factors, some of which are in conflict, the Commission must ensure that each is represented in the overall regulatory system. 39 U.S.C. § 3622(b) states that each of the objectives shall be applied in conjunction with the others, making it clear that each should be fully taken into account. Since the passage of the PAEA, I believe the

Commission has taken this responsibility seriously and incrementally improved the design of the system to make sure that the objectives and factors are implemented in the system. This particular issue is an area of great focus for the Commissioners and we have been well advised by staff in implementing § 3622.

29. The Postal Service and mail users may request that the PRC change the Market Dominant and Competitive product lists by adding new products, removing current products, or transferring products between the lists. How should the PRC consider customer needs in this process?

The framework for how the PRC evaluates the matter of placing products on the Market Dominant and Competitive product lists is prescribed by statute, and includes some customer-facing considerations. Specifically 39 U.S.C. § 3642 defines Competitive products based on criteria related to competition, market power, monopoly status, and other considerations that are more specifically tied to customers: the views of product users and likely impact on small business concerns.

The Commission allows customers to weigh in on a proposed product transfer through various mechanisms that allow customers to participate in a docket, and the Commission does take such views into account. However, the current practices may not optimize opportunities for participation. The Commission should seek to provide clear and accessible information to the public, using dashboards and visualization tools, in order to improve understanding of important postal issues and encourage input from the public. The Commission should also seek to enhance its website so that it is easier to use and provides greater value to all of its users with varying levels of expertise.

30. In accordance with 39 U.S.C. § 407, the PRC submits views to the Secretary of State on any treaty, convention, or amendment that alters rate or classification for a market-dominant mail product. In your view, how should the Secretary of State consider U.S. law and the views of the Commission when concluding such treaties, conventions, or amendments?

The law requires the Secretary of State to give full consideration to the authority vested in the Commission. In addition, the law clearly requires the Secretary to ensure that the treaties and other agreements concluded by the Secretary are consistent with the views submitted by the Commission. While the Secretary has latitude to determine that it is in the best interest of the United States not to ensure consistency, the statute established strict criteria for making such a decision based on the foreign policy or national security interests, and requires that the Secretary explain this determination to the Commission in writing. The law therefore, clearly establishes that the Secretary should follow US law and the Commission's recommendations, while giving the Secretary the flexibility to conclude agreements to the contrary only for specific purposes related to the best interest of the United States, and which are stated explicitly.

31. The PRC reviews proposed changes to rates not of general applicability, offered by the Postal Service to specific mailers through negotiated service agreements (NSAs). The number of NSAs has increased in recent years. In FY 2012, the PRC approved 54 NSAs, growing to 267 in FY 2020.<sup>1</sup> What do you believe the PRC can do to handle the NSA workload and provide timely reviews?

Since the passage of the PAEA, the Commission has made laudable efforts to organize, prioritize, and follow through on its increasing workload, including NSAs. While NSA submissions have increased as described in the question, funding for the Commission has essentially been flat. Since being confirmed, I worked closely with our staff to obtain a more granular understanding of these efforts and the Commission's workload. After taking office in January 2019, my first hire was a senior economic and financial advisor with excellent training and experience in the private sector and government, including postal experience. One of our first projects was a very detailed review of the process underlying NSAs, including reviewing the models used to develop and to analyze them. This review was aimed at ensuring quality and legal compliance, and also facilitating efficient processing of NSAs down the line. Ultimately, the Commission will need greater resources to continue to process NSAs – the value of which has been proven by the market – while continuing to handle its other regulatory responsibilities.

In addition to continuing to approve Competitive product NSAs in a timely fashion, I believe the Commission should revisit its approach to Market Dominant NSAs. Several years ago, the Commission adopted an approach to analyzing Market Dominant NSAs that effectively discouraged their adoption, as it would be very difficult to get one approved. As the industry continues to change, there may be an opportunity to adopt more flexible standards that help the Postal Service and its customers with an updated regulatory framework for Market Dominant NSAs.

32. The Postal Service is a multi-product networked operation, and the longstanding system used to assign costs to postal products is complex.
- a. How can the PRC ensure that postal costing system adapts as the mix of market dominant and competitive products changes?

Since joining the PRC in early 2019, I have been impressed by the mechanisms that the agency has put into place to study and adapt to changes in costs. In addition to highly detailed, scheduled periodic reviews of these issues, with significant stakeholder input, the Commission permits any party to request an improvement to the “analytical principles” or sophisticated cost models underlying postal regulation. Known colloquially in the postal regulatory community as “carwashes,” these cases are an opportunity to update cost models with exceptionally refined, minute updates to the formulas used to calculate postal costs. The Postal Service and its competitors have brought such cases before the Commission. These complex cases take up considerable Commission resources, but I believe they are salutary for the industry, and a credit to the

<sup>1</sup> Postal Regulatory Commission: *Annual Report to the President and Congress, Fiscal Year 2020* (January 2021) ([https://www.prc.gov/sites/default/files/reports/FY2020\\_AnnualReportFiled.pdf](https://www.prc.gov/sites/default/files/reports/FY2020_AnnualReportFiled.pdf))

Commissioners and staff who developed this important process over the years. This highly analytical and adaptive approach is one model for how postal regulation should continue to evolve.

- b. What is the role of the PRC in helping stakeholders to understand how the costs of postal products are calculated?

This is a critical role that the Commission serves through the cases that update analytical principles, as described above, as well as through the Annual Compliance Determination, in which the Commission carefully reviews whether postal products covered their costs in the prior fiscal year. The Commission also hosts technical conferences, with substantial stakeholder participation, to discuss a number of detailed analytical issues. This educational role is shared with other organizations, including the USPS Office of Inspector General and the stakeholders themselves.

33. Do you believe the Postal Service should continue to operate on a self-sustaining basis? If so, what is the role of rate regulation in ensuring the Postal Service's financial sustainability?

Late in 2020, the Commission issued its final rule following the statutorily-required 10-year review of the postal ratemaking system, including the price cap. I believe this regulation should be implemented for a period of time, and the Commission and other agencies should study the effects on Postal Service finances, before policymakers consider changing the self-sustaining approach to postal policy. Rate regulation is critical and foundational in the Postal Service's financial stability, as financial stability is among the objectives for the price cap in Title 39 § 3622.

*Universal Service, Service Standards and Performance Measures*

34. What are your views on the Postal Service's universal service obligation and the PRC's role in ensuring universal service?

Universal service is the centerpiece of postal policy, is the reason that our Founders recognized the importance of postal services in the Constitution, and should guide decisions regarding the Postal Service and its business model going forward. The Commission provides critical transparency by calculating the cost of universal service. The Commission also monitors and analyzes service issues, consults with the Postal Service, and advises Congress on service matters.

35. What do you believe should be the Commission's role in establishing performance standards for postal products and services and monitoring the Postal Service's results in meeting these standards?

The Commission's role in establishing performance is established by Congress – the Commission is tasked with consulting with the Postal Service as it sets its standards. The Commission has done this effectively during the PAEA era, and the Commission also

approved a move by the Postal Service to use internal measurement systems to effectively monitor the Postal service's results. One area where the Commission can do much more is effectively using the data, organizing it, and making it available for its staff as well as the public and stakeholders. By providing better data for its staff and building data analytics capabilities, the Commission will be able to generate insights into trends in service, and understand better what is going on in the postal network. By providing more and better organized data to stakeholders and the public, the Commission will be able to get better and more timely feedback regarding the impact of service problems.

36. The Postal Service is required to seek an advisory opinion from the PRC for any "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." What are your views on this process and its usage during your tenure at the PRC?

The advisory opinion process is an important part of postal oversight, as Postal Service management has significant leeway in implementing operational changes. Commission advisory opinions are the main avenue to provide transparency into these changes, and for the public and stakeholders to give input prior to the implementation of these highly consequential decisions.

I have been involved in two advisory opinions since I joined the Commission, both of them in 2021. We issued the first one in July 2021, as requested by the Postal Service on its plan to reduce service standards for certain mail categories including some First Class Mail. For this case, however, I decided to write a separate opinion to highlight some concerns regarding the process used to develop advisory opinions. In my estimation, the law clearly requires the Commission to analyze certain issues (regardless of the conclusion), and it is critical for the Commission's role as a government institution to conduct such analyses in a rigorous manner. Regardless of the outcome or conclusion, the Commission serves an important role in highlighting critical analytical issues as part of its mission of providing transparency and accountability of the postal system.

The advisory opinion process has changed over the years. In 2011, the Commission issued an advisory opinion on the Postal Service's plan to move from six to five days of delivery. The process took nearly one year, a length of time which created some consternation and criticism. The process that led to the 2011 advisory opinion was too slow and inefficient. In reaction to that episode, the Commission by rule created a 90 day advisory opinion process. This time period is likely adequate for more simple advisory opinions, but may be too short for other, more complex ones. This is especially true because the Commission has very limited resources – any personnel devoted to producing the lengthy draft opinion is less able to assist with the daily ongoing work, such as negotiated service agreements. My main concern is that the compressed time period can create pressure to avoid complicated issues or to explore them in a shallow manner that does not match the capabilities and determination of the staff working diligently within the permitted time. Given the critical role of the Commission and the advisory opinion process in providing transparency, oversight, and insight of service standard changes, I believe this risk should be addressed.



I explained these concerns in my separate opinion, and I believe in the second advisory opinion the Commission issued this year (which was issued unanimously) we did a better job of being thorough and addressing all of the key analytical points raised by the request for an advisory opinion, partly through a short (14 day) extension of the time used to analyze the issues and issue an opinion. I have discussed the concerns about the advisory opinion process with my colleagues and staff, and we are considering potential measures to continue to address these concerns going forward. Adding capacity to the Commission is one approach to reducing the risks I have identified, while adding a limited amount of time as needed is another possibility.

37. The PRC evaluates service performance against the Postal Service's service standards and also approves its service performance measurement systems. In your view, how can the PRC support the Postal Service in collecting more accurate and complete service data, and in providing such information to the public?

The Postal Service has built an infrastructure that allows it to measure service matters. The scanning technologies that the Postal Service has deployed allow "visibility" of mail as it travels throughout postal network.

The Postal Service can now track mail down to the individual mail piece. This overall direction is in keeping with best practices in the logistics and ecommerce industry, which have increasingly focused on visibility. The Commission approved an internal service performance measurement system in recent years, but there is more that can be done in this area.

For the first time, the Commission is presently implementing compliance with the OPEN Government Data Act, which will include appointing its first Chief Data Officer. The CDO will oversee the Commission's first Data Governance Board, which will have representatives from the various offices including the Office of Accountability and Compliance (which does our technical data analysis) and the Office of General Counsel. With this new structure, the Commission will be able to analyze the needs of data users both inside the Commission and outside including large postal customers and the general public and strategize in a disciplined manner on ways to address those needs. These uses of data will cut across several areas including service, finances, and volume and operational data.

While open data has significant value across government, there is an especially strong upside and unfulfilled potential in the postal sector, which overlaps significantly with the data rich worlds of ecommerce, communications, finance (as the Postal Service is used for bill presentment and payment), and marketing. There are several players in the postal sector that have developed sophisticated practices around collecting, analyzing, and presenting data (including leveraging the Postal Service's application programming interfaces or APIs), but these are often proprietary approaches and the world of postal government agencies and postal regulation does not reflect the data-driven innovation in

the sector in a way that benefits the general public. We are working to change that, and I believe this is a critical inflection point in postal regulation.

*Postal Service Oversight and Operations*

38. The PRC conducts oversight of Postal Service operations, including monitoring Postal Service compliance with applicable laws and promoting transparency. This role includes enforcing requirements for quality, accuracy, and completeness of Postal Service data and data analysis. What role can the PRC play in ensuring Postal Service data is actionable and accessible? How can the PRC also improve its own transparency by making PRC information accessible to the public?

The Chief Data Officer and open data implementation efforts I discussed above are key to this issue. Importantly, having an internal structure specifically to examine data issues will ensure that quality, accuracy, and completeness of Postal Service data receives ongoing attention and can be tailored to the needs of the various entities that view and use such data including the Commission, Congress, the public, and large customers. A key goal of the open data efforts is to enhance transparency in a way that is consistent with modern best practices.

The Commission is also establishing a data analytics division for the first time in order to enhance its data analytics capabilities. This division will focus on utilizing modern techniques in statistics, network optimization, and related capabilities to ensure that the Commission understands developing issues in the postal network and is able to work with the Postal Service to ensure that these matters are resolved relatively quickly.

Currently, transparency is provided through lengthy reports with extensive legal and technical analysis. Parallel to, and overlapping with, the open data and analytics efforts, the Commission is presently implementing an approach to transparency that will emphasize the use of dashboards and visualization tools to present data. This will enhance transparency as the dashboards will be easier to grasp than the 200-page annual compliance determination, for example. The dashboards should also improve the input that the Commission receives from the public, as they will be more easily able to see how postal data relates to their experiences as consumers – either as senders or recipients.

Another critical issue is that the dashboards should facilitate more timely dissemination of information about issues, including but not limited to service. The current compliance process creates a large regulatory lag. For example, service issues that were in the headlines during the holiday season – November and December -- 2020 (and thus in FY 2021), will be addressed in the FY 2021 ACD, which will be released by the end of March 2022. This is a lag of 15 to 16 months between the time that high profile service problems occur and are in the headlines and when they are addressed by our current compliance process. Dashboards will help increase transparency, accessibility, and provide more timely transparency.



39. The 2018 Report from the Task Force on the United States Postal System recommended a stronger regulatory oversight role for the PRC to improve Postal Service accountability. What role do you believe the Commission should play in overseeing the Postal Service?

The Commission's present statutory role as a regulator is generally sensible: the Commission currently focuses on compliance on an annual cycle, which provides predictability for our oversight efforts. As the industry undergoes major changes, I believe continuing to enhance the quality of analysis and providing accurate, timely, and helpful information to Congress is particularly important. Going forward, the Commission is focusing on data in order to modernize our regulatory approach. More data, presented and analyzed in useful formats that are accessible to the public, will help inform future-decision making in postal regulations.

Congress may wish to consider enhancing the Commission's role in a few ways. One approach would be to strengthen the Commission's role in proposed changes to service standards or nationwide changes in service. Congress could also clarify whether contract post offices are intended to be treated the same way as Postal Service owned facilities for the purpose of closures and consolidations. Finally, the Commission needs additional resources to solidify its role as a robust regulator in this changing industry.

40. The PAEA set forth a process for the PRC to adjudicate customer complaints against the Postal Service. What do you believe must be done to ensure the PRC reviews and resolves complaints promptly and fairly?

A complaint may be filed with the Commission by any interested person who believes the Postal Service is not complying with certain requirements of Title 39. I believe the Commission has learned to handle such complaints expeditiously, and it has developed appropriate procedures and processes to ensure that each complaint is handled fairly. The Commission is a very small agency with about one third the number of total employees (74) as the number of lawyers (200+) at Postal Service headquarters. Bolstering the resources of the Commission would help to maintain the capacity to ensure that such cases are handled well and expeditiously.

Besides complaints alleging a violation of Title 39 that are considered by the Commission in its formal dockets, the Commission's Office of Public Affairs and Government Relations (PAGR) also handled over 6,000 consumer complaints in 2020, which were submitted through our website, by mail, phone, fax, and email. The issues in these complaints included missing packages, delayed, misdelivered, and undelivered mail, and collection box schedules. Our PAGR staff fielded these inquiries and routed them to the Postal Service as appropriate. A prior Commission order requires the Postal Service to follow up on such inquiries and complaints in an expeditious fashion and file reports with the Commission on them.

I believe the Commission's efforts at modernizing transparency through implementation of an open data platform could also bolster the complaint process by making data readily available, accessible, and understandable for stakeholders, including the general public.

41. The PAEA allows any person served by a post office to appeal its closing or consolidation to the PRC. What is your experience with this responsibility and do you believe the PRC has been effective in exercising it?

Since I joined the Commission in January 2019, I have been involved in Commission orders on three such appeals. The affected communities raised a number of meaningful issues and explained how they would be impacted by the Postal Service's proposed actions in closing or consolidating a retail facility. As the Commission noted earlier this year, the Commission has limited powers in this area, defined by Title 39 § 404(d)(5). Under this provision, the Commission may not modify the determination of the Postal Service, but may order that the matter be returned to the Postal Service for further consideration if it finds in favor of the complainant.

There has been some disagreement over what type of facility closure appeals can be considered by the Commission, because the Postal Service uses a number of contractor-operated retail facilities known as Contract Postal Offices (CPOs), Village Post Offices (VPOs), and Contract Postal Units (CPUs). The Postal Service has taken the position that the Commission lacks jurisdiction over such facilities as the Postal Service categorizes the contractor-operated facilities as separate from "post offices" run by the Postal Service itself. This issue has arisen because of the disparity between the common usage of the term "post office" and the Postal Service's usage of the term, which it uses only to refer to the facilities that it directly operates, and excludes contract facilities.

Throughout its history, the Commission has found that the statutory language is somewhat ambiguous on this matter, but that Congress intended for customers to be able to appeal a closure or consolidation when a contracted facility is the "sole source" of postal services in a community. The Commission has developed a body of case law applying the sole source doctrine, focusing on geographic distance, drive time, and other factors that affect the practical accessibility of postal services, including the availability of service by letter carriers. The majority of appeals of these contractor-run facilities have been dismissed because the affected facility does not meet the test to be considered a "sole source."

This disparity between the common usage of "post office" and the Postal Service's usage of the term is an item that Congress may wish to address. The Commission has done well in analyzing the relevant issues and developing a test that allows it consider the needs of customers of contracted facilities in limited circumstances, under a reasonable interpretation of the statute. Greater clarity in this area may require Congress to update the definition of the type of retail facility for which a customer may appeal to the Commission.

42. What role, if any, should the Commission have in the Postal Service's operational decisions?

The current framework, established by statute and custom, gives the Postal Service authority over its operational decisions. The Commission's role is focused on regulations, oversight, transparency, and accountability. This is generally a sensible division of roles. In addition, the enormous gap in resources between the Postal Service (an \$80 billion agency) and the Commission (a \$17 million agency) makes a direct role in operations infeasible for the Commission.

The Commission's current mission of providing transparency and accountability of Postal Service operations is a valuable and appropriate one. In addition, while it would be difficult for the Commission to take a direct role in operating an entity with a budget more than 4,700 times as large as its own, more modern and sophisticated uses of data (including transparency measures such as dashboards) can be a high-leverage approach to regulation and oversight, one that allows the Commission to have more impact than its small size alone would indicate.

43. Cost and efficiency are key considerations as the Postal Service seeks to provide postal services across the nation. In your opinion, how can the PRC help the Postal Service improve efficiency while ensuring robust service?

The price cap, through the implementation of statutory objectives and factors, attempts to balance these competing imperatives. The Commission engaged in the lengthy "ten-year review" of the ratemaking system, including the price cap, in which it attempted to balance efficiency, service, and other matters through the design of the revised cap. The cap drives efficiency by forcing the Postal Service to control costs to stay beneath it, and by increasing the amount of the cap, the Commission enabled the Postal Service to continue to address service issues as well. In addition, as the Commission finalized the rule implementing the revised cap, it noted that it would separately pursue proposals for "performance based regulation" a set of sticks and/or carrots designed specifically to address issues of efficiency and service quality. Over the past few years, the Commission has begun to develop expertise and receive comments on such regulatory frameworks and will pursue them further in the future. This is one matter for which it is important that the Commission continue to add to its capacity.

44. What role do you believe the Commission should play in shaping the future Postal Service, given the rapid increase in utilization of e-commerce and other market trends?

Currently, the major policy and strategic decisions about the future of the Postal Service are made by Congress and the Board of Governors. The Commissions' role in shaping the future of the Postal Service is somewhat indirect but important, through the implementation of transparency and accountability. Many of the data-driven approaches that the Commission is implementing now may indirectly shape the Postal Service's future through the series of interactions that often take place between a regulator and operator. A data driven, customer-centric approach to regulation should over time, help shape the Postal Service indirectly by using incentives that are well tailored so that by responding to these incentives, the Postal Service produces results that improve customer experience and deliver measurable improvements in service. I believe this is consistent

with the intent of Congress in creating the modern Postal Service as a government entity that operates in the marketplace.

If Congress gives the Commission the responsibility to define universal service, that would create a very strong role for the Commission in shaping the future Postal Service. One of my primary goals as Chairman is to steadily increase the Commission's capacity so that it is more capable of dispatching such major tasks in a highly efficient manner.

## V. Accountability

### *Whistleblower Protections*

45. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.

- a. Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

As a former employee of the USPS Office of Inspector General and the House Oversight and Reform Committee, I am very familiar with and supportive of the important role whistleblowers have in holding executive branch entities accountable to Congress and the American public. In these roles, I placed the highest value on whistleblower complaints. When I served at the USPS OIG, the Inspector General personally made it clear that he placed great importance on these matters and I, together with the other staff, acted accordingly. In my position in government relations, I received complaints forwarded by members of Congress and Congressional committees. The main priority was protecting confidentiality of whistleblowers throughout the processes of investigating and reporting on these complaints, a focus that was bolstered by my perspective as a certified information privacy professional. This priority guided everything from how the complaints were discussed in meetings, to management of digital and paper records related to the cases.

In the government relations office, I also oversaw some of the records, databases, and processes used to track the USPS OIG's progress on meeting deadlines. On a weekly basis, at the minimum, I briefed the IG on the status of whistleblower complaints that had been forwarded to my government relations office. I coordinated with USPS OIG officials to ensure that the complaints were being adequately addressed and that the relevant Congressional offices would receive timely and accurate updates regarding the process. I arranged and participated in several briefings of Congressional staff related to whistleblower complaints.

- b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at the PRC?

It is my intention to create and maintain an atmosphere within the Commission where employees can trust that concerns raised to senior leadership will be handled appropriately and that retaliation will not be tolerated regardless of whether those concerns are raised to senior leadership, our Inspector General, or to Congress. In addition, I will ensure that all employees of the Commission are familiar with how to contact and bring concerns to the attention of the Commission's Inspector General. Finally, I will ensure that the Commission's congressional relations policies have clear exceptions to allow for whistleblowers to contact congressional offices.

- c. If confirmed, what steps will you take to ensure that whistleblowers at the PRC do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately?

The best way to implement such policies is to communicate them clearly and then act accordingly. Any rebukes or disciplinary action should focus on personnel undertaking such reprisals rather than those offering constructive suggestions. Where possible, I will seek to reward those who bring critical problems to my attention.

*Cooperation with Inspectors General*

46. What is your view of the role of the Postal Regulatory Commission's Office of the Inspector General (OIG)? Please describe what you think the relationship between a PRC Commissioner and the OIG should be. During your first term, what steps did you take to foster a working relationship with the Inspector General? If confirmed, what additional steps would you take to foster a working relationship?

As a former staff member of the USPS Office of Inspector General, I know first-hand the critical role Inspectors General have in improving the effectiveness of the executive branch. I believe Commission leadership must look to the Inspector General as a partner in improving the efficiency and safeguarding the integrity of Commission decision-making and operations. As Chairman, it is my responsibility to lead by example through active cooperation with the Inspector General and holding staff to the same standard. In addition, the Chairman must also have an "open door" to allow the Inspector General to directly raise any concerns with the Commission's responses to the PRC OIG and promptly addressing these concerns. This builds trust between the Inspector General and me and demonstrates to the Commission staff our commitment to responsiveness. When the Commissioners and Commission staff all understand that the Inspector General is a critical partner in achieving the agency's goals, a positive working relationship can be maintained.

Since joining the PRC, I have joined other Commissioners in discussions with the Inspector General about how the office can operate efficiently and the PRC can facilitate its work.

47. If confirmed, do you commit to ensuring that all recommendations made by the PRC OIG to the PRC are reviewed, responded to, if necessary, and, unless the agency justifies its disagreements with the recommendations, implemented to the fullest extent possible within a reasonable time period?

Yes

48. If confirmed, do you commit without reservation to ensuring the OIG receives timely access to PRC records and to interview PRC employees?

Yes

49. If confirmed, what steps will you take to ensure all PRC offices and employees cooperate fully and promptly with OIG requests?

I will ensure the Commission regularly reminds staff about our Inspector General policy including their right to communicate confidentially with and their responsibility to comply with PRC OIG requests fully and accurately. I will ask senior staff to emphasize prompt and complete responses to PRC OIG requests, and, consistent with requests for confidentiality, monitor the status of responses to the Inspector General to ensure requests are promptly and completely answered.

*Cooperation with GAO*

50. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests for information, including for records and meetings?

Yes

51. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO?

Yes

52. If confirmed, what steps will you take to ensure all PRC functions and employees cooperate fully and promptly with GAO requests?

At the Commission, our Office of Public Affairs and Government Relations (PAGR) receives and is responsible for coordinating the responses to GAO. The Commission prioritizes GAO requests and the staff offices work closely with PAGR to ensure complete and timely responses. As Chairman and Commissioner, I have and will continue to emphasize the importance of cooperating with GAO. In addition, I have and will continue to review all responses to PAGR—consistent with requests for confidentiality—to ensure their quality and completeness.

# **VI. Relations with Congress**

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

Yes

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

Yes

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

Yes

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

I place a high degree of importance on this role for the Commission. If confirmed, I will continue to work closely with our office of Public Affairs and Government Relations (PAGR), which handles Member request for information on behalf of the Commission. While this office is small, it has consistently been one of the more effective legislative affairs units I have seen in Washington. The office effectively relays requests to me and other units in the Commission, and assists in coordinating timely and accurate responses. In addition, I hired to my personal team an experienced former staffer of the House Oversight and Reform Committee, who in addition to advising me on a number of policy matters, supports and coordinates with PAGR and other units in order to prioritize and facilitate this role at the Commission. This staffing approach highlights the importance of handling Member requests efficiently, and in a thorough and bipartisan manner.

57. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request?

Yes

58. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us?

Yes



**VII. Assistance**

59. Are these answers completely your own? If not, who has provided you with assistance?

I crafted the final answers and received assistance in research and drafting some of the answers from Rob Borden, my Senior Strategic Advisor. Additional staff members provided editorial assistance.

60. Have you consulted with the PRC, or any other interested parties? If so, please indicate which entities.

The answers were reviewed by PRC staff.

I, Michael Kubayanda, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

*Michael Kubayanda*

(Signature)

This 29<sup>th</sup> day of October, 2021



**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Michael Kubayanda**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

1. As the United States Postal Service begins to implement its 10-year plan, it is important that the Postal Regulatory Commission can provide comprehensive advisory opinions and oversight to ensure that the implementation does not negatively affect Americans' access to this vital service. While the PRC has already begun to expand its analysis capabilities with the new analytics special studies group, what additional resources does the PRC team need in order to expand these capabilities to provide sufficient advisory opinions and oversight over the ten-year plan implementation? How will such an expansion potentially improve Postal Service operations?

The Commission has had essentially flat funding since the Postal Accountability and Enhancement Act of 2006, which has curtailed our ability to do this needed analysis, in addition to the traditional compliance work we have done for 50 years. The Commission received an appropriation of \$17 million in FY 2021 and we have requested \$19.585 million for FY 2022. It is critical that the Commission is funded at the requested level in order to launch these data initiatives in an effective manner and to allow us to lay the groundwork for larger scale initiatives in the future.

As the Commission worked on advisory opinions in 2021, network design and optimization questions were at the forefront, and Commission staff worked tirelessly to address them. The Commission, however, suffered from a lack of dedicated staff to pursue these matters along with other regulatory issues, and our insufficient capacity hindered our ability to provide strong oversight of the massive, \$80 billion agency. Fully funding our appropriations request would be a crucial first step in building the needed capacity.

The Commission's expansion of analytics capabilities will offer opportunities to improve advisory opinions and oversight in a few ways. First, an analytical unit will steadily improve the Commission's ability to identify and organize operational and cost data, which will allow the Commission to ask better informed questions that in turn produce better data. As an initial step, the analytics unit will allow the Commission to build on its previous small-scale work to identify bottlenecks, or pinch points, in the network affecting flat-shaped products (such as catalogs and magazines). The analytics group will be able to scale up this body of work to identify similar problems affecting other products. As the analytics group grows and gains greater sophistication

in network optimization, I think it's critical that we develop the capability to use analytical skills to benchmark against industry standards for efficiency and quality.

As a very small agency, the Commission does not currently have staff applying engineering or operations research skills to our oversight work. This is a shortcoming for a regulatory agency overseeing an operator in a network industry. Our analytics group is starting out with experts in statistics, postal regulation, and data mining. As we build capacity, I hope we can add analysts with engineering and operations research expertise. By building this type of capacity, the Commission will be able to establish quantitative standards for what an efficient network and efficient operations look like (both from building quantitative models and from examining the postal network and other real networks) and hold the Postal Service accountable for meeting those standards of efficiency and quality.

**Senator James Lankford  
Post-Hearing Questions for the Record  
Submitted to Michael Kubayanda**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

- 1) *On profitability:* The Postal Service continues to say that its two highest revenue producing products, First-Class Mail and packages, are profitable. But it lost \$4.9 billion for 2021. The Postal Service even claimed its “controllable net loss” was \$2.4 billion. How can the Postal Service claim these primary operations are profitable and continue to lose money every year, even with the noise of its liabilities taken out?

When the Postal Service states that First-Class Mail and packages are profitable, it defines profitability as providing positive contribution. Contribution is defined as revenue minus attributable costs and, under the law, attributable costs are those costs that can be assigned to individual products based on reliably identified causal relationships. Therefore, when the Postal Service says that First-Class Mail is profitable it means that total First-Class mail revenue exceeds total First-Class Mail attributable costs.<sup>1</sup> When it says that packages are profitable it means that the revenue of each Competitive product (packages) covers the attributable cost of that product<sup>2</sup> in addition to all Competitive products collectively covering an appropriate share of the Postal Service’s institutional costs.<sup>3</sup> In general, products that make a positive contribution are recovering the costs that they impose on the Postal Service, while also helping to cover the common costs of operating the postal network.

Profitability at a product or class level does not necessarily translate into profitability at an entity level because the Postal Service has a large amount of institutional costs. Institutional costs are common costs that cannot be assigned to products based on reliably identified causal relationships. Institutional costs include some administrative costs, as well as common costs that arise from the operation of a transportation and delivery network that simultaneously handles multiple products, and which exhibits economies of scale and scope. In isolation, certain products and classes such as First-Class Mail and Competitive packages can generate a positive contribution. However, if total institutional costs exceed the combined contribution from all

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<sup>1</sup> Reported in the Postal Service’s Cost and Revenue Analysis reports.

<sup>2</sup> This is the level of cost coverage required by 39 U.S.C. § 3633(a)(2).

<sup>3</sup> This is the level of cost coverage required by 39 U.S.C. § 3633(a)(3).

products, a net loss will occur, as was the case in FY 2021. There are also several products, notably periodicals and other flat shaped mail that do not generate positive contribution and are considered not profitable. These products significantly impact the overall net loss.

Historically, First-Class Mail produces the highest contribution per revenue dollar. However, First-Class Mail volume has been steadily declining over the past 20 years. Packages, with comparatively higher associated labor and transportation costs, and competition in the delivery space, generate a lower contribution per revenue dollar. Due in part to the Covid-19 pandemic there has been a recent surge in package volume. This change in mail mix has increased cash flow but decreased contribution per revenue dollar, which directly impacts overall profitability.

- 2) *On the role of the PRC:* You mentioned in your paperwork that the PRC is working to increase its use of data in areas such as network optimization and understanding bottlenecks in the postal network. How are you using data to gain a better understanding of USPS costs and profitability or loss in each of its operation areas?

The Commission recently began a new data analytics division in the Office of Accountability and Compliance. This division will leverage Commission expertise, emerging data analytics trends and techniques, and Postal Service data to identify causation of noncompliance and approaches for addressing noncompliance issues. The division will also develop subject matter expertise in all areas of postal operations and the broader postal network to understand bottlenecks in the postal network.

The Postal Service accrues costs in separate cost segments, which generally correspond to major divisions in the Postal Service's chart of accounts. Identifying cost drivers that reflect the essential activity of each cost component determines the portion of attributable costs that vary with changes in volume ("volume variable cost"). Most cost segments contain multiple cost components.<sup>4</sup> Attributable costs calculated within each cost segment are distributed to products using distribution keys that reflect the underlying cost drivers. The Commission assesses the profitability of the product, group of products or mail class by comparing the revenue and the attributable costs.

Detailed analysis of individual cost segments helps the Commission understand profitability and loss by product and identify operational issues that the Postal Service should address. In the transportation cost segment, for example, it is possible to separately analyze costs from domestic air, highway, rail, and water transportation, as well as international transportation, using data

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<sup>4</sup> FY 2020 Financial Report (revised) at 81, available at <https://www.prc.gov/sites/default/files/reports/FY2020%20Financial%20Report%20%28REVISED%29.pdf>.

from the Cost and Revenue Analysis (CRA) Report.<sup>5</sup> A year-by-year comparison of the cost data at the component level or at an even more detailed level, for each transportation account, would illustrate the dynamics of costs in the referenced time period, and a deeper analysis would reveal the causes for the observed change. Understanding the causes of cost increases will also support further understanding of transportation issues that cause bottlenecks in the postal network. Similar analysis related to mail processing and delivery cost segments and components can highlight upstream and downstream issues that impact both costs and service performance.

In addition to performing cost and profitability analysis at the detail level, the Commission is increasing its use of data to better understand and further investigate the overall postal network. Specifically, with sufficient resources, the Commission would provide value by fully exploring the following areas:

- Service performance in “3-D”: by geographic location (postal area or district), by groups of products and by stage of service performance measurement (first mile, last mile and processing duration);
- Customer access (with the special focus on post office suspensions); and
- Issues specific to different types of delivery networks (regular city carrier, special purpose routes and rural carrier).

3) *On Postal Banking*: In September, the Postal Service quietly rolled out a pilot program that would expand its operations into consumer financing by offering gift cards for paychecks.

- a. Do you believe implementing this program was a violation of the Postal Accountability and Enhancement Act (PAEA), which prohibits the Postal Service from providing nonpostal services and requires the PRC to review any nonpostal service offered?

The Commission has not yet received or reviewed information on the pilot program. The Commission has rules against *ex parte* communication that prohibit Commissioners and staff from opining on the legality of a matter that is before the Commission or likely to come before the Commission. It would be premature and a violation of these rules, then, for me to offer an opinion on the legality of the pilot program. I can, however, address the statutory and regulatory framework in which the USPS’s current gift card sales operate.

Requests to create a new product are reviewed pursuant to 39 U.S.C. § 3642. A product is defined by 39 U.S.C. § 102(6) as a “postal service” and under 39 U.S.C. § 3642, must be determined by the Commission to be either Market Dominant or Competitive and placed on the applicable product list. After the 2006 passage of the Postal Accountability and Enhancement Act, the Postal Service was precluded from offering new nonpostal services and thus only a

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<sup>5</sup> See Summary Description, Costs by Segments and Components, FY 2020, and Narrative Explanation, Econometric Demand Equations for Market Dominant Products Filed on January 20, 2021, July 1, 2021, (FY 2020 Summary Description), ZIP file “Summary Description,” file “CS14-20.docx,” at <https://www.prc.gov/dockets/daily?filterdate%5Bvalue%5D%5Bdate%5D=7-1-2021>.

postal service as defined by 39 U.S.C. § 102(5) can be added as a new product. 39 U.S.C. § 404(e)(1), (2). “Postal service” is defined in 39 U.S.C. § 102(5) as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.”

If a new product meets applicable requirements, it is placed in the Mail Classification Schedule, a document the Commission keeps updated on its website that outlines the perimeters of each Postal Service offering as approved by the Commission. The Mail Classification Schedule can be viewed on the Commission’s website at <https://www.prc.gov/mail-classification-schedule>.

The Commission previously reviewed the Postal Service’s offering of gift cards in two related cases in 2011 and 2014, prior to the start of my service with the Commission. In Docket No. MT2011-2, the Postal Service proposed to offer gift cards as a market test of an experimental product under 39 U.S.C. § 3641.<sup>6</sup> Under 39 U.S.C. § 3641, the Postal Service can offer products on an experimental basis prior to making them a permanent offering if certain requirements are met. One of the primary issues in that case was whether gift cards were a postal service within the definition of postal service provided in 39 U.S.C. § 102(5) (“the delivery of letters, printed matter, or mailable packages, including acceptance collection, sorting, transportation, or other functions ancillary thereto”) or subject to 39 U.S.C. § 404(e)(2)’s prohibition on new nonpostal services.<sup>7</sup> In authorizing the gifts cards market test, the Commission concluded that gifts cards could be considered a postal service because they were reasonably comparable to existing postal services, money orders and greeting cards, and were likely to be mailed. Order No. 721 at 8-9, 11. To confirm this preliminary finding, the Commission required the Postal Service to gather information on the nature and uses of the gift cards purchased during the market test to determine whether the sale of gift cards ultimately could continue to be characterized as a postal service.<sup>8</sup> at 8, 11.

Following the mandatory conclusion of its market test, the Postal Service filed a request in Docket No. MC2014-26 for the Commission to add gift cards as a price category in the renamed Greeting Cards, Gifts Cards, and Stationery product on the competitive product list.<sup>9</sup> In Order No. 2145, the Commission authorized the Postal Service to sell gift cards as a competitive postal service within the Greeting Cards, Gifts Cards, and Stationery product.<sup>9</sup> In that order, the Commission cited the data gathered in Docket No. MT2011-2 and found that gift cards were likely to be mailed. Order No. 2145 at 12. Thus, the Commission concluded that the sale of gift cards is

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<sup>6</sup> Docket No. MT2011-2, Notice of the United States Postal Service of Market Test of Experimental Product - Gift Cards, January 5, 2011, at 1.

<sup>7</sup> Docket No. MT2011-2, Order Authorizing Gift Card Market Test, April 28, 2011, at 6 (Order No. 721).

<sup>8</sup> Docket No. MC2014-26, Request of the United States Postal Service to Add Gift Cards as a New Price Category in the Greeting Cards and Stationery Product, June 9, 2014, at 1-2.

<sup>9</sup> Docket No. MC2014-26, Order Granting Request to Add Gift Cards to the Competitive Product List, August 8, 2014, at 2 (Order No. 2145).

ancillary to the delivery of letters and mailable packages and therefore is a postal service.*Id.* at 13.

The description of the Greeting Cards, Gift Cards, and Stationery product can be found in section 2610.1 of the Mail Classification Schedule. The Mail Classification Schedule states that "Gift Cards include cards with stored value that can be used for the purchase of goods and services" and lists the prices for the two types of gift cards the Postal Service is authorized to sell in section 2610.2. The Mail Classification Schedule does not specify any of the approved or required forms of payment for any postal product, including the Greeting Cards, Gift Cards, and Stationery product. In addition, the orders issued by the Commission in Docket Nos. MT2011-2 and MC2014-26 did not consider the forms of payment for gift cards.

b. Did the PRC review this decision, and if so, what was its ruling?

The Commission had not reviewed the pilot program nor had the USPS asked the Commission to review the pilot program as of the last day of the 'hold over period' of my first term as Commissioner. I would encourage the Commission to review the pilot program during its annual compliance review process or through another appropriate process.

As explained in response to part a., the Commission did review the Postal Service's request to offer gift cards, first as an experimental product and later as an offering within the Greeting Cards, Gifts Cards, and Stationery product, in Docket Nos. MT2011-2 and MC2014-26. As described in response to part a, the Commission determined gift cards were an ancillary postal service in accordance with 39 U.S.C. § 102(5) in those dockets. The Commission did not in those cases, and has not in other cases, reviewed or ruled on payment methods for Postal Service product offerings.

c. As Chairman of the PRC, how does providing banking services uphold the Postal Service's mission to provide the nation with reliable, affordable, universal mail service?

The Postal Service's mission is established by law, and the Postal Service is currently not authorized under the law to offer banking services, broadly speaking. It is generally acknowledged that banking services, such as savings accounts, would require Congressional authorization to be offered. If Congress were to authorize the Postal Service to offer banking services, I would look to statute and Congressional intent in determining how such services fit within the Postal Service's mission and universal service obligation.

**Senator Rick Scott  
Post-Hearing Questions for the Record  
Submitted to Michael Kubayanda**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

1. The Postal Regulatory Commission’s primary responsibility is to ensure the Postal Service meets its statutory obligations, with a focus on service, pricing, and costs.

The Postal Service has reported that it does not attribute over 44% of its costs to any product. Why does the Postal Service have any costs not attributed to a product? How can the Commission confirm that any postal service is profitable when over \$35 billion in costs are not accounted for?

The standard for attributing costs to a product is established by law, and the Commission follows the law on this matter. As defined by the Postal Accountability and Enhancement Act of 2006 (PAEA), costs may be attributed to a product only if there is a “reliably identified causal relationship[]” between the cost and the provision of the product(s) at issue. 39 U.S.C. § 3631(b). Costs that are not attributed to products, however, are accounted for under postal costing regulations.

All costs that are not attributed to specific products or groups of products, due to there being no reliably identified causal relationship between the costs and any specific product or group of products, are “institutional costs.”<sup>1</sup> The postal sector is a network industry with a large amount of fixed and common costs associated with providing the network and the personnel necessary to process and deliver postal products. *Id.* at 80-95. That network is a necessary antecedent to the Postal Service being able to offer postal products, but no single product or group of products is responsible for those network costs; rather, they are collectively incurred by the Postal Service as a whole. *Id.*

Recovering those network costs is a matter of pricing. The costs that are attributable to specific postal products or groups of products are used to calculate the applicable price floors, and the Postal Service must then set prices for each product above those price floors such that in the aggregate, the Postal Service is able to recover the institutional costs associated with the postal network. *Id.* at 22-24, 34-35.

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<sup>1</sup> See Postal Regulatory Commission, Docket Nos. RM2017-1 & RM2022-2, Supplemental Notice of Proposed Rulemaking and Order Initiating the Third Review of the Institutional Cost Contribution Requirement for Competitive Products, November 18, 2021, at 72-97 (Order No. 6043).



For Market Dominant products, the Postal Service's ability to raise prices is constrained by a price cap and associated regulations intended to protect Market Dominant mailers from excessive price increases, given that the Postal Service faces little to no direct competition in offering those products. *See* 39 U.S.C. § 3622(d)(1)(A); 39 CFR part 3030.<sup>2</sup>

For Competitive products, which the Postal Service does compete with private sector firms in offering, the Postal Service by law has more flexibility to set prices.<sup>3</sup> However, the PAEA requires the Commission to set three price floors to govern prices for Competitive products. First, Market Dominant products may not subsidize Competitive products; effectively this means that the Commission must ensure that Competitive products collectively recover all of the costs that they cause. 39 U.S.C. § 3633(a)(1). Second, each Competitive product must recover its attributable costs. 39 U.S.C. § 3633(a)(2). Third, prices for Competitive products collectively must be set sufficient to recover what the Commission determines to be an "appropriate share" of the Postal Service's institutional costs. 39 U.S.C. § 3633(a)(3). Historically, that "appropriate share" was set at 5.5 percent of institutional costs, which was based on Competitive products' historic contribution to institutional costs at the time the PAEA was enacted. Order No. 6043 at 103.

In the order released on November 18th of this year, the Commission proposes to implement a dynamic formula-based approach to calculating the appropriate share, which would adjust the requirement annually based on annual changes in the Postal Service's market power and market position. Order No. 6043 at 98-105. Under that proposal, the FY 2022 appropriate share requirement would increase to approximately 10 percent of institutional costs. *Id.* at 106. That figure is significant, given that Competitive products accounted for 5.5 percent of total mail volume in FY 2020. *Id.* at 116.

However, the Postal Service has always exceeded the appropriate share requirement, often by a large amount. *Id.* at 10. In FY 2020, for instance, the most recent year for which the Commission has reported figures, Competitive products' contribution to the Postal Service's institutional costs was approximately 31 percent.<sup>4</sup> This largely reflects the fact that the Postal Service must, by necessity, seek to maximize revenue from Competitive products in order to cover institutional costs, since it is limited in its ability to increase prices for Market Dominant products. *Id.* at 60, 92-94. Even with Competitive products, however, the Postal Service is limited in its ability to increase prices by what the market will bear. *Id.* at 34-35.

In sum, under the PAEA each postal product or group of products is required to recover the costs attributable to it, which the Commission verifies each year as part of its statutorily-mandated Annual Compliance Determination. *See* 39 U.S.C. § 3653(b)(1). For Competitive products that fail to recover their product or group-level attributable costs, the Commission generally requires the Postal Service to either take remedial action or discontinue the product. *Id.* at 48 n.72. The existence of certain Market Dominant products that fail to cover their attributable costs has been a long-running problem, primarily due to the constraints associated with the price cap. Order No. 5763 at 181-183, 189-191.

<sup>2</sup> *Id.*; *see also* Postal Regulatory Commission, Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2021 (Order No. 5763).

<sup>3</sup> Order No. 6043 at 34; *see also generally* 39 U.S.C. § 3633.

<sup>4</sup> *See* Postal Regulatory Commission, Docket No. ACR2020, Annual Compliance Determination Report, FY 2020, March 29, 2021, at 92.

For the institutional costs associated with the postal network but not with any individual product or group of products, the Postal Service sets product prices to attempt to recover these costs. *Id.* at 22-24, 34-35. In theory, those prices should be sufficient to enable the recovery of all institutional costs. In practice, for a variety of reasons, including Market Dominant volume declines, the constraints associated with the price cap on Market Dominant products, and the state of competition in the parcel delivery market (which limits price increases for Competitive products), the Postal Service has had difficulty recovering all of its costs, including its institutional costs, in recent years. *Id.* at 34-35. That does not mean, however, that individual products or groups of products are not profitable. As long as a product recovers its attributable costs, it is considered profitable. Any amount of revenue that it is capable of generating in excess of its attributable costs contributes to covering the Postal Service's institutional costs.

- Please list all the “attributable costs”
- Please list all the “institutional costs”.
- Why are “institutional costs” increasing?

Postal costs are traced to the mail products using activity-based costing in which costs are grouped by cost activity rather than by product. To achieve this, postal costs are first divided into different cost segments, representing different functions that the Postal Service performs, ranging from transportation costs, to the cost of supplies, and employee benefits. The Postal Service's cost segments consist of partly attributable costs and partly institutional costs. Because cost segments include a mix of attributable and institutional costs, it is not possible to produce comprehensive lists of costs that are strictly attributable or institutional. Commission-approved costing methodologies are used to identify the causal relationships between postal costs and individual products or groups of products. All costs that have a reliably identified causal relationship to products or groups of products are attributed to those products or groups of products. Other remaining costs are classified as institutional. Therefore, any increase (or decrease) in cost attribution causes a corresponding decrease (or increase) in institutional costs. For an in-depth discussion of postal costing developed under the PAEA – Present, see Order No. 6403 at page 22, Order 6403.

In addition, the Commission analyzes the changes in attributable and institutional costs each year as part of its annual compliance review process. The most recent analysis appears in the Commission's FY 2020 Financial Analysis of United States Postal Service Financial Results and 10-K Statement at pages 80-98.

A significant portion of the increase in total institutional costs is related to the PAEA requirement that the Postal Service fund the liability for retiree health benefits under a 10-year schedule that averaged almost \$5.6 billion per year. These costs are divided into a “current year” amount, which has the same variability as total labor costs, and a “prior year” amount classified as institutional cost. In FY 2017, the supplemental contribution to the Civil Service Retirement System and Federal Employees Retirement System was added to institutional cost.

Institutional cost is primarily driven by accruals for retirement related expenses, workers' compensation, and delivery network costs. Therefore, institutional cost will increase or decrease depending on changes to retirement obligations (initiated by OPM), interest rate fluctuations that

impact the workers' compensation liability, and increases in delivery points or changes due to restructuring routes. The largest drivers of the changes have been workers' compensation and annuitant health benefits accounting adjustments, rather than changes in operational costs. Over time, the institutional cost of city and rural carriers has generally increased in a manner consistent with the steady increase in the number of delivery points.

Institutional costs contain some discrete fixed costs that are easily identifiable, although they make up only a small portion of the Postal Service's institutional costs. For example, Cost Segment 17—Research and Development includes costs that relate to materials, equipment, and contract services relating to research and development, and Cost Segment 7—City Delivery Carriers, Street Activity includes costs from cost component 54 (Network Travel) which are the costs associated with the time spent traveling between delivery sections or certain pick-up and drop-off points for Special Purpose Routes.

2. The Court of Appeals, D.C. Circuit remanded its Appropriate Share Decision back to the Commission in April 2020.
  - What has the Commission done with the case since the remand?
  - If nothing has been done, when will the Commission take up the matters remanded from the Court?
  - Please provide a timeline.

The Commission issued a Supplemental Notice of Proposed Rulemaking on November 18, 2021, addressing the issues identified in the D.C. Circuit's remand decision and re-proposing a dynamic formula-based approach to calculating the appropriate share.<sup>5</sup> Comments concerning the Supplemental Notice are due February 25, 2022 and reply comments are due March 25, 2022. *Id.*

3. The Postal Service lost \$4.9 billion in 2021.
  - How can the Commission continue to certify that the USPS meets the requirements of postal law, when the law says the USPS must be self-sustaining?

The Commission is required, as part of its statutorily-mandated Annual Compliance Determination, to determine "whether any rates or fees...were not in compliance with applicable provisions of [Chapter 36 of Title 39 of the United States Code] (or regulations promulgated thereunder)[.]" 39 U.S.C. § 3653(b)(1). The Commission does this each year. Title 39 establishes a framework for a postal ratemaking system that aspires to cover all of the Postal Service's costs, but Title 39 also requires the Postal Service's financial stability to be balanced against other

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<sup>5</sup> See Postal Regulatory Commission, Docket Nos. RM2017-1 and RM2022-2, Supplemental Notice of Proposed Rulemaking and Order Initiating the Third Review of the Institutional Cost Contribution Requirement for Competitive Products, November 18, 2021 (Order No. 6043).

statutory objectives, such as rate stability, service quality, and the provision of universal service.<sup>6</sup> These varying objectives sometimes conflict, and in recent years the Postal Service has struggled to balance all of these various objectives while at the same time covering all of its costs. The Commission provides its annual in-depth analysis of the Postal Service's financial statements each fiscal year; the most recent analysis covering FY 2020 is available at: [https://www.prc.gov/sites/default/files/reports/FY2020 Financial Report %28REVISED%29.pdf](https://www.prc.gov/sites/default/files/reports/FY2020%20Financial%20Report%28REVISED%29.pdf).

From the 1970 Postal Reorganization Act until the 2006 PAEA, the Postal Service was required by law to break even, and the resulting system of price regulation implemented this requirement through "cost-of-service" regulation. Under cost-of-service regulation, the Postal Service would submit to the Commission its projected costs over the succeeding years, and then would charge prices to match those costs, while stakeholders would litigate before the Commission which products were driving the costs and which products should bear price increases. Because of complaints that this system was overly litigious, and concerns that it did not provide enough incentives for efficiency, the cost-of-service system was eliminated in the PAEA.

In its place, the PAEA created a price cap, a system that limited annual Market Dominant rate increases generally to the rate of inflation (as measured by the annual percentage change in the CPI-U). The PAEA required the Commission to oversee this cap-based ratemaking system, and implement rules that met certain objectives and factors. While one of the objectives is financial stability, each product is still required to cover its attributable costs, and Competitive products as a whole must cover attributable costs, *under the PAEA net cost coverage for the Postal Service as a whole is not mandatory*. In fact, under this framework the Postal Service essentially had little chance to cover costs through pricing its Market Dominant products, as (after having covered its costs for decades under the previous system) it began to lose significant sums of money almost immediately after the cap went into place.

In recent years, the Commission has exercised its authority in in order to address these financial shortfalls. The PAEA required the Commission to review the performance of the ratemaking system after 10 years, and if necessary, make changes to better achieve the objectives of the law. In 2017, the Commission's 10-year review found that with billions of dollars of annual losses, the existing system was not meeting the objectives of the law, particularly financial stability. In 2020, the Commission issued a final rule that better meets the objectives of the PAEA. *See* Order No. 5763 at 37. The final rule created additional rate authorities "targeted to 'costs that are outside of the Postal Service's control': declines in mail density and statutorily mandated retirement payments."<sup>7</sup> The "density factor and retirement factor built on comments received during the rulemaking, which in turn relied heavily on research by the Postal Service Office of Inspector General identifying a decline in density as a threat to the financial stability of the postal system, along with the inflexibility of the CPI-only price cap for addressing retirement costs. The Postal Service increased rates for its Market Dominant products to the extent allowed by the Commission's modified system, effective October 1, 2021."<sup>8</sup>

<sup>6</sup> *See* 39 U.S.C. § 3622(b). For a discussion of legal requirements with respect to universal service, *see* Postal Regulatory Commission, Report on Universal Postal Service and the Postal Monopoly, December 19, 2008.

<sup>7</sup> *Nat'l Postal Policy Council v. Postal Reg. Comm'n*, 2021 WL 5263954, \*3 (quoting Order No. 5763 at 12), (D.C. Cir. Nov. 12, 2021).

<sup>8</sup> R2021-2, Order No. 5937, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, July 19, 2021.

As modified by the Commission, the updated ratemaking system will put the Postal Service in a much better position to potentially cover its costs: the Postal Service projects it will raise an additional \$44 billion over ten years due to Commission regulatory actions allowing price flexibility for Market Dominant products.<sup>9</sup> In sum, the Commission's modifications to the ratemaking system made the system more rational as it allows the Postal Service to better cover its costs, while still respecting the decision by Congress to move away from cost-of-service regulation in the PAEA.

Additionally, the Postal Service instituted a temporary increase for its Competitive products (effective October 3 through December 26, 2021) and has proposed a permanent rate adjustment to take effect January 9, 2022.<sup>10</sup>

- What are you doing to ensure costs are properly attributed and taxpayers are not subsidizing US postal service package delivery?

Pursuant to 39 U.S.C. § 3653, as part of each Annual Compliance Determination (ACD), most recently issued for fiscal year (FY) 2020 on March 29, 2021, the Commission determines whether any rates or fees in effect during the previous FY were not in compliance with the three requirements of 39 U.S.C. § 3633(a). This evaluation ensures that Competitive products (which comprise the vast majority of parcels) are not subsidized by Market Dominant products.

First, 39 U.S.C. § 3633(a)(1) prohibits cross-subsidization of the Postal Service's Competitive products by its Market Dominant products. In each ACD since FY 2008, the Commission found that Competitive products were not subsidized by Market Dominant products, and therefore that the Postal Service complied with 39 U.S.C. § 3633(a)(1). For FY 2007 (the first year subjected to annual compliance review), the Commission could not determine compliance with section 3633(a)(1) due to lack of available data.

Second, 39 U.S.C. § 3633(a)(2) requires that each Postal Service Competitive product cover its attributable costs. In each ACD since FY 2007, the Commission has identified each product that failed to cover its attributable costs.

Third, 39 U.S.C. § 3633(a)(3) requires that the Postal Service's Competitive products collectively cover a Commission-determined appropriate share of the Postal Service's institutional costs. In each ACD since FY 2007, the Commission has determined that the Postal Service complied with section 3633(a)(3). Since FY 2007, the appropriate share has been set at 5.5 percent. In each fiscal year since 2007, Competitive products have collectively contributed over 5.5 percent to cover the Postal Service's institutional costs. The Commission has proposed regulations that would implement a dynamic formula-based approach to calculating the appropriate share, which would adjust the requirement annually based on annual changes in the Postal Service's market power and market position. Order No. 6043 at 98-105. Under that

<sup>9</sup> *Delivering for America Plan*, p. 5 [https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS\\_Delivering-For-America.pdf](https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf).

<sup>10</sup> CP2021-127 Order No. 5973 - Order Approving Price Adjustments for Domestic Competitive Products, August 31, 2021; CP2022-22 USPS Notice of Changes in Rates of General Applicability for Competitive Products, November 10, 2021.

proposal, the FY 2022 appropriate share requirement would increase to approximately 10 percent of institutional costs. *Id.* at 106.

In terms of the scope of attribution, the Commission has multiple ways to evaluate new methodologies that would enable the attribution of more costs to specific postal products or groups of products. The Commission's rules allow any interested party to petition the Commission to initiate proceedings to consider proposals to change an accepted analytical principle. *See* 39 CFR 3050.11(a). The Commission may also initiate such proceedings *sua sponte*. *Id.* These proceedings, which are filed in rulemaking dockets, are intended to improve the quality, accuracy, or completeness of data or data analysis in the reports the Postal Service submits each year to the Commission. *Id.* The Commission has long encouraged interested parties to bring such issues to the Commission's attention. Known in the industry as "carwashes," these proceedings to update analytical principles are a well-established way for stakeholders and the Commission to continually look for opportunities to improve costing methodologies. Additionally, the Commission recently initiated a new rulemaking to identify priorities for future data collection and analytical work relating to the Postal Service's periodic reports in order to develop an inventory of data collection and analysis needs, comprehensively evaluate those needs, and devise a plan for meeting those needs with input from any interested persons.<sup>11</sup>

As another example, the Commission substantially expanded cost attribution in 2016 in response to a petition from UPS.<sup>12</sup> In Docket No. RM2016-2, UPS proposed that the inframarginal costs of a particular activity should be apportioned among products based on the Postal Service's distribution keys, *i.e.*, its estimates of the proportion of the number of units of each activity's cost driver (such as cubic-foot-miles for highway transportation) that are used to calculate volume-variable costs. The Commission rejected UPS's overall proposal, finding that it relied on an unreasonable assumption to quantify and distribute all of the costs in question and attempted to attribute costs to products that did not bear a reliably identified causal relationship to those products. *See* Order No. 3506 at 56. However, the Commission in reviewing UPS's proposal determined that some of the costs identified by UPS could be reliably identified and linked to specific products or groups of products. Order No. 3506 at 61-62. The Commission accordingly updated its cost attribution methodology to incorporate these costs. *Id.* The Commission adopted final rules formalizing this requirement in a separate rulemaking proceeding.<sup>13</sup>

It is important to note my approach to public service, regulation, and analytical rigor. I strongly believe that a government agency must strive for continuous improvement. Therefore, it is unacceptable to maintain major rules and principles solely through bureaucratic inertia. This belief has informed my focus on open data and data analytics, as well as a commitment to leveraging the Commission's existing vehicles for improvement, such as the proceedings to update analytical principles.

<sup>11</sup> Docket No. RM2022-1, Notice and Order of Proposed Rulemaking on Periodic Reporting, October 8, 2021 (Order No. 6004).

<sup>12</sup> *See* Postal Regulatory Commission, Docket No. RM2016-2, Order Concerning United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Updated October 19, 2016).

<sup>13</sup> Docket No. RM2016-13, Order Adopting Final Rules on Changes Concerning Attributable Costing, December 1, 2016 (Order No. 3641).

As the Commission grows more sophisticated in harnessing and analyzing data, that data will provide opportunities to constantly evaluate our approach to a number of issues, including the identification and allocation of costs. In addition, by making data available in accessible formats, stakeholders will have access to data held by the Commission and will be able to provide stronger inputs into the Commission's work.

- Do you believe USPS is properly covering its costs in accordance with the law?

Over the years, the Commission has identified some Market Dominant products for which the Postal Service has failed to meet the cost coverage requirements of the law, notably periodicals and other flat shaped mail. The Commission has reported on an annual basis on all products that failed to cover their attributable costs in the ACD. In the 2020 ACD, the Commission identified nine Market Dominant products that failed to cover attributable costs for the fiscal year.<sup>14</sup>

While Competitive products as a whole covered their attributable costs and contributed an appropriate share to institutional costs, the Commission also identified four individual Competitive products, which did not cover their attributable costs in 2020.<sup>15</sup>

For these products, the Commission directs the Postal Service to bring cost coverage into compliance, and the Commission's modification to the system of price regulation will improve the Postal Service's ability to bring the Market Dominant products into compliance.

- Why haven't you done a third party audit of the USPS to ensure that it's properly pricing its mail/package and properly accounting for all costs?

This sort of independent audit authority has been provided to the Postal Service's Office of Inspector General, and the Postal Service contracts with outside auditors as described below. The Commission does, on an independent basis, provide oversight over the finances of Postal Service, including review of the audited financial results, with respect to compliance with Title 39. The Commission's staff is the driving force supporting its mission to ensure transparency and accountability of the Postal Service. The Commission's staff ensures the Postal Service complies with the law, in areas including postal rates, product offerings, service quality, the letter monopoly, and fair competition. Throughout my time at the Commission, I have done everything in my power to enhance the Commission's talent. However, this has been challenging with the Commission's modest budget that funds only 74 staff, which is insufficient to complete the necessary work of the Commission as the sector goes through significant changes.

My first hire as a commissioner was a University of Chicago trained economist who immediately brought a well-tailored skill set for the work done by the Commission. She is a seasoned professional with finance expertise in both the public and private sector, and I hired her as my personal financial and economic advisor, elevating her to the role of the Commission's Chief of

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<sup>14</sup> ACD, Chapter III, pp. 20 - 66.

<sup>15</sup> ACD, Chapter IV, pp. 68-84.

Staff when I was named Chairman. While I was a commissioner, she helped me conduct a systematic and structured review of the Commission's approach to financial modeling.

Before and after being designated Chairman, I have assisted in recruiting additional experienced and dynamic career staff to the agency who ensure proper Postal Service pricing and accounting as part of their everyday jobs. The highly trained and expert career staff at the Commission produce the ACD every year where they review the Postal Service's performance, fulfilling the Commission's responsibility to produce an annual assessment of Postal Service rates and service mandated by Title 39, § 3653, of the United States Code. The ACD focuses on compliance issues as defined in 39 U.S.C. §§ 3653(b)(1) and (b)(2). These statutory subsections require the Commission to make determinations on whether any rates and fees in effect during each fiscal year were not in compliance with chapter 36 of Title 39 of the United States Code and whether any service standards in effect during a fiscal year were not met. The Commission's review in the latest FY 2020 ACD is based on the rates approved in Docket No. R2020-1 and all the rates in effect during FY 2020 for Competitive products.

Per Title 39 § 2008, the Postal Service contracts with an outside auditor, Ernst & Young LLP, which reviews the Postal Service's controls over financial reporting, as reported in the Postal Service Form 10-K. The Commission develops an annual Financial Analysis of the Postal Service Financial results and 10-K Statement which provides an in-depth analysis of the Postal Service's financial performance primarily using information reported in its Form 10-K measured against the previous fiscal year and its Integrated Financial Plan. Additionally, data filed with the Annual Compliance Report, such as the Cost and Revenue Analysis report, the Cost Segments and Components report, and the Revenue, Pieces, and Weight report, are utilized in developing this report.

The Postal Service is also overseen by its Office of Inspector General. Their audits and reviews are designed to protect assets and revenue and are in compliance with standards published by the Comptroller General of the United States, the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Institute of Internal Auditors, and the Council of the Inspectors General on Integrity and Efficiency.

As described above in the answer to question 1 and in this answer, the Commission follows Title 39's standards for accounting for attributable costs and institutional costs. The costing system has been vetted numerous times over the years. First, through the PRA costing methodology whereby interested parties weighed in, and now through the "carwash" process. The system and the Commission's authority over it have also been upheld in court. The Commission reviews and reports on the compliance with the law, including cost coverage issues, in the ACD and the Financial Analysis report.



Hearing before the U.S. Senate Committee on Homeland Security and Governmental Affairs

**Ms. Laurel Blatchford**  
**Nominee to be Controller, Office of Federal Financial Management, Office of Management and Budget**  
**November 18, 2021**

Chairman Peters, Ranking Member Portman and Members of the Committee,

Thank you for the opportunity to appear before you today as President Biden's nominee for Controller, Office of Federal Financial Management, in the Office of Management and Budget.

I am humbled to have been nominated for this important role and would be deeply honored to have the chance to serve the American people if confirmed. I am joined here today by my husband, Bernie Kluger. I am very grateful for his unwavering love and support over the years. And I know that other members of my family are watching as well, along with many dear friends and colleagues. I thank them all for their support and love.

I sit before you today because I am, at heart, a public servant. This calling comes directly from my parents: my father, Edward Blatchford, was an accomplished teacher and school administrator whose leadership and vision impacted the lives of many kids and their families. My mother, Claire, is also an educator and community leader who has shared the challenges and blessings of her own lived experience as a deaf woman to help others in countless ways. Their lives of purpose and service have had incredible impact on those around them, and I am deeply grateful for their example.

I started my own public service career as a young paralegal in the Manhattan District Attorney's Office, investigating organized crime. Since then, my path has taken me from the New York City Mayor's office, to a leadership role in the largest local affordable housing and community development agency in the country, to serving as Chief of Staff at HUD and as Executive Director of the Hurricane Sandy Task force, to continued service in the nonprofit world, where I served as President of Enterprise Community Partners, one of the nation's largest affordable housing intermediaries. Along the way, I have had the honor of working on a wide range of issues including 9/11 recovery, our ongoing affordable housing crisis, the many challenges facing HUD, and recovery from natural disasters including Hurricane Katrina, Superstorm Sandy and more recent storms and wildfires.

Across these different roles, one clear lesson has shone through: no matter how brilliant the idea, or how much money we were able to invest, the success of every project I have ever been involved with has depended on *how* the work is done. I have seen time and time again that strong implementation – with transparency, with efficiency, with consistency, and with strong partnerships – is essential to success, especially in the public sector. Great ideas without great execution are not enough.

If confirmed as Controller, I would bring my track record of delivering results to the unique challenges and opportunities we are facing as a country. Just as I have done before, I am eager to serve and bring my energies and capabilities to ensuring that the Federal Government works effectively and efficiently for the American people, and specifically that our considerable financial resources are deployed, tracked, and spent as well as possible.

I would be especially excited to serve alongside the talented and hardworking political and career staff at the Office of Management and Budget, some of whom I got to know during my prior federal service. If

confirmed, I would be honored to join this team, to lead OFFM, and to work closely with leaders across the federal family and with Congress to ensure that we accomplish our shared goals.

Thank you for the chance to appear before you today, and I look forward to your questions.

REDACTED

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Controller, Office of Federal Financial Management Office of Management and Budget	October 27, 2021

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Laurel	Anne	Blatchford	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 614 F Street NE		
<u>City:</u> Washington	<u>State:</u> DC	<u>Zip:</u> 20002	<u>City:</u> Washington	<u>State:</u> DC	<u>Zip:</u> 20002

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	C h e c k i f M a i d e n a	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)

				<b>m</b> <b>c</b>		
<b>None</b>					<b>Est</b> <input type="checkbox"/>	<b>Est</b> <input type="checkbox"/>
					<b>Est</b> <input type="checkbox"/>	<b>Est</b> <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1972	Syosset, New York

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Bernhard	Sigmund	Kluger	

<i>Spouse's Other Names Used (current spouse only)</i>					
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
				<div> <div>C</div> <div>h</div> <div>e</div> <div>c</div> <div>k</div> <div>if</div> <div>M</div> <div>a</div> <div>i</div> <div>d</div> <div>s</div> <div>e</div> <div>n</div> <div>s</div> </div>	

None					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

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

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Williams College	College	September 1990	June 1994	BA	June 1994
Harvard University, Harvard Kennedy School	University	September 1998	June 2000	MPP	June 2000

		Est □	Est Present □ □		
1992	1992	Est □	Est Present □ □		

### 3. Employment

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

<b>Type of Employment</b> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<b>Name of Your Employer/Assigned Duty Station</b>	<b>Most Recent Position Title/Rank</b>	<b>Location</b> (City and State only)	<b>Date Employment Began</b> (month/year) (check box if estimate)	<b>Date Employment Ended</b> (month/year) (check box if estimate) (check "present" box if still employed)
Non-government employment	LEAD, USA	Student coordinator	Williams town MA	Jan 1992 (est)	May 1994 (est)
State/local government	Manhattan District Attorney's Office	Analyst and paralegal	New York, NY	June 1994	June 1996
Non-government employment	Temp agency	Paralegal	New York, NY	June 1996	August 1996
State/local government	New York City Public Advocate	Special Assistant	New York, NY	August 1996	June 1998
Non-government employment	Harvard Kennedy School	Research Assistant	Cambridge, MA	Fall 1998 (est)	Spring 2000 (est)
State/local government	New York State Attorney General's Office	Summer intern	New York, NY	June 1999	August 1999
Non-government employment	Alliance for Downtown New York	Director of economic development	New York, NY	August 2000	January 2002
State/local government	Office of the New York City Mayor	Senior policy advisor	New York, NY	January 2002	April 2004
State/local government	NYC Department of Housing Preservation and Development	Chief of Staff, Deputy Commissioner	New York, NY	April 2004	March 2008
Non-government employment	General Growth Properties Inc	VP for Development	New York, NY	March 2008	Jan 2009
Federal government	US Department of Housing and Urban Development	Chief of Staff	Washington DC	Jan 2009	December 2013



Non-government employment	Enterprise Community Partners	SVP, Solutions (2014-2018) President (2018-2020)	Washington, DC	Jan 2014	February 2020
Non-government employment	Uplook Advisors, LLC	Principal and founder	Washington, DC	Jan 2020	Present
Non-government employment	Blue Meridian Partners	Managing Director	Washington, DC	July 2020	Present

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

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
None		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>

#### 4. Potential Conflict of Interest

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

In connection with the nomination process, I have consulted with the Office of Management and Budget's Designated Agency Ethics Official, in consultation with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the agency's Designated Agency Ethics Official and have provided to the Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any

**legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.**

While at Enterprise Community Partners, my responsibilities included leadership of our public policy/government relations team. The team developed an annual set of policy priorities and would focus its advocacy on those priorities. These priorities typically included advocating for funding for various housing and community development programs (LIHTC, HUD programs including CDBG and HOME, CDFI funding, and Section 4 funding), as well as advocacy for improvements and expansions to various programs, including the LIHTC program.

## **5. Honors and Awards**

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

Williams College – graduated cum laude (1994)

Secretary's Award for Meritorious Achievement – US Department of Housing and Urban Development (awarded in 2013)

## **6. Memberships**

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

- Member, Board of Governors, National Housing Conference (2016-present)
- Founding Co-Chair, Families in Partnership Association, Capitol Hill Day School (Spring 2021-present)
- Member and Co-Chair, WELL Homes Advisory, International Well Building Institute (Spring 2021-present)
- Member, Leadership Now Project (Jan 2020-present)
- Volunteer Chair, Policy; New Yorkers for Donovan Campaign (Jan 2020-June 2021)
- Co-Chair, Housing and Community Development Policy Committee, Biden for President (June 2020-November 2020)
- Member, 21<sup>st</sup> Century Government Policy Committee, Biden for President (June 2020-November 2020)
- Member, HUD/FHFA/Agency Review Team Biden-Harris Presidential Transition (November 2020-Jan 2021)
- Board Member, National Housing Trust (2015-2020)
- Board Member, Community Preservation Development Corporation (2017-2020)
- Advisory Board Member, American Flood Coalition (March 2021-present)

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

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

#### **7. Political Activity**

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

No

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


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

See list of activities above.

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

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

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Friends of Clyde Williams	\$250	2016

Hillary for America	\$250	8/13/16
	\$250	9/25/16
	\$375	10/15/16
	\$375	11/6/16
Brian Forde for Congress	\$250	12/6/17
	\$100	3/31/18
Gillibrand 2020 (via ActBlue)	\$100	3/31/19
Julian for the Future (via ActBlue)	\$100	3/31/19
Pete for America (via Act Blue)	\$100	3/31/19
Win the Era PAC	\$103.45	12/3/19
	\$100	1/12/20
Biden for President	\$2800	4/28/20
Conor Lamb for Congress (via House Swing State Fund)	\$250	10/5/20
Tom O'Halleran for Congress (via House Swing State Fund)	\$15	10/13/20
New Yorkers for Donovan	\$200	3/2/20
	\$750	1/9/21
John King	\$100	4/28/21

### 8. Publications and Speeches

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

See attached resume.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>

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

None

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


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

None

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


### 9. Criminal History

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

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?  
(Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)

No

- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

No



- Have you been charged, convicted, or sentenced of a crime in any court?  
No
- Have you been or are you currently on probation or parole?  
No
- Are you currently on trial or awaiting a trial on criminal charges?  
No
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?  
No

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

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

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: **Yes / No**

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: **Yes / No**

J) Were you incarcerated as a result of that sentence for not less than one year: **Yes / No**

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: **Yes / No**

N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

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

No

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

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

No

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


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

### 11. Breach of Professional Ethics

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

No

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

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

No

### 12. Tax Compliance

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

REDACTED

**13. Lobbying**

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

No

**14. Outside Positions**

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

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

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

#### 15. Agreements or Arrangements

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

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

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

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

#### **16. Additional Financial Data**

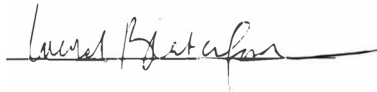
All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

REDACTED

SIGNATURE AND DATE

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



This 28 day of Oct, 20 21



**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



November 4, 2021

The Honorable Gary C. Peters  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Laurel Blatchford, who has been nominated by President Biden for the position of Controller, Office of Federal Financial Management, Office of Management and Budget.

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

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

Sincerely,

DAVID APOL

Digitally signed by DAVID  
APOL  
Date: 2021.11.04 15:28:20  
-0400

David J. Apol  
General Counsel

Enclosures **REDACTED**



October 22, 2021

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

Dear Ms. Adams:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Controller, Office of Federal Financial Management, Office of Management and Budget. It is my responsibility to understand and comply with commitments outlined in this agreement.

#### SECTION I – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program

regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state and local government.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

## SECTION 2 – RESIGNATIONS

Upon confirmation, I will resign from my positions with the following entities:

- Blue Meridian Partners
- Mt Adams LLC
- IIIB LLC
- National Housing Conference

Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

## SECTION 3 – UPLOOK ADVISORS, LLC

I am the sole owner of Uplook Advisors, LLC, a pass-through entity established to receive compensation for consulting services. Uplook Advisors, LLC has been dormant since January 2021. I am not owed any fees for services. During my appointment to the position of Controller, Uplook Advisors, LLC will remain dormant and will not advertise. I will not perform any services for the entity, except that I will comply with any requirements involving legal filings, taxes, and fees that are necessary to maintain the entity while it is in an inactive status. As Controller, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Uplook Advisors, LLC. In addition, pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

## SECTION 4 – FAMILY TRUST

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

## SECTION 5 – DIVESTITURES

As soon as practicable but not later than 90 days after my confirmation, I will divest my interests in the following entities:

- AbbVie, Inc.
- Albany International Corp.
- American Express Co.
- Amgen, Inc.
- Applied Materials, Inc.
- Aptiv PLC
- AT&T Inc.
- B&G Foods, Inc.
- Bristol-Myers Squibb
- Brixmor Property Group, Inc.
- Carrier Global Corporation
- CarMax, Inc.
- Chevron Corp.
- Cisco Systems, Inc.
- Clearway Energy, Inc.
- Compass Diversified
- Dow, Inc.
- Duke Energy Corp.
- Energy Transfer LP
- Enterprise Products Partners, L.P.
- Everest Re Group Ltd.
- Facebook, Inc.
- Fortress Transportation and Infrastructure Investors LLC
- Freeport-McMoRan, Inc.
- Fiserv, Inc.
- GXO Logistics, Inc.
- H&R Block, Inc.
- Hercules Capital, Inc.
- Intel Corp.
- International Business Machines Corp.

- Interpublic Group of Cos., Inc.
- Iron Mountain, Inc.
- Lumen Technologies, Inc.
- Magellan Midstream Partners, L.P.
- Marriott International, Inc.
- Materion Corp.
- Medical Properties Trust, Inc.
- Medtronic PLC
- MGM Resorts International
- MGM Growth Properties LLC
- National Retail Properties, Inc.
- Navient Corp.
- New York Community Bancorp, Inc.
- NextEra Energy Inc.
- Northrop Grumman Corp.
- Palo Alto Networks, Inc.
- Pfizer Inc.
- PPL Corp.
- Regeneron Pharmaceuticals, Inc.
- Ross Stores, Inc.
- Sabra Health Care REIT, Inc.
- Sysco Corp.
- Teradyne, Inc.
- The Walt Disney Co.
- Thermo Fisher Scientific, Inc.
- Umpqua Holdings Corp.
- United Rentals, Inc.
- Unum Group
- VMWare, Inc.
- Verizon Communications, Inc.
- ViacomCBS Inc.
- Walgreens Boots Alliance, Inc.
- XPO Logistics, Inc.
- Zimmer Biomet Holdings, Inc.

With regard to each of these entities, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I have verified that I will be able to carry out the divestitures within the timeframe described above.

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture.

Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets. I understand that I must timely submit my request for a Certificate of Divestiture to allow for adequate time for OGE to process the Certificate of Divestiture, and in order to divest assets within the agreed upon timeframe.

I (including my spouse and dependent children if applicable) will not repurchase any asset I was required to divest without consulting with my agency ethics official and the U.S. Office of Government Ethics.

#### SECTION 6 – SPOUSAL EMPLOYMENT

My spouse is the sole owner of Public Insights Corp. LLC, a pass-through entity established to receive compensation for consulting services. Public Insights Corp. LLC has been dormant since March 2021. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Public Insights Corp. LLC, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, I also will not participate personally and substantially in any particular matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

#### SECTION 7 – PUBLIC POSTING

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

Sincerely,

  
Laurel Blatchford

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Laurel Blatchford to be  
Controller, Office of Federal Financial Management  
Office of Management and Budget**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be the next Controller, Office of Federal Financial Management (OFFM) at the Office of Management and Budget (OMB)?  
  
No.
2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.  
  
None.
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Administrator? If so, what are they, and to whom were the commitments made?  
  
No, I did not make any specific commitments to policies.
4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.  
  
No, I am not aware of any such conflicts, or the appearance of conflicts. If confirmed, I plan to step down from any/all positions of responsibility noted in my ethics agreement, including my current employer.
5. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained or contracted with regarding this nomination, including any amounts paid in fees or otherwise.  
  
None.

**II. Background of the Nominee**

6. Why do you want to serve as Controller?

There are two primary reasons I want to serve as Controller. First, I am a public servant and would consider it the honor of a lifetime to serve my country again as we begin to recover from the COVID-19 pandemic. Second, I know how essential good execution is to effective delivery and true impact. Throughout my career in government and in the nonprofit sector, I have seen again and again that no matter how great a plan or a program is, it won't make an impact if it is not well executed. OMB and OFFM play a central role in ensuring the effective, transparent, and efficient implementation and execution of the President's priorities, and I would be honored to lead OFFM as Controller and help support the implementation of so many important programs.

7. What specific background, experience, and attributes qualify you to be Controller?

My prior federal and local government experience, combined with my experience as a nonprofit executive working in communities across the country on a range of policy and program issues, have provided me with considerable tools and knowledge that would serve me well if confirmed.

Early in my career, I worked in New York City government on a range of issues including 9/11 recovery, efforts to support the city's economic revitalization, and on affordable housing preservation and development. This work brought me to Washington, where I served as Chief of Staff to the Secretary of the U.S. Department of Housing and Urban Development (HUD) and then as Executive Director of the Sandy Rebuilding Task Force. These experiences gave me working knowledge of federal budgeting and management systems, and gave me the opportunity to work closely with Congress and the oversight community.

Following my government service, I joined Enterprise Community Partners (ECP), a national affordable housing and community development nonprofit first as a senior vice president and then as president. My time at Enterprise further strengthened my management skills and gave me an appreciation of what it's like to be a federal grant recipient; our programmatic and policy work was funded by both federal grants as well as philanthropic dollars. More recently, my work at Blue Meridian Partners, a philanthropic organization focused on the economic and social mobility of children, has given me due diligence, investing and additional financial management experience.

I believe that my unique combination of experiences has prepared me well to serve as Controller if confirmed.

8. Please describe:  
a. Your leadership and management style.

I am a positive, resourceful and pragmatic leader who brings strong emotional and situational intelligence to every situation. I am transparent and inclusive. I make difficult decisions when needed and take the time to communicate the logic and reasoning behind those decisions. In every leadership role I've held, I've successfully earned and retained the trust of employees, collaborators and partners. Many of those who have joined my



teams in the past have remained valuable colleagues and friends, and quite a few have gone on to work with me again in new or different roles.

Teams are stronger when they can hold – and constructively debate – different points of view and opinions, and I believe that it is the responsibility of a good leader to cultivate an environment where people can share concerns and ideas as we collaborate together. I have a consistent track record of empowering those on my team, and deeply enjoy partnering with colleagues across the organization to achieve shared goals. And finally, I am data driven in my approach and always seek a deeper and more holistic understanding of how work is progressing through performance management and data tools.

b. Your experience managing personnel.

I have been a manager since my first job out of college, and over time have managed teams ranging in size from 2-3 people to 350 people while President and interim co-lead at Enterprise. In the federal government, I led a Chief of Staff team of approximately 50 people, and worked closely with a far larger number of our political and career leadership. As Executive Director of the Sandy Task Force, I led a team of 70 people.

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

As President of Enterprise Community Partners, I led a team of 250 professionals around the country. Between December 2018 and September 2019, I served as co-lead of the larger Enterprise family of companies. During this time, my management portfolio grew to include additional teams that totaled approximately 350 people.

9. 31 U.S.C. §504 requires that the President appoint a Controller who possesses “demonstrated ability and practical experience in accounting, financial management, and financial systems. . . .” Please describe your ability and specific experience in these areas.

As a seasoned leader in both the public and nonprofit sectors, I have had extensive practical experience managing budgets and financial systems. At HUD, I was responsible developing the agency’s annual budget submission and worked extensively with our leadership team on the implementation of new and existing programs once those annual budgets were appropriated. While Executive Director of the Sandy Task Force, I was responsible for the Task Force budget, and for setting up systems for guiding and tracking the \$60B Sandy spend across 17 agencies.

As President of Enterprise Community Partners, I had profit and loss responsibility for all of our programmatic and policy teams and worked closely with our CFO on all aspects of financial management including audits, annual financial statements, and the overall budgeting process. We undertook several successful enterprise-wide efforts including the transition to a new financial management software and improvements to our federal grant reporting process, which had some risks that we were able to partner with HUD to successfully mitigate.

10. The statute also requires that the Controller possess “extensive practical experience in financial management in large governmental or business entities.” Please describe your experience managing the finances of a large entity.

As noted above, I served as President of Enterprise Community Partners between 2018 and 2020. In the nonprofit context, our P&L was large: on average it was \$70M annually, with revenues that included federal grants and contracts (40%), philanthropic gifts (45%), and contributions from revenues earned by one of our subsidiaries, Enterprise Community Investment (15%). During this time, we implemented new reporting and compliance standards for our federal grants and contracts, developed and made the transition to a new financial management software system, and developed and implemented new reporting metrics including division and organization-wide KPIs.

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

Among my greatest successes as a leader was the creation of multiple high performing teams in different contexts ranging from New York City government to the Federal Government to the non-profit sector. For example, following the creation of the Sandy Task Force, I built a high performing interagency team within 6 weeks that was able to respond to state and local stakeholders as well as Congress effectively, as well as develop a new project management tool to coordinate and track spending. In addition, we successfully led an interagency process that resulted in 69 recommendations for improving the long-term recovery process, nearly all of which were implemented. We had 180 days to do our job, and we did it well – and I credit that to the people I was able to hire and the culture we collectively created.

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

When I first joined HUD as Chief of Staff, I was new to Washington and the federal government. It took me time to adjust to this new context after many years in New York City government, and one of the key lessons I quickly learned was the importance of working with Congress to build support for the Secretary’s housing priorities. While we had not needed to work as closely with the City Council in New York City, I soon realized we had real thought partners on the Hill who had important feedback and points of view about how programs should be funded, designed, and implemented. In addition, the relevant committee members and staff had a critical oversight role to play too.

This experience taught me that it is essential to work closely with partners in Congress and the oversight community from the get-go, and it is something that I took to heart and implemented during the work of the Sandy Task Force. If confirmed, I commit to bringing the same humility to OMB and OFFM’s work with key stakeholders across the federal government, including Congress.

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

During my first few years at Enterprise, our then CEO created an innovation function that was intended to drive program innovation across the organization. In my view, this function was designed and staffed poorly from the start and created significant tension across the organization. I advocated for changes to the design and leadership of this function, and I was successful in helping our CEO decide on a new approach. In this situation and others, I have found that doing the research, developing alternatives and then making a clear and objective case for my point of view is critical to my success at advocating for change within large organizations.

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

Yes. Inviting different points of view is core to my approach to leadership. During my time at Enterprise, we created a new tool called Opportunity360, which was designed to measure the level of economic and social opportunity for residents in a neighborhood using indices comprised of a host of relevant public and proprietary data sources. There was a real debate about whether this should be a free, open-source product that was available to the community development field, or whether it should be a tool that we sold to generate revenue.

My team felt strongly that it be free and open source, and our board was pressuring us to generate revenue. As the leader of the team, I knew that we needed to find a way to cover our costs given our budget constraints. I worked closely with the staff to understand their concerns and develop an option that allowed us to provide a consistent set of the information for free, but that still allowed for deeper, more tailored engagements that generated revenue for our work. My team did not agree with this approach at first, but through careful engagement and dialogue, we were able to come up with this solution, refine it, and then execute it effectively.

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

One of the most difficult challenges we faced on the Sandy Task Force was balancing the need to get desperately needed recovery funds to communities quickly with the need to ensure that we protected against potential fraud, waste, and abuse by working with local jurisdictions to support careful program design. There were several occasions when we had to push for greater speed to get program guidance out to jurisdictions, and also had to then slow down to ensure program design was clear and consistent, and actually matched the needs on the ground. In addition, we used our PMO function to track spending and provide visibility to the oversight community, which helped illuminate for all stakeholders where the bottlenecks and decision points really were.

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

Two important tools come to mind: the first is listening and the second is following through. I listen deeply and carefully to those around me, seeking to truly understand where they are coming from and then building that perspective into our shared priorities. I am also extremely attentive to following through in a thoughtful way. I have found again and again that listening well and then taking the steps necessary to follow through on what's been discussed or agreed upon builds deep trust and credibility over time.

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

No.

### **III. Role of the Controller**

18. Please describe your view of OFFM's core mission and the Controller's role in achieving that mission.

I believe OFFM's core mission is to set the strategic vision and government-wide priorities for federal financial management and guide continuous improvements in execution across agencies.

19. In your opinion, is OFFM currently fulfilling its financial management policy responsibilities? If not, what would you do differently as Controller?

Based on all available information, I believe the answer is yes. However, if confirmed, I will be conducting a review of this matter and will determine whether there are any responsibilities we need to fulfill in a different or better way.

### **IV. Policy Questions**

#### *Management*

20. What do you believe are the most pressing internal challenges currently facing OFFM? Which challenges will you prioritize and what do you plan to do to address each of those challenges?

If confirmed, I look forward to the opportunity to work with the OFFM team and other key stakeholders to identify any internal challenges, and then to create and execute on a plan to address them.

21. What do you believe are the most pressing external challenge currently facing OFFM? Which challenges will you prioritize and what do you plan to do to address each of those challenges?

I believe the most pressing external challenge OFFM and OMB are likely facing is ensuring that agencies have the tools and support they need to confront the pandemic and support the economic recovery. If confirmed, I would work with the OFFM team, OMB leadership, and agency leadership to improve agencies' ability to effectively implement their missions.

22. In your view, what are the highest priorities in both urgency and importance for enhancing Federal financial management? Why?

If confirmed, one immediate priority would be the effective implementation of recently passed legislation, with an emphasis on ensuring the effective stewardship of the taxpayer resources. However, I would also plan to connect as quickly as possible with all of OFFM's key stakeholders to hear firsthand their needs, concerns, and hopes for my tenure. Given that the role has been vacant for more than five years, and there are unprecedented levels of federal funding being deployed to support COVID relief and recovery, as well as additional investments in infrastructure, seeing for myself where things are working – and where they aren't – would be essential.

As I have in prior leadership roles, I would then use these inputs to determine my priorities, and what metrics for my success – as well as that of the OFFM team – would be. If confirmed, I know I would be a responsive and transparent partner eager to be held accountable for her success.

23. What measures would you use to determine whether your office is successful?

See answer above. If confirmed, I would engage with OFFM's key internal and external stakeholders to develop my priorities and establish metrics for the office's success.

24. If confirmed, what do you anticipate will be your greatest challenges as Controller?

If confirmed, the greatest challenge would be striking the appropriate balance between prioritizing the near-term needs of agencies as they seek to successfully implement the unprecedented levels of federal funding while also building the long-term infrastructure agencies necessary for response to future events.

*Improper Payments, Performance, and Transparency*

25. What are the top challenges to combatting improper payments across the government? If confirmed, how would you combat improper payments across the federal government?

I take seriously the issue of improper payments and believe that it is important to focus on preventing improper payments, especially those that cost the taxpayer and/or are due

to fraud. The best, most high leverage way to tackle this problem is to try and prevent improper payments in the first place. The Payment Integrity Information Act of 2019 (PIIA) offers several important tools to prevent (and reduce) improper payments. If confirmed, I would focus on continued implementation of PIIA within OMB and with our partner agencies and the oversight community.

26. If confirmed, what steps will you take to ensure agencies are in compliance with improper payment laws and following OMB guidance in this area?

If confirmed, I would collaborate with agency leaders, GAO, and the Inspector General (IG) community to ensure agencies comply with improper payment laws.

27. What steps will you take to ensure the quality, accuracy, and full implementation of data reporting requirements for federal agencies established under the Digital Accountability and Transparency Act of 2014 (DATA Act)?

I believe access to quality and accurate federal spending data is essential to effective government management of taxpayer dollars. If confirmed, I would review the implementation of the DATA Act to assess performance to date and where potential improvements can be made. And, if confirmed, I would welcome the opportunity to work with the Committee to ensure strong implementation of the DATA Act.

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

I understand that subcontracts and sub grants data are already publicly available on USAspending.gov pursuant to FFATA as amended by the DATA Act. If confirmed, I would review implementation of the subaward reporting requirements for grants to learn more and determine whether there are improvements to be made.

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

Yes. OMB plays a critical role in connecting policy objectives with real outcomes and being transparent about those objectives and outcomes ensures that the federal government can be held accountable as a steward of the American peoples' resources and trust.

30. If confirmed, how would you work to improve transparency of federal programs and performance?

I believe it is critical for Congress and the public to have timely and high-quality information that provides insight into program performance and results. If confirmed, I look forward to working with OMB leadership and federal agencies to improve the

consistency and quality of performance reporting and build on existing platforms such as Performance.gov and USASpending.gov.

31. What steps will you take to ensure the Grant Reporting Efficiency and Agreements Transparency Act (GREAT Act) implementation stays on track?

If confirmed, I would review implementation of the GREAT Act to determine where it stands and how best to continue moving it forward. I am committed to effective implementation, and I would look forward to working with Committee on it.

32. The Coronavirus Aid, Relief, and Economic Security (CARES) Act directs federal agencies to report on significant COVID-19 related spending ("large covered funds") provided for in the CARES Act and other relief legislation. Before passage of the Consolidated Appropriations Act, 2021 (P.L. 116-260), the prior Administration took the position that this reporting requirement excludes Division A of the CARES Act, which includes significant spending such as the Paycheck Protection Program. The Consolidated Appropriations Act, 2021 (P.L. 116-260) clarified that reporting requirements included Division A of the CARES Act, which included items such as the Paycheck Protection Program.

- a. If confirmed, what steps will you take to ensure agencies retroactively collect and report on significant spending in Division A of the CARES Act that preceded passage of P.L. 116-260 in an accurate, comprehensive manner?

It is important to develop clear and transparent reporting of federal spending for all programs, including CARES Act programs. These tools are necessary for appropriate performance management, as well as to build and sustain ongoing public trust in federal programs. If confirmed, I would work with the Department of the Treasury and other agencies who received funds under the CARES Act, as well as the members of this Committee, to determine where there may be opportunities to improve our reporting of Federal spending.

- b. If confirmed, what steps will you take to ensure agencies' COVID-19 spending data, as reported to the Pandemic Response Accountability Committee (PRAC) and the public, is comprehensive, accurate, and transparent?

President Biden is committed to transparent and accountable governing. If confirmed, I would work with the Department of the Treasury, reporting agencies, and others at OMB to ensure that agencies have the guidance and assistance from OMB that they need to report comprehensively and accurately.

In addition, I would embrace the priority placed by OMB Acting Director Young and Deputy Director for Management Miller on engagement with the Inspector General and Oversight Community, including the PRAC, to identify opportunities to continue to improve the quality of our reporting. And finally, if confirmed, I would work with the Committee on these matters to ensure further progress is made.

33. Congress has noted that there are problems with timely and accurate reporting on agency expenditures related to declared disasters and emergencies. Do you believe OFFM is taking appropriate steps to improve reporting on disaster-related funding and outlays for disasters and emergencies, including any efforts related to data quality issues? What additional steps would you take, if confirmed?

I believe it is important to ensure the clear and transparent reporting of government expenditures, including COVID-19 relief spending and other expenditures related to declared disasters and emergencies. If confirmed, I look forward to learning what steps OFFM has taken to improve reporting in response to the COVID-19 relief effort, and to identifying what further efforts may be under way and whether there is more that can be done. And finally, if confirmed, I would work closely with agencies and the oversight community to ensure transparency and accountability of federal spending, and to identify areas for continued improvement and investment.

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

In accordance with PIIA, OFFM plays a role in facilitating agency collaboration and guiding agencies to implement data-sharing in compliance with laws, regulations, and policies. If confirmed, I would continue to prioritize the work of preventing improper payments before they occur, and as part of this will focus on sharing data more broadly to prevent potential improper payments and specifically fraud.

35. OFFM and OMB have made requests to Congress for new authorities and resources to deal with the serious issues around expanding safe and secure digital identity solutions to reduce waste and fraud in federal programs. Do you believe OFFM is taking sufficient steps to improve the availability and security of digital identity solutions and the ability of agencies to share and match data to prevent waste and fraud in federal programs? What additional steps would you take, if confirmed?

I believe that OMB and OFFM should play a role in supporting ongoing efforts by the Administration to prevent waste and fraud, including those that rely digital identity tools as a prevention mechanism. I look forward to learning more about the work underway at OMB and, if confirmed, would work with the OFFM staff to determine if additional steps should be taken.

#### *Financial Management Systems*

36. What is your view of the government's current financial reporting requirements?
- a. Would you support any revisions to OMB Circular A-136, *Financial Reporting Requirements*?
  - b. If so, what are they? If not, why not?



My understanding is that A-136 reflects reporting requirements specified by the Federal Accounting Standards Advisory Board (FASAB), which are necessary for agencies to fulfill their statutory obligation to produce audited financial statements.

I further understand that OMB updates A-136 annually to reflect changes promulgated by FASAB, changes made by law, and changes in policy requirements. I support this annual updating process.

I believe that the financial reports used by each agency, as well as those that are Government-wide, complement budget reporting. Taken as a whole, these reports provide transparency into and accountability for how taxpayer dollars are used.

37. What are your views regarding the risk management approach detailed in OMB Circular A-123, *Management's Responsibility for Internal Control*?
- Would you support any revisions to OMB Circular A-123?
  - If so, what are they? If not, why not?

I believe the Enterprise Risk Management (ERM) framework detailed in OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, is a good management tool that addresses the full spectrum of an organization's risks, including challenges and opportunities, and integrates them into an enterprise-wide, strategically aligned portfolio view. Through integration of enterprise risk management practices into daily operations, federal agencies can enhance their speed and agility in adapting to uncertainties that might otherwise impact their ability to execute on mission, achieve goals, and meet objectives.

If confirmed, I will consult with the staff on any revisions to the Circular that are needed to support agencies in implementing ERM.

## V. Accountability

### *Whistleblower Protections*

38. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.
- Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

As Chief of Staff at HUD, I handled numerous confidential employee and partner complaints. Where appropriate, I worked closely with our HR and Legal teams to determine the appropriate steps to protect those coming forward and to take actions needed. I also made several referrals to the IG for investigation. In all cases, I consistently followed up to ensure that those complaints were being resolved.

- b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at OFFM and OMB?

If confirmed, I would work with the OMB Director as appropriate to ensure systems are in place across OMB to properly handle whistleblower complaints. In addition, I would work with the OMB Director and OMB leadership to ensure that all staff know the necessary practices to ensure full compliance with the legal protection of whistleblowers.

- c. If confirmed, what steps will you take to ensure that whistleblowers at OFFM and OMB do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately?

If confirmed, I would work with the OMB Director and staff to ensure that all appropriate systems are in place and whistleblowers are appropriately protected, fully and fairly.

*Cooperation with Inspectors General*

39. Inspectors General (IGs) face unique obstacles as they do their work, including budget challenges and disputes with agency heads over access to information. How do you view OMB's relationship with various Offices of Inspectors General (OIGs)?

I believe OMB and the IG community are very effective when partnering together on Government-wide initiatives. These partnerships are necessary to strengthen our efforts to address fraud, waste, abuse, and mismanagement, as well as to prevent or detect failures to comply with statutes and regulations.

40. Under what circumstances, if any, do you believe OMB is not required to provide any OIG with timely access to agency records?

OMB should comply with its statutory obligation to provide information and assistance to OIGs across the Executive Branch.

41. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from IGs?

While the day-to-day interaction with IGs is with individual agencies, if confirmed, I commit to assisting IGs with their important work should they request assistance from OMB.

42. If confirmed, what steps would you take to facilitate and encourage timely cooperation by federal agencies with IGs?

If confirmed, I would seek to work in partnership to resolve any identified ongoing issues regarding timely cooperation by federal agencies.

*Cooperation with GAO*

43. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests for information, including for records, meetings, and information?

Yes.

44. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO?

Yes.

45. If confirmed, what steps would you take to facilitate and encourage timely cooperation by federal agencies with GAO?

If confirmed, I would consult with OFFM staff to understand practices in working with GAO, and I would work to support timely cooperation from federal agencies.

46. If confirmed, what steps will you take to ensure OFFM cooperates fully and promptly with GAO requests?

If confirmed, I would work with the OFFM staff to help ensure OFFM functions and employees provide appropriate and prompt responses to GAO requests.

#### **VI. Relations with Congress**

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

Yes.

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

Yes.

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

Yes.

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

If confirmed, I would work with the OMB Director and OMB staff to ensure that timely responses are provided.

51. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request?

If confirmed, I would work with the OMB Director to ensure that OMB continues to comply with the presumption of openness articulated in the Freedom of Information Act and DOJ guidance, and will consider proactively releasing documents.

52. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us?

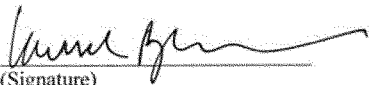
Yes.

#### VII. Assistance

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

Yes, they are mine. In compiling the information for these answers, I have consulted with OMB staff.

I, Laurel Bratenford hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
(Signature)

This 10<sup>th</sup> day of November, 2021

**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Laurel Blatchford**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

1. As the nominee to be Controller of the Office of Federal Financial Management, you will be responsible for the effective financial management of executive agencies. As the Executive Director of the Hurricane Sandy Rebuilding Task Force, you have experience in directing time sensitive government-wide initiatives. With this experience, what steps do you believe the Office of Federal Financial Management should take to make sure investments made through our bipartisan infrastructure package are distributed efficiently and spent effectively?

Over the course of my career, I have had the honor of working on a wide range of time sensitive government initiatives, including 9/11 recovery, the implementation of the American Reinvestment and Recovery Act and response and recovery to natural disasters including Superstorm Sandy. One of the most important lessons from this work is that *how* the work is done matters enormously. As I noted in my testimony before the Committee, I have seen time and time again that strong implementation – with transparency, efficiency, consistency, and strong partnerships – is essential to success, especially in the public sector. Great ideas and great legislation without great execution are not enough.

OMB plays a central role in coordinating the execution of the President's priorities, and the same will be the case regarding the bipartisan infrastructure package. If confirmed as Controller, I would bring this grounding of prior experience and track record of delivering results to working with OMB colleagues and agency leaders to develop federal-wide implementation guidance for the Infrastructure Investment and Jobs Act and ensure that the financial resources are effectively deployed, tracked, and spent in accordance with this landmark legislation.

Under my leadership, OFFM would continue to support agencies in ensuring there is accountability, consistency and transparency in how these programs are executed financially and programmatically. I would draw on my prior experience to ensure that agencies are coordinating effectively on reporting requirements to pave the way for the effective deployment of funds. From the beginning of the process, I would work to build strong relationships with the oversight community in order to work together to ensure payment integrity and other oversight priorities are addressed collaboratively and there is

room for continuous improvement. Finally, I would also emphasize the importance of high-quality data to track program performance throughout the lifecycle of fund deployment.

2. The position of Controller involves working across executive agencies to implement financial management priorities and establishing government-wide financial management policies. As the former Chief of Staff at the U.S. Department of Housing and Urban Development, what lessons can be taken from that experience to better implement multi-agency initiatives and policies?

A few lessons come to mind from my time as Chief of Staff at the US Department of Housing and Urban Development; perhaps the most important is the importance of defined shared goals for interagency work. Additionally, there is always a need to invest in the work of coordination itself – everyone is busy and so this work can fall by the wayside if it is not owned and coordinated clearly.

If confirmed, I anticipate bringing these lessons-learned to the Controller role and would anticipate leveraging OFFM's continued responsibility for interagency coordination to drive cross-agency transformation in accountability, transparency and ensuring that federal agencies, recipients and subrecipients are strong stewards of public resources. If confirmed, I would draw on my experience of convening with diverse stakeholders to work with the CFO Council and other interagency governance bodies to establish the vision and priorities for government-wide financial management, working closely with agencies to ensure effective execution, comprehensive reporting and ongoing improvement.

And, as I did during my time at HUD, I would also embrace the priority placed by OMB Acting Director Young and Deputy Director for Management Miller on engagement with the Inspectors General and oversight community to identify opportunities to continue to improve implementation and the quality of our reporting. Since its creation, OFFM has promoted good government by taking a risk-based approach to strengthening internal controls, accountability, and transparency to guard against fraud, waste, and abuse of Federal resources, while also minimizing administrative burden. If confirmed, I fully intend to build on OFFM's strong tradition and history of accomplishment in financial management, while focusing on areas that are high risk and in need of mitigation at a time when the stakes could not be higher for our nation.

**Senator James Lankford  
Post-Hearing Questions for the Record  
Submitted to Laurel Blatchford**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

- 1) *On Taxpayer Right-to-Know Act*: The Taxpayer Right to Know Act became law last Congress and I'm still waiting for OMB to issue their report on steps for implementation. When implemented, it will require government agencies to identify and describe each program they administer, the cost to the administer the program, expenditures for service, the number of program beneficiaries, and the number of federal employees and contract staff involved. The OFFM Controller would be tasked working with agencies to implement the statute. Are you familiar with the law? What do you expect your role to be in ensuring this implemented quickly and as Congress intended?

Yes, I am familiar with the legislative requirement that OMB publish a functional, accessible Federal Program Inventory that can be used as a tool for further transparency into Federal spending and oversight of program performance. I agree that if well executed, such an inventory would be beneficial in connecting agency and government-wide spending information to information about results.

I understand that OMB recently delivered the statutorily required report to Congress that outlines its experience running a pilot in 2020 and describes the resources and necessary actions that will be required for full implementation. If confirmed, I plan to expeditiously work with the OFFM staff to more fully understand the work done to-date and to lead OMB's efforts to stand-up a comprehensive program inventory. I am confident that with the experience and expertise of the OFFM team, and with the leadership that I would bring, we could build on the lessons of this pilot to solve this issue.

- 2) *On Transparency*: What role do you think OFFM plays in ensuring the efficiency, effectiveness, and transparency of the Federal government?

I am excited about the central role that OFFM plays in ensuring the effectiveness of the Federal government – doing so is critical to maintaining the trust and confidence of the American public. As you know, OFFM's role, and the role of the OMB Controller, has been established by more than two dozen statutory authorities and responsibilities, including the CFO Act (1990), the Federal Funding Accountability and Transparency Act (2006), the Digital Accountability and Transparency Act (2014), the Payment Integrity Information Act (2019) and the Grant Reporting

Efficiency and Agreements Transparency Act (2019). Each of these statutes establishes expectations and mandates for OFFM with regards to the efficiency, effectiveness and transparency of Federal government spending. In all cases the OFFM team has leaned in to meet these requirements. And, given OMB's central role in the Executive Branch, OFFM is especially well positioned to support agencies as they put in place processes and systems to support the financial execution of the federal investments through recent legislation including CARES, ARPA and HJA. If confirmed, I look forward to focusing on these aspects of the Controller role and working closely with the Committee, Congress and the oversight community to ensure our collective success.





*The voice of career federal executives since 1980*

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November 30, 2021

The Honorable Gary Peters, Chairman  
The Honorable Rob Portman, Ranking Member  
Committee on Homeland Security and Governmental Affairs  
Washington, D.C. 20510

Dear Chairman Peters, Ranking Member Portman, and Members of the Committee:

On behalf of the Senior Executives Association (SEA) – which represents the interests of career federal executives in the Senior Executive Service (SES), those in Senior Level (SL), Scientific and Professional (ST) and equivalent positions and other senior career federal leaders – I write to convey the association's strong endorsement of the nomination of Laurel Blatchford to serve as Controller, Office of Federal Financial Management, Office of Management and Budget (OMB).

As this committee is aware, the government has lacked a confirmed OMB Controller for nearly five years, with the position last being filled in 2017. Congress has approved trillions of dollars in federal spending during the COVID-19 pandemic and more recently with the Infrastructure Investment and Jobs Act. It is critical for federal agencies and Congress alike to have a financial management point person in the Controller, and for the position to not continue to be held on an acting or interim basis.

Ms. Blatchford's public and private sector experience has prepared her well for this role, where she will serve as a conduit among the federal financial management community and implementation chief for the administration's financial management initiatives. SEA has every confidence in Ms. Blatchford's qualifications and ability to succeed in this role.

Finally, in recent years Congress has on occasion had challenges obtaining budget and financial information from OMB. If confirmed, the Controller would also be accountable and answerable to policymakers in Congress.

Thank you for your consideration of SEA's perspective. Please have your staff contact SEA Director of Policy and Outreach Jason Briefel ([jason.briefel@seniorexecs.org](mailto:jason.briefel@seniorexecs.org); 202-971-3300) for further information.

Sincerely,

Robert E. Corsi, Jr.  
President

**Opening Statement of Donald Walker Tunnage**  
**Nominee to be Associate Judge of the District of Columbia Superior Court**

Chairman Peters, Ranking Member Portman, and members of this Committee, thank you for the opportunity to appear before you today. I am deeply grateful to you and your dedicated Committee staff for considering my nomination. I would also like to extend my heartfelt gratitude to all the members of the Judicial Nomination Commission and specifically its chair, the Honorable Emmet G. Sullivan, for recommending me to the White House, and I thank President Joseph Biden for nominating me to become an Associate Judge of the Superior Court of the District of Columbia. This nomination and the opportunity to appear before you today are easily the highest honors of my professional career.

I appear today buttressed by the enthusiastic support of my extended family, close friends, schoolmates, and colleagues. Through unwavering support, they have mentored, supported, and encouraged me in life and throughout my career. I offer special mention to my husband, Juan Ruiz Rojas, whose dedication and commitment is the fulcrum that allows me to successfully balance family, work, and co-parenting our four-year-old son, Alec. Guiding and being a loving, caring, and providing Papa to Alec is the eternal commitment in my life. My mother, Linda Walker, a formerly retired public-school administrator who returned to her career in education, which is more accurately her life's calling, is watching with great excitement and unbridled love and support from Fort Lauderdale, Florida. Finally, I offer special mention to my late father, a veteran of the United States Army and a retired public-school educator affectionately known simply as Don. I am my father's namesake, and his unwavering support uplifted and encouraged me during his lifetime, while the memory of his unconditional love is a personal comfort that has sustained me since his passing.

The entirety of my professional practice has been in pursuit of fair process and equal treatment. Since 2000, I have had the honor and privilege of being a career trial attorney in the Department of Justice, where I have represented the United States in the enforcement of laws to ensure full and fair participation of all citizens in material life activities, such as housing, employment, and the constitutional right to be secure in their persons and effects. During my two-decades career as a Justice Department trial attorney, I appeared in federal districts courts in more than ten states and dutifully served without interruption under five presidential administrations. Prior to joining the Justice Department, I served as an assistant public defender, where my advocacy was for trial proceedings that were fair and constitutionally compliant.

In my professional experience, I have practiced as a criminal-defense counsel, a civil litigator, and a criminal prosecutor. I have appeared in both state appellate courts and federal district courts. In each role and every court appearance, I have advocated for equality under law and procedural fairness. If I am granted the honor of confirmation, those will be my guide posts as I seek to ensure the fair and impartial administration of justice. Finally, I restate my sincere gratitude, Mr. Chairman, to you and the Committee members for considering my nomination, and I look forward to answering any questions you may have of me.

**REDACTED**

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,  
UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

**1. Full name (include any former names used).**

Donald Walker Tunnage  
Donald Lynn Tunnage

**2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

I am a citizen of the United States of America.

**3. Current office address and telephone number.**

United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W. – 4CON  
Washington, DC 20530  
202.305.2789

**4. Date and place of birth.**

October 20, 1968; Fort Lauderdale, FL

**5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am married to Juan Ruiz Rojas, Ph.D., Research Scientist at KeyGene, Inc., 9600 Gudelsky Drive, Rockville, MD 20850.

**6. Names and ages of children. List occupation and employer's name if appropriate.**

**REDACTED**

**7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

Harvard Kennedy School, 1998 – 2000, M.P.P. awarded June 8, 2000.  
Duke Law School, 1990 – 1992, J.D. awarded December 30, 1992.  
Morehouse College, 1986 – 1990, B.A. awarded May 20, 1990.

South Plantation High School, 1983 – 1986, Diploma awarded June 19, 1986.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

May 1992 – August 1992  
Tripp, Scott, Conklin, & Smith  
110 S.E. 6th Street, 15th Floor  
Fort Lauderdale, FL 33301  
Summer Legal Intern

May 1991 – June 1991  
Office of the Miami-Dade State Attorney  
1350 N.W. 12th Avenue  
Miami, FL 33136  
Summer Legal Intern

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Phi Beta Kappa (1990)

U.S. Department of Justice, Special Achievement Award (2002, 2003, 2005, 2006, 2012, and 2014 – 2017)

U.S. Department of Justice, Special Commendation Award (2004, 2018 – 2019)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

None.

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Department of Justice Pride (DOJ Pride)  
Member, 2000 – Present

Department of Justice Association of Black Attorneys (DOJABA)  
Member, 2000 – Present

The Black Lawyers Association  
Member, 1994 – 1998

The Florida Gay and Lesbian Lawyer's Association (GALLA)  
Member, 1994 – 1997  
Co-President, 1998

- 12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

DC Strokes Rowing Club  
Crew Member, 2001 – 2003

Thompson Boat Center  
Masters Crew, 2005 – 2006

Arena Stage Board of Trustees  
Member, 2009 – 2011

National Museum of African American History & Culture  
Ambassador, 2016 – Present

To the best of my knowledge, none of the above listed organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

- 13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

District of Columbia, admitted October 2, 1995.

United States District Court, District of Columbia, admitted October 3, 2005.

United States District Court, Eastern District of Wisconsin, admitted September 19, 2000.

There have been no lapses in membership.

- 14. Published writings. List the titles, publishers, and dates of books, articles, reports,**

or other published material you have written or edited.

None.

15. **Speeches.** List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. **Legal career.**

A. Describe chronologically your law practice and experience after graduation from law school, including:

- (1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I did not serve as a law clerk.

- (2) **Whether you practiced alone, and if so, the addresses and dates;**

I did not practice alone.

- (3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

June 1993 – July 1998  
Office of the Public Defender, Miami, FL  
1320 N.W. 14th Street  
Miami, FL 33125  
Assistant Public Defender

Summer 1999  
Office of the Corporation Counsel  
441 4th Street, Suite 650  
Washington, DC 20004  
Summer Legal Intern

July 2000 – Present  
United States Department of Justice, Civil Rights Division  
950 Pennsylvania Avenue, N.W. - 4CON  
Washington, DC 20530  
Trial Attorney

- B. **Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

In the first five years of my practice (1993 – 1998), I served as an assistant state public defender in the State of Florida, and litigated criminal appeals of indigent persons convicted of crimes in the circuit and county courts of Miami-Dade and Monroe counties.

Since July 2000, as a trial attorney in the Civil Rights Division of the U.S. Department of Justice, I prosecute official misconduct and federal hate crime statutes. My professional responsibilities include all aspects of criminal prosecution, including joint investigation with the Federal Bureau of Investigation, drafting felony indictments, grand jury presentations, and courtroom litigation.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

During my practice as an assistant public defender, all of my former clients were indigent persons convicted of state crimes. In my current area of practice (*i.e.*, federal prosecution), I represent solely the United States government and I do not have individual clients.

**D. Describe the general nature of your litigation experience, including:**

**(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

As an assistant public defender (1993 – 1998), my court appearances were more frequent than at any other point in my career. I presented oral arguments approximately twice a month, which amounted to an annual average of 24 court appearances.

As a civil trial attorney (2000 – 2008), my trial court appearances were occasional. I tried two cases to verdict during this period, where one was a bench trial and the other was a jury trial. My practice during this period was primarily a motions practice, where I made frequent appearances before federal magistrate judges to present discovery motions and occasional appearances before federal district court judges to argue dispositive motions.

From 2009 through 2015, I tried three cases to verdict for an average of one trial every two years. In the last five years, I have tried to verdict six cases and made frequent court appearances to litigate motions and other pre-trial matters associated with each respective trial. In addition to the six trials and the respective pre-trial motions affiliated with each trial, I also made several

post-conviction court appearances for sentencing hearings and to litigate post-conviction relief motions.

**(2) What percentage of these appearances was in:**

**(a) Federal courts (including Federal courts in D.C.);**

100% of my trial court appearances were in federal courts.

**(b) State courts of record (excluding D.C. courts);**

100% of my appellate court appearances were in state courts.

**(c) D.C. courts (Superior Court and D.C. Court of Appeals only);**

None.

**(d) other courts and administrative bodies.**

None.

**(3) What percentage of your litigation has been:**

**(a) civil;**

Approximately 20% of my courtroom trial litigation has been civil.

**(b) criminal.**

Approximately 80% of my courtroom trial litigation has been civil.

**(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

I have tried a total of 11 cases to verdict. In nine criminal trials, I partnered with a single local Assistant United States Attorney and, in each instance, we were paired as co-counsel. In the remaining two civil trials, I served as co-counsel with a Civil Rights Division colleague in one case and as associate counsel on a team of five Civil Rights Division colleagues in the other case.

**(5) What percentage of these trials was to**



**(a) a jury;**

Approximately 90 % (*i.e.*, ten) of the cases were to a jury.

**(b) the court (include cases decided on motion but tabulate them separately).**

Approximately 10 % (*i.e.*, one) case, was to the court.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. *Harrell v. State*, 709 So. 2d 1364 (Fla. 1998) (before the Honorable Gerald Kogan, Chief Justice, and the Honorable Ben F. Overton, Leander J. Shaw, Jr., Charles T. Wells, Major B. Harding, Harry Lee Anstead, and Stephen H. Grimes Associate Justices)

From approximately 1997 to 1998, I was chief counsel in this case representing the defendant, David Harrell. I filed a state supreme court appeal seeking to overturn Mr. Harrell's robbery conviction that was based upon testimony from a material witness, who was located in a foreign country and appeared only via satellite during the trial proceeding in the State of Florida. This was a case of first impression and presented the issue: Whether allowing a prosecution witness to testify from a foreign country, via live satellite, instead of appearing in-person at an American court violated the Confrontation Clause of the Sixth Amendment to the United States Constitution?

I drafted the appellate brief and presented the oral argument before the Supreme Court of Florida. The Supreme Court of Florida affirmed the defendant's conviction, but held that the satellite procedure can only be approved as an exception to the Confrontation Clause. The court further held that "in order to qualify as an exception, the procedure must (1) be justified, on a case-specific finding, based on important state interests, public policies, or necessities of the case and (2) must satisfy the other three elements of confrontation—oath, cross-examination, and observation of the witness's demeanor."

Principal counsel for opposing party:

Richard L. Polin, Assistant Attorney General  
Office of the Attorney General  
1 S.E. 3rd Avenue, Suite 900  
Miami, FL 33131  
305.377.5441

2. *United States v. Atesiano* (1:18-cr-20479, S.D. Fla. 2018) (before the Honorable K. Michael Moore)

The police chief of a small municipality in Miami-Dade County, along with subordinate police officers, conspired to falsely arrest and “pin” outstanding criminal complaints on innocent black men who walked through the city and happened to have prior arrests or convictions. The chief of police was charged with the overall conspiracy and two subordinate officers were charged with civil rights violations for their compliance with the chief of police’s order to falsely arrest and charge a 16-year old juvenile with four unsolved burglaries. The purpose of the conspiracy was to fraudulently achieve a 100% crime clearance rate in the city.

From approximately 2015 to 2018, I served as chief counsel in the investigation and prosecution of this case, and I represented the United States government. I led the five-agency joint federal and state investigative team comprised of the Civil Rights Division, the Federal Bureau of Investigation, the U.S. Attorney’s Office for the Southern District of Florida, the State’s Attorney for the 11th Judicial Circuit of Florida, and the Florida Department of Law Enforcement. I was the primary interviewer of all material witnesses and primary drafter of the felony indictments. I conducted the grand jury examinations of several material witnesses, including two defendants, and I presented the oral argument during the sentencing hearing of the defendant police chief.

The defendant police chief pled guilty to conspiracy to violate constitutional rights and was sentenced to 36 months of incarceration. The defendant officers each pled guilty to one count of falsely arresting a juvenile and each was sentenced to 12 months of incarceration.

Co-counsel:

Harry Wallace, Assistant United States Attorney  
United States Attorney’s Office, Southern District of Florida  
99 N.E. 4th Street, Suite 800  
Miami, FL 33132  
305.961.9401

Trent Reichling, Assistant United States Attorney  
United States Attorney’s Office, Middle District of Florida  
2110 First Street, Suite 3-137  
Fort Meyers, FL 33901  
239.461.2200

Principal counsel for opposing parties:

David J. Sobel  
633 SE 3rd Avenue, Suite 301  
Fort Lauderdale, FL 33301  
954.463.0773

Ana M. Davide  
420 S. Dixie Highway, Suite 4B  
Coral Gables, FL 33146  
305.854.6100

Richard Docobo  
1 NE 2nd Avenue, Floor 2  
Miami, FL 33132  
305.423.6868

3. *United States v. Brown*, No. 9:17-CR-80102, 2017 WL 11489447, at \*1 (S.D. Fla. Oct. 26, 2017) (before the Honorable Robin Rosenberg)

Following a high-speed traffic pursuit of a vehicle that struck and seriously injured a police officer who was standing outside his patrol vehicle and attempting to deploy stop sticks, a Boynton Beach, FL, police officer unlawfully assaulted the front seat passenger. During the federal investigation of this matter, a police sergeant who supervised the assaulting officer intentionally obstructed the investigation by providing misleading statements to FBI agents.

From approximately 2015, I was co-chief counsel in the jury trial of this matter, and I represented the United States government. I led the joint investigation with the FBI and the U.S. Attorney's Office for the Southern District of Florida, and I was the primary interviewer of all material witnesses. I was the primary drafter of the felony indictments and conducted the grand jury examinations of several material witnesses. During the severed jury trials of the defendants, I conducted the direct examination of several material witnesses, including the Chief of Police, the use of force expert, and the FBI agent whom the defendant sergeant attempted to unlawfully obstruct. I also presented the closing argument in both jury trials and the rebuttal argument in the jury trial of the defendant patrol officer.

The defendant patrol officer was convicted of using excessive force against an arrestee and the defendant sergeant was convicted of obstruction of justice. Both defendants were sentenced to probation for a term of 18 months and each appealed his conviction. The Eleventh Circuit Court of Appeals, 934 F.3d 1278 (11th Cir. 2019), affirmed both defendants' convictions and remanded for re-sentencing. (I was not appellate counsel).

Co-counsel:

Susan Osborne, Assistant United States Attorney  
United States Attorney's Office, Southern District of Florida  
500 S. Australian Avenue, Suite 400  
West Palm Beach, FL 33401  
561.209.1003

Principal counsel for opposing parties:

The Honorable Bruce E. Reinhart

701 Clematis Street  
West Palm Beach, FL 33401  
561.514.3710

Gregg S. Lerman  
330 Clematis Street, Suite 209  
West Palm Beach, FL 33401  
561.832.5770

4. *United States v. Pooler* (CV401-263, S.D. Ga. 2003) (before the Honorable William T. Moore)

The City of Pooler is a small municipality in Chatham County, Georgia. The county seat is Savannah. where the county seat is Savannah. Although Pooler and Savannah are separated by only 12 miles (according to 1990 Census figures), Pooler's population of 4,453 was 96% white and Savannah's population of 137,560 was only 47% white. When a private developer sought funding to construct an apartment complex in Pooler for low-income seniors, the city mounted opposition to the development based upon a fear that African Americans would move into the complex. In addition to the reported overt racially discriminatory statements made by city officials, there was also a disparate racial impact from the city's zoning ordinance, which required minimum square footage of 1,500 square feet for an efficiency apartment; 2,000 square feet for a one bedroom; 2,500 square feet for a two bedroom; and 3,000 square feet for a three bedroom.

From approximately 2001 to 2006, I served as chief counsel in the investigation of this civil enforcement case, and I represented the United States government. I was the lead investigator of this civil enforcement effort, and it was handled exclusively by the Civil Rights Division. I conducted the depositions of several high ranking elected and administrative officials of the defendant municipality, including the City Attorney, City Manager and several members of the City Council. I co-authored dispositive motions in the case, and I was the lead negotiator during the private mediation that resulted in the settlement of this case.

The City of Pooler entered into a consent decree, where it agreed to pay more than \$445,000 in damages and to revise its zoning ordinance to eliminate discriminatory minimum floor area requirements for multifamily dwellings that had the effect of preventing the construction of any apartment complexes within the municipality.

Co-counsel:  
Rebecca Bond  
Disability Rights Section  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W. - 4CON  
Washington, DC 20530  
202.305.2952

Principal counsel for opposing party:

Patrick T. O'Connor  
218 W. State Street  
Savannah, GA 31401  
912.236.3311

5. *United States v. Tan Duc Nguyen*, No. SACR 08-251 DOC, 2010 WL 374967, at \*1 (C.D. Cal. Jan. 25, 2010), *aff'd*, 673 F.3d 1259 (9th Cir. 2012) (before the Honorable David O. Carter)

During the 2006 general election for the 47th United States Congressional district in California, a national party's candidate and his political advisor orchestrated the dissemination of a Spanish language letter with misleading statements about voter eligibility. The letter was mailed only to voters with Spanish surnames, who were born in Spanish speaking countries, and who had recently registered to vote. While agents investigated the reports of voter intimidation, the Congressional candidate intentionally misled investigators for the purpose of impeding the federal investigation.

From approximately 2010 to 2012, I was associate counsel in the jury trial of this matter, and I represented the United States government. I was the lead attorney in the grand jury investigation that resulted in a superseding indictment with an additional charge against the defendant. During the jury trial, I conducted the direct examination of half of the prosecution witnesses and presented the opening statement and closing argument.

The defendant was convicted of obstructing justice by attempting to impede a federal investigation of possible voter intimidation, and he was sentenced to a term of incarceration of one year and a day. On appeal before the Ninth Circuit Court of Appeals, 673 F.3d 1259 (9th Cir. 2012), the defendant's conviction was affirmed. (I was not appellate counsel).

Co-counsel:

Greg Staples  
United States Attorney's Office, Central District of California  
411 W. Fourth Street, Suite 8000  
Santa Ana, CA 92701  
714.338.3500

Principal counsel for opposing party:

H. Dean Steward  
17 Corporate Plaza, Suite 254  
Newport Beach, CA 92660  
949.481.4900

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but**

**you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

I was the primary attorney during an approximately five-year, multi-agency federal investigation of an in-custody altercation between United States Customs and Border Protection agents and a Mexican national that resulted in his death. In the spring of 2010, Border Patrol agents attempted to repatriate a Mexican national who had previously entered the United States without documentation. As the agents escorted the foreign national to a crossing-gate at the international border separating the United States and Mexico, the foreign national grappled with the border patrol agents and resisted their attempts to restrain him. A number of federal agents responded to the scene, and an agent shocked the foreign national with a Taser. The foreign national became unresponsive and was pronounced dead two days later - after his removal from life support.

In coordination with agents from the Federal Bureau of Investigation and the Department of Homeland Security Office of Inspector General, I conducted a comprehensive and independent investigation that generated videos of the incident, federal law enforcement witness accounts, Mexican law enforcement witness accounts, civilian witness accounts, medical personnel accounts, medical records, autopsy reports, official use of force training materials and forensic evidence.

The Department of Justice did not pursue federal criminal civil rights charges in the matter.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I have not held judicial office.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.**

None.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.**

Biden for President	\$100.00	July 31, 2020
	\$100.00	August 16, 2020
	\$500.00	August 19, 2020
	\$500.00	August 31, 2020
	\$100.00	October 7, 2020
	\$ 60.00	October 14, 2020
	\$100.00	October 14, 2020

Warnock Victory Fund	\$250.00	November 24, 2020
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22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

Yes. On or about July 17, 1994, I was involved in a three-car accident on Interstate 95 in Miami, FL. The Florida State Trooper who responded to the accident scene ordered me to leave and did not allow me to make a statement about the cause of the accident. When I asked the trooper if he was refusing to take my statement, the trooper placed me under arrest. The Florida State Trooper issued a county ordinance citation charging me with failure to obey a lawful order and a misdemeanor state charge of disorderly conduct. Both of the criminal charges were dismissed, and the arrest record of the incident was ordered expunged.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

*Donald Lynn Tunnage v. Florida Highway Patrol*, Case No. 96-23606-CA-01 (Florida

Eleventh Judicial Circuit, Circuit Court). Following the dismissal and expungement of the criminal charges, I was the named plaintiff in a civil lawsuit against the Florida Highway Patrol for false arrest. I received payment of \$1,600.00 from the State of Florida, and the matter was settled without trial.

*Donald Walker Tunnage v. Ameer Patel*, Case. No. 2019 LTB 019769 (District of Columbia Superior Court – Landlord and Tenant Branch) and *Donald Walker Tunnage v. Frank Eppling*, Case. No. 2006 LTB 6136 (District of Columbia Superior Court – Landlord and Tenant Branch). I own a studio apartment in a multi-family high-rise building located at 1615 Q Street, N.W., Suite 205. I have continuously operated the unit as a market-priced rental since July 2005. In two separate instances, I filed a civil complaint for possession of real property after the tenant breached his rental agreement by non-payment of rent. In both cases, default judgment was entered against the tenant.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.



## II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**  
  
Yes.
2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**  
  
None.
3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**  
  
I own two residential rental properties in the District of Columbia.
4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**  
  
None.
5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**  
  
None.
6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**  
  
No.
7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**  
  
I will hire a residential management company to operate my rental properties.
8. **If confirmed, do you expect to serve out your full term?**  
  
Yes.

**III. FINANCIAL DATA**

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

**REDACTED**

## IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-150.1 (b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to the bar of the District of Columbia on October 2, 1995.

4. If the answer to Question 3 is "no" --

A. Are you a professor of law in a law school in the District of Columbia?

B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Yes. Since May 2006, I have resided at

[REDACTED]

**REDACTED**

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

- 8. Have you been a member of either of these Commissions within the last 12 months?**

No.

- 9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

Copies of my District of Columbia Judicial Nomination commission questionnaire are attached.

## AFFIDAVIT

Donald Walker Tunnage being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.



SUBSCRIBED and SWORN TO before me this 12<sup>th</sup> day of October 2021.

  
Notary Public

Senator James Lankford  
Post-Hearing Questions for the Record  
Submitted to Donald W. Tunnage

Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia

Thursday, November 18, 2021

**1) How would you describe your judicial philosophy?**

Response: If I am confirmed as an Associate Judge of the Superior Court of the District of Columbia, I will be guided by the constitutional duty of providing fair and impartial hearings. I will fully hear, without bias or favor, every litigant and issue judgment that is mandated by the application of controlling legal authority to the facts lawfully received into evidence.

**2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?**

Response: If I am confirmed, I will always conclude what is mandated by clear and controlling legal authority.

**3) Should judges take changing social values into consideration when interpreting the law?**

Response: If I am confirmed, changing social values are not matters I will consider when interpreting the law.

**4) At the outset of the pandemic, Congress included eviction protection in the CARES Act. When those protections expired, the CDC issued an eviction moratorium which took effect on September 4, 2020. That rule was challenged and reached the Supreme Court. On June 29, 2021 the Court left the moratorium in place, but noted that “congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31.” Despite the Supreme Court’s warning, President Biden attempted to extend the moratorium. On August 26, 2021, the Supreme Court vacated the moratorium because it exceeded CDC’s statutory authority. The District of Columbia provided eviction protection beyond that provided by the CDC.**

**As the District’s eviction moratorium begins to phase out and evictions may resume next year, how will you balance the rights of landlords who, in some situations, have not received rent in over a year and a half, with the interests of tenants who seek a safe place to live?**

Response: Seeking an appropriate balance between the rights of landlords and the interests of tenants is, indeed, a present and significant issue of public policy consideration. If I am confirmed and called upon to resolve disputes between landlords and tenants, I will decide every case solely upon the merit of the issues presented by the parties in each respective proceeding. I will give thoughtful and equal consideration to the interests of all parties, and I will issue orders that are mandated by the applicable and controlling legal authority.

**Will you apply the law to the facts, or will other consideration influence your decision making?**

Response: If I am confirmed, I will apply the law to the facts.

**5) What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area?**

Response: The occurrence of crime and the expeditious adjudication of the cases of persons charged with committing crimes are two issues of significant concern to the citizens of the District of Columbia. If I am confirmed as a trial court judge, my principal role and primary duty is to preside over fair, impartial and statutorily-timely trial proceedings. It will also be my responsibility to make individual evaluations of the specific harmful effects and give thoughtful consideration when determining the particular punitive and/or rehabilitative measures necessary to redress the specific harmful effects of each individual convicted of committing a criminal act.

**6) What do you consider one of the most critical areas that you can serve D.C. while you're on the bench?**

Response: If confirmed, I will seek to establish and maintain an orderly and efficient courtroom docket, and I will endeavor to maximize my availability to assist other judicial colleagues when they are confronted with trial conflicts.

**7) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”**

**To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector.**

**Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?**

Response: In response to the COVID-19 pandemic, federal, state, and local governments have imposed varying levels of restrictions that are dynamic and, in certain instances, presently being re-imposed. Accordingly, if I am confirmed, the legality of any future regulations newly imposed by the District of Columbia might be an issue upon which I am called to decide. I would not want potential future litigants to believe that I had prejudged an issue that might come before me in the absence of a full hearing and review of the complete legal submissions of interested parties to any such prospective hearing, and therefore I cannot predetermine the conclusion or judgment that I would render in any such prospective hearing. I am well aware that the District of Columbia is a “covered entity” for purposes of the Religious Freedom Restoration Act, and I will employ the same legal framework relied upon by the District Court for the District of Columbia in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020).

Specifically, if confirmed, I will first look to determine whether a future restriction substantially burdens an entity’s exercise of religion. If the prospective restriction imposes a substantial burden upon an entity’s exercise of religion, I will next determine whether the District has demonstrated a compelling interest in restricting the religious activity and, if so, whether the District has imposed a narrowly tailored or the least restrictive means to achieve that compelling interest.

I will strictly adhere to the mandates of RFRA and all applicable Supreme Court precedent.



**Opening Statement of Ebony M. Scott**  
**Nominee to be an Associate Judge on the Superior Court of the District of Columbia**

Thank you, Chairman Peters and Ranking Member Portman, for holding this hearing today to consider my nomination to serve as an Associate Judge on the Superior Court of the District of Columbia. Thank you also to the Committee staff for their hard work preparing for this hearing. I would like to thank the Judicial Nomination Commission and its chair, the Honorable Emmett G. Sullivan, for recommending me to the White House, and I thank President Joseph Biden for the honor of this nomination.

As Maya Angelou has said, I come as one, but I stand as 10,000. I did not travel the road that led me here today alone. I would like to thank and acknowledge my Court family—in particular, the Chief of the Superior Court of the District of Columbia, Anita Josey-Herring and my mentor, Chief Judge Anna Blackburne-Rigsby, of the District of Columbia Court of Appeals, for their immeasurable support. I am truly fortunate to have the support not only of my colleagues present and past, but my friends and family members, too many to name, many of whom are watching virtually, and all of whom I am deeply grateful to.

I would like to recognize and thank my husband, Jon Scott. His love has been enduring, and his encouragement and understanding has been endless.

I would like to recognize my maternal grandmother, Gladys Slaughter, who is watching from my hometown of Buffalo, New York. Thank you for your support, and most importantly your love. I would like to recognize my father-in-law, John H. Scott, and mother-in-law, JoEllen Scott. I would also like to recognize my husband's Mother, Dorothy Harris Scott, who passed away in 1996. Although I never met her, her spirit is with me, and I honor her memory today.

I would like to now tell you a little about my background. My mother, Darnetta Adamson, who is watching from home, is my hero. My mother had me as a teenager, and even though she had many hurdles to cross as a result of having a child at a young age, she always modeled for me grace, hard work, humility, and strength. As I have told her many times over the years, the pride that wells up in her when she looks at me, is the same pride that wells up in me when I look at her.

My father, Dewitt Oliver, who we lost at a young age in the beginning of the COVID pandemic, was also a source of strength for me and a man of dignity and valor. Likewise, my paternal grandmother, Elizabeth Morse, who we lost just a few months after my father, was also a source of strength and encouragement. My Grandmother instilled in me the pursuit of excellence, which I have carried with me every step of my career, including in my current role as a Magistrate Judge on the Superior Court of the District of Columbia. Since my appointment to the bench, I have presided over the Court's high-volume civil calendars, dutifully applying the law to the facts, and serving the Court, and the people who come before, me with respect. Prior to my service on the Court, I was a civil trial attorney and Assistant Attorney General for the Office of the Attorney General for the District of Columbia, and brought a variety of matters in the Superior Court over the course of nine years. I also served as a General Counsel and Deputy Director at District of Columbia Agencies, and worked on administrative and personnel matters affecting local and governmental employees. I began my career as a Judicial Law Clerk on the District of Columbia Appeals, and conducted research and writing on issues that were appealed from the Superior Court of the District of Columbia.

I can assure the Committee that my broad range of professional experience has well-equipped me to be a prepared, thoughtful, and fair Associate Judge, should I be confirmed. I truly love this city, and

have built my personal and professional life here. It would be an honor of a lifetime to continue to give back to a city that has given me so much.

I look forward to answering the Committee's questions.

**REDACTED**

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,  
UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**  
  
Ebony Michelle Scott  
Ebony Michelle Robinson
2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**  
  
I am a citizen of the United States of America.
3. **Current office address and telephone number.**  
  
Superior Court of the District of Columbia  
500 Indiana Avenue, N.W.  
Chambers 4450  
Washington, D.C. 20001  
(202) 879-9962
4. **Date and place of birth.**  
  
November 14, 1978; Buffalo, NY.
5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**  
  
I am married to John Scott. He is the business owner and operator of Jon Scott Cuts Corporation. The company's address is:  
  
2001 L Street, N.W.  
Suite 500  
Washington, D.C. 20026
6. **Names and ages of children. List occupation and employer's name if appropriate.**  
  
None.
7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to**

**earliest.**

American University Washington College of Law, 2003 – 2006, Juris Doctor awarded May 2006.

Wake Forest University School of Law, 2001 – 2002, no degree awarded.

The University of Rochester, 1996 – 2000, B.A. in Political Science awarded May 2000.

Nichols School, 1992 – 1996, High School diploma awarded June 1996.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

July 2002 – August 2003  
L.A. Weight Loss  
7727 Pineville Matthews Road  
Suite 400  
Charlotte, NC 28226  
Sales Counselor

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Dora Palkin Memorial Scholarship Recipient, American University Washington College of Law, 2003.

Dean's Research Fellow for the Legal Rhetoric Program, American University Washington College of Law, 2004.

Marshall-Brennan Constitutional Literacy Project Fellow, American University Washington College of Law, 2004 – 2006.

Metropolitan Police Department Certificate of Recognition for "Outstanding Service," 2016.

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

None.

- 11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Women's Bar Association of the District of Columbia  
Member, 2021 – Present.

National Association of Women Judges  
District 4 Member, 2020 – Present.

National Bar Association  
Member of the Greater Washington Area Chapter, 2019 – Present.

Abramson Scholarship Foundation  
Mentor and Member, 2015 – Present.  
Member of the Mentoring Committee, 2015 – 2020.  
Co-chair of the Professional Development Program, 2015 – 2020.

Trial Lawyers' Association of Metropolitan Washington, D.C.  
Governor on the Board of Governors, 2010 – 2012.  
Member, 2007 – 2012.

American University Washington College of Law Mock Trial Honor Society  
Vice President and Team Member, 2006.

American University Washington College of Law Moot Court Honor Society  
Executive Board and Team Member, 2005.

- 12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

None.

- 13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

District of Columbia Bar, 2007.

United States District Court for the District of Columbia, 2009 – 2012.

Washington Bar Association, 2012.

Maryland Bar Association, 2007 (inactive).

On October 28, 2019, I learned of a brief administrative lapse in my District of Columbia Bar membership due to administrative and clerical errors, all of which were corrected on October 29, 2019. Otherwise, there have been no lapses in membership.

- 14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

None.

- 15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

- 16. Legal career.**

**A. Describe chronologically your law practice and experience after graduation from law school, including:**

- 1. Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

From August 2006 to September 2007, I served as a law clerk to the Honorable Anna Blackburne-Rigsby of the D.C. Court of Appeals.

- 2. Whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

- 3. The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

January 2020 – Present  
Superior Court of the District of Columbia  
500 Indiana Avenue, N.W.  
Chambers 4450  
Washington, D.C. 20001

August 2018 – December 2019  
Mayor's Office of Legal Counsel  
1350 Pennsylvania Avenue, N.W.  
Suite 407  
Washington, D.C. 20004

June 2016 – August 2018  
D.C. Office of Human Rights  
441 4<sup>th</sup> Street, N.W.  
Suite 570N  
Washington, D.C. 20001

October 2012 – June 2016  
Office of the Attorney General for the District of Columbia  
400 6<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

September 2007 – July 2012  
Chaikin, Sherman, Cammarata & Siegel, P.C.  
1232 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

**B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

My fourteen-years of legal practice has focused on serving the residents of D.C. in both public service and private practice.

From 2006 to 2007, I was a Judicial Law Clerk to then D.C. Court of Appeals Associate Judge Anna Blackburne-Rigsby. In that role, I reviewed the appellate record, which included appellate briefs, as well as those submitted by amicus curiae, conducted legal research on the issues raised by the parties on appeal, and prepared bench memoranda analyzing the appellate issue(s) and recommending the court's ruling. I routinely briefed Judge Blackburne-Rigsby on the appellate issue(s) before each oral argument, and observed each matter assigned to the Judge from the courtroom.

From 2007 to 2012, I was an Associate at Chaikin, Sherman, Cammarata & Siegel, P.C., where I served as Plaintiffs' counsel and handled cases ranging from premises liability, civil assault, wrongful death, negligence, and breach of contract.

From 2012 to 2016, I was an Assistant Attorney General ("AAG") in the Office of the Attorney General ("OAG") for D.C., designated to the Neighborhood and Victim Services Section, now known as the Housing and Community Justice Section. During this period, I appeared in the Superior Court regularly, and settled

north of 50 cases as sole counsel, often prior to the filing of a Complaint. As an AAG, I brought civil actions against property owners who allowed, maintained, or facilitated illegal drug or firearm use, and those who operated houses of prostitution, which often involved human trafficking. For example, I prosecuted a high-profile matter in which the owner of a massage parlor operated a brothel, and secured a judgment for the District of over \$3,000,000 – the largest to date in a nuisance action. I also brought the first slumlord action on behalf of OAG against a prominent housing provider, who subjected low-income District residents to unsafe and inhabitable housing conditions. Additionally, I worked with many District agencies, often partnering with them in nuisance abatement cases, such as the Department of Consumer and Regulatory Affairs.

From 2016 to 2018, I was a General Counsel for the D.C. Office of Human Rights. In this role, my client was the Office of Human Rights. I both supervised the agency's legal division and reviewed all legal documents, including final agency decisions, motions, regulations, legislation, and memoranda. Further, I developed both anti-discrimination and sexual harassment trainings and Gender Identity & Expression Policy for the D.C. government.

From 2018 to 2019, I was the Deputy Director of the Mayor's Office of Legal Counsel, where I counseled the D.C. Mayor, the D.C. Deputy Mayors, and the D.C. government agencies. I created a taskforce pursuant to Mayor's Order 2017-313, which prohibits workplace sexual harassment. The taskforce created and disseminated guidance on the Order's procedures, and developed trainings for the investigations required by the Order.

On January 17, 2020, I was appointed as a Magistrate Judge by former Chief Judge, Robert E. Morin; I continue to serve in this role. The Court assigned me to the Civil Division. In this Division, I have entered orders on the following high-volume calendars: Small Claims; Landlord & Tenant; Mortgage Foreclosures and Tax; and Debt Collection.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

In private practice, my clients were individuals who suffered serious injuries. As a local prosecutor, I represented the District government's interests. As counsel to a District agency, I provided advice and counsel to the Chief Executive. As a Magistrate Judge, I do not have clients.

**D. Describe the general nature of your litigation experience, including:**

- 1. Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**



From August 2006 to June 2016, I frequently appeared in court in three different roles: as a Judicial Law Clerk; as a Civil Trial Attorney; and as an Assistant Attorney General.

From June 2016 to December 2019, I occasionally appeared in court as a General Counsel and Deputy Director.

Since January 2020, I have frequently appeared in court virtually as a Magistrate Judge.

**2. What percentage of these appearances was in:**

**(a) Federal courts (including Federal courts in D.C.);**

0% of my appearances have been in federal courts.

**(b) State courts of record (excluding D.C. courts);**

0% of my appearances have been in state courts.

**(c) D.C. courts (Superior Court and D.C. Court of Appeals only);**

99.9% of my appearances have been in D.C. courts.

**(d) other courts and administrative bodies.**

0.1% of my appearances have been in other courts and administrative bodies.

**(3) What percentage of your litigation has been:**

**(a) civil;**

100% of my practice has been in civil matters.

**(b) criminal.**

0% of my practice has been in criminal matters.

**(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

I have tried approximately 110 cases to verdict or judgment, of which I was the lead counsel in 103 cases.

**(5) What percentage of these trials was to**

**(a) a jury;**

7% of the trials were before a jury.

**(b) the court (include cases decided on motion but tabulate them separately).**

93% of the trial were before the court.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. *D.C. v. George S. Thanos, et al.*, 2008 CA 006897 B and 2011 CA 000856 B  
(before the Honorable Jeanette J. Clark)

I represented D.C. in this matter, starting on June 5, 2015. The Defendant, George S. Thanos, owned a four-story building in D.C., in which he ran a dry-cleaning business on the first floor, and rented out the three upper floors to tenants. Mr. Thanos leased the fourth floor to VIP, a brothel masquerading as a massage parlor. Mr. Thanos took no action to abate the prostitution-related nuisance. In 2008, D.C. filed a complaint against Mr. Thanos and VIP for illegal operation of brothel, resulting in the court finding that Mr. Thanos and VIP participated in a prostitution-related nuisance as defined in the Nuisance Act. After issuing its findings, the court held an evidentiary hearing to determine damages and equitable relief. D.C. sought: per diem fines at a rate of \$100-per-day that VIP leased the unit in Mr. Thanos' building; the rents and other monies collected by Mr. Thanos from VIP; attorney's fees; and the gross revenues of VIP's illegal business. The court granted D.C.'s request for attorney's fees and issued a permanent injunction, but denied its request for income disgorgement. Both parties appealed. The Court of Appeals reversed the Superior Court's denial of D.C.'s disgorgement request, remanding a determination as to whether such damages were appropriate in this case.

On remand, I filed D.C.'s Brief in Support of an Award of Disgorgement of Revenue and Profits from Mr. Thanos and VIP, and all subsequent replies and oppositions. On January

19, 2016, Judge Clark issued an Order granting D.C.'s request to disgorge the profits Mr. Thanos and VIP accumulated through the brothel; this was the first time a D.C. court required defendants to surrender the profits they received from such illegal activities.

Opposing Counsel:

Nathan Baney  
4000 Legato Road  
Suite 1100  
Fairfax, VA 22033  
(571) 303-9102

Thomas Heslep  
419 7<sup>th</sup> Street N.W.  
Suite 405  
Washington, D.C. 20004  
(202) 628-0293

2. *D.C. v. 1309 Alabama Avenue, LLC, et al.*, 2016 CA 000162 B (before the Honorable Frederick H. Weisberg)

I represented D.C. in this matter from January 2016, until my departure from the Office of the Attorney General in June 2016. D.C.'s Complaint alleges the owners and property managers of D.C.'s Congress Heights neighborhood did not address a long history of housing code violations. Accordingly, D.C. requested that a financial and repair plan be implemented by a court appointed receiver for the rehabilitation of Congress Heights. After the Complaint was filed, I represented D.C. in a Show Cause Hearing before Judge Weisberg, who issued an Order specially appointing a District Housing Inspector to the case, and requiring the owners and property managers to file an abatement plan addressing the numerous housing code violations. The matter is still pending.

Opposing Counsel:

Richard J. Bianco  
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(202) 918-5397

Stephen O. Hessler  
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Suite 500  
Washington, D.C. 20005  
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3. *Chaikin, Sherman, Cammarata & Siegel, P.C. v. Negada, L.L.C., et al.*, 2009 CA 002136 B (before the Honorable Anita Josey-Herring)

In 2019, I represented Chaikin, Sherman, Cammarata & Siegel (“CSCS”) in a contract dispute against Defendants, Negada, L.L.C. and the African Business Directory, Inc., companies controlled by Defendants, Yonatan Mekonnen and Henok Daba, respectfully. The Defendants were selling advertisements in, and publishing, the African Business Directory. CSCS and the Defendants entered into a contract wherein CSCS purchased a Directory advertisement for a specified Directory publication date. However, the Directory was never published nor distributed.

CSCS filed suit against the Defendants for breach of contract, fraud, violations of the D.C. Consumer Protection Act, negligent misrepresentation, and equitable estoppel. Subsequently, an Order of Default was entered against each Defendant and an initial *Ex Parte* Proof Hearing on damages was held. At the initial hearing, the counsel for Negada, L.L.C. and the African Business Directory, Inc. failed to appear. Nevertheless, the court ruled against Defendants, Mekonnen and Daba, jointly and severally, and awarded damages for breach of contract, negligent misrepresentation, violations of the Consumer Protection Act, and attorney’s fees. However, since the corporations’ counsel failed to appear at the first hearing, the court scheduled a second *Ex Parte* Proof Hearing to determine whether damages should be assessed against the corporations. Pending the second *Ex Parte* Proof Hearing, the court stayed the Order of Judgment against Mekonnen and Daba. In response, I filed a Partial Consent Motion for Summary Judgment, arguing that Mekonnen and Daba were the corporate entities’ agents when communicating with CSCS and, therefore, the corporations were negligently responsible for CSCS’ injuries. Following the second *Ex Parte* Proof Hearing, the court vacated its judgment against Mekonnen and Daba, due to its indetermination of whether the corporate veil should be pierced, and denied the Partial Consent Motion for Summary Judgment. I then filed an appeal to the D.C. Court of Appeals (Case No. 09-CV-001499).

There were two issues on appeal. First, whether the trial court erred in denying CSCS’ Partial Consent Motion for Summary Judgment against Negada, L.L.C., and the African Business Directory, Inc., when it was uncontroverted that Mekonnen and Daba were agents of the corporate entities when entering into a contract with CSCS and, therefore, responsible for the actions of its agents. Second, whether the trial court erred in vacating the judgments entered against Mekonnen and Daba where a Default had been entered. The Court of Appeals agreed the trial court erred in vacating the judgment against Mekonnen and Daba as they were agents of the corporation and remanded the case.

Opposing Counsel:

None as the Defendants proceeded *pro se*

Co-counsel:

Ira Sherman  
1232 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
(301) 802-4075

4. *Chizinga, Victor et al. v. Luckey, Michael et al.*, 2008 CA 008469 B (before the Honorable Brook Hedge)

In 2008, I represented the Plaintiffs in a wrongful death suit. My clients — who suffered brain injuries, causing cognitive impairments — were the driver and passenger of a vehicle that was owned by the decedent. When the case was filed, I had never represented clients with such devastating injuries. Because of my client's brain injuries, our lawyer-client relationship was tense at times. For example, during a meeting with one of my clients, my client and their family had a major disagreement. Confronted with a distressed client, an upset family member, and severe cognitive injuries, I had to decide how to both serve my client and diffuse the disagreement, thereby learning my true role as a lawyer. I learned I must exhibit compassion, empathy, and patience when a client is distressed. This case transformed my ability to allow people to grieve, to be angry, to have outbursts, and to explain their often-traumatic experiences. People simply want to be heard, and powerful people, such as judges, should be mindful of this very human need.

Opposing Counsel:

Christopher Costabile  
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Suite 400  
Fairfax, VA 22030  
(703) 273-2777

Andre Forte  
34 W Franklin Street  
Hagerstown, MD 21740  
(301) 791-6924

5. *Jewell, Tiffany v. Jones, Tulena, et al.*, 2009 CA 000278 V (before the Honorable Ramsey Johnson)

I represented the Plaintiff in this matter, Tiffany Jewell, who was the victim of a hit-and-run accident in D.C. Ms. Jewell was at a park and crossing the street to reach her son's baseball game when she was struck by a vehicle, which left the scene. Subsequently, Ms. Jewell suffered severe injuries, including permanent scarring, glass particles embedded throughout her skin that took months for her body to discharge, cervical injuries, and mental distress. Ms. Jewell did not possess a vehicle at the time and did not possess automobile insurance, nor did she live in a home where an insurance policy existed to cover her injuries. The driver of the vehicle that struck her was not the registered owner and was the victim of an unrelated homicide sometime after the incident. The Defendant claimed throughout the litigation that she did not provide the driver with consent to drive her vehicle.

In addition to litigating this matter, I also alerted my client to community resources and

located programs that would help her cope with her injuries. Ultimately, the matter settled.

Opposing Counsel:

O'Neil S. King  
962 Wayne Avenue Suite 910  
Silver Spring, MD 20910  
(301)563-6071

- 18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

From October 2012 to June 2016, as an Assistant Attorney General for D.C., I worked on nuisance abatement issues. During this time, I pursued property owners who neglected their properties and forced their low-income tenants to live in unsafe housing conditions. Although I brought lawsuits against such property owners, I also had discussions with the owners prior to taking legal action. Additionally, I routinely worked in partnership with the Metropolitan Police Department in providing trainings teaching new police recruits on nuisance property issues. Equally, I built relationships with D.C. residents by regularly attending community meetings on nuisance abatement issues at various police stations, churches, and community centers.

- 19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

Yes. I was appointed to the position of Magistrate Judge on the Superior Court of the D.C. on January 17, 2020, by the Chief Judge of the Superior Court, and I remain in this position. Pursuant to D.C. Code § 11-921, the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in D.C., except those actions in which exclusive jurisdiction is vested in a federal court in D.C., or in the United States District Court for D.C. Pursuant to D.C. Code § 11-1732, Magistrate Judges may administer oaths and affirmations; determine conditions of release pursuant to the provisions of Title 23 of the D.C. Official Code (relating to criminal procedure); conduct preliminary examinations and initial probation revocation hearings in all criminal cases to make probable cause determinations; preside over family court matters; and with the consent of the parties involved, make findings and enter final orders or judgments in matters brought in the Civil, Criminal, and Probate Divisions, and the Family Court, of the Superior Court, excluding jury trials and trials of felony cases.

As a Magistrate Judge presiding over the court's high-volume civil calendars, I have not written any opinions to date. Instead, I issue orders setting the next court date, and state

my findings of fact and conclusions of law on the record, pursuant to Super. Ct. Civ. R. 52(a)(1).

**A. List all court decisions you have made which were reversed or otherwise criticized on appeal.**

I have never been reversed or otherwise criticized on appeal.

**20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

Yes, I was a candidate for the position of Magistrate Judge on the Superior Court in 2015 and 2019. I was appointed as a Magistrate Judge on January 17, 2020.

**21. Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

Magistrate Judge (appointed).

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.**

None.

**22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

No.

**23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-**

respondent, and list any grand jury investigation in which you appeared as a witness.

No.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.



## II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

My current employer is the Superior Court of the District of Columbia and, if confirmed as an Associate Judge, will remain my employer.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

I currently serve as an Adjunct Professorial Lecturer of Law at American University Washington College of Law. If confirmed as an Associate Judge, I plan to continue to serve in this role.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

I will abide by the ethical canons included in the Code of Judicial Conduct to ensure

impartiality and fairness. Should any possible conflicts of interest arise, I will apply the ethical cannons and recusal standards and, if necessary, I will confer with judicial ethics officials so to determine, as appropriate, whether I should recuse myself from the matter at issue.

**8. If confirmed, do you expect to serve out your full term?**

Yes.

**III. FINANCIAL DATA**

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

**REDACTED**

**IV. DISTRICT OF COLUMBIA REQUIREMENTS**

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?  
Yes.
3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.  
Yes. I was admitted on November 5, 2007.
4. If the answer to Question 3 is "no" --
  - A. Are you a professor of law in a law school in the District of Columbia?
  - B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  - C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  - D. Upon what grounds is that eligibility based?
5. Are you a bona fide resident of the District of Columbia?  
Yes.
6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Since January 2018, my spouse and I have resided at [REDACTED]. From December 2013 to January 2018, my spouse and I resided at 4301 [REDACTED]  
[REDACTED]

**REDACTED**

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

Copies of my District of Columbia Judicial Nomination commission questionnaire are attached.

## AFFIDAVIT

El Rony M. Scott being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 13 day of October 2021.

Heiner E. Ramirez  
Notary Public



District of Columbia  
Signed and sworn to (or affirmed) before me on  
October 13, 2021 by El Rony Scott  
Date Name(s) of Individual(s) making statement  
Heiner E. Ramirez  
Signature of Notarial Officer  
Heiner E. Ramirez  
Title of Office  
My commission expires: 12/14/2025

**Senator James Lankford  
Post-Hearing Questions for the Record  
Submitted to Ebony M. Scott**

**Nominations of Erik A. Hooks to be Deputy Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; the Honorable Michael Kubayanda to be a Commissioner, Postal Regulatory Commission; Laurel A. Blatchford to be Controller, Office of Federal Financial Management, Office of Management and Budget; and Ebony M. Scott and Donald W. Tunnage to be Associate Judges, Superior Court of the District of Columbia**

**Thursday, November 18, 2021**

1) How would you describe your judicial philosophy?

Response: I strive to be a fair and thoughtful Judge. I am mindful of the important role that Judges play in our community, and so it is important to me that litigants leave my courtroom feeling respected, and heard, no matter the outcome. I carefully listen to the arguments and evidence in cases before me and apply the law objectively.

2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Response: Since being appointed to the position of Magistrate Judge in 2020, my approach has been to set aside any personal views I may have on an issue before me. In the scenario presented, I would ensure that the law is properly, and objectively, applied to the facts before me. Ultimately, I would explain my decision to the parties and indicate the legal standards that apply, and explain that Judges are duty bound to follow the law.

3) Should judges take changing social values into consideration when interpreting the law?

Response: No. As a Judge, my role is to interpret the law by first looking to its plain language. "The first step in construing a statute is to read the language of the statute and construe its words according to their ordinary sense and plain meaning. If the statute is clear and unambiguous, we must give effect to its plain meaning." *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 383 (D.C. 2012) (internal quotation marks and citations omitted).

4) At the outset of the pandemic, Congress included eviction protection in the CARES Act. When those protections expired, the CDC issued an eviction moratorium which took effect on September 4, 2020. That rule was challenged and reached the Supreme Court. On June 29, 2021 the Court left the moratorium in place, but noted that "congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31." Despite the Supreme Court's warning, President Biden attempted to extend the moratorium. On August 26, 2021, the Supreme Court vacated the moratorium because it exceeded CDC's statutory authority. The District of Columbia provided eviction protection beyond that provided by the CDC.

As the District's eviction moratorium begins to phase out and evictions may resume next year, how will you balance the rights of landlords who, in some situations, have not received rent in over a year and a half, with the interests of tenants who seek a safe place to live?

Will you apply the law to the facts, or will other consideration influence your decision making?

Response: As a Magistrate Judge, I currently preside over the Landlord and Tenant calendar. In this role, I have had to daily balance the rights of landlords with the interests of tenants. In doing so, I have applied the law to the facts. As a Judge, I am duty bound to apply the law to the facts in all matters that come before me, and I can assure the Committee that I would continue to do so should I be confirmed.

5) What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area?

Response: As a resident of the District of Columbia, I see the overall increase in crime as significant, as opposed to a particular criminal issue. As a Judge, I can help to address the increase in crime by ensuring that I handle criminal cases fairly and efficiently. I will apply the law to the facts of the case before me in all cases. For example, if a matter were to come before me for arraignment, my role is to determine whether an individual should be detained pre-trial or whether that individual should be subject to conditions of pre-trial release pursuant to the law. *See D.C. Code § 23-1321*. I will ensure that I take into account all relevant factors in my decisions, including public safety as required by statute. I will also ensure that my cases move along.

6) What do you consider one of the most critical areas that you can serve D.C. while you're on the bench?

Response: As I mentioned at the hearing, the Court currently has approximately 15 vacancies, and I suspect that additional vacancies will be created by the retirement of my colleagues. These vacancies have contributed to the Court's backlog. Should I be confirmed, I consider one of the most critical areas that I can serve the city as an Associate Judge is to be prepared to immediately address the backlog on any division that I am assigned to.

7) Religious Freedom Restoration Act (RFRA) states that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."

To pass the least-restrictive-means test, the government must show "that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion" by the religious objector.



Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Response: The above statement correctly recites the provisions of the Religious Freedom Restoration Act (“RFRA”), codified at 42 U.S.C. §§ 2000bb *et seq.* As a sitting Judge, I am ethically bound to perform the duties of judicial office impartially, competently, and diligently. Should I be confirmed as an Associate Judge, this matter may come before me, and I would not want to signal to the people that I serve that I have compromised my duty to be an impartial arbiter by providing an opinion on the stated premise. However, should I be confirmed, I can assure the Committee that if a matter comes before me in which a party asserts a claim, or defense, pursuant to RFRA, I will apply the law to the facts, and adhere to Supreme Court and District of Columbia precedent in evaluating this and all other claims. *See, e.g., Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (“government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.”) (citation omitted).

## The ring in the ashes

### Why FEMA's billion-dollar program to prevent disasters failed to save Mount Olive Road

By Hannah Dreier and Andrew Ba Tran

GRASS VALLEY, Calif. — They had put it off for weeks, but now the ground had stopped smoldering and the weather had cooled, so Michael Goetze set out with his son to see the home that a wildfire had turned to rubble and ash.

They had one goal: Find the wedding band Michael had worn for 40 years of marriage.

“It’ll be there. Titanium doesn’t melt,” his son, Jeremy, said as they drove to the house.

“But the fire was so hot, everything else is going to be dust,” Michael said.

Following behind them were members of their church. A dozen people worried about Michael, a 61-year-old man with a booming voice who had once hosted pool parties and volleyball contests at his home, but had grown quiet and withdrawn in the past year after his wife fell ill and died.

They drove through the foothills of the Sierra Nevada, past the dense pine trees that looked suddenly ominous and overgrown. “This whole place is just turning into a tinderbox,” Michael said.

Their street, Mount Olive Road, was lined with charred remnants of cars and houses, all destroyed in August by what came to be known as the River Fire. When they parked and got out, smoke from a wildfire miles away caught in their throats. Pieces of ash were drifting down in clumps.

“It’s bad today with the ash,” Jeremy said. “Kind of claustrophobic.”

This was the road where Michael had lived for most of his life, where Jeremy, 40, had grown up, and where both men had worked every day making granite countertops. It had always felt safe to them. But a map filed away in a county office told a different story: The local emergency management department had traced Mount Olive in brown highlighter, singling it out as a place highly likely to burn in a wildfire. The county wanted to clear away dry grass and thin the trees to reduce this risk. That work can cost millions of dollars, and so in 2018, Grass Valley applied for

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a grant from the Federal Emergency Management Agency. Then came a record-breaking wildfire season, and then an even bigger one, and when the fires started again this summer, the county was still awaiting FEMA's decision.

As natural disasters worsen, President Biden is directing FEMA to shift more of its efforts to preventing them. This work was always a small part of the agency's role, but now Biden has committed an unprecedented \$5 billion in new funding to minimize future disasters, and Congress designated several billion dollars more in its recently passed infrastructure bill.

A review of internal FEMA data obtained by The Washington Post, however, shows how difficult such a shift might be. Of the \$11 billion FEMA has allocated for this program over the past decade, only \$1.5 billion has been spent. The vast majority of the money is caught up in bureaucratic delays that leave counties waiting years to get started on what they describe as urgently needed work. In the case of the Mount Olive Road project, FEMA moved the proposal into the final stages of review this fall, almost four years after the county first applied. By then, the River Fire had jumped the road and burned down 140 buildings, including Michael's house and granite workshop.

Since the fire, Michael had been ruminating over all the things he left behind when he evacuated. He hadn't wanted to come back, but Jeremy hoped the wedding band might bring him some peace.

Before they walked up to what was left of Michael's home, the group stood in a circle and prayed. "We know that you are a God of comfort, and we hope that we find comfort today," a man read. "Amen," Michael said. Someone had brought disposable hazmat suits and he tried to put one on, but it was too small for his 6-foot-7 frame. He put on a cloth mask instead and said he was ready.

For decades, FEMA's dominant strategy has been to come in after disasters to coordinate cleanup and recovery. This is why the agency was created 40 years ago, but as climate disasters grow more frequent and devastating, FEMA is refocusing on a policy known as mitigation, which involves trying to intervene before catastrophe strikes. In places that flood, it might mean elevating houses. In places prone to hurricanes, it means retrofitting buildings to withstand damaging winds. And in areas vulnerable to wildfire, it means clearing space around homes. Biden is counting on these programs to contain the spiraling expense of federal disasters, which cost an estimated \$99 billion last year. "The evidence is overwhelming that every dollar we invest in resilience saves \$6 down the road, when the next fire doesn't spread as widely, or the power station holds up against a storm," Biden said in September.

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How to get the money into communities, though, has been a continuing challenge. A Post analysis found that counties wait an average of seven years to complete their FEMA-funded projects, and that during those waits, applicants for fire mitigation experience an average of three more major wildfires, and applicants for storm mitigation experience two more hurricanes. The Post analysis also found that FEMA is about half as likely to fund grants for rural areas like Grass Valley, and that poor counties and places where White people are a minority face longer delays in getting grants approved.

In its own analysis, the Government Accountability Office found that counties struggled with a “cumbersome” process that entails hundreds of pages of supporting documentation, multiple rounds of review with different FEMA reviewers, and years of requests for additional information. Local officials told The Post they see federal mitigation funding as a last resort. In some cases, workers have threatened to quit if they ever had to deal with the grants again. In other cases, communities have withdrawn applications or opted out of the program after realizing how much staff time it would take, including at least half the California counties that saw wildfires this past summer.

“There’s a lot of money there. But we’ve all kind of shied away because it’s so complex to access,” said Ken Pimlott, chair of the Fire Safe Council for El Dorado County, where one of the biggest wildfires in state history destroyed a thousand buildings. Seventy miles to the east, the North Tahoe Fire Protection District applied for a grant in 2010 to clear space near homes, but FEMA review requirements delayed the project for eight years. “We think we should have been able to get right to work,” Eric Horntvedt, the district’s forest fuels coordinator, said. The district was halfway through the project when the Caldor Fire began burning toward Lake Tahoe in September.

David Maurstad, who runs FEMA’s mitigation program, said grant applications take a while to process because the projects are complex. “Everything we’re doing, we’re doing with the focus of how we can turn seven years into six years into five years,” he said. “As different issues are brought to our attention that need to be addressed, we do what we can to make steady improvement.” He said some policies that frustrate applicants, like the requirement that counties wait on FEMA approval before starting any part of their projects, are necessary to safeguard taxpayer dollars. Grass Valley decided to apply for a grant because mitigation work “just wouldn’t be possible for a small, rural community without it,” county spokeswoman Taylor Wolfe said. More than 90 percent of homes in the 100,000-person county are classified as “high” or “extremely high risk” for fire, and hundreds of residents have requested help protecting their homes. “There’s a lot of people who are scared to death, and they can’t afford to get a contractor out,” Jamie Jones, executive director of the county Fire Safe Council, said.

Jones helped apply for the \$4.8 million FEMA grant in 2018. But her hopefulness faded as years passed without a decision. She and her colleagues sent emails checking on their application. “Do we have any updates?” they wrote. “Our leadership is really interested in progress on this,” they wrote again months later. The responses came back the same: still under review. When Jones saw footage of homes burning in the River Fire, she remembers thinking, “Please let it not be someone who was waiting.” Later, she drove by the ruins of the Goetzes’ house, where her kids had gone to pool parties thrown by Michael and his wife, Wendy, and wondered whether the county could have done more.

The River Fire was the kind most likely to be suppressed by mitigation; it was driven largely by dry vegetation, not wind, and had spread by climbing into densely packed treetops. It started burning toward Mount Olive Road from a campground in the canyon below as Michael and Jeremy were finishing work. “Get out. Just leave now,” they remembered a fireman shouting. As they drove away, they saw a vortex of fire charging up the mountain from the opposite side of the road, and when they awoke the next day, it was to photos their friends had sent them, taken from newscasts, of their home destroyed.

Now, as they prepared to start the search, a man from their church walked around marking the site with yellow caution tape. He roped off the dead trees. The 250-gallon propane tank that smelled of gas. The piles of ash that might contain disintegrated batteries or pieces of asbestos that had been used in the house as flooring. Jeremy managed to get a hazmat suit mostly zipped up, put on a KN95 mask, and, apologizing to the man who had just marked the hazards, stepped over the caution tape. “I’m trying to remember the layout of the house. It’s kind of hard when it’s not here,” Jeremy said.

Michael told him he had kept the wedding band in a glass on the bathroom windowsill, so Jeremy knelt down where he thought the bathroom wall would have been and began to dig. He found a buried slab of the granite shower. At least he was in the right place.

Michael watched from outside the tape. “Jeremy can always find anything,” he said, and soon, Jeremy uncovered a melted glob of glass with a sparkling piece of melted metal embedded inside.

“It’s something gold,” he said, and showed it to his father.

But it wasn’t the ring. “Yeah, I think there were gold earrings on the window ledge,” Michael said, and explained that Wendy had kept her jewelry collection there.

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Jeremy went back to the pile. He found more lumps of glass with melted silver and gold inside, examined each one, and put them aside. The church members were looking around, too, calling out what they found. A ball of coins, all melted together. A fireproof box with orange pill bottles containing the medicine that Wendy had taken when she was sick with cancer. The crushed frame of the chair where she had spent her last days.

There was nowhere for Michael to sit but the propane tank, so he sat down amid the gas fumes, thinking about when they first moved in. Wendy had taught art at the grade school down the road, and they had covered the walls with her paintings. In the summer, they rented a shaved ice machine and invited the neighborhood kids over. There was so much Michael wished he'd saved from the fire: the paintings, Wendy's scrapbooks, the clothes that Jeremy's sisters had wanted, her jewelry.

Jeremy searched through the rubble until he hit the black dirt underneath. His hazmat suit had split and plumes of ash were falling onto his lower back. His mask was broken, dangling from one ear. "I think we've done enough, Jeremy," Michael said. "Who knows, it might have been so hot that it melted."

"All right," Jeremy called back, but he stayed where he was and picked up a sieve he had brought to sift the wreckage more finely. He was coughing and rubbing at his red eyes. He lifted a piece of sheet metal and found something that looked like a ring, but when he picked it up, he saw it was just a steel washer. "Dang it," he said.

At the other side of the ash heap, someone called, "I found something." They had unearthed a set of utensils, gray and rust-colored from the fire. Michael smiled when he saw the discovery. "That's our wedding silverware," he said.

Michael held the silverware as they walked back to the cars. He paused in front of the granite shop, where something had exploded and bent the warehouse doors outward. The others gathered in front of him. "I appreciate you all coming and helping," he said.

"Oh, we love you, Mike," one of the men said.

Michael explained that Wendy had picked the silverware out with her artist's eye. It was delicate, with ornate roses looping down the handles. "We used it every day for 41 years," he said. He rubbed the soot off one of the forks and held it up.

"Look, you can see the roses here," he said.

A week later, after hearing the county would be coming soon to start clearing debris, Michael and Jeremy decided to try again, just the two of them. They arrived better

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prepared, with hiking boots and perfectly fitting hazmat suits. And this time, instead of watching from the sidelines, Michael went into the ash pile. Wondering whether the bathroom walls might have tipped over backward as they collapsed, he began searching beyond the footprint of the house, and almost immediately, he saw a chunk of glass with a dark shape within it. "I think I found it," he shouted.

Jeremy headed toward him, but before he could get there, Michael grabbed a shovel and shattered the glass, and there was the ring, blackened and rough, but intact. He held it in his palm.

"Look at that," he said.

A few days later, a truck of workers showed up at the property in white-and-green protective gear and spread out looking for toxic materials to haul away. "Jackpot right here," one of them called, and waved the others over to four disintegrated car batteries that needed to be carefully lifted into bags and sealed in a plastic barrel. They emptied the propane tank Michael had used as a seat and spray-painted pink Xs over the pockets of asbestos. One pulled out a rubber gripper to lift up a piece of sheet metal roofing. "That stuff will cut you like a knife," he said. The crew leader wrote down their findings on a clipboard: seven batteries, one and a half gallons of toxic chemicals, 1,770 square feet of asbestos. The county estimated it would cost \$100,000 to clear the property, most of which would be paid by FEMA — not with funds from its mitigation program, but through its much larger recovery operation.

By midmorning, the leader announced, "We're rolling out." The men drove to the next home, searched it and kept moving along Mount Olive Road. It was a slow process and a hazardous one that would go on for months, and as they continued their work, Michael was sitting in Jeremy's kitchen one afternoon at the granite counter they had built together. He was wearing the ring, which he had cleaned and tried to polish.

"All the time I spent looking for it. It was probably meant for you to find," Jeremy said.

Michael nodded and turned the ring around and around on his finger. "Remember how the fire department had that guy racing down the street, yelling at us?" he said. "It was like, 'This can't be happening.'"

"Yeah, seriously," Jeremy said. "The smoke was just coming right straight toward us."

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“If I’d known the fire was going to take the house out, I could’ve gotten the water pump going,” Michael said. “You kind of imagine if you’d stayed back, maybe you could have saved everything.”

Jeremy listened, not sure what to say. His home was deep in the woods, surrounded by dry grass and sloping tree branches. Like his father’s property, this one also appeared on the map in the county file, some yards away from another road the grant application said needed urgent mitigation work. The country roads were covered now with handmade signs advertising tree-trimming services, but Jeremy didn’t have money for that. Instead, in his own version of mitigation, he had bought a chain saw to cut back the low branches and looped a garden hose over the roof.

Michael was quiet for a moment and then began describing a dream he’d had the night before. “I’m going back in the house and looking around and nothing’s burned. And it’s like, ‘What is going on?’ ” he said.

“Better not to think about the past,” Jeremy said finally. “Don’t even think about tomorrow. Certain things, you just don’t have control over them.”

