

**NOMINATIONS OF CHRISTI A. GRIMM  
AND NEIL H. MacBRIDE**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

CHRISTI A. GRIMM, TO BE INSPECTOR GENERAL, DEPARTMENT OF  
HEALTH AND HUMAN SERVICES; AND NEIL H. MacBRIDE, TO BE GEN-  
ERAL COUNSEL, DEPARTMENT OF THE TREASURY

—————  
SEPTEMBER 22, 2021  
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Printed for the use of the Committee on Finance

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U.S. GOVERNMENT PUBLISHING OFFICE

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# CONTENTS

## OPENING STATEMENTS

	Page
Wyden, Hon. Ron, a U.S. Senator from Oregon, chairman, Committee on Finance .....	1
Crapo, Hon. Mike, a U.S. Senator from Idaho .....	2
Warner, Hon. Mark R., a U.S. Senator from Virginia .....	4

## CONGRESSIONAL WITNESS

Kaine, Hon. Tim, a U.S. Senator from Virginia .....	5
---	---

## ADMINISTRATION NOMINEES

Grimm, Christi A., nominated to be Inspector General, Department of Health and Human Services, Washington, DC .....	6
MacBride, Neil H., nominated to be General Counsel, Department of the Treasury, Washington, DC .....	8

## ALPHABETICAL LISTING AND APPENDIX MATERIAL

Crapo, Hon. Mike:	
Opening statement .....	2
Prepared statement .....	27
Grimm, Christi A.:	
Testimony .....	6
Prepared statement .....	28
Biographical information .....	29
Responses to questions from committee members .....	40
Kaine, Hon. Tim:	
Testimony .....	5
MacBride, Neil H.:	
Testimony .....	8
Prepared statement .....	74
Biographical information .....	75
Responses to questions from committee members .....	86
Warner, Hon. Mark R.:	
Opening statement .....	4
Wyden, Hon. Ron:	
Opening statement .....	1
Prepared statement with attachments .....	102

## COMMUNICATION

Keckler, Charles N. W. ....	111
-----------------------------	-----



**NOMINATIONS OF CHRISTI A. GRIMM, TO BE  
INSPECTOR GENERAL, DEPARTMENT OF  
HEALTH AND HUMAN SERVICES; AND NEIL  
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DEPARTMENT OF THE TREASURY**

WEDNESDAY, SEPTEMBER 22, 2021

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

The hearing was convened, pursuant to notice, at 10 a.m., via Webex, in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Brown, Bennet, Warner, Whitehouse, Cortez Masto, Warren, Crapo, Grassley, Thune, Toomey, Lankford, Young, and Sasse.

Also present: Democratic staff: Ian Nicholson, Investigator and Nominations Advisor; and Joshua Sheinkman, Staff Director. Republican staff: Gable Brady, Health Policy Advisor; Lincoln Foran, Policy Advisor; and Catherine Fuchs, Senior Counsel.

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR  
FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. There are two nominations for key roles in the Biden administration, jobs that deal with sound management and good government within major Federal agencies. Christi Grimm is the President's nominee for Inspector General for the Department of Health and Human Services. Neil MacBride is the President's nominee to serve as General Counsel of the Treasury Department.

Ms. Grimm brings to her nomination more than 2 decades of experience within the HHS Office of Inspector General. She first joined that office in 1999. She has held a variety of roles over the years, and she currently serves as Principal Deputy Inspector General and has been performing the role of the Inspector General for more than a year. She knows this office inside out. She knows the importance of working with Congress, and this committee in particular. She has a proven commitment to maintaining and strengthening the integrity of America's health-care programs. I appreciate that she is willing to take on the top job as Inspector General during such a challenging time. Setting all other issues aside, studying the Nation's response to the pandemic would keep the Inspector General and the staff of more than 1,500 busy through the end of the decade. The pandemic response, however, is just one of many challenges ahead for the HHS Inspector Gen-

eral. The committee takes its role very seriously. We look forward to working closely with Ms. Grimm, if and when she is confirmed.

Neil MacBride also brings decades of service to his nomination. Currently in private practice, he previously served in the Obama administration as Associate Deputy Attorney General for Criminal Enforcement, and as the U.S. Attorney for the Eastern District of Virginia. He also served as Chief Counsel for then-Senator Biden's Judiciary Committee, which means he certainly knows his way around the Dirksen Senate Office Building.

If and when he is confirmed, Mr. MacBride will join the Treasury Department, which is working hard to build back better from the economic crash that wiped out tens of millions of jobs through the early stages of the pandemic. Democrats in Congress are working closely with Secretary Yellen and her team on policies that will create high-skill, high-wage jobs, make it easier to support a family, build more affordable housing, and ensure that the mega-fortunate will pay their fair share of taxes. Members of this committee will count on Mr. MacBride to support these efforts.

As I mentioned, the Finance Committee is committed to oversight. I had a chance to speak with Mr. MacBride about oversight issues during our recent meeting, particularly certain abuses by the previous administration. I was pleased to have his commitment to work with the committee on improving oversight, particularly in comparison to what we went through over the last 4 years.

Bottom line: I think these are two highly qualified nominees. I want to thank them for their willingness to serve in challenging roles at a time when the HHS IG and the Treasury Department are working long nights as a result of the pandemic. We look forward to hearing from them in the questions and answers, and let us hear from Senator Crapo.

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

**OPENING STATEMENT OF HON. MIKE CRAPO,  
A U.S. SENATOR FROM IDAHO**

Senator CRAPO. Thank you, Senator Wyden.

Today, we welcome two nominees to the committee: Mr. MacBride to be General Counsel of the Treasury and Ms. Grimm to be Inspector General of the Department of Health and Human Services. Welcome to both of you, and congratulations on your nominations.

I am interested in learning more about each of your perspectives and reviewing your responses to questions for the record that our members will submit after today's hearings.

Let's start with you, Mr. MacBride. The General Counsel of the Treasury should be able to provide nonpartisan legal and policy advice to the Secretary and other senior Department officials. As head of the Treasury Legal Division, the General Counsel is also responsible for all legal work in the Department, with the exception of the legal work in the Office of the Comptroller of the Currency and the Offices of the Inspectors General.

Your role as General Counsel, if confirmed, will be important to the Secretary and the Treasury Department, given the health and economic challenges currently facing our country, and it is impera-

tive that you take on this role with the best interests of the United States, not the President or the Senators sitting before you today or any one political party.

Today, the United States is experiencing unprecedented economic pressures on multiple fronts, including significant inflation and record price increases, significant legislative and regulatory changes, and international economic competition and threats. Congress is considering a \$3.5-trillion tax-and-spending package that would change the social fabric of our country. These changes would impose massive tax hikes on America's small businesses and job creators, and expand the role of the IRS to monitor the transactions of Americans at every income level. Many Americans are justifiably concerned.

Mr. MacBride, you would play a large role in the regulatory process to implement this partisan \$3.5-trillion package, if it were to pass. You would also be closely involved in the ongoing international tax negotiations occurring at the OECD. These matters will require transparency and accountability.

They will also require you to follow the law and serve the best interests of our Nation, not a partisan agenda, and that you keep Treasury's authorizing committee—the Finance Committee—fully informed. To date, this administration and the Treasury Department have failed to be fully transparent and accountable to this committee. I expect you to be a transparent and responsive leader, if confirmed. And I appreciate the conversation we had.

Now, turning to Ms. Grimm. If confirmed as Inspector General of HHS, you will continue to serve as the chief watchdog over the Department of Health and Human Services, one of the largest Federal agencies, whose programs account for roughly \$2.4 trillion in taxpayer dollars. It will continue to be your responsibility to lead OIG's efforts to fight waste, fraud, and abuse in some of our most important and far-reaching Federal programs, including Medicare and Medicaid. Together, these programs account for more than one-fifth of all Federal outlays and serve some of our country's most vulnerable citizens.

It is imperative that the HHS Inspector General avoid politicization and maintain independence. HHS OIG is the largest civilian Office of the Inspector General across the entire Federal Government, with a workforce of around 1,650 employees. Given the substantial size and unparalleled purview of your office, I hope you will continue to serve as a principled and nonpartisan steward of vital programs, initiatives, and taxpayer dollars.

I look forward to working together with you to bolster program integrity, as well as to continue adapting our fraud and abuse regulations and oversight infrastructure to keep pace with cutting-edge technology and health-care innovation.

Thank you, very much.

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

The CHAIRMAN. Thank you, Senator Crapo.

Ms. Grimm, you have the good fortune to be introduced by Senator Warner.

**OPENING STATEMENT OF HON. MARK R. WARNER,  
A U.S. SENATOR FROM VIRGINIA**

Senator WARNER. Thank you, Mr. Chairman and Ranking Member Crapo. It is my great honor—I am going to actually introduce both Virginians who are here, with apologies to Senator Kaine. I do not know if I jumped the line there, but let me go ahead and start with Christi Grimm, who is joined today by her husband Drew, and I had a chance to say “hello” to both of them.

Christi is, as you know, the Principal Deputy Inspector General at HHS already, residing in Northern Virginia. She has been nominated to be the Inspector General. I think we all know, the chairman knows, the ranking member mentioned, Inspectors General are extraordinarily important. They do not get a lot of attention until they are in the spotlight, and we unfortunately saw Inspectors General too many times overruled or jerked out of their jobs, the last time, when Inspectors General simply did their job. And I think, as Senator Crapo indicated, Ms. Grimm, I hope you will be confirmed, and I believe your background and professionalism and willingness to do what is right as opposed to what is partisan for either team, are critically important. I know this committee is continuing to look at ways where we can support Inspectors General, protect whistleblowers, and I wholeheartedly endorse Christi Grimm to be approved by this committee.

Neil MacBride is somebody I have known since the late 1990s. He is joined by his spouse Chris and two of his children, Charlotte and Alistair. My understanding is his third child, Duncan, has graduated from UVA. He thought this was really important, but not important enough—this session—to break apart his post-college trip, but I understand he is at least viewing this and will get some computerized version of this.

So, I personally met Neil in the late 1990s when he was really just starting into his legal career. Back when Senator Webb and I were the Senators from Virginia, we nominated him to be the U.S. Attorney for the Eastern District. He was confirmed by the Senate and did a great, great job. He served actually in all three branches of government. He went to Houghton College. He got his J.D. from UVA. Again, he’s passed that on to at least two of the three kids, who either went there or are going there at this point.

He clerked in the Eastern District. He served as a Federal prosecutor in the United States Attorney’s Office for the District of Columbia. He served as Chief Counsel to then-Senator Biden on the Senate Judiciary Committee. And finally, he joined the Obama-Biden administration as an Associate Deputy Attorney General for Criminal Enforcement in the Department of Justice. He now serves as the Chief Litigation Partner in the firm of Davis, Polk, and Wardwell. He is one of the Nation’s top white-collar litigators. I think he brings a great deal of background and expertise to this position.

I am going to go ahead and skip the rest of the biographical information, other than just noting what I think that Senator Kaine will probably note as well: we both have such high regard for Neil’s judgment. He serves, and has served for some time, on a group that reviews our judicial nominees in Virginia. The quality of the

nominees, all of whom have been confirmed, shows that he has done a good job.

I absolutely, without reservation, recommend Neil to the committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warner.

And, Senator Kaine, in the interest of fairness, it seems that we should afford you the right to introduce multiple Virginians as well this morning. Why don't you just go ahead?

**STATEMENT OF HON. TIM KAINÉ,  
A U.S. SENATOR FROM VIRGINIA**

Senator KAINÉ. Well, thank you, Senator Wyden, Ranking Member Crapo, and committee members. I will be brief. I am very, very happy to be here with this panel. I wrote a letter of recommendation for Christi Grimm for the position that she has been nominated for, and I am a strong supporter and echo the comments that Senator Warner made about her professional track record and her ability to handle the important job as IG in a fair and careful and balanced way.

I am here particularly to talk about my friend Neil MacBride. He is a great Virginian and a great public servant, and also a personal friend. Neil has served in all three branches of government, as Senator Warner mentioned. And he has done public service in six different chapters of his political career. I know he does not look that old. He has also done work in the private sector, but six different times he has worked, from judicial law clerk, to prosecutor, to U.S. Attorney, to positions at main Justice. This would be a sixth chapter. I think anybody who is signing up for a sixth term as a public servant deserves the title "patriotic glutton for punishment," and Neil is a patriotic glutton for punishment.

I think in particular, his service in this body as the Chief Counsel for the Judiciary Committee for President Biden, when he was the chair of the committee, right in the days after 9/11, put him at front and center of really important policies such as reauthorization of the Violence Against Women Act.

As many of you know—because there are members of this committee who are also members of Judiciary—the Eastern District of Virginia, where Neil was the chief prosecutor, has one of the most complex dockets of any district in the United States, because it includes the Pentagon, the CIA, and many national security and also very significant financial enforcement, financial corruption cases that come from the Eastern District.

And so, Neil's work, both in criminal enforcement at main Justice, but then his work supervising over 300 people in the Eastern District of Virginia, gives him significant expertise in the very areas that he would be working on as General Counsel at Treasury.

As Senator Warner mentioned, we rely on Neil's advice, because we have a panel of lawyers that gives us recommendations both for U.S. Attorney nomination recommendations to the White House, but also judicial recommendations. And Neil and his colleagues have had a superb track record of giving us recommendations that, when we recommended them to the Obama administration or the

Trump administration or the Biden administration, we have a really high batting average, Senator Warner and I, and I think it is because we have people like Neil giving us advice about good people to recommend.

The last thing I will say is that Neil has a tremendous amount of bipartisan support for the position. Thirteen former Treasury General Counsels from both parties, including the previous administration, have written to the committee to recommend Neil. And also, nearly 150 former DOJ officials, appointed by both parties, have written to the committee to recommend Neil. He comes with great credentials, and the people who know him best, who have worked with him, might be the ones whose opinions matter the most, and they very much understand that Neil would do a great job in this role, and I am proud to be here and recommend him to the committee.

The CHAIRMAN. Thank you, Senator Kaine. It has been good to see the endorsements flowing fast and furious from Virginians for Virginia nominees, and I share their judgment with respect to the quality of service of the nominees.

Senator Kaine, we can excuse you. Senator Warner, we will start with the regular process of the committee. And I also want to put into the record several letters of support for Mr. MacBride and Ms. Grimm. Without objection, so ordered.

[The letters appear in the appendix beginning on p. 102.]

The CHAIRMAN. We will now have opening statements from you, Ms. Grimm, and from you, Mr. MacBride. Then we have a process where we have to ask you some questions, and I think you are aware of what those will be. With that, let's go forward and begin with you, Ms. Grimm.

**STATEMENT OF CHRISTI A. GRIMM, NOMINATED TO BE INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC**

Ms. GRIMM. Hi. Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee. I thank Senator Warner for his gracious introduction and Senator Kaine for his kind statement of support. I thank the President for nominating me to serve as the Inspector General for the Department of Health and Human Services. I am honored to appear before the Senate Committee on Finance as it considers my nomination.

I believe that public service is a calling—a calling to which generations of my family have responded through military and other public service. I draw inspiration from my family's commitment to serve this country and improve government. As a child growing up in Edgewater, CO, I watched my grandfather, Albert Mackinson, the head of the Public Works Department, strive to improve the infrastructure of that small town. I saw his pride when water could reach the homes of hardworking families, when parks were well maintained, and when new roads and sidewalks connected the community.

I was proud of how he made our town better. It is personally meaningful for me to continue this tradition of ensuring that government works for the people it serves. I thank my family, each and every one, for their inspiration. My husband Drew, a Federal

law enforcement agent, is with me today. Drew, thank you for being my partner as we try to model public service for our 4-year old daughter, Hazel.

Inspectors General perform an essential public service. They root out fraud, waste, and abuse and help make programs more efficient and effective. It is critical to have Inspectors General who understand the value of objective and independent oversight. Through independence, objectivity, and transparency, IG's help government better serve the American people. A strong Inspector General makes a stronger department and a stronger, more trusted Federal Government.

With more than 20 years of executive branch service and more than a decade of holding top management and strategic positions within HHS-OIG, I offer unique qualifications to lead this agency. I have been performing the duties of IG since January 2020, directing oversight of HHS's COVID-19 pandemic response while transitioning a workforce of over 1,600 professionals to a mostly virtual environment.

We have not allowed unprecedented challenges to disrupt our mission, and we have excelled in productivity, employee satisfaction, and maintaining standards of excellence. If confirmed, I will be honored to lead HHS-OIG's mission-driven team of program integrity experts.

I am deeply committed to ensuring that we remain a modern organization with a high-performing, diverse, and inclusive workforce. Continued investment in data analytics and information technology will ensure that HHS-OIG's dedicated professionals have the tools they need to succeed. I am steeped in the disciplines central to the work of an Inspector General. I understand the everyday challenges of ensuring program integrity. If confirmed, I will deliver practical results to help address the most consequential issues facing HHS: financial integrity of HHS programs; access, quality, and safety of care, including for some of the Nation's most vulnerable populations; safeguarding public health; appropriate administration of HHS programs at the Federal and State levels; and preventing fraud, waste, and abuse that harm people and divert critical resources.

OIG's work is vital to ensure that HHS programs deliver the services and outcomes that Congress intends, and that beneficiaries and taxpayers deserve. If confirmed, I will maintain strong partnerships with stakeholders, including the Department of Justice, HHS, the Pandemic Response Accountability Committee, States, and other law enforcement agencies so that we can continue our fight against fraud, waste, and abuse. And I will continue a rigorous program of audits and evaluations that aim to drive positive change for HHS programs and the people they serve.

If confirmed, I will uphold the IG's dual reporting obligations to Congress and the Department. That includes my commitment to inform Congress as HHS-OIG conducts its work and to be accessible to Senators, Representatives, committees, and their staffs.

As a career public servant who rose through the ranks, I am humbled and honored to be considered for the position of the Inspector General. During my career, I have marshaled experience in the craft of oversight and the art of leading a high-performing

workforce. It would be my privilege to serve and lead HHS–OIG, an organization to which I am deeply committed.

I thank the Senate Committee on Finance for considering my nomination and for its strong support of independent and objective oversight. I look forward to answering your questions.

[The prepared statement of Ms. Grimm appears in the appendix.]

The CHAIRMAN. Thank you. We look forward to that shortly.

And now, Mr. MacBride.

**STATEMENT OF NEIL H. MacBRIDE, NOMINATED TO BE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. MACBRIDE. Thank you, Chairman Wyden, Ranking Member Crapo, members of the committee, for the opportunity to appear before you today. Thank you to Senators Warner and Kaine for their kind introductions. I am deeply honored that President Biden has nominated me to serve as General Counsel for the Treasury Department, and I am grateful to Secretary Yellen for her confidence in me.

I would like to begin by quickly introducing my family: my amazing wife of 29 years, Christina Jackson MacBride, and our three children. Duncan could not be here today, but I am joined by our daughter Charlotte and my son Alistair. As you all know, public service can place great demands on one’s family, and I am very thankful to Chris and our children for their constant love and support throughout the last several months, and especially during my prior 15 years of public service.

I would also like to acknowledge my incredible parents: my mom, Ruth Parkerson MacBride—who just turned 90 and is watching today’s hearing from her home in Charlotte—as well as my dad, Harvey MacBride—who passed away several years ago. And if I may, I would like to acknowledge my wonderful in-laws, Rear Admiral Grady Jackson and Linda Jackson, who are watching from home in Falls Church.

My parents instilled in me a deep commitment to public service. They were children of the Great Depression and both from humble roots. My mom grew up in rural Indiana while my dad, the son of immigrants, was raised in the South Bronx. My parents both modeled hard work and personal responsibility, but also firmly believed that government has an obligation to help out those who are down on their luck, and that Americans should give back to a country that had given them so much opportunity.

My parents’ personal example led me to law school and subsequently into 15 years as a government attorney, serving in all three branches of government. The highlight of my public service, however, was spent right here in the U.S. Senate, when I was incredibly fortunate to spend 4 years as Chief Counsel to then-Senator Joe Biden on the Judiciary Committee. I joined Senator Biden’s staff 1 week before the September 11th terrorist attacks on our Nation, and I witnessed first-hand the strength, resolve, and resilience of this great body and its members during those challenging days. It is now humbling for me to be seated on the “other side” of the committee dais in a Senate hearing room, after I logged

hundreds of hours on the back bench of Dirksen 226, just down the hallway.

Having spent 4 years working on the Judiciary Committee, including with now Finance Committee members Senator Cantwell, Senator Grassley, Senator Cornyn, and former Senator Hatch, I have enormous respect for the significant work of this committee in ensuring that the people's work is done.

I learned so much about the law and public service from then-Senator Biden and was privileged to work with him on important bipartisan legislation to protect vulnerable victims, whether of domestic violence, corporate fraud, or terrorism. I believe that experience, including seeing up close Congress enacting laws that are then carried out by the executive branch, was incredibly helpful when I was later honored to serve as the United States Attorney in the Eastern District of Virginia.

As U.S. Attorney, I partnered frequently with Treasury's enforcement offices to tackle banking and financial crimes, and worked closely with FinCEN, OFAC, SIGTARP and IRS CID, and I know first-hand the importance of their missions. Treasury's responsibilities cover a range of issues that generate no shortage of complex, difficult legal questions. The Department has a crucial role to play in promoting a more fair and equitable economy, in maintaining an effective tax system, in bolstering our national security, and in ensuring the continued dynamism of the U.S. economy.

If confirmed, my job as General Counsel will be, as Congress directed in its authorizing legislation, to be "the chief law officer of the Department." My role will not be to make policy or to oversee enforcement actions but to, as the regulations provide, to provide legal advice to Secretary Yellen and other component heads, to manage Treasury's litigation positions, and to ensure that the Department's regulatory actions comply with the laws Congress enacts.

I would be very fortunate to work alongside the Department's dedicated, experienced, and immensely talented Legal Division lawyers and staff. And if confirmed, most importantly, I look forward to working closely with Congress, and especially members of this committee. I have enormous respect for this institution, and I am personally committed to maintaining a close working relationship between Treasury and this committee.

Thank you again, Mr. Chairman and Ranking Member Crapo, for the opportunity to appear before the committee, and I look forward to answering your questions.

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

The CHAIRMAN. Thank you both.

There are some obligatory questions we have to ask each of the nominees after they have given their opening statements. I think you both have been apprised of that.

So, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Ms. Grimm?

Ms. GRIMM. No.

The CHAIRMAN. Mr. MacBride?

Mr. MACBRIDE. No, Senator.

The CHAIRMAN. Second, do you know of any reason, 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? Ms. Grimm?

Ms. GRIMM. No, Mr. Chairman.

The CHAIRMAN. Mr. MacBride?

Mr. MACBRIDE. No, Senator.

The CHAIRMAN. Third, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed? Ms. Grimm?

Ms. GRIMM. Yes, Senator.

The CHAIRMAN. Mr. MacBride?

Mr. MACBRIDE. Yes, I do, Senator.

The CHAIRMAN. Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of the committee?

Ms. GRIMM. Yes, Senator.

Mr. MACBRIDE. Yes, I do.

The CHAIRMAN. Very good. I thank you both. We will now go to rounds of questions. We have a fair number of members coming, so we will try to address a lot of concerns in a relatively short period of time. I am going to start with you, Ms. Grimm.

Given the devastating consequences of the pandemic on mental health in America, mental health claims have gone through the stratosphere. Just as we recognized 9/11 a few days ago, I had an event with veterans' groups who reported tremendous increases in the demand for mental health services. And the CDC said adults were almost twice as likely to report a mental health or substance abuse issue during the pandemic compared to pre-pandemic levels. And I find, based on meetings that I have been having with high school students across Oregon, that is the same pattern with high school students.

So, the question for you, as a potential public official in this key position, is what to do when patients are facing hurdles like prior authorization, or narrow provider networks, when they are seeking behavioral help?

And my concern—and I saw this years ago, and I have followed this. My brother was schizophrenic, and for years we went to bed at night worrying he might hurt himself or somebody else. And when the parity law came into being, we said, “What a great moment for Jeff Wyden and everyone else who faces these mental health challenges.”

And I am concerned that big insurance companies are honoring the parity law more in the breach than in the observance. And they have some clever strategies. They seem to be taking a long time to pay any bills. They seem to have fewer staff. And when you add it all up, these changes in their administrative policies, it really denies patients who need these services.

So, if confirmed, would your office undertake analyses to examine behavioral health-care, particularly mental health needs, and identify inequities in how those claims are being handled—particularly between mental health claims and physical health claims? Would you take that on and make it a priority?

Ms. GRIMM. Thank you, Chairman Wyden. The topic of behavioral health and mental health, and access to those services, is a priority for my organization. Yesterday we released two reports looking at the use of telehealth to access behavioral health services.

We looked at it across 37 states, Medicaid Managed Care, to see how much those services were being accessed, if programs keep track of them, and obstacles to telehealth in accessing behavioral health services.

I am definitely committed to looking at issues related to health, which includes mental health. We know from—

The CHAIRMAN. And the parity law, specifically.

Ms. GRIMM. We do not have work that I am aware of currently looking at equity between mental health and regular health. And we are happy to come up and talk to you about your interest in this area. I want to underscore our commitment to looking at behavioral health issues, and that is really covered in the report.

The CHAIRMAN. Let me move on. I would like, in writing, the commitment that outlines what you would do with respect to the parity law that says mental health is treated like physical health, and particularly how you would investigate these dodges—like the companies being slow to pay mental health bills, not having adequate staff to process them, and basically using all of the implementation dodges to essentially get around the commitment to parity.

So I would like you to give me that in writing, let us say within 48 hours—your commitment on that.

Ms. GRIMM. Absolutely, Senator.

The CHAIRMAN. All right.

And now on the telehealth issue, tell us also in writing how you would ensure access to the telehealth services while not creating a path to some of the fraudsters that we are hearing about. And my sense is that you have probably done some work on that. So I would like both of those in writing within the next 48 hours. Okay?

Ms. GRIMM. Okay.

The CHAIRMAN. Very good.

One other question for you. We are very troubled by the pandemic's impact on nursing home residents, particularly residents of color. If confirmed as Inspector General of HHS, how will you build on HHS IG efforts related to COVID-19 in nursing homes and the disproportionate impact on nursing home residents of color?

Ms. GRIMM. Senator, nursing homes, and the toll that the pandemic has taken on nursing home residents, is tragic. And we have identified improving nursing home care as a top priority. And the number one issue that I plan to tackle as a leader is the data that shows disparities in nursing homes. One of our reports found that, of beneficiaries who either had COVID or likely had COVID, 50 percent were from populations of color, as compared to 41 percent of white residents. And we see similar results with outcomes.

We owe our Nation's aging population better, and I plan to tackle a strategy that includes looking at performance at nursing homes, putting residents first, and better oversight from the Federal and State perspective, as a top priority of mine, Senator.

The CHAIRMAN. Let me finish with you, Mr. MacBride, quickly. As I indicated to you when you came to visit in the office, we did not have a particularly constructive relationship with your predecessors. We need a more open and accountable one for both sides, Democrats and Republicans, to get the information we need.

Are you going to do that?

Mr. MACBRIDE. Thank you, Mr. Chairman, and thank you for your time in our earlier meeting. I feel very strongly about the institutional importance of Congress and its oversight role. I saw that firsthand 20 years ago on the Judiciary Committee, and I believe agencies work best when they are in collaboration and partnership with their authorizing committees.

I know this is a priority to you, and therefore it will be a high priority to me. I want to look into it, if I am so fortunate to be confirmed, to understand from you and from my future colleagues, as I am not in the building yet, what past practice has been, what the issues have been, and how to get a process that is transparent and predictable and gets the information this committee needs as quickly and efficiently as possible.

The CHAIRMAN. The past practice has been to be unresponsive, and we need you to be responsive.

Let me do one other question really quickly. I am over my time. One thing that has been particularly important for Congress is reports required to be made by the institutions under the Bank Secrecy Act.

For 20 years, these documents have been physically produced to Congress and committee chairs for the purposes of doing critical oversight. Can you assure us that this critical oversight relationship between Congress and Treasury will continue under your watch?

Mr. MACBRIDE. Yes, Mr. Chairman, it will. I am not familiar with the history of the particulars, but I pledge to look into that as soon as I can, as this process moves forward, and ensure that it continues.

The CHAIRMAN. It is 20 years of history.

Senator Crapo?

Senator CRAPO. Thank you, Mr. Chairman.

Ms. Grimm, I will start with you also. Last November the Department of Health and Human Services and the OIG issued the rebate rule, which would modify the Anti-Kickback Statute's safe harbors for Medicare Part B plans and drug manufacturers.

While reports indicate the Department is currently reviewing the regulation, I have heard from stakeholders across the health-care system with concerns over uncertainty around the rule's implementation, as discussions regarding next year's bid submissions are already underway.

Can you tell me when, if at all, does your office currently expect the rebate rule to go into effect?

Ms. GRIMM. Senator, unfortunately, because of ongoing litigation, I cannot speak to the rebate rule.

Senator CRAPO. I assume then you cannot tell me if there have been internal documents or deliberations over its implementation?

Ms. GRIMM. Senator, unfortunately I cannot.

Senator CRAPO. All right; thank you.

Mr. MacBride, the debt limit could be breached by as early as sometime in October unless the Democrats in Congress use tools they have available for them to increase the limit. Nearing the breach, we know from subpoenaed information from Treasury and the Federal Reserve that both agencies set up plans for prioritizing payments. And we know that those plans involve sharing of information between Treasury and the Fed and private-sector financial firms.

While I am not going to opine on prioritization, I will ask you whether you believe that Treasury should provide to this committee, which is Treasury's authorizing committee, plans that it is making with the Fed and sharing with Wall Street firms? And if you do not think so, please explain why.

Mr. MACBRIDE. Thank you, Ranking Member Crapo, and thank you for your time and courtesy in meeting with me earlier this summer. I know that this is obviously a very important issue that Congress and the Department are focused on.

I am not familiar with some of the particulars that you mentioned, since I am not yet in the building, but I pledge to you—should I be so fortunate to be confirmed—to dig into this immediately and come back and have further discussion with you about the issue and how we can get the appropriate information to this committee.

Senator CRAPO. All right; thank you. And at Treasury, and if confirmed, you will also have a large role in tax policy and financial stability through FSOC. Do you believe that financial stability regulation is important in maintaining stability of our global banking system?

Mr. MACBRIDE. Yes. Yes, I do.

Senator CRAPO. I thought you would. Do you agree that we should not be in the business of taxing activities that are required by a regulatory mandate?

Mr. MACBRIDE. So, Ranking Member Crapo, I am not sure if there is a particular example you have in mind. I certainly agree that the role of FSOC has been set up in the Dodd-Frank authorizing legislation, and it is clear. I know that it is—from press reports, I am aware that FSOC is currently engaged in various review activity. What I can say is that, should I be fortunate enough to move forward with this process and get in the building, I can be briefed more on this issue and would welcome the chance to continue this discussion.

Senator CRAPO. All right; we will take you up on that. Because I think it really would be a more productive discussion once you are in the building and have been briefed up. These are issues that are brewing right now.

One last question for you, Mr. MacBride. Are you familiar with Operation Choke Point? Do you know what I mean when I say that?

Mr. MACBRIDE. Yes, I am familiar with it from press reports, Ranking Member Crapo.

Senator CRAPO. Well, Operation Choke Point was a program that was started under the Obama administration—and finally, I think we have got it stopped. But it took us awhile and several years and several administrations to get that done.

It was a program that essentially was using regulatory authority to identify legal businesses that are engaged in legal activities but which are politically incorrect in the minds of some, and it ranged to everything from the firearms industry to the oil and gas industry to, I do not know why, stamp collectors and several dozen industries. And it subjected them to, frankly, inappropriate regulatory pressures.

And really the effort was, as I see it, the effort was to try to make it so that these businesses would have a much harder time getting the regulatory approvals in the financial sector and elsewhere that they were entitled to as law-abiding companies, and to utilize the regulatory burden as a way to depress these industries.

We have that stopped now. My question to you is, what assurances can you give businesses engaged in legal activities that they will not be subjected to unfair, politically motivated investigations?

Mr. MACBRIDE. Thank you, Ranking Member Crapo. I am not familiar with the particulars of Choke Point and how that has been resolved. What I can say is, my general view is that what you described, you know, sounds unusual to me, in the sense that I think that is something that would have to be looked at very carefully.

I am not aware, from press reports—and since I am not in the building—of anything comparable that is in flight, but I would want to sit with you, should this process move forward, to have a deeper understanding of what happened in the past, whether you have current or ongoing concerns. And I would look forward to that discussion.

Senator CRAPO. I appreciate it. My time is up, but this was a situation in which lawful businesses were unable to get banked, for example, because the banks were worried that they were going to get undue political and regulatory pressure from their regulators if they took them on as clients—things like that. And I would be glad to have a further discussion with you once you get in place—and I am confident that you will—and as we move forward.

Mr. MACBRIDE. Thank you, Senator.

Senator CRAPO. Thank you.

Senator GRASSLEY. I guess it is my turn now. Congratulations to both of you. I work with so many Inspectors General, so I spend a lot of time on who is going to be an Inspector General. I probably have worked with hundreds of them over the years I have been in the Senate. I have only, I think, had to lead the way to get four or five of them fired. Twenty years ago, one of them was your predecessor in HHS.

On July 27th, I gave a speech in regard to the EcoHealth investigation, and I said things along this line: “I expect the Inspector General to be aggressive and unrelenting to get the records, the emails, the memos, run the transcribed interviews, and question everyone up the leadership chain. Leave no stone unturned. If punches are pulled, the audit will be a waste of everybody’s time and taxpayers’ money. The Inspector General has a tremendous responsibility to get this done right away.”

So in regard to that—the National Institutes of Health and EcoHealth complying with Federal requirements with respect to the coronavirus grants—does your investigation’s scope include a determination as to what research was actually done under the

subgrants that EcoHealth got, and the Wuhan Institute of Virology, and whether it was gain of function research? Is that part of your investigation?

Ms. GRIMM. Senator Grassley, I thank you for your very strong support of the Inspectors General over decades. You are describing grants oversight work. NIH must manage and administer Federal awards to ensure that funding is expended and associated programs are implemented in full accordance with statutory and policy requirements.

We are conducting a grant oversight review of EcoHealth Alliance, as you referenced your strong desire to make sure we are getting our records. I can tell you that, to date we are getting cooperation with the records that we have requested from NIH, from EcoHealth.

Our work aims to take a look at whether the rules for grants are being followed. As part of that, we are looking at whether gain of function—which should not be happening—whether the rules are being followed from a compliance audit perspective. I will tell you that the scope of this work does not include identifying the source of the coronavirus.

We are in coordination and in frequent discussion with GAO, which is doing a deeper dive into some of these issues. So both from the executive branch and legislative branch, we are talking to our partners. But those are the contours of the EcoHealth review that we have ongoing, sir.

Senator GRASSLEY. I think you answered this question, so I think you are telling me that your audit does include a review of all relevant communications between the National Institutes of Health and EcoHealth? I think you said that.

Ms. GRIMM. Senator, to the extent that that involves oversight of grants—and I mentioned oversight of that grant and the EcoHealth Alliance grant—in my view that would include communications.

Senator GRASSLEY. Okay. With respect to any documents and record requests that have been made, have the National Institutes of Health complied fully? I think you have answered that, that they are complying fully.

Ms. GRIMM. Yes, Senator, to date.

Senator GRASSLEY. At this point, have you determined the amount of taxpayers' money sent to EcoHealth for coronavirus research in China? If so, how much?

Ms. GRIMM. Senator, I do not have those figures in front of me, but we can get back to you with the dollar amounts that we have so far.

Senator GRASSLEY. Okay; you can answer that question in writing.

Why did you decide to perform an audit instead of an investigation?

Ms. GRIMM. Senator, the process, when something is referred to us, includes a broad review across all of our disciplines. So once a week, we meet and talk about possible work that we might undertake. After those meetings, as the deputy for investigations—we take a look at it from a broad scope that would include looking at it from an investigative lens. And I, of course, would not be able to confirm or deny an ongoing investigation.

Senator GRASSLEY. Thank you.

Senator Wyden's staff said I should recognize Senator Lankford.

Senator LANKFORD. Thank you.

Senator GRASSLEY. And thank you for answering.

Senator LANKFORD. Thank you both for the ongoing work. I do have multiple questions here, and so I want to be able to try to get through them as quickly as I can on this.

Ms. Grimm, HHS coordinated with the Department of Justice to dismiss a lawsuit against the University of Vermont Medical Center for knowingly, willfully, and repeatedly violating the Church Amendment, which is a Federal conscience law. And that was a case that was already going through the process. We are trying to be able to figure out why that case suddenly got dropped.

It was interesting, on the Church Amendment side of it, that now HHS has determined they are going to enforce the Church Amendment in Texas on abortion providers there but have dropped it in Vermont where a nurse given a conscience protection there—historically given a conscience protection—had it suddenly taken away.

Are you aware of that situation with the inequality of the application of the Church Amendment, and of why HHS would drop that case suddenly?

Ms. GRIMM. I am not familiar with that.

Senator LANKFORD. It is a legal matter, and it is a serious matter. I wish you would get a chance to be able to take a look at that on just the equal application of the law for HHS.

Ms. GRIMM. We would be happy to come up and talk to you about your interest in that matter.

Senator LANKFORD. Xavier Becerra also mentioned during his confirmation hearings that he would recuse himself from any case that he was also involved in as the Attorney General in California. It was not long after he came to HHS that suddenly the cases dealing with California and some of the conscience protection issues there under the Weldon Amendment were suddenly dropped.

Do you know of any situation there suddenly where California cases suddenly got dropped from HHS shortly after the Secretary became confirmed?

Ms. GRIMM. I am not aware of cases that fit that description.

Senator LANKFORD. That would be one we could certainly walk you through. There are some obvious questions that are there, that we think need to be addressed, and it is one of those cases that we look at and go, that seems odd, to say the least on it.

It also does not allow the people of California to continue to have conscience protections there, as they do in other parts of the country.

Of late, there is a division within HHS called the Conscience and Religious Freedom Division. I am sure you are aware of that. We are hearing that HHS is looking to dissolve that division. Do you know the status of that division, whether it is being dissolved or what structural changes are being proposed for the Conscience and Religious Freedom Division?

Ms. GRIMM. I do not have any specifics on the dissolution of that office, or what is happening.

Senator LANKFORD. That will be one that we will want to be able to follow up with you on, to be able to find out what is actually happening there. Because there are obviously a lot of questions and a lot of concerns about what actually happens there, and what political appointees may or may not do to be able to deal with some issues that are legal issues. There is, as you know, a whole series of legal protections for conscience protections that have been in law for decades and decades that this division was created to be able to make sure that those were actually enforced.

If suddenly that goes away, there is an obvious question as to whether those are no longer going to be enforced at HHS.

Ms. GRIMM. Senator, I think it would make sense for us to come up and talk to you about your concerns in this area.

Senator LANKFORD. Okay. Let's plan to be able to do that.

Mr. MacBride, let me ask you some questions. Over the last several months, we have all seen the articles from the ProPublica organization on some obvious leaks that are coming out of the IRS that are attributed to be filings from quote/unquote "wealthy Americans."

There have been a lot of questions on where that information came from. There is also a legal issue there as well, that it is a felony to release private tax records. It is also a felony to be able to publish known tax records.

ProPublica has announced that they are very aware that these are tax records, and they are publishing them anyway for the public good, which is clearly a felony to do that, and it is also an issue if someone has released these documents as well.

Are you tracking that? Is that a course of investigation that you would be engaged in? What is your consideration on that?

Mr. MACBRIDE. Thank you, Senator Lankford. So I am aware generally of the issue that you have raised, from press reports. I am not in the Treasury building yet. But I agree with you that the unauthorized release of confidential or proprietary government information is unlawful. My understanding, mainly from press reports, is that there are multiple investigations ongoing with the Inspector General's office at Treasury, and I believe with the U.S. Attorney's Office in the District of Columbia.

If I am so fortunate to be confirmed, I would want to get read in on this issue and understand what happened, and how to make sure that it is brought to a swift conclusion and does not happen again.

Senator LANKFORD. It seems to be something that achieves a political end, and some people are saying, "It is wealthy people and I do not care; we can release their tax records."

It is illegal, regardless of who it is. I do not care if it is you, or if it is me, or if it is Senator Whitehouse, or any of my 4 million constituents in my State, or whoever it may be, it is not legal to be able to release tax records, and people should know that the IRS is a closed system, and that there are individuals within the IRS who have their political agenda trying to be able to release those documents—and that it is a felony and does need to be enforced to regain the confidence of the American people in the days ahead.

So, we would be eager for you to actually apply the law and to be able to do a thorough investigation to be able to find out what

is actually happening there, because the American people, when they file their tax records, should have some level of confidence that they are going to be kept confidential in that process.

So thank you both. I now have the great joy of recognizing, as we are passing the football back and forth, Senator Whitehouse for the next questions.

Senator WHITEHOUSE. Thank you, Senator Lankford.

Mr. MacBride, welcome. We have gone through considerable effort to pass what we call beneficial ownership legislation which allows the Treasury Department, FinCEN specifically, to understand who the real beneficial owner is, who is really behind American shell corporations—because there were appalling stories of foreigners and criminals using American shell corporations to hide misbehavior.

That effort is now at the Treasury Department for the regulations that will implement what we are doing. We fought through considerable opposition to all of this because, sadly, there are professionals and people who make a lot of money servicing this illicit, dark, international, corrupt economy. And they do not want the spotlight shone on themselves and their clients.

I worry that they will be hard at work in the regulatory process to try to have you and the Department of Justice have the most weak-kneed possible regulations regarding enforcement. Could you assure me, particularly as the former DOJ prosecutor, that you understand the importance of this and will see to it that congressional intent gets followed in putting out strong, clear, enforceable regulations that enable us to take on this menace?

Mr. MACBRIDE. Thank you, Senator Whitehouse, for the question, and thank you for meeting with me earlier this summer. The short answer is “yes.” I want to acknowledge your active role here and your leadership, along with a number of members of this committee, who are—

Senator WHITEHOUSE. Senator Crapo is perhaps the major lead on all of this in his role on Banking, with Senator Brown.

Mr. MACBRIDE. Yes. And as we talked about in your office, Senator, this is a law that I really could have used when I was at the Justice Department, and that will have broad application, from white collar cases to organized crime cases to international terrorism cases. And not just in the criminal context, but in civil asset forfeiture cases.

It is an age-old problem of not being able to follow the money and to follow the ownership.

Senator WHITEHOUSE. Let me jump in to add that I see this as a national security issue. I think that most of the evil that has befallen the country in the last 20, 30 years has come from non-rule-of-law entities where autocrats and kleptocrats and criminals are able to run and steal from countries.

The problem with being one of those crooked people is that you have to find a place to hide your money. And they want to hide their money behind the shelter of rule-of-law nations. And when we aid and abet them in doing that, we are really giving aid and comfort to very significant enemies of America.

There is a kleptocracy and anti-kleptocracy summit coming up. I think they call it The Democracy Summit. I hope you will push

hard to make sure that we are forceful at expanding the spotlight that we brought on our own shell companies so that there is an international agreement that we are simply not going to tolerate this kind of misbehavior any longer. And if countries want to participate in international trade and in international commerce, they cannot be the custodians of international criminals' accounts.

Mr. MACBRIDE. I fully agree with that, Senator. I would simply add, when I was U.S. Attorney, we did a number of extraterritorial cases in my old district, and I saw there was a direct proportion of extraterritorial threats emanating from countries that you described where there is not a traditional rule of law, or where kleptocracies operate.

Senator WHITEHOUSE. Last, I want to point you at the 501(c)(3), 501(c)(4) problem of hidden political dark money. When the *Citizens United* decision allowed unlimited money, they said it was going to be transparent. But of course, the big forces do not want the money to be transparent, so they ran off to 501(c)(3)s and 501(c)(4)s, and they started spending enormous amounts of political money hidden through those enterprises.

And when the IRS tried to push back, those forces blew everything up. They referred IRS employees for criminal prosecution. They repeatedly threatened the IRS Commissioner with impeachment. They flooded the right-wing media with faux outrage, and sadly the Obama administration wilted in front of that pressure, and we still have 501(c)(3)s and we still have 501(c)(4)s operating politically, in plain violation of Congress's intent and the words of the statute that set them up.

Moreover, when they file, they seem to be making false statements. They say to the IRS, "We did not spend a single dollar on political work." And then they go to the Federal Election Commission or a State election commission and say, "Oh, we spent \$70 million on political ads."

To me, that is at least predication for a false-statement case, because both are under oath, and it is hard to imagine how both can be true. And yet, the DOJ has always refused to prosecute those plain bread-and-butter false-statement cases, because the IRS has never bothered to refer them.

I hope you will take a second look at this policy. It makes no sense from DOJ's perspective. I do not think they should wait for those referrals when it is something as plain as the false statement, as bread-and-butter as that.

But we have gotten into a situation now where neither DOJ nor IRS-Treasury is playing by the rules. And as a result, there is this huge gap in which false statements, dark money, and what I believe is, at the end of the day, illegal spending continues to occur.

Would you promise me you will take a look at that?

Mr. MACBRIDE. Yes, Senator, I will. I thank you for the question. I know you are a leader on these issues. I know you have talked with Secretary Yellen about them, and she is committed to looking into them. And if I am so fortunate to be confirmed, I would look forward to working on this issue with you further.

Senator WHITEHOUSE. Thank you, Mr. MacBride. My time has expired, and I turn the podium over—I hear that Senator Young is online. So we will go back and forth, and then Senator Warren.

Is Senator Young on the line, and can people—

Senator YOUNG. I am, indeed. Thank you, Senator Whitehouse.

Mr. MacBride, early in its term the Biden administration announced it would be reviewing all U.S. sanction programs. We understand Deputy Secretary Wally Adeyomo is currently conducting this top-to-bottom review and has completed several roundtables and other consultations.

While we await the results of this review, I would like to hear more about your perspective on sanctions, and what counsel you would provide the Treasury, if confirmed. Specifically, sir, what is your view on the legal standard necessary to confirm serious human rights abuses in the context of our sanctions program?

Mr. MACBRIDE. Thank you, Senator Young, for that question. And I want to say first, I agree fully with you that U.S. sanctions play an incredibly important role in protecting our national security and are part of our foreign policy.

When I was U.S. Attorney in Virginia, I partnered with OFAC, and we worked collaboratively to target drug cartels and money launderers and other common targets between the Treasury Department and the Justice Department. And so that is where I start from.

Senator YOUNG. Can we dive—because my time is limited—into either a multifactor standard you have, or some other legal standard that you would draw upon, should you be confirmed, sir?

Mr. MACBRIDE. So, the specific issue, Senator Young, that you raised in terms of the human rights side, that is an issue that I would want to be briefed on. I am not in the building yet, so I would like to dig into that, if this process moves forward, and I would very much like the ability to come back and talk with you once I am up to speed.

Senator YOUNG. Okay. If you have any follow-on writing about that, that would be important as I consider your confirmation. Thank you.

What is your view on the legal standard necessary to confirm corruption of foreign government officials in the context of our sanctions program?

Mr. MACBRIDE. So, Senator Young, my understanding is that OFAC has broad discretion—after its internal fact-finding—to make findings about corrupt government officials, and it has done so in a number of countries.

I understand it is a fact-specific issue. I would want to, if I am confirmed, understand more of the legal issues that they consider, but my general view is that they have great discretion in being able to move forward.

Senator YOUNG. Okay. Let's set aside legal standards for a moment and discuss your view on global Magnitsky sanctions implementation and enforcement.

Mr. MACBRIDE. Senator Young, I believe that also—my understanding, mostly from press reports, is that is something that Treasury is looking into to conduct a review of its use, and if it can be used in other contexts. So again, it is not an issue that I am currently familiar with, but I will commit to looking at it and discussing this further with you.

Senator YOUNG. In your view, does Treasury have the resources and authorities necessary to target serious human rights' abuses and corruption with sanctions?

Mr. MACBRIDE. To my knowledge, Senator, they do. I am not familiar with whether there have been offline discussions between Treasury and the Congress about the need for additional authorities. If there are, I would obviously support those.

Senator YOUNG. Okay.

In June, the Biden administration issued Executive Order 14032 to ensure that the U.S. markets are not used to fund the Chinese military industrial complex. It is a welcome step that builds upon President Trump's executive order protecting vital national security interests and holding China accountable.

Looking forward, I welcome further details about the criteria that Treasury will use to identify companies that are part of this Chinese military industrial complex.

Mr. MacBride, if confirmed, what are the standards you would advise for determining whether a company has operated in the defense or surveillance tech sectors of the Chinese economy?

Mr. MACBRIDE. Senator, I agree with you fully about the strategic threat that China poses to our country, to our national security, to our economy. I saw that firsthand in the work I did at the Justice Department.

I would look forward to, if confirmed, digging into that executive order. I am generally familiar with it, but have not had occasion to work on it or be briefed by my future colleagues, but I would commit to do so and come back to you for a more fulsome discussion.

Senator YOUNG. I see that my time has expired. If you have any further written correspondence as it relates to these questions, I will welcome it. Thank you.

Mr. MACBRIDE. Thank you, Senator.

Senator WARREN. And I think that means that I am up next.

I want to have a chance to talk about the revolving door. One of our nominees today, Mr. MacBride, has been in and out of government multiple times. And just to give a partial list, since his last turn through the revolving door, Mr. MacBride has sued Treasury to overturn a fine on ExxonMobil for violating sanctions on Russia; defended S&P in ratings fraud cases; defended Cisco Systems over a, quote, "vast kickback corruption scheme," end quote; defended AstraZeneca against terrorism financing charges; and done all sorts of legal work for Wells Fargo, J.P. Morgan, and Facebook, in just the past year.

Now, I do not think that private-sector work is disqualifying, but with this record, the public might wonder each time he passes through the revolving door whether he is actually working for the public, or if he is thinking about his next high-paying client, or his past high-paying clients.

So let me do this, Mr. MacBride. I want to secure some commitments from you that you will at least reduce the speed of the revolving door. So, Mr. MacBride, will you commit to recuse yourself from working on any matters related to your former clients, including ExxonMobil, Wells Fargo, Morgan Stanley, AstraZeneca, and others, for 4 years, if you are confirmed? Can you commit to that?

Mr. MACBRIDE. Thank you, Senator Warren, for the question. Thank you for meeting with me earlier.

I know you are a leader in this area, and these are issues of enormous concern to you: the revolving door, and not just the reality but the perception of fairness and impartiality and doing the people's work, and I fully agree with that first principle.

This would be my sixth opportunity to work for the American people, should this process go forward. I have spent 15 years previously working as a government attorney. I have always taken these issues extremely seriously—

Senator WARREN. Mr. MacBride, my time is limited here. I asked you just a very simple question. Will you agree to a 4-year period in which you will not be involved in decisions involving people you have been representing up to and including the past few weeks?

Mr. MACBRIDE. Senator Warren, I am fully committed to the Biden ethics pledge. It is the toughest pledge—

Senator WARREN. So is that a "no"?

Mr. MACBRIDE. I am in full compliance with the Biden ethics pledge, and its enhanced recusals with respect to former clients and employers.

Senator WARREN. What I am asking is not what it is that you have already been asked to do by the Biden administration, which I understand is 2 years. I am asking for a commitment of 4 years. That is a good start, what you have already got, but I take it you are saying "no" to a 4-year commitment?

Mr. MACBRIDE. Senator, I enjoyed the opportunity to talk with you previously and wanted to know your views. I would like to know—

Senator WARREN. That's right. That means you have now had 2½ months to think about this since we spoke.

Mr. MACBRIDE. Yes, and I welcome the opportunity to continue—

Senator WARREN. And you know that other administration officials, including Defense Secretary Lloyd Austin, were willing to commit to 4 years of recusals, not making decisions that directly affect the people that you have been taking money from up to this point. And I take it you are saying, no, you will not agree to do that for a 4-year period. Is that right?

Mr. MACBRIDE. Senator, I am happy to continue this conversation—

Senator WARREN. I do not want to continue the conversation. I want a "yes" or "no." We are going to have to vote on this. And I am taking it, because you will not say "yes," that your answer is "no," and you are trying to dance around like I am not going to notice.

So let me ask you another question. Let's ask, on the other side of the revolving door, Mr. MacBride, can you pledge not to seek employment with or be compensated by any company that you interact with during your time in government for 4 years after you leave government service? Just slow down that revolving door a little bit?

Mr. MACBRIDE. Senator, the Biden ethics pledge has a number of very specific—

Senator WARREN. I am not asking you about what other pledges you have taken. I am asking you if will you make a commitment

that after you leave government service, for 4 years you will at least not work for the specific people for whom you are making decisions while you are in government service.

Mr. MACBRIDE. Senator, I take these issues very seriously. I have—

Senator WARREN. How about taking them seriously enough to agree that you will not do this? That is what I am asking for, so that the American people can have confidence that, while you are in your government official role, that you are not thinking about the people you have already taken money from and will be taking money from as soon as you leave government service. That is what I am asking for. Can I have that commitment?

Mr. MACBRIDE. Senator, I believe I have conducted all of my—

Senator WARREN. I think that is a “no.” Whether it is Democrats or Republicans, the revolving door between government officials and industries they regulate undermines confidence in government officials and whether they are working for themselves or working for the American people. That is why I have introduced legislation that would strengthen ethics and conflict of interest rules, and that would lock this revolving door for good.

I am tired of waiting on this. We need to change the way that Washington does business, and we need to change it now.

So, with that, I think we are ready to—oh, we are going to Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. And to the nominees, congratulations on your nominations.

Let me start with Ms. Grimm. First of all, let me thank you for the incredible work that you are doing within the Department of Health and Human Services. I know the goal for the Office of the Inspector General is to fight fraud, abuse, and waste in Medicare and Medicaid and HHS programs.

I also know, coming from Nevada, that the pandemic has posed challenges for all industries and continues to do so, and fraud has not been exempt from that. We have heard in conversations that fraud is associated with public health emergency spending, and the COVID-19 pandemic in general is an issue that I know your office is investigating.

So, Ms. Grimm, my question is, how will OIG rise to address these new fraud concerns? And what should Congress be considering as we work to build better, more robust Federal programs?

Ms. GRIMM. Thank you for your question, Senator. Just this last week, we had a fraud takedown that included a variety of COVID schemes. We have seen, unfortunately, the best and the worst of humanity during the COVID crisis. The fraud cases have evolved. Initially, they were offering fake cleaning kits to fake vaccines to now fake cards.

We are working aggressively with our law enforcement partners to combat these pernicious fraud schemes that have taken advantage of the crisis and vulnerable people. You had asked what—I’m sorry, could you repeat the second part of your question? I apologize.

Senator CORTEZ MASTO. Yes. What should we be considering in Congress? Obviously, you are at the forefront of addressing the fraud, seeing the types of fraud. As we work to expand and build

more robust Federal programs, what should we be considering as well? And let me just say this: to somebody who has worked as an Attorney General for the State of Nevada, I obviously know that any time Federal funds and support are coming out, there is always fraud and abuse to some extent, unfortunately.

So what should we be considering in Congress as well to address the fraud, if there is anything we can do?

Ms. GRIMM. Senator, I really appreciate that question, from the perspective that thinking about public integrity up front is always critical to better ensure that programs are working the way that Congress intends, and that the American public intends.

So, what Congress can do as it considers new legislation and new programs is the importance of program integrity. I will say—I do not want to get ahead of the President’s budget—but our resources have declined over time to be able to keep pace with the increasing amounts coming to and through HHS. So, the resources in the President’s 2022 budget are very important to us. But I do ask that, with new programs, program integrity be considered. And we are working with the Pandemic Response Accountability Committee, as new programs are being stood up at HHS and across other departments, to sit down with those running those programs to talk about the imperative of program integrity, the controls that should exist, monitoring of data so that you can detect aberrancies in some of the enforcement tools that are absolutely critical.

Senator CORTEZ MASTO. Thank you. I appreciate your response.

Mr. MacBride, you mentioned in your opening remarks working closely with the IRS in the past to tackle banking and financial crimes. And we have discussed the issue of tax enforcement in this committee recently, and the need to give the IRS the tools to increase enforcement to close the tax gap.

President Biden has also been vocal in his support of increasing the enforcement capabilities of the IRS. How will you work with Treasury to address issues of tax enforcement and the growing need for IRS to work more proactively in that area?

Mr. MACBRIDE. Thank you, Senator, for that question. And as you noted, I spent 4 years working on a number of significant financial and bank fraud cases, partnering with Treasury components including IRS-CID.

I am not yet in the building, but if I am confirmed, I would want to be read up on the issues that you have mentioned. I am aware from press reports, of course, of statistics about underpayment of taxes, and the need for sufficient resources for the IRS to make sure that folks just pay the taxes that are due.

I am aware of the President’s commitment, and Secretary Yellen’s commitment to make sure that there are resources in place to execute the core mission. And so I would look forward, if confirmed, to being part of that in the General Counsel’s office, to the extent we have a role, and would very much like to hear further from you thoughts that you have about how Treasury can be most effective in this important area.

Senator CORTEZ MASTO. Thank you. I appreciate your view. I know my time is up. I will submit the rest of my questions for the record. Congratulations to all of you.

I believe Senator Toomey is next.

[The questions appear in the appendix.]

Senator TOOMEY. Thank you very much, Senator Cortez Masto.

Let me begin with Mr. MacBride. I just want to talk a little bit about the Biden administration's agreement at the OECD. And as you know, it consists of two pillars, as they are described. The first is called the Market Jurisdiction Tax Allocation, which for the first time in history that I know of would be allowing other countries to tax the income of American companies based on sales in other countries. That is Pillar One.

Pillar Two is this Global Minimum Tax, which, by the way, seems to be the priority of the administration. It is also the conflicted confession that the big increase in the Global Minimum Tax that the Biden administration wants to impose on American multinationals puts us at a competitive disadvantage if the rest of the world does not go along and, similarly, punishes the multinational businesses, which is why it is such a big priority. And the Secretary has made a big deal about the agreement of most of the OECD countries.

Despite that importance that they implicitly acknowledge, the rate of this Global Minimum Tax that the Biden administration wants to impose is considerably higher than the one that was negotiated with most OECD countries, and there are some who are not going to do it at all. Having said all that, the OECD wants to grab a piece of American tax revenue. It is a tax shift from U.S. coffers to foreign government coffers, if you ask me.

But my question for you, Mr. MacBride, is about implementation. There is no question that Pillar One—there is no question in my mind—would require superseding current bilateral tax treaties. And as such, it will require a new treaty, or at least a modification of an existing treaty. And that requires a two-thirds vote in the Senate to ratify.

So my question, Mr. MacBride, is, do you share the view that the implementation of Pillar One will require a treaty vote in the Senate?

Mr. MACBRIDE. Thank you, Senator Toomey. I appreciate the question and know this is an important issue to you. Unfortunately, it is one that I have not yet been read into. I have seen some press reports at a very high level, but I have not studied the treaties or authorities that you mentioned.

My view is that, as the chief legal officer for Treasury, my job is to ensure that the Department carries out all its activities in compliance with law generally, and obviously the acts of Congress in particular. And so, if I am fortunate enough as to move forward, I would want to immediately dig into this issue to just get educated about it so that we could have a further conversation.

Senator TOOMEY. Well, I would strongly encourage you to look at this as soon as you possibly can. It is going to be extremely important. I should point out, I am certainly not the only one who has the view that this is a straightforward matter that requires a treaty. PWC has written about this, saying Pillar One and the passage of a treaty in the Senate, however, may be more difficult. And they go on to discuss the difficulties, clearly accepting the premise that Pillar One requires a new treaty. And Deloitte, in their analysis, talks about Pillar One. They refer to it as "Amount A." That is just

their vernacular for this in this particular write-up. And they say Amount A, the Pillar One market reallocation, will require both a treaty-based response to permit market countries to tax Amount A, and a local country response to impose tax on Amount A. Ernst and Young similarly, in their writings, talk about the likelihood of requiring a treaty ratification.

So nobody disputes that the Constitution assigns to the Senate the responsibility to approve or reject treaties. That is going to be an important part of this discussion going forward.

And that pretty much consumes my time, Mr. Chairman, so I will yield back the remainder.

The CHAIRMAN. Thank you for your courtesy, Senator Toomey. We are at an end. I just want to do a brief recap so everybody understands where we are.

I am going to need from you, Ms. Grimm, within 48 hours, the two areas I talked about: what your strategy is for making sure that our country is dealing with these policies that seem to be breaching the commitment and the text of the black-letter law to make sure that mental health gets treated like physical health. We are going to need you to look at the billing practices, because there is a lot of delaying and staff patterns and the like, because I think when you add it all up together, mental health does not get a fair shake. And that is contrary to what the law says.

So we are going to want to see, within 48 hours, your plan for doing that, and we talked about that.

And then I would like an extension of what we talked about before. It sounds like you are doing important work with respect to telehealth, and I want to see how you would make sure that these services that were added continue to stay in place, but we also have a path to deal with the fraudsters, because we have seen that fraud. That from you within 48 hours. Thank you.

Mr. MacBride, on this question I asked you about with respect to bank secrecy, we have a 20-year history of physically producing these documents. I am going to expect that you are going to continue to stay with that 20-year tradition. If you have some reason to do otherwise, you need to tell us that very quickly as well. Okay?

All right. Thank you both. We appreciate your willingness to serve.

One other bit of business regarding questions for the record: the deadline for members to submit questions for the record will be next Wednesday, September 29th, at 5 p.m. That is a firm deadline, colleagues.

We thank all for their cooperation and appreciate the patience of our guests, and the hearing is adjourned.

[Whereupon, at 11:35 a.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM IDAHO

Today, we welcome two nominees to the committee: Mr. MacBride to be General Counsel of the Treasury and Ms. Grimm to be Inspector General of the Department of Health and Human Services. Congratulations on your nominations.

I am interested in learning more about each of your perspectives and reviewing your responses to questions for the record that our members will submit after today's hearings. Let's start with Mr. MacBride.

The General Counsel of the Treasury should be able to provide nonpartisan legal and policy advice to the Secretary and other senior Department officials. As head of the Treasury Legal Division, the General Counsel is also responsible for all legal work in the Department, with the exception of the legal work in the Office of the Comptroller of the Currency and the Offices of the Inspectors General.

Your role as General Counsel, if confirmed, will be important to the Secretary and the Treasury Department, given the health and economic challenges currently facing our country, and it is imperative that you take on this role with the best interests of the United States, not the President or Senators sitting before you today or any one political party.

Today, the United States is experiencing unprecedented economic pressures on multiple fronts, including significant inflation and record price increases, significant legislative and regulatory changes, and international economic competition and threats. Yet Congress is considering a \$3.5-trillion tax-and-spending package that would change the social fabric of our country. These changes would impose massive tax hikes on America's small businesses and job creators, and expand the role of the Internal Revenue Service to monitor the transactions of Americans at every income level. Many Americans are justifiably concerned.

Mr. MacBride, you would play a large role in the regulatory process to implement this partisan \$3.5-trillion package, if it were to pass. You would also be closely involved in the ongoing international tax negotiations occurring at the OECD. These matters will require transparency and accountability. They will also require you to follow the law and serve the best interests of our Nation, not a partisan agenda, and that you keep Treasury's authorizing committee—the Finance Committee—fully informed. To date, this administration and Treasury Department have failed to be fully transparent and accountable to this committee. I expect you to be transparent and responsive, if confirmed.

Turning to Ms. Grimm, if confirmed as Inspector General of HHS, you will continue to serve as the chief watchdog over the Department of Health and Human Services, one of the largest Federal agencies, whose programs account for roughly \$2.4 trillion in taxpayer dollars. It will continue to be your responsibility to lead OIG's efforts to fight waste, fraud, and abuse in some of our most important and far-reaching Federal programs, including Medicare and Medicaid. Together, these programs account for more than one-fifth of all Federal outlays and serve some of our country's most vulnerable citizens.

It is imperative the HHS Inspector General avoid politicization and maintain independence. HHS-OIG is the largest civilian Office of the Inspector General across the entire Federal Government, with a workforce of around 1,650 employees. Given the substantial size and unparalleled purview of your office, I hope you will

continue to serve as a principled and nonpartisan steward of vital programs, initiatives, and taxpayer dollars.

I look forward to working together to bolster program integrity, as well as to continue adapting our fraud and abuse regulations and oversight infrastructure to keep pace with cutting-edge technology and health-care innovation.

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PREPARED STATEMENT OF CHRISTI A. GRIMM, NOMINATED TO BE INSPECTOR  
GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee. I thank Senator Warner for the gracious introduction and Senator Kaine for his kind statement of support. I thank the President for nominating me to serve as the Inspector General for the Department of Health and Human Services. I am honored to appear before the Senate Committee on Finance as it considers my nomination.

I believe that public service is a calling—a calling to which generations of my family have responded through military and other public service. I draw inspiration from my family’s commitment to serve this country and improve government. As a child growing up in Edgewater, CO, I watched my grandfather, the head of the Public Works Department, strive to improve the infrastructure of that small town. I saw his pride when water could reach the homes of hardworking families, when parks were well maintained, and when new roads and sidewalks connected the community. I was proud of how he made our town better. It is personally meaningful for me to continue this tradition of ensuring that government works for the people it serves. I thank my family, each and every one, for their inspiration. My husband Drew, a Federal law enforcement agent, is with me today. Drew, thank you for being my partner as we try to model public service for our 4-year-old daughter, Hazel.

I also want to recognize the many mentors who have generously shared their wisdom, support, and time during my career at HHS. These mentors include Ellen Vinkey, Jodi Nudelman, Larry Goldberg, Giovanna “Joanne” Chiedi, and Daniel R. Levinson. I thank them for seeing and cultivating my potential. I commit every day to do the same for future leaders.

Inspectors General perform an essential public service. They root out fraud, waste, and abuse and help make programs more efficient and effective. It is critical to have Inspectors General who understand the value of objective and independent oversight. Through independence, objectivity, and transparency, Inspectors General help government better serve the American people. A strong Inspector General makes a stronger department and a stronger, more trusted Federal Government.

With more than 20 years of executive branch service and more than a decade of holding top management and strategic positions within HHS-OIG, I offer unique qualifications to lead this agency. I have been performing the duties of the Inspector General since January 2020, directing oversight of HHS’s COVID-19 pandemic response while transitioning a workforce of over 1,600 professionals to a mostly virtual environment. We have not allowed unprecedented challenges to disrupt our mission, and we have excelled in productivity, employee satisfaction, and maintaining standards of excellence.

If confirmed, I will be honored to lead HHS-OIG’s mission-driven team of program integrity experts. I am deeply committed to ensuring that we remain a modern organization with a high-performing, diverse, and inclusive workforce. Continued investment in data analytics and information technology will ensure that HHS-OIG’s dedicated professionals have the tools they need to succeed.

I am steeped in the disciplines central to the work of an Inspector General. I understand the everyday challenges of ensuring program integrity. If confirmed, I will deliver practical results to help address the most consequential issues facing HHS: financial integrity of HHS programs; access, quality, and safety of care, including for some of our Nation’s most vulnerable populations; safeguarding public health; appropriate administration of HHS programs at the Federal and State levels; and preventing fraud, waste, and abuse that harm people and divert critical resources.

OIG’s work is vital to ensure that HHS programs deliver the services and outcomes that Congress intends, and that beneficiaries and taxpayers deserve. If confirmed, I will maintain strong partnerships with stakeholders, including the Department of Justice, HHS, the Pandemic Response Accountability Committee, States,

and other law enforcement agencies so that we can continue our fight against fraud, waste, and abuse. And I will continue a rigorous program of audits and evaluations that aim to drive positive change for HHS programs and the people they serve.

If confirmed, I will uphold the Inspector General's dual reporting obligations to Congress and the Department. That includes my commitment to inform Congress as HHS-OIG conducts its work and to be accessible to Senators, Representatives, committees, and your staffs.

As a career public servant who rose through the ranks, I am humbled and honored to be considered for the position of Inspector General. During my career, I have marshaled experience in the craft of oversight and the art of leading a high-performing workforce. It would be my privilege to serve and lead HHS-OIG, an organization to which I am deeply committed.

I thank the Senate Committee on Finance for considering my nomination and for its strong support of independent and objective oversight. I look forward to answering your questions.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Christi Anne Grimm; former name, Christi Anne Macrina (maiden name); name occasionally used in publications, Christi Macrina Grimm.
2. Position to which nominated: Inspector General for the Department of Health and Human Services (HHS).
3. Date of nomination: June 24, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: March 10, 1975, Denver, Colorado.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):  
New York University, Robert F. Wagner Graduate School of Public Service, Master of Public Administration in Health Policy, May 2004.

Additional:

Harvard University, Kennedy School of Government, Senior Managers in Government, 2015. Immersive certificate program designed for senior-level public leaders. Program focused on public policy and management, leadership skills, and managerial practice.

American University, Experienced Leaders in the OIG Community, 2011. Multi-week certificate program designed to transition proven leaders into executives.

9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):

From January 3, 1999 to the present date, I have been employed by the Federal Government at HHS. The following is a listing of positions I have held and titles I have used, from most recent to oldest, at HHS:

**Principal Deputy Performing Duties of Inspector General, HHS Office of Inspector General (OIG), Washington, DC, 1/1/2020–present (9/2021)**

As Principal Deputy Inspector General Performing Duties of Inspector General, I lead an independent and objective organization of more than 1,600 auditors, evaluators, investigators, lawyers, and management professionals who carry out OIG's mission of protecting the integrity of HHS programs as well as the health and welfare of program beneficiaries.<sup>1</sup> In this role, I ensure effective use of OIG's approximately \$397 million budget and \$12 million of COVID-19 supplemental resources (2020 enacted), plus approximately \$250 million in grants for Medicaid Fraud Control Units, to oversee \$2.4 trillion in HHS base and supplemental expenditures. I am responsible for the oversight of HHS and all the agencies operating within HHS including the Centers for Medicare and Medicaid Services (CMS), Administration for Children and Families, Centers for Disease Control and Prevention, Food and Drug Administration, National Institutes of Health, and Office of Global Affairs.

**Chief of Staff, HHS OIG, Washington, DC, 8/2014–12/2019**

As Chief of Staff to the Inspector General, I was the second highest-ranking career official at OIG. I was directly responsible for effective execution of priority initiatives and providing counsel on a wide variety of policy and operational matters and ensuring high quality work products. I was further responsible for ensuring that OIG's budget advanced innovation, focused on impactful work most likely to produce improvements in programs and in the lives of beneficiaries, and considered input from stakeholders. I served as an executive liaison, responsible for communicating and coordinating with government partners, national professional associations, and the private sector. As Chief of Staff, I also:

Advocated for the financial, human, and technical resource allocation needs of OIG. These instrumental efforts culminated in a \$65 million funding increase from Congress between 2014–2017, that enabled OIG to end a hiring freeze, launch new oversight activities, and make critical investments to modernize its IT infrastructure. These improvements enabled OIG to seamlessly transition to near total remote operations during the COVID-19 pandemic without compromising productivity.

Oversaw OIG efforts to assist the Secretary of HHS in efforts to reduce regulatory barriers and accelerate the transformation of the health-care system into one that better pays for value and promotes care coordination.

Helped to establish OIG's Affirmative Litigation Team, to leverage OIG's unique enforcement authorities to independently bring civil monetary penalty actions when the Department of Justice cannot support prosecution under the False Claims Act. Within 6 months of its launch, the team returned \$45 million to the Medicare trust fund.

Managed OIG's Media Communications and approved the design and execution of sophisticated media strategies for press conferences, press kits, video series, and podcasts.

Led negotiation discussions with HHS's top leaders on recommended improvements to HHS programs and operations (341 recommendations implemented in Fiscal Year (FY) 2019).

Held a primary responsibility for the quality and timeliness of OIG work products, amounting to over 300 products generated in FY 2019 that included OIG audits, evaluations, fraud alerts, annual reports, and congressional correspondence and testimony. In FY 2019, the combined expected audit recoveries, questioned costs, and potential savings identified in OIG reports exceeded \$2.5 billion. Additionally, OIG's investigative work led to \$5.04 billion in expected investigative recoveries.

**Director of Policy and Programs, HHS OIG, Washington, DC, 1/2013–7/2014**

As the Director of Policy and Programs, I supervised the day-to-day operations of the Immediate Office to the Inspector General, consisting of the Chief Medical Officer, Senior Counselor for Health Information Technology, the Office of Congressional Affairs, the Office of Regulatory Affairs, Media Communications,

<sup>1</sup>In keeping with the OIG succession plan implemented by former Inspector General Daniel R. Levinson, I assumed the role of Principal Deputy Inspector General following the retirements of IG Levinson in May 2019 and PDIG Joanne Chiedi in January 2020. I have been performing the duties of Inspector General since January 2020.

the Executive Secretariat, and the Freedom of Information Act Office. As the Director of Policy and Programs, I also:

Collaborated with budget and planning experts to align OIG resource requests with planned work and to develop budget justification information submitted to appropriators; conducted cost-benefit analyses of proposed evaluations and audits to ensure projected human and financial capital investments were sound and reflected priorities.

Provided technical expertise for OIG oversight strategies and tactical approaches and collaborated with senior staff to identify and collect data for performance metrics.

Regularly communicated with key HHS and congressional stakeholders and identified opportunities to better integrate key stakeholders' interests and concerns, as appropriate, into OIG's Strategic Plan, Semiannual Work Plan, and Semiannual Report to Congress.

**Senior Advisor to the Principal Deputy, HHS OIG, Washington, DC, 11/2009–1/2013**

As the Senior Advisor to the Principal Deputy, I advised and represented the Principal Deputy and Inspector General on OIG policy, operations, and program matters. I regularly prepared written products and oral presentations on behalf of the Principal Deputy and Inspector General for senior officials in HHS, the Legislative Branch, other Federal Executive agencies, State or local governments, public interest groups, industry, members of the press or media, and the public. I also worked closely with managers and staff to set strategies and lead priority initiatives.

**Senior Program Analyst, HHS OIG, Office of Evaluation and Inspections, Dallas, TX (2005–2009); New York, NY (1999–2005)**

As a Senior Program Analyst within OIG, I applied program knowledge and technical skills to gauge potential risk to programs and beneficiaries and designed, managed, and executed award-winning national evaluations of HHS programs and policies.

**Insurance Specialist, Centers for Medicare and Medicaid Services, New York, NY, 1/1999–8/1999**

As an Insurance Specialist within CMS, I conducted program evaluations for Medicare Part A and Part B contractors located in Nebraska, Texas, New York, Florida, and Puerto Rico. I led several teams of insurance specialists to examine contractor compliance with local and national medical review policies and procedures and adherence to financial reporting requirements. These results were communicated for review and action to CMS executive leadership and its contractors.

**Additional positions held after college:**

1999—Banana Republic, Sales Associate, New York, NY (part time, approx. 10 hours/week). Position entailed retail sales (clothing).

1998—Vectra Bank, Personal Banker, Denver, CO. Position entailed opening personal loans, home equity loans, and bank accounts for customers.

1998—Banana Republic, Sales Associate, Denver, CO. Position entailed retail sales (clothing).

1998 (approx.)—U.S. Bank, Bank Teller, Denver, CO. Position entailed electronically entering deposits and withdrawals, balancing checking accounts for customers, filling ATMs with cash, and balancing cash drawers.

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

I list my government experience in my response to Question A.9.

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

I serve on the Board of Directors for Worldwide Assurance for Employees of Public Agencies (WAEP), a nonprofit 501(c)(9) providing life insurance and fi-

nancial service benefits to Federal civilian employees. In this role, I serve on two committees within WAEPA: the Finance Committee and the Governance Committee. If confirmed, I will resign from this position, in accordance with a commitment in my June 17, 2021 ethics agreement with the Office of Government Ethics (OGE). I will also comply with the additional requirements outlined in this agreement.

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

As the Principal Deputy Inspector General Performing Duties of Inspector General, I am OIG's lead representative for intragovernmental memberships established to better effectuate communication and coordination across agencies. Examples of these memberships include the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the Pandemic Response Accountability Committee (PRAC), and the PRAC Health Care Subgroup that I lead. My interaction with some of these organizations—like CIGIE—precede my current role and are associated with my employment at OIG.

The following list does not include memberships and offices held solely in my official capacity and instead includes only those that I have chosen to hold and perform in my capacity as a private citizen.

My husband and I are members of St. Aidan's Episcopal Church, located in Alexandria, VA. We have been members of this church since the winter of 2018.

WAEPA Board of Directors member. Since the fall of 2019 I have served as a member of the Board of Directors at WAEPA, as discussed above. If confirmed, I will resign from this position in accordance with a commitment in my June 17, 2021 ethics agreement with OGE. I will also comply with the additional requirements outlined in this agreement.

Tennessee Walking Horse Association. From 2013–2014 (approx.) I was a member of the Tennessee Walking Horse Association. My membership is not active.

13. Political affiliations and activities:

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

None.

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

None.

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

One-time contribution to Heidi Heitkamp, October 9, 2018. Amount = \$100, via ActBlue.

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

Honors and Awards:

CIGIE, Excellence in Management, 2019. In recognition of my “outstanding management efforts to revolutionize HHS OIG's work planning process through the creation of the Engagement Committee and Living Work Plan.”

HHS Secretary's Award for Excellence in Management, 2015.

HHS Inspector General's Bronze Medal for Outstanding Employee of the Year, 2011 and 2010.

HHS Inspector General's Award for Cooperative Achievement, 2012, 2011.

HHS Inspector General's Award for Exceptional Evaluation and Collaboration, Adverse Events in Hospitals, 2009.

HHS Inspector General's Award for Creative Investigation and Analysis in Identifying Durable Medical Supplier Associations, 2009.

HHS Inspector General's Award for Outstanding Contributions in Strengthening Controls in Medicaid Eligibility, 2006.

HHS Inspector General's Award for Major Contributions Toward OIG Goals, 2005, 2004, and 2002.

Special Act and Time Off Awards: Over the course of my career I have received over 40 Special Act, time off, or performance-based cash awards. I can provide a list of these awards if it would be helpful to the Senate Committee on Finance.

Scholarships: At both New York University and the University of Colorado at Denver, I received merit-based scholarships to cover tuition costs directly from the school.

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

Please note, although many audit and/or evaluation reports that represent the views and work of my office have been signed out under my name and title (*e.g.*, Principal Deputy Inspector General), I do not list these reports here. Nor do I list OIG reports for which I was a team leader or member earlier in my career. My understanding of this question is to include published writings that were written or co-written directly by me.

"Four Crucial Lessons for Improving COVID-19 Testing," Opinion by C. A. Grimm, M. E. Horowitz, *CNN.com* Opinion, April 9, 2021.

"Why Drug Prescriptions Should Include Diagnoses," C. A. Grimm, J. K. Taitsman, *STAT News*, March 1, 2021.

"Medicare Advantage Should Not 'Game the System' But Prioritize Patient Care, Honest Billing," C. A. Grimm, *HealthcareDive*, September 2020.

"Commercial Influences on Electronic Health Records and Adverse Effects on Clinical Decision-Making," J. K. Taitsman, A. VanLandingham, and C. A. Grimm, *JAMA Intern. Med.* May 11, 2020;180(7):925-926.

"Protecting Patient Privacy and Data Security," J. K. Taitsman, C. M. Grimm, and S. Agrawal, *New England Journal of Medicine*, March 14, 2013: 368:11, 977-979.

"Navigating OIG's New Website to Find Compliance Information," J. Taitsman and C. Grimm, *Compliance Today*, December 2012: 14:12, 67-70.

"The Importance of Accurate, Complete, and Usable Documentation," C. Grimm, MPA and J. Taitsman, MD, JD, *Compliance Today*, January 2012: 14:1, 5-7.

"Buprenorphine Treatment Services in the 50 States and District of Columbia: Lessons for New York City," C. Macrina, V. Shier, and J. Sturtz, New York University, Wagner School of Public Service Graduate School Capstone.\*

16. Speeches (list all formal speeches and presentations (*e.g.*, PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates. Provide the committee with one digital copy of each formal speech and presentation):

**American Health Law Association (AHLA)**, Update on Oversight of COVID-19-Related Programs, 2021 Virtual Annual Meeting, June 29, 2021.

**AHLA Panel**, Conversation with Dr. Fauci, 2021 Virtual Annual Meeting, June 29, 2021.

**Partnership for Public Service, Excellence in Government Fellows**, Navigating Change Perspective, Virtual Engagement, June 16, 2021.

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\*Please note that the final item was completed as part of a capstone in my graduate school program. The work was conducted for the benefit of the New York City Department of Health and Mental Hygiene (NYCDHMH) and was provided to NYCDHMH upon completion. While I am able to provide what exists of the capstone online, I am unaware of whether the full project was further disseminated or published, and I do not currently have a copy of it.

**Health Care Compliance Association (HCCA)**, HHS OIG Update, 2021 Virtual Compliance Institute, April 19, 2021 (keynote). Additional materials, including handouts, video, and presentations, available on the OIG website.

**National Association of Medicaid Fraud Control Units (NAMFCU)**, OIG Updates, Annual Conference, Directors Symposium, October 19, 2020.

**Council of the Inspectors General on Integrity and Efficiency (CIGIE)**, Annual Awards Ceremony: Conversation with Dr. Anthony Fauci (video), October 13, 2020.

**AHLA**, Connecting the Dots: An OIG Update, Fraud and Compliance Forum, October 1 2020 (keynote).

**U.S. House of Representatives, Committee on Oversight and Reform**, Opening Statement for Member Briefing on the administration's Coronavirus Response, May 26, 2020. Full video archived on the committee's website.

**HCCA**, OIG Update, 2020 Virtual Compliance Institute, March 30, 2020 (keynote).

**Philadelphia Regional HCCA**, HHS–OIG Compliance Priorities for 2019 and Beyond, May 31, 2019.

**NAMFCU**, OIG Updates, Annual Conference, Directors Symposium, March 21, 2018.

**U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations**, Combating Waste, Fraud, and Abuse in Medicaid's Personal Care Services Program, May 2, 2017. Full video here: <https://www.youtube.com/watch?v=vRaQBjEvukg>. Additional committee materials archived on the committee's website.

**HCCA Annual Conference**, Strategic Priorities of the OIG, April 2017 (panel discussion).

**NAMFCU**, OIG Updates, Annual Conference, Directors Symposium, March 22, 2017 (panel discussion).

**The 2016 Healthcare Information and Management Systems Society Annual Conference and Exhibition**, OIG 101: An Introduction to the HHS OIG, March 3, 2016.

Please note, I have omitted media engagements, *e.g.*, CBS Evening News and National Public Radio, from this list since these engagements appear to fall outside the scope of the question (*i.e.*, they were not a formal "speech," nor did they involve a presentation of supporting data and materials accompanied by graphics). I am happy to provide further information upon request.

As an additional item, please be aware that I do not have copies of or notes from my remarks for the March 21, 2018 and March 22, 2017 presentations for NAMFCU. Further, I am unable to locate these remarks in any format online.

***Upcoming Speeches and Presentations:***

**CIGIE Identity Fraud Reduction and Redress Working Group**, title of speech to be determined, August 3, 2021.

**AHLA**, title of speech to be determined, Fraud and Compliance Forum, September 22, 2021 (keynote).

**NAMFCU**, title of speech to be determined, Annual Training Program, September 28, 2021.

Please note that I will provide to the Senate Committee on Finance copies of the prepared remarks in connection with the above presentations following delivery of the remarks.

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

I am Christi A. Grimm, the Principal Deputy Inspector General for the U.S. Department of Health and Human Services (HHS). I have been successfully performing the duties of Inspector General since January 2020. I am a proven public servant dedicated to independent and tenacious oversight to protect taxpayer investments and ensure the health and welfare of people served by HHS programs. My more than 20 years of government service includes serving in top leadership and strategic positions within the Office of Inspector General (OIG) for over a decade. As the senior most executive for the largest civilian Federal OIG, I lead an independent and objective organization of more than 1,600 audi-

tors, investigators, evaluators, lawyers, and management officials who carry out OIG's mission. I have deep experience leading a complex organization, high profile initiatives, and a highly skilled workforce.

I drew on this experience to navigate OIG through the unprecedented challenges of the COVID-19 pandemic. I recognize that OIG's people are its most valuable asset. When the pandemic struck, workforce safety was paramount. I worked with our leadership team to adapt work practices to fulfill our mission while keeping our staff and the public we serve as safe as possible. This included, for example, new safety protocols and equipment for our front-line law enforcement agents. OIG also seamlessly transitioned to a virtual working environment for most tasks. Our quick and successful move to remote work was possible because of prior investments in information technology.

During my tenure as Chief of Staff and then Principal Deputy, I was instrumental in leading and securing significant change in the way OIG leverages technology and data. These changes yielded dramatic benefits but required sustained commitment, investment, and culture changes. Collaborating with partners across OIG, I obtained substantial added budget resources and executed a strategy that enabled OIG to be among the first Inspectors General to hire a Chief Data Officer, to create a centralized advanced data analytics division, and to deploy mobile-first, cloud-based tools to OIG's nationwide staff. These infrastructure investments paid off during the pandemic, enabling OIG's workforce to shift to virtual work in two days with adaptable technology and data analytics capabilities available regardless of where an employee works.

Amidst these monumental changes and challenges, OIG did not miss a beat. We maintained high productivity levels in FY 2020, producing 178 audit reports with over \$1.6 billion in expected audit recoveries or questioned costs and 44 evaluation reports that contained valuable insights to improve HHS programs and the beneficiaries they serve. This represented an increase in the number of reports issued over the prior year; OIG is on track to maintain or exceed this productivity level in the current fiscal year.

I am proud to say that, under my leadership, in 2020, OIG ranked as the top place to work in HHS and as the top OIG among large Offices of Inspector General, according to the annual Federal Employee Viewpoint Survey (FEVS). Areas of notably high scores relative to other agencies include effective leadership, leadership empowering staff, and teamwork. High scores notwithstanding, I am committed to ensuring OIG remains a learning organization that cultivates employees' ideas and uses FEVS and other feedback to make meaningful improvements. It is mission critical that every employee feels engaged, valued, and respected. In 2020, expanding on an already successful program and at my direction, we hired our first diversity and inclusion specialist, established a Diversity and Inclusion Advisory Board to offer insights and feedback to leadership, and empowered a variety of employee-led initiatives sparked by their high level of interest in this area. Additionally, I have prompted and supported innovative ideas from our workforce for oversight projects to help advance health equity in HHS programs.

Under my leadership, OIG continues to be at the forefront of fighting fraud in Health and Human Services programs and promoting programs' economy, efficiency, and effectiveness by using data-driven analysis, technology, and a highly skilled and motivated workforce to achieve results. I am uniquely prepared to lead the organization specifically charged with safeguarding the integrity of HHS programs at the enterprise level and, if confirmed, to elevate our oversight work to meet the challenges of a rapidly changing Health and Human Services landscape. Having risen through the ranks in OIG and served in a range of staff and leadership positions in headquarters and regional offices, I am steeped in the critical needs and disciplines of evaluation, auditing, data analysis, investigations, and business management. I frequently represent OIG in interactions at the most senior levels of government, including with members of Congress. I have thought deeply about the challenges of ensuring program integrity and how the OIG can produce optimal value for the American people. I do not give credence to whether the work I lead will be popular; my driving concern is delivering independent, objective, credible, standards-based information and results that identify cost savings and advance better outcomes for the American public.

I am committed to combating fraud aggressively and preventing people from becoming victimized. During the pandemic, OIG has protected the public from

many types of COVID-19 fraud and held accountable the perpetrators who took advantage of this global emergency to harm patients and steal money. This effort used advanced data analytics and leveraged strong partnerships with law enforcement agencies, the Department of Justice, the Pandemic Response Accountability Committee (PRAC), States, and private industry to quickly detect COVID fraud schemes, shut them down, and alert the public in order to prevent further harm.

In FY 2020, OIG's investigative work (in total, not limited to COVID-19 fraud) contributed to 824 indictments, 624 criminal actions, 791 civil actions, over \$3 billion in total monetary recoveries, and 2,148 exclusions of untrustworthy individuals and entities from participating in Federal health-care programs. OIG played a leading role in the 2020 National Health Care Fraud Takedown, which targeted individuals allegedly involved in a tele-fraud scheme to elicit money and personal information from beneficiaries. Under my leadership this takedown was safely conducted during the pandemic with novel search, seizure, and arrest procedures to better protect agents and the communities in which they serve. More than 345 defendants were charged with submitting over \$6 billion in false and fraudulent claims to Federal health-care programs and private insurers. Perhaps more importantly, the 2020 takedown sent a message that a pandemic would not deter our efforts to combat fraud. In response to growing cybersecurity risk to HHS programs and beneficiaries, I substantially expanded OIG's enforcement and oversight capabilities in this area. For example, under my leadership, OIG completed an HHS-wide review of critical cybersecurity incident response capabilities.

I am equally committed to protecting taxpayer funds from waste and misuse through a rigorous program of audits and evaluations. For example, in response to billions of dollars appropriated for HHS's pandemic response, under my leadership OIG has launched over 70 reviews related to this funding, with more being planned. I am a forward-leaning leader in the PRAC community and serve on behalf of OIG, which is one of the statutorily required Inspectors General established under the CARES Act. To protect the historic levels of financial investment Congress provided for pandemic relief, I led the development of PRAC's Strategic Plan that covers 22 Federal agencies and \$5 trillion in Federal spending and which received unanimous support by PRAC members. I also chair PRAC's Health Care Subgroup, which produced a first of its kind data brief on coronavirus testing frequency, costs, and turnaround times across six Departments that pay for or provide health care.

Under my leadership, OIG has conducted, and continues to conduct, vital work to ensure that HHS programs deliver the services and outcomes for beneficiaries and consumers that Congress intends. This includes work looking at patient safety and quality of care; services for children; emergency preparedness and response; access to, and affordability of, care and services; innovation in health-care delivery, including telehealth; and equity in HHS programs.

Recent examples of work generated under my leadership include the following: (1) a report identifying COVID-19's devastating effects on Medicare beneficiaries residing in nursing homes; (2) a review outlining additional monitoring needs for buprenorphine, a medication-assisted treatment for opioid addiction; (3) a report identifying critical supply, equipment, and personnel shortages hospitals faced in confronting the novel coronavirus as of March 2020; (4) an early alert outlining deficiencies in background checks for staff working with native American and American Indian children; and (5) a report highlighting challenges for HHS in reunifying unaccompanied children who were separated from their parents. Further, in 2020, OIG issued groundbreaking regulations under the Federal anti-kickback statute to advance properly designed, beneficial care coordination arrangements and value-based care.

The success of an Inspector General is measured not only by the number of reports issued, but also by the impact of those reports. To maximize positive impact, OIG's stakeholders, including HHS, Congress, and the American people, must trust that our work meets the highest standards of the Inspector General community. It is a topmost priority of mine that OIG unfailingly meets or exceeds relevant professional standards. During my time as Chief of Staff and Principal Deputy, OIG underwent six peer reviews through the Council of the Inspectors General on Integrity and Efficiency, and I am pleased to say we passed each of them. I believe productive relationships with stakeholders inside and outside government are essential to maximizing the impact of OIG's work.

I strive to ensure that, within HHS, OIG is viewed as a proven, trusted, objective voice at the table that shares HHS's interest in effective program operations and can be a go-to resource for ideas to prevent and correct problems. I have open lines of communication with officials across HHS. I take an evidence-based approach in persuading officials to implement OIG recommendations. I meet regularly with members of Congress to hear concerns and inform our work planning. I am frequently invited to speak at conferences of major professional associations engaged in health-care compliance. In response to feedback from these stakeholders, I am spearheading a new initiative to modernize OIG's industry guidance and to use open, modern data approaches to improve industry compliance. This initiative will also reduce compliance burden on health-care providers without compromising program integrity. If confirmed, I will continue to hold the OIG workforce to the highest possible Inspector General community standards, and I will pursue further opportunities to build and sustain relationships with stakeholders to maximize the impact of OIG's independent, objective work.

To heighten impact, OIG must deploy its appropriated resources prudently and pursue high-value projects. To this end, as Chief of Staff I conceptualized and implemented a novel advancement in OIG's work plan development. I established an Engagement Committee, comprised of senior executives from each OIG component that meets weekly to assess data and deliberate on the merits of work proposals presented by audit and evaluation teams, with an eye toward optimizing use of resources and achieving impact. The Engagement Committee has been successful at strengthening OIG's work planning and providing greater transparency across the organization, in turn spurring more component collaboration and teamwork.

Inspectors General are the eyes and ears of taxpayers, Congress, and policy makers seeking to drive positive change in government. It is more important than ever to have experienced and thoughtful oversight leaders in Inspector General positions to carry out this important function. I am uniquely and especially qualified for the HHS-OIG position. Through my on-the-ground, practical leadership experience and my record of leading OIG through unprecedented times, I have demonstrated the qualifications and capabilities of a forward-thinking, trusted Inspector General. If confirmed, I will be the rare Inspector General who has come up through the ranks as a career professional, along the way marshaling experience in the craft of oversight and art of leading a high performing workforce, to serve and lead an organization to which I am deeply committed.

I thank the Senate Committee on Finance for its strong support of independent and objective oversight and look forward to discussing my qualifications with committee members.

## **B. FUTURE EMPLOYMENT RELATIONSHIPS**

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

I am a current Federal employee, with the attendant health care, retirement, and other benefits that come with this employment. Since my status as a Federal employee will not change should I be confirmed, my participation in these benefit systems will continue. Further, since I am presently serving in the agency at which I hope to be confirmed to lead, my connection to my present employer will also continue.

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

No. I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the government.

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

No. No person or entity has made a commitment or agreement to employ my services in any capacity after I leave government service.

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

### C. POTENTIAL CONFLICTS OF INTEREST

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

As identified above, I am presently on the Board of Directors for WAEPA, a nonprofit 501(c)(9) providing life insurance and financial service benefits to Federal civilian employees. If confirmed, I will resign from this position in accordance with a commitment in my June 17, 2021 ethics agreement with OGE. I will also comply with the additional requirements outlined in this agreement.

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

As identified above, I am presently on the Board of Directors for WAEPA, a nonprofit 501(c)(9) providing life insurance and financial service benefits to Federal civilian employees. If confirmed, I will resign from this position in accordance with a commitment in my June 17, 2021 ethics agreement with OGE. I will also comply with the additional requirements outlined in this agreement.

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

None.

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

I will comply with the terms outlined in my June 17, 2021 ethics agreement with OGE.

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

It is my understanding that the OGE has provided the Senate Committee on Finance with this information.

### D. LEGAL AND OTHER MATTERS

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

No, not that I know of.

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

No.

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

The following list itemizes responsive matters in my professional capacity. A copy of the docket sheet for each case is attached.

*Case Name: Kogan, L.A.C. v. Becerra et al.*

*Case Number: 3:2021cv10856.*

*Court: United States District Court for the District of New Jersey.*

*Role: Defendant (In Official Capacity).*

*Date Complaint Filed: May 13, 2021.*

*Nature of Case: Action seeking review of an order of exclusion and requesting declaratory judgment to declare that the final order excluding Plaintiff acupuncturist from participation in all Federal health-care programs was unlawful.*

*Status of Case: Pending.*

*Case Name: Baxter v. Becerra et al.*

*Case Number: 1:2021cv00451.*

*Court: United States District Court for the Eastern District of Virginia.*

*Role: Defendant (In Official Capacity).*

*Date Complaint Filed: April 13, 2021.*

*Nature of Case: Action for temporary restraining order, preliminary injunction, and permanent injunction to prevent enforcement of order excluding Plaintiff doctor from participation in all Federal health-care programs.*

*Status of Case: Dismissed by Stipulation following Settlement on May 7, 2021.*

*Case Name: Pharmaceutical Care Management Association v. United States Department of Health and Human Services et al.*

*Case Number: 1:2021cv00095.*

*Court: United States District Court for the District of Columbia.*

*Role: Defendant (In Official Capacity).*

*Date Complaint Filed: January 12, 2021.*

*Nature of Case: Action brought under the Administrative Procedure Act and the Declaratory Judgment Act, challenging and seeking declaratory relief from a final agency rule—Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals, 85 Fed. Reg. 76666 (November 30, 2020).*

*Status of Case: Pending.*

*Case Name: Pfizer Inc. v. United States Department of Health and Human Services et al.*

*Case Number: 1:2020cv04920*

*Court: United States District Court for the Southern District of New York.*

*Role: Defendant (In Official Capacity).*

*Date Complaint Filed: June 26, 2020.*

*Nature of Case: Action seeking declaratory judgment and to set aside the Department of Health and Human Services Office of Inspector General's determination that Plaintiff's proposed copay assistance programs implicate the Anti-Kickback and Beneficiary Inducement statutes.*

*Status of Case: Pending.*

The following list itemizes responsive matters in my personal capacity.

Civil litigation (personal): adoption of child, State of Michigan, finalized in December 2017.

Divorce, State of Texas, finalized in 2007.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.  
No.
5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.  
None.

#### **E. TESTIFYING BEFORE CONGRESS**

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

Yes, to the greatest extent possible.

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QUESTIONS SUBMITTED FOR THE RECORD TO CHRISTI A. GRIMM

QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* Please outline your commitment regarding the work HHS OIG plans to take on with respect to health parity laws (which say mental health should be treated like physical health) and particularly how you would investigate the types of dodges we're seeing today by companies, insurers and other entities, that essentially get around the commitment to parity.

*Answer.* The Department of Health and Human Services, Office of Inspector General (HHS–OIG) is committed to continuing and expanding our oversight of equitable access to behavioral health services in HHS programs, including issues related to mental health parity requirements. This critically important topic would continue to be a priority if I am confirmed. Appendix 1 describing reports recently issued and currently underway related to behavioral health is attached.

With respect to the specific issue of health parity laws, HHS–OIG is developing work assessing Medicaid managed care organization (MCO) compliance with applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). MHPAEA parity requirements apply to coverage offered by Medicaid MCOs.<sup>1</sup> This work is still being planned and specific elements may change as the proposal is finalized. Potential areas of focus under consideration for this audit include potential barriers created by the MCOs, such as placing limits on mental health service utilization; other MCO actions that may create financial barriers to beneficiaries accessing mental health services, such as applying increased copayments and deductibles; and how State Medicaid agencies ensure that MCOs comply with applicable parity laws and related MCO contract requirements. HHS–OIG would be pleased to provide a scope and methodology briefing once an audit proposal is completed and approved.

Focusing on compliance with MHPAEA through the lens of Medicaid managed care provides us with our strongest opportunity to produce high-impact work regarding MHPAEA compliance, given our jurisdiction and data available to us. Medicaid managed care currently covers over 80 percent of all Medicaid beneficiaries, and Medicaid is the largest payor for mental health services.

We anticipate that findings and recommendations related to Medicaid MCOs would be valuable to policymakers considering a range of parity issues across various plans that provide coverage to approximately 65 million individuals.

Our oversight plan with respect to MHPAEA compliance is to start with Medicaid MCOs, as described above, and to continue to research other potential options for oversight on this important issue. In addition to Medicaid MCOs, MHPAEA and related laws apply to a broad range of health insurance plan types, including employer-sponsored plans, group health plans, and individual market plans. In most instances, HHS–OIG does not have the authority to oversee plan compliance with the MHPAEA and related laws because HHS does not regulate or fund most health plans subject to MHPAEA. HHS–OIG is authorized to conduct, supervise, and coordinate audits and investigations relating to HHS programs and operations. For issuers and health plans that do not receive HHS funding and do not constitute HHS programs or operations, HHS–OIG does not have jurisdiction to examine those issuers or health plans. HHS–OIG would be happy to provide a briefing and would appreciate an opportunity to assess how the committee's interests in mental health parity issues align with potential work that falls under HHS–OIG's authorities.

More broadly, HHS–OIG is committed to examining issues of access, equity, and parity of behavioral health services, beyond the specific application of MHPAEA. In addition to ongoing work described in the Appendix 1, future work could include looking at parity through Medicare data, for example. The Medicare Payment Advisory Commission issued a report describing concerns that some Medicare Advantage plans may discriminate against beneficiaries who require mental health services by requiring cost-sharing amounts substantially higher than Medicare fee-for-service

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<sup>1</sup>The Social Security Act applies the MHPAEA parity requirements to coverage offered by Medicaid MCOs, Medicaid benchmark and benchmark-equivalent plans (referred to as Medicaid Alternative Benefit Plans), and the Children's Health Insurance Program (§§ 1932(b)(8), 1937(b)(6), and 2103(c)(7), and (d)(2) of the Social Security Act, respectively).

levels. This is an area of potential interest as HHS–OIG considers future work. HHS–OIG is also exploring new work to examine the use of prior authorization and other administrative steps by Medicare Advantage organizations and Medicaid managed care organizations that may result in burdens or delays for beneficiaries to access behavioral health services.

Based on our previous communication with the Senate Committee on Finance staff, HHS–OIG has been developing new work to evaluate the availability of behavioral health-care providers in traditional Medicare, Medicare Advantage, and Medicaid managed care. This work may assess and compare across these programs the extent to which behavioral health providers, including those listed in managed care plans' networks, are serving enrollees and able to offer appointments to new patients.

Should I be confirmed, I look forward to engaging with you and your staff as we further develop and prioritize these and other ideas for new work to address required parity and equitable beneficiary access to mental and behavioral health care.

*Question.* Please detail how the HHS OIG would take on work (and review the work done to date) that would ensure access to telehealth services while not creating a path to fraud.

*Answer.* HHS–OIG has a comprehensive telehealth oversight and enforcement strategy. It is important that new telehealth policies and technologies with potential to improve care and enhance access achieve these goals and are not compromised by fraud, abuse, or misuse. To accomplish that, OIG's telehealth strategy involves: conducting significant oversight work to ensure that services are paid appropriately, to better understand potential telehealth challenges and opportunities, and to further target high-risk areas with subsequent work; monitoring telehealth claims continually for aberrant trends, outliers, and potential improper payments; taking law enforcement action, as appropriate, against bad actors who exploit telehealth technology and conduct sham remote visits to bill fraudulently for other items and services; and informing congressional and HHS stakeholders of the results of our work and of recommendations for program improvements to promote access and safeguard against fraud, abuse, or misuse.

#### TELEHEALTH OVERSIGHT

HHS–OIG recently announced seven work plan items and issued three reports addressing the telehealth used to provide behavioral health services in Medicaid. These recent work plan items and reports are described in the attached Appendix 2.

HHS–OIG's telehealth oversight will provide objective findings and recommendations to further inform policymakers and other stakeholders as they consider changing telehealth beyond the public health emergency. For example, we are: (1) assessing potential program integrity risks associated with expanded telehealth services authorized by the public health emergency; (2) assessing important telehealth utilization and access issues, such as how the use of telehealth during the pandemic compares to the use of the same services delivered in-person; and (3) making an early assessment of whether services such as evaluation and management and psychotherapy comply with Medicare requirements.

Many of these telehealth oversight reports are expected to be completed in calendar year (CY) 2022. As appropriate, HHS–OIG's telehealth oversight will recommend suitable safeguards to help ensure that telehealth operates effectively and efficiently to enhance access; deliver quality health care; improve health outcomes; and mitigate potential fraud, abuse, and misuse.

As HHS–OIG's oversight informs how and the extent to which the public health emergency affected the delivery of telehealth services, HHS–OIG will assess any associated risks. HHS–OIG continuously plans for new work using a risk-based approach. As such, the results of ongoing telehealth work will inform planning for future additional work targeted to high-risk areas.

We are coordinating with other Offices of Inspector General as part of the Pandemic Response Accountability Committee to plan work related to telehealth issues that affect multiple Federal agencies. Although work planning is still ongoing, HHS–OIG expects this work will provide valuable insights into telehealth service delivery and payment across several Federal agencies. These insights may further inform policymakers and other stakeholders about the successes and challenges that span Federal programs.

## MONITORING TELEHEALTH CLAIMS

HHS–OIG’s direct access to Medicare data allows for sophisticated monitoring of telehealth claim utilization patterns. By identifying outliers and other patterns, HHS–OIG generates potential leads for investigations or spots potential program integrity risks that would benefit from further oversight. We have been monitoring these data since the beginning of the pandemic in spring 2020 via automated reports that are shared with the Centers for Medicare and Medicaid Services (CMS) and our law enforcement partners. HHS–OIG will continue this effort and improve our data analytics by incorporating field intelligence from our law enforcement agents, auditors, and evaluators.

## LAW ENFORCEMENT ACTIONS ADDRESSING TELEFRAUD AND TELEHEALTH FRAUD

HHS–OIG is committed to taking swift action against bad actors who seek to exploit telehealth and remote care. To date, most of our enforcement has involved telefraud schemes that use phone calls or sham remote visits to engage with a beneficiary to order or prescribe medically unnecessary testing, equipment, or prescriptions.

These telefraud scams target Medicare beneficiaries through aggressive telemarketing techniques to confuse and take advantage of the growing acceptance of remote care. The amount of alleged fraud associated with these schemes is in the billions of dollars and is largely associated with fraud related to medically unnecessary claims for durable medical equipment (DME), various types of laboratory tests, and pain medication.

To protect beneficiaries and recover billions in alleged fraud, HHS–OIG, the Department of Justice (DOJ) and our law enforcement partners have conducted four large-scale takedowns that have targeted telefraud schemes: Operation Brace Yourself,<sup>2</sup> the 2020 National Health Care Fraud Takedown,<sup>3</sup> the 2021 COVID–19 Takedown,<sup>4</sup> and the 2021 National Health Care Fraud Enforcement Action.<sup>5</sup>

Although the schemes charged in these takedowns are not identical, most leverage phone calls or sham remote visits to expand the reach of the fraud to Medicare beneficiaries no matter where the criminals might be. Perpetrators “cold call” Medicare beneficiaries to connect them with co-conspirator health-care providers who conduct sham remote visits. The health-care provider then orders unnecessary DME, testing, or prescriptions. In some cases, the health-care provider signs fraudulent orders from their desk without even attempting to talk with the beneficiaries. The criminal organizations sell those fraudulent orders to DME companies, laboratories, or pharmacies, who then bill Medicare fraudulently.

HHS–OIG continues to work with our law enforcement partners and the CMS to prevent and take action against the bad actors perpetrating telefraud schemes. For example, CMS revoked the billing privileges of 256 medical professionals for their involvement in telefraud schemes in the 2020 National Takedown. We have published materials on our website and social media and have partnered with government and private stakeholders to make Medicare beneficiaries aware of these telefraud scams so they can take steps to protect themselves.

In most telefraud cases to date, the criminals are not engaging in telehealth fraud. The main target for these schemes is medically unnecessary ordering of DME and laboratory tests, and prescriptions.

HHS–OIG is aware of allegations of telehealth fraud by health-care facilities and providers—the billing for a telehealth service that does not occur or upcoding of telehealth claims. Although such allegations make up a small portion of our enforcement work as of September 2021, HHS–OIG is monitoring for indicators of increases in fraudulent billing for telehealth services. In the instances where this has occurred already, HHS–OIG and DOJ have taken action against those health-care providers.

<sup>2</sup> <https://www.justice.gov/opa/pr/federal-indictments-and-law-enforcement-actions-one-largest-health-care-fraud-schemes>.

<sup>3</sup> <https://www.justice.gov/opa/pr/national-health-care-fraud-and-opioid-takedown-results-charges-against-345-defendants>.

<sup>4</sup> <https://www.justice.gov/opa/pr/doj-announces-coordinated-law-enforcement-action-combat-health-care-fraud-related-covid-19>.

<sup>5</sup> <https://www.justice.gov/opa/pr/national-health-care-fraud-enforcement-action-results-charges-involving-over-14-billion>.

As we continue to learn from our significant body of telehealth oversight and enforcement work, HHS–OIG will continually assess the need for additional compliance materials to help those providers who want to comply with laws and provide high-quality telehealth services to their patients.

#### INFORMING STAKEHOLDERS

In instances where HHS–OIG finds significant risks that are supported by data and our analysis, audits, evaluations, and investigations, HHS–OIG is committed to keeping this committee, Congress, and other stakeholders informed. HHS–OIG recognizes the importance of providing timely, independent, and objective information as policymakers consider telehealth expansion or other changes beyond the public health emergency. We have already provided technical assistance to Congress, including the Senate Committee on Finance, earlier this year that highlight potential risks based on high-level, early data analyses.

Should I be confirmed, I look forward to continued engagement with the Senate Committee on Finance on HHS–OIG’s telehealth oversight and enforcement work.

*Question.* Over the last 19 months, Congress has passed several COVID–19 relief bills containing more than \$175 billion in financial relief for health-care providers. Providers have faced enormous challenges in responding to this pandemic, including lower revenues and higher costs. This support has been essential to their ability to continue serving their communities. Oversight of these funds will be critical to ensuring these funds are utilized for their intended purpose, and to understand the impact of the pandemic on providers. I understand HHS–OIG is currently conducting an audit of the Provider Relief Funds.

If confirmed, what will be your focus in conducting oversight of these funds?

*Answer.* If confirmed, I will continue to focus on ensuring that the Department’s distribution of Provider Relief Fund (PRF) payments are accurate and funds were used as intended and not wasted. PRF payments were distributed quickly to address an emergency, and some controls may not have been in place. These circumstances increase the risk of improper payments, including payments being calculated incorrectly, being unsupported by reasonable and appropriate documentation, or being paid to ineligible providers.

HHS–OIG has ongoing work looking at PRF payments. We are conducting a series of audits on the PRF general and targeted distributions in three stages. The first two audits focus on HHS and Health Resources and Services Administration (HRSA) controls, and the third focuses on provider compliance. HRSA is the HHS agency administering the PRF. First, HHS–OIG is assessing the effectiveness of HHS and HRSA’s controls over the accuracy of payments, ensuring payments met Federal requirements and grant terms, and provider eligibility of funds received for the automatic distributions. Second, we are assessing HHS and HRSA’s controls over the accuracy of payments, provider eligibility of funds received, and other PRF program requirements (*e.g.*, provider documentation) for the application-based and other general distributions. Third, we are conducting a series of audits of providers’ compliance with PRF reporting and expenditure requirements to determine whether claims for services complied with Federal requirements.

Through this ongoing oversight work, HHS–OIG expects to make recommendations to improve HHS and HHS program oversight of any ongoing emergency spending and future emergency spending. Potential improvements may include more effective communications and internal controls among entities involved in determining, allocating, and distributing the funding, as well as recommendations to recover any identified overpayments. Additionally, HHS–OIG is conducting an evaluation of the geographic distribution of provider relief funds to communities disproportionately impacted by adverse COVID–19 outcomes. Looking forward, HHS–OIG is exploring a potential evaluation of PRF payments to nursing homes.

HHS–OIG is continuing to coordinate on oversight of cross-cutting issues related to pandemic funds with the Pandemic Response Accountability Committee (PRAC), which promotes transparency and ensures coordinated, comprehensive oversight of the Government’s spending and COVID–19 response to prevent and detect fraud, waste, and abuse, and mismanagement.

HHS–OIG would be happy to provide a briefing for you and your staff on this issue.

*Question.* Today, over 25 million Medicare beneficiaries enroll in private health plans in order to access their Medicare benefits, as well as supplemental benefits,

such as post-hospital meals delivered to their homes and lower cost-sharing for doctor visits.

By 2025, the Congressional Budget Office expects half of all Medicare beneficiaries will enroll in a Medicare Advantage plan. Last year, Medicare spent \$320 billion in payments to private plans, which is about 40 percent of all Medicare spending. In testimony before the House, the Government Accountability Office reported that the improper payment rate within the Medicare Advantage program is 10 percent. If correct, that means in 2020, \$32 billion in Medicare payments in Medicare Advantage should not have been made. Oversight of this program will be critical to ensure Medicare beneficiaries receive benefits they are entitled to and longevity of the program remains for all Medicare recipients.

Can you tell us why Medicare Advantage's improper payment rate is so high? What can Congress do to reduce these improper payments?

Answer. With respect to the Medicare Advantage, the Centers for Medicare and Medicaid Services (CMS) is responsible for calculating the Medicare Part C/ Medicare Advantage gross improper payment estimate. In the Department's Fiscal Year (FY) 2020 Agency Financial Report,<sup>6</sup> CMS reported a 6.78-percent error rate or \$16.27 billion. This is a decrease from the prior year's estimate of 7.87 percent.

As context, the methodology that CMS uses for the Medicare Part C error rate estimates improper payments resulting from errors in beneficiary risk scores used in risk adjustment. The primary component of most beneficiary risk scores is clinical diagnoses submitted by the plan. If medical records do not support the diagnoses submitted to HHS, the risk scores may be inaccurate and result in payment errors. The Part C improper payment estimate is based on medical record reviews conducted under HHS's annual Part C Improper Payment Measurement process, through which HHS identifies unsupported diagnoses and calculates corrected risk scores. CMS risk-adjusts payments by paying higher capitated payments to Medicare Advantage companies for beneficiaries expected to have higher-than-average medical costs based on their diagnoses. This practice may create financial incentives for Medicare Advantage companies to make beneficiaries appear as sick as possible.

With respect to one of the causes of improper payments in Medicare Advantage (errors in risk scores used in risk adjustment), findings from HHS-OIG reports raise concerns about the extent to which Medicare Advantage companies may have inappropriately leveraged chart reviews and beneficiary health risk assessments to maximize risk-adjusted payments. HHS-OIG found that diagnoses that Medicare Advantage companies reported only on chart reviews (a review of beneficiaries' medical records to identify unreported or misreported diagnoses)—and not on any service records in the encounter data—resulted in an estimated \$6.7 billion in added risk-adjustment payments for 2017. HHS-OIG also found that in 2017 Medicare Advantage companies received an estimated \$2.6 billion in risk-adjustment payments from diagnoses reported only on health risk assessments. Although these assessments are intended to promote access to and coordination of needed care, there were no encounter records for any other services for these beneficiaries for these diagnoses. A small number of companies drove most of these risk-adjustment payments deriving solely from chart reviews and health risk assessments. These findings raise a payment integrity concern. If diagnoses from these chart reviews or health risk assessments are inaccurate or unsupported, the associated risk-adjusted payments would be inappropriate.

In addition, HHS-OIG has performed a number of risk-adjustment data validation audits to determine whether diagnosis codes that were submitted by Medicare Advantage companies to receive a higher payment were supported by underlying medical records as required. HHS-OIG used data analytics to help identify particularly high risk diagnosis codes and focused some of our audit work in these high-risk areas. HHS-OIG's audits found that overpayments existed where Medicare Advantage companies submitted diagnosis codes that increased risk scores but were not supported by underlying medical records. As a result, these Medicare Advantage companies should not have received these risk-adjustment payments from CMS. HHS-OIG risk-adjustment data validation audits are a key oversight tool in Medicare Advantage and result in the identification of overpayments that can be returned to the program. HHS-OIG plans to continue to perform audits in this area.

<sup>6</sup> <https://www.hhs.gov/about/agencies/asfr/finance/financial-policy-library/agency-financial-reports/index.html>.

HHS-OIG does not currently have legislative recommendations regarding reducing improper payments in Medicare Advantage; however, we have numerous recommendations to CMS to target and strengthen its oversight of Medicare Advantage companies' use of chart reviews and health risk assessments. We have also recommended that CMS reconsider whether to allow Medicare Advantage companies to use chart reviews that are not linked to service records and in-home health risk assessments as sources of diagnoses for risk adjustment.

Although the Part C improper payment rate has improved over the last couple of years, CMS has not implemented a recovery audit program in Part C, especially for risk-adjustment payments—the primary vulnerability in Part C. HHS-OIG recommends that CMS explore alternative ways to conduct Part C recovery audits.

HHS-OIG briefed your staff in May 2021 about our Medicare Advantage body of work, and we would be happy to provide follow-up briefings for you and your staff.

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QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

*Question.* Nursing homes and skilled nursing facilities have been particularly hard hit during the COVID-19 pandemic. A nursing facility in Kirkland, WA was the site of the first U.S. death from the coronavirus, and 39 residents of the facility died within 4 weeks.

In a recent report, the HHS Inspector General's Office found that during 2020, two in five Medicare beneficiaries in nursing homes were diagnosed with COVID-19. It is also found that almost 1,000 more deaths occurred per day in the facilities during April 2020 than during April 2019, increasing the mortality rate by 5 percent.

Long-term care facilities have been entrusted to take care of our seniors and residents should not have to fear for their own safety while having lived in isolation away from friends, family, and visitors during the pandemic. This situation is preventable and unacceptable.

*Answer.* I share your commitment to protecting nursing home residents and appreciate your reference to HHS-OIG's extensive work in this area. The devastating toll that the COVID-19 pandemic has taken on Medicare beneficiaries in nursing homes demonstrates the need for increased action to mitigate the effects of the ongoing pandemic and to avert such tragedies from occurring in the future. Nursing homes should be places of comfort and healing, and we owe our Nation's aging population better. If confirmed, I plan to tackle this issue as my top priority, employing an oversight strategy to raise nursing home performance, put residents first, and improve oversight to ensure that problems are detected and remedied quickly. HHS-OIG greatly appreciated the opportunity to testify before the Senate Committee on Finance at a hearing entitled "Promoting Elder Justice: A Call for Reform"<sup>7</sup> on July 23, 2019, and I look forward to continuing a collaborative dialog with this committee should I be confirmed.

HHS-OIG has work underway that will build on the report you reference, seeking to better understand nursing home challenges resulting from the COVID-19 pandemic and strategies to combat those challenges. The goal of this body of work is to help protect the health and safety of the vulnerable nursing home population as the pandemic continues, and to use these lessons to improve nursing home safety and quality moving forward.

*Question.* The American Rescue Plan Act that Congress passed in March included \$250 million for States to deploy nursing home strike teams to assist with cases of COVID-19 among residents and staff. I have heard concerns, including from my home State of Washington, that recipients have had difficulty understanding the requirements to receive HHS program funding. Do States have the necessary resources and clear information to access funding for nursing home strike teams? If not, what do you think are the barriers preventing States from accessing this money?

*Answer.* HHS-OIG does not currently have work examining American Rescue Plan Act funding to States for deployment of nursing home strike teams. We have work related to other pandemic-related appropriations, such as distributions to health-care entities through the PRF. HHS-OIG continually conducts work planning

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<sup>7</sup> [https://oig.hhs.gov/documents/testimony/65/20190723\\_-\\_Tinker\\_Testimony.pdf](https://oig.hhs.gov/documents/testimony/65/20190723_-_Tinker_Testimony.pdf).

to identify areas that warrant our review, and examples of HHS–OIG’s extensive nursing home work are provided in the next response. We note your interest in this funding and would like to hear more about these reported difficulties and your related concerns.

*Question.* The same report that I mentioned also found that about 50 percent of Black, Hispanic, and Asian Medicare beneficiaries in nursing homes contracted COVID–19, compared to 41 percent of white beneficiaries. What is the reason behind this disparity? How do you recommend that we address this issue?

*Answer.* Thank you for your attention to our work. As you reference, we reported disturbing differences in infection and death rates for nursing home residents, with Black, Hispanic, and Asian Medicare beneficiaries experiencing higher rates of infection and greater increases in mortality as compared with White beneficiaries. This initial report did not evaluate the causes of these differences, and we did not make recommendations. Follow-up reports on nursing home challenges and strategies will address problems maintaining resident safety and infection control. This work may uncover issues related to disparities, but it will not study the causes of the differences we found in infection and death rates.

Additionally, HHS–OIG has ongoing work focused on the collection and use of data on disparities in COVID–19 cases and outcomes by the Centers for Disease Control and Prevention (CDC). This study will examine data that CDC collects and maintains that can be used to assess racial, ethnic, and socioeconomic disparities in COVID–19 cases and outcomes, as well as how CDC uses those data as part of its activities to address the COVID–19 pandemic. HHS–OIG will also examine CDC’s lessons learned about how to best protect communities of color and economically disadvantaged communities in future public health emergencies.

More broadly, our extensive work focusing on nursing homes may be useful as you, Congress, and other stakeholder look for ways to address the significant problems at nursing homes. HHS–OIG has made substantial investments in oversight, enforcement, compliance, and outreach to protect nursing home residents. HHS–OIG has an extensive body of completed and ongoing work and recommendations looking at the vulnerability of nursing home residents to COVID–19 and other emergencies; abuse, neglect, and failures of care in nursing homes; States’ oversight of nursing homes; risks to quality of care and well-being for residents in nursing homes.

HHS–OIG investigates potential criminal and civil violations to hold accountable those who victimize residents of nursing homes. HHS–OIG investigates and works with DOJ to resolve False Claims Act cases, which may lead to the subject provider entering into a Corporate Integrity Agreement that contains provisions addressing policies and procedures, training, internal monitoring, and other requirements to improve quality of care. In addition, HHS–OIG may exclude the nursing home or chain from participating in Federal health-care programs. HHS–OIG runs the Federal grant program for State Medicaid Fraud Control Units (MFCUs); MFCU investigations and prosecutions of nursing home abuse or neglect cases are a core component of their grant responsibilities. HHS–OIG also engages providers in protecting residents. In July 2020, HHS–OIG staff contacted 493 nursing homes and 236 emergency medical services providers that serve nursing homes. HHS–OIG provided information on how to report concerns about unsafe COVID–19 practices, quality of care, patient abuse, neglect, and health-care fraud or misconduct. HHS–OIG is planning future engagements with nursing homes regarding emergency preparedness and response.

Implementation of pending HHS–OIG recommendations would help protect vulnerable residents. Among unimplemented HHS–OIG recommendations related to nursing homes, a top recommendation is that, to ensure that nursing homes are implementing actions to prevent the spread of COVID–19 and that they are protecting residents, CMS should assess the results of infection control surveys of nursing homes and revise surveys as appropriate, and clarify expectations for States to complete backlogs of standard surveys and high priority complaint surveys that were suspended in the early months of the pandemic.

HHS–OIG would be pleased to brief you and your staff on this body of work.

*Question.* Crowding in nursing facilities was one of the main reasons that COVID–19 was able to spread so quickly to so many residents. I have led efforts here in the Senate to expand the Money Follows the Person program, which aims to transfer people from institutional settings to the comfort of their own homes and

communities. In your opinion, are programs like Money Follows the Person helpful in preventing this tragedy from happening again in the future?

Answer. Throughout my career at HHS–OIG, I have demonstrated commitment to improving home and community-based services (HCBS) to ensure that these services are delivered effectively and efficiently and provide improved quality of life and health. Improving access to, and the quality of, HCBS, such as personal care services, social services for adults, and group homes for people with developmental disabilities, is essential. These services help ensure that the millions of individuals can continue to live independently outside of institutions and nursing facilities. HCBS provide individuals leaving institutional care more options to do so. As with nursing home care, we must ensure that HCBS providers maintain safe, high quality services for beneficiaries. HHS–OIG has ongoing work examining HCBS, including an audit to assess State and provider compliance with health and safety requirements involving Medicaid beneficiaries residing in individualized supported living settings. This review will include an assessment of resident safety measures for infectious diseases such as COVID–19.

Other HHS–OIG work supports strengthening HCBS practices. Our Office of Audit Services conducts extensive audits of State claims for Federal Financial Participation, including audits addressing Money Follows the Person (MFP) expenditures. Further, HHS–OIG has an extensive body of work addressing HCBS in dozens of States under a wide range of Medicaid waivers and in various service settings, including home health, hospice, personal care service, group homes, and adult day centers.

We do not have work focused on the value and role of MFP in supporting beneficiaries who wish to receive home care rather than nursing facility care. HHS–OIG would like to learn more about your interest in this topic to inform our ongoing work planning and further explore how our existing HCBS work may inform for your efforts.

Looking toward the future in health care, value-based care models increasingly promote care in home and community settings through in-person home visits, remote monitoring, and other technologies. At-home care is often preferred by patients. An HHS–OIG evaluation of strategies used by Medicare accountable care organizations (ACOs) found that many ACOs provided beneficiaries with a range of at-home services. In 2020, HHS–OIG issued new regulations under the Federal anti-kickback statute and the civil monetary penalties law to promote improved care coordination and value-based care, including arrangements that can facilitate more care in peoples’ homes. It will be important to ensure that new models that provide more care in peoples’ homes operate as intended for the person’s benefit and are not compromised by fraud, waste, or abuse. HHS–OIG’s work on telehealth is described in the responses to your next question.

*Question.* Telemedicine services have been extremely helpful and popular during the public health emergency. The University of Washington School of Medicine, a leading health provider in my State, has offered telehealth services for its patients across the Pacific Northwest since the 1970s. Over the past 5 years, the number of people seeking telehealth services has steadily grown to around 21,000 per year in 2019. After the pandemic began, that number ballooned to over 20,000 per month, accounting for approximately 20 percent of all ambulatory visits.

There have been numerous reports that telehealth fraud has become more and more prevalent in recent years. Just this week, the Department of Justice charged 43 individuals with exploiting more than \$1.1 billion in telemedicine fraud schemes.

Public trust in the health-care delivery system is imperative for a successful health-care network that provides high quality service, especially during the COVID–19 pandemic.

Who, or which demographics, were the main targets of telehealth fraud? What can we do to improve telehealth literacy and security so that people are aware when they are being targeted?

Answer. To date, most of HHS–OIG’s enforcement in this area has involved “telefraud”—schemes that use phone calls or sham remote visits to engage with a beneficiary to order or prescribe medically unnecessary testing, equipment, or prescriptions. The alleged fraud associated with these schemes is in the billions of dollars and is largely associated with fraud related to medically unnecessary claims for durable medical equipment (DME), various types of laboratory tests, and pain medication.

These telefraud schemes intentionally target Medicare beneficiaries. In four national law enforcement actions, HHS–OIG identified hundreds of thousands of elderly and disabled individuals who were targeted by the schemes and had medically unnecessary items ordered or prescribed on their behalf. During the pandemic, fraudsters are victimizing unsuspecting Medicare beneficiaries and stealing from Federal health-care programs through aggressive telemarketing techniques to confuse beneficiaries and take advantage of the growing acceptance of remote care. HHS–OIG remains committed to taking swift action against bad actors who engage in telefraud schemes or seek to exploit telehealth services and remote care.

To spread awareness of scams, HHS–OIG has published materials and fraud alerts on our website and social media and has partnered with Government and private stakeholders to alert Medicare beneficiaries on emerging telefraud scams so they can take steps to protect themselves. For example, we regularly share information with the Senior Medicare Patrol (SMP), which has published specific educational materials related to telefraud scams. HHS–OIG is developing additional educational materials for beneficiaries and doctors about additional practical steps they can take to avoid telefraud scams. Once those materials are public, HHS–OIG will notify your office.

HHS–OIG will continue to assess the need for additional HHS–OIG compliance materials to help providers who want to comply with laws and provide high-quality telehealth services to their patients. More broadly, with respect to improving telehealth literacy, a range of Government and private stakeholders, especially those who interact directly with patients and consumers, can play important roles in educating the public.

HHS–OIG has oversight work underway looking at telehealth in Medicare and Medicaid, described more fully in the response to your next question. Further, HHS–OIG is coordinating with other Offices of Inspector General as part of the Pandemic Response Accountability Committee to plan oversight work related to telehealth issues that affect multiple Federal agencies. Although work planning is ongoing, the expectation is that this work will provide valuable insights into telehealth service delivery and payment across several Federal agencies. These insights may further inform policymakers and other stakeholders about the successes and challenges that span Federal programs. HHS–OIG would be pleased to provide a briefing for you and your staff on this work.

*Question.* I understand that the Departments of Justice and Health and Human Services operate a joint initiative, the Medicare Fraud Strike Force, to prevent and deter health-care fraud around the country. Has the joint initiative been successful in decreasing the volume of fraudulent claims? Is there any room for expansion of scope beyond Medicare to include other government health-care programs?

*Answer.* To protect beneficiaries and recover billions in alleged fraud, HHS–OIG and our law enforcement partners have conducted four successful, large-scale takedowns that have targeted telefraud schemes: Operation Brace Yourself,<sup>8</sup> the 2020 National Health Care Fraud Takedown,<sup>9</sup> the 2021 COVID–19 Takedown,<sup>10</sup> and the 2021 National Health Care Fraud Enforcement Action.<sup>11</sup> These actions were conducted as part of the Strike Force initiative.

These joint enforcement actions can reduce potentially fraudulent claims to Medicare. For example, in the 16 weeks prior to and during the week of Operation Brace Yourself, the 130 DME suppliers that were targets of the takedown submitted \$754 million of claims to the Medicare program and were paid \$389 million by CMS. In the 16 weeks following the takedown, the same 130 DME suppliers that were suspended by Medicare submitted \$279,000 of claims and were paid \$133,000. Furthermore, there was a 48 percent decrease in Medicare payments for products related to Operation Brace Yourself (primarily DME) and 74 DME suppliers voluntarily withdrew from billing the Medicare program.

The telefraud takedowns mostly involve fraud against Medicare because the schemes specifically target Medicare beneficiaries. However, other Strike Force op-

<sup>8</sup> <https://www.justice.gov/opa/pr/federal-indictments-and-law-enforcement-actions-one-largest-health-care-fraud-schemes>.

<sup>9</sup> <https://www.justice.gov/opa/pr/national-health-care-fraud-and-opioid-takedown-results-charges-against-345-defendants>.

<sup>10</sup> <https://www.justice.gov/opa/pr/doj-announces-coordinated-law-enforcement-action-combat-health-care-fraud-related-covid-19>.

<sup>11</sup> <https://www.justice.gov/opa/pr/national-health-care-fraud-enforcement-action-results-charges-involving-over-14-billion>.

erations have taken action against fraud that affected other Government health-care programs, including Medicaid and TRICARE. We continually monitor fraud trends and share them with our government program integrity partners, including other Offices of Inspectors General and law enforcement partners. Coordinated enforcement is critical to success, and HHS–OIG routinely seeks opportunities to work with law enforcement partners to strengthen oversight and protect programs and patients.

*Question.* In terms of technology, how can health care and technological providers collaborate in improving security features to stamp out attempts of fraud?

*Answer.* It is important that new telehealth technologies with potential to improve care and enhance access achieve these goals are not compromised by fraud, abuse, or misuse. HHS–OIG recognizes that the increased demand for telehealth services raise privacy and security concerns as providers and patients adopt new technology for telehealth and other virtual care.

HHS–OIG has recently announced seven reviews addressing telehealth, that endeavor to provide objective findings and recommendations to further inform policymakers and other stakeholders as they consider changing telehealth beyond the public health emergency. HHS–OIG is also currently developing two reviews that will assess security- and privacy-related issues associated with telehealth:

- Medicare Part B Telehealth Services During the COVID–19 Public Health Emergency: HHS–OIG will conduct a series of audits of Medicare Part B telehealth services, including a review of telehealth technology and potential effects of Health Insurance Portability and Accountability Act (HIPAA) waivers during the public health emergency.
- Audit of IHS Telehealth Technologies’ Cybersecurity Controls: HHS–OIG is conducting an audit that will determine whether Indian Health Services has implemented cybersecurity controls to protect its telehealth technologies from emerging risks.

Earlier this year, HHS–OIG provided technical assistance to Congress, including the Senate Committee on Finance and your staff, that highlighted potential risks based on high-level early data analyses. In that technical assistance, HHS–OIG identified the following potential safeguards to increase security and minimize risk of telehealth services: ensure expanded telehealth technology meets a consistent level of security expectations; ensure that security requirements take into account the patient role and potential vulnerabilities and harmonize security requirements as much as possible across service types; create a system between provider and patient to verify the provider (*e.g.*, technology verification “handshake” or something similar to multifactor authentication or to the electronic visit verification system for home health and personal care services); continue addressing patient access to reliable Internet connection to ensure that patients can securely communicate with their providers; and ensure training on telehealth-specific health-care privacy and security training for providers and staff who provide telehealth services.

HHS–OIG is committed to keeping this committee, Congress, and other stakeholders informed in instances where significant risks are found that are supported by data and our analysis, audits, evaluations, and investigations. HHS–OIG recognizes the importance of providing timely, independent, and objective information as policymakers consider telehealth expansion or other changes beyond the public health emergency, including potential impacts on security and privacy.

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QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO

*Question.* In response to the COVID–19 pandemic, both Congress and the Department of Health and Human Services (HHS) expanded access to telehealth for a wide range of services. What kind of data and utilization information is the OIG currently working to collect and what will be important for Congress to consider as we seek to make some of these expansions permanent?

*Answer.* HHS–OIG’s direct access to Medicare data allows for sophisticated monitoring of telehealth claim utilization patterns. By identifying outliers and other patterns, HHS–OIG generates potential leads for investigations or spots potential program integrity risks that would benefit from further oversight. We have been monitoring Medicare claims data since the beginning of the pandemic in spring 2020 via automated reports that are shared with the CMS and our law enforcement partners.

HHS–OIG will continue this effort and improve our data analytics by incorporating field intelligence from our law enforcement agents, auditors, and evaluators.

HHS–OIG recently announced seven reviews and issued three reports addressing the telehealth used to provide behavioral health services in Medicaid. Several of these reviews will assess specific aspects telehealth utilization. For example, HHS–OIG is conducting a data snapshot,<sup>12</sup> which will describe the extent to which Medicare beneficiaries had established relationships with providers from whom they received telehealth services. These recently announced reviews and reports are described in the attached Appendix 2.

Many of these telehealth oversight reports are expected to be completed in calendar year (CY) 2022. As appropriate, HHS–OIG’s telehealth oversight will recommend suitable safeguards to help ensure that telehealth operates effectively and efficiently to enhance access; deliver quality health care; improve health outcomes; and mitigate potential fraud, abuse, and misuse.

In instances where HHS–OIG finds significant risks that are supported by data and our analysis, audits, evaluations, and investigations, HHS–OIG is committed to keeping this committee, Congress, and other stakeholders informed. HHS–OIG recognizes the importance of providing timely, independent, and objective information as policymakers consider telehealth expansion or other changes beyond the public health emergency. We have already provided technical assistance to Congress, including the Senate Committee on Finance, earlier this year that highlight potential risks and safeguards based on high-level, early data analyses.

*Question.* In your opinion, would it be beneficial to extend telehealth access to be able to further study and review the effects that the expanded access to telehealth during the pandemic has had on access, cost, and quality of care?

*Answer.* I recognize the potential positive effects of telehealth expansion. It offers opportunities to increase access to services, decrease burdens for both patients and providers, and enable better care, including enhanced mental health care. A 2019 HHS–OIG study<sup>13</sup> found that telehealth can be an important tool to improve patient access to behavioral health services. And as we observed in a rulemaking in December 2020,<sup>14</sup> HHS–OIG recognizes the promise that telehealth and other digital health technologies have for improving care coordination and health outcomes.

It is important that new policies and technologies with potential to improve care and enhance access achieve these goals and are not compromised by fraud, abuse, or misuse. HHS–OIG’s oversight work referenced in response to your first question can help ensure that the potential benefits of telehealth are realized for patients, providers, and HHS programs.

As HHS–OIG’s work and the national conversation regarding telehealth continues, I believe there is a shared goal: ensuring that telehealth delivers quality, convenient care for patients and is not compromised by fraud. If I am confirmed, I look forward to providing objective, independent information to stakeholders and policymakers to help achieve the goal.

*Question.* Recently published OIG reports looked at State Medicaid programs using telehealth to provide behavioral health services and noted the various challenges and opportunities in this space. In one report, OIG recommended that CMS conduct evaluations on the effects of telehealth on access, cost, and quality of behavioral health services and monitor for fraud, waste and abuse in this space. The report stated that CMS did not explicitly state if it concurred with these recommendations, despite that many States believe that telehealth has increased access to care and they are unsure of the impacts it has on quality and cost. Do you foresee any impediment to CMS implementing these recommendations and does Congress have a role to play in carrying out this recommendation?

*Answer.* Consistent with normal HHS–OIG report follow-up processes, CMS has 6 months from the issuance date of the report to submit a Final Management Decision in response to the recommendation. In the Final Management Decision, CMS should provide details about any plans or progress to implement this recommendation and should indicate whether it concurs or non-concurs. HHS–OIG will continue

<sup>12</sup> <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000613.asp>.

<sup>13</sup> [https://oig.hhs.gov/oei/reports/oei-02-17-00490.asp?utm\\_source=oig-web&utm\\_medium=oig-grimm-letter&utm\\_campaign=oig-OEI-02-17-00490](https://oig.hhs.gov/oei/reports/oei-02-17-00490.asp?utm_source=oig-web&utm_medium=oig-grimm-letter&utm_campaign=oig-OEI-02-17-00490).

<sup>14</sup> <https://www.federalregister.gov/documents/2020/12/02/2020-26072/medicare-and-state-health-care-programs-fraud-and-abuse-revisions-to-safe-harbors-under-the#p-403>.

to follow up with CMS on the status of this recommendation through this process. HHS–OIG would be happy to provide you and your staff a briefing on this work and explore ways that Congress might support evaluation of telehealth. Further, HHS–OIG will keep you and your staff updated on the recommendation status following receipt of CMS’s Final Management Decision.

*Question.* Recent increases in unaccompanied minors seeking asylum at the southern border, combined with the ongoing COVID–19 pandemic, have strained immigration resources and exposed intolerable conditions in detention facilities. As Inspector General, how will you guide oversight of the Office of Refugee Resettlement’s Unaccompanied Children programs?

*Answer.* The safety and care of unaccompanied children in HHS custody has been and remains a key focus for HHS–OIG. If I am confirmed, HHS–OIG will continue to provide independent oversight of the Office of Refugee Resettlement (ORR) Unaccompanied Children (UC) Program, and actionable recommendations for improvements.

Past HHS–OIG work has uncovered significant safety and well-being concerns at the care facilities, and not all of HHS–OIG’s recommendations for improvements have been implemented. Earlier this year, we released a toolkit<sup>15</sup> of insights from our audits, evaluations, and investigations that outlines consequential actions that HHS program officials and care facility administrators can take to ensure the health and safety of unaccompanied children, especially children at new influx care facilities and emergency intake sites—two types of facilities that are not required to be State licensed.

If confirmed, I will guide our work using a dynamic, risk-based approach that will help HHS–OIG anticipate and respond to emerging issues and vulnerabilities with the resources available. To enhance the impact of this work, HHS–OIG will leverage data, modern technology, specialized expertise, and strategic partnerships. I will also further our work in automating our ability to monitor reports of sexual abuse and other Federal crimes committed against unaccompanied children. This will allow HHS–OIG to coordinate more efficiently with ORR, law enforcement partners, and non-governmental organizations to appropriately investigate and respond to allegations. I am also committed to continuing to alert HHS to trends and concerns that HHS–OIG teams have identified from site visits to facilities for unaccompanied children, or through other work.

Two areas of pressing concern are health and safety vulnerabilities in ORR care facilities and ensuring appropriate placement of unaccompanied children. HHS–OIG has been closely monitoring the ORR response to the 2021 surge, including conducting oversight on the ground at care facilities. We have work underway assessing influx facilities and emergency intake sites with regard to background checks, COVID–19 protocols, and case management, including work at Fort Bliss. Other ongoing work includes assessing children’s initial placements and subsequent transfers to identify any challenges that ORR and facilities may have encountered in the placement and transfer process. Information on HHS–OIG’s completed and ongoing work is available on the Unaccompanied Children<sup>16</sup> page of the featured topic section of our website. We appreciated the opportunity to brief your staff on HHS–OIG’s UC Program work in April 2019 and the continued engagement with your staff since then. We would be happy to provide additional briefings to you and your staff on this issue.

*Question.* According to a 2016 GAO report, ORR lacked a process for annually updating and documenting its plan to care for unaccompanied children, including planning for housing and educational, medical, and therapeutic service needs. What are your goals to ensure the Department of Health and Human Services is properly monitoring and documenting care for unaccompanied children in ORR custody?

*Answer.* After responsibility for unaccompanied children was transferred to HHS by the Homeland Security Act of 2002, HHS–OIG has provided extensive oversight to the ORR UC Program, including issuing 23 reports since 2017. Similar to findings from GAO’s 2016 report, HHS–OIG has identified concerns with ORR’s oversight of the UC program and provided recommendations to support program improvements, including recommendations related to monitoring and documenting care.

<sup>15</sup> <https://oig.hhs.gov/oei/reports/OEI-09-21-00220.asp>.

<sup>16</sup> <https://oig.hhs.gov/reports-and-publications/featured-topics/uac/>.

In fiscal year 2021, HHS–OIG released four new reports on the UC Program, and we currently have eight ongoing oversight reviews. If I am confirmed, HHS–OIG will continue its independent oversight of the UC Program, including providing actionable recommendations for program improvements that better protect children. This work and my approach are further described in the preceding response. Although it is up to HHS and care facilities to implement HHS–OIG recommendations, if confirmed, I will continue to ensure that HHS–OIG is actively tracking recommendations that remain unimplemented. In addition, to further my goal to drive positive change, I will oversee the launch of a streamlined, transparent, and interactive approach to provide stakeholders better access to our findings and open recommendations via our public website.

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QUESTIONS SUBMITTED BY HON. MIKE CRAPO

*Question.* I am concerned about the potential for the work of HHS OIG, and indeed that of all inspectors general, to become politicized, despite their offices' intended independence.

What is your understanding of your role in reviewing policy decisions made by career officials and political appointees?

*Answer.* The role of an Inspector General is to oversee programs and operations of the Department; to make recommendations to promote the economy, efficiency, and effectiveness of Department programs; and to prevent and detect fraud and abuse in such programs, acting at all times with independence and objectivity. Under the IG Act, an Inspector General cannot engage in program operating responsibilities. Accordingly, an Inspector General does not make program decisions or substitute her judgement for the discretion of a program official. If I am confirmed, I will provide independent, objective oversight of Department programs and operations consistent with the IG Act.

*Question.* How will you work to ensure OIG acts as an independent investigator?

*Answer.* Inspectors General perform an essential public service. They root out fraud, waste, and abuse and help make programs more efficient and effective. Their ability to do that is rooted in their independence and objectivity. Through independence, objectivity, and transparency, Inspectors General help Government better serve the American people. A strong Inspector General makes a stronger department and a stronger, more trusted Federal Government.

One way that I will ensure independence and objectivity, if I am confirmed, is by ensuring that HHS–OIG continues to closely follow the standards for work products, such as audits and evaluations. This means that HHS–OIG will continue to keep an arm's length from the agencies and programs it oversees. The IG Act provides Inspectors General with several means to maintain independence, such as an OIG having its own legal counsel and the ability to hire its own personnel and contract for goods and services. Independence also means that Department officials have to make program decisions without the approval of their Inspector General. If I am confirmed, HHS–OIG will continue to follow the facts wherever they lead and conduct itself in a wholly nonpartisan manner.

Maintaining independence does not mean that HHS–OIG cannot have productive relationships with Department leaders and officials. I meet regularly with Department officials to talk about HHS–OIG's findings and recommendations. I encourage our senior leaders and subject matter experts to do the same with their counterparts. Those relationships are critical to ensure understanding of our work and resultant recommendations and will continue if I am confirmed. When I meet with HHS officials, I often say that they may not always like what we say, but I hope they will take our input as a blueprint for what can be done better.

*Question.* Last year, HHS OIG took an important step towards driving value for American patients from all walks of life with its updates to the Anti-Kickback Statute's (AKS) safe harbor regulations, which will help to facilitate high-quality and dynamic value-based arrangements (VBAs), in addition to bolstering cybersecurity safeguards and adapting to some of the pressing technological needs of the health-care system. These safe harbor modernization efforts, however, included a number of exclusions that risk retaining barriers to effective VBAs, medication adherence programs, and other patient-centered initiatives, particularly with respect to medical device and life sciences innovators. While well-intentioned, exclusions along

these lines can hinder efforts to promote positive health outcomes and reduce health disparities.

Can you commit to continuing to engage with my office, along with the offices of other interested members, to ensure that our vital anti-fraud and abuse laws protect patients while also keeping pace with an evolving and technologically advancing health-care ecosystem?

Answer. Yes, I can commit to engaging with your office and offices of other interested members on this issue. Congress intended safe harbor regulations to evolve as the health-care industry and technology changed. To this end, HHS-OIG has issued new and modified safe harbors from time to time and annually solicits suggestions from the public on new and amended safe harbors. HHS-OIG's goal is to promulgate safe harbor regulations that protect beneficial arrangements for patients and at the same time protect against fraud and abuse. Safe harbor work is conducted with public input, including through notice-and-comment rulemaking, and in consultation with the Department of Justice (DOJ).

*Question.* Effective coordination among Federal agencies enables more efficient and informed responses to policy challenges, as HHS OIG has demonstrated through its partnership with the Department of Justice (DOJ) in overseeing and enforcing important anti-fraud and abuse laws like the Anti-Kickback Statute (AKS).

With respect to this partnership in particular, what role does DOJ play with respect to AKS oversight and enforcement, and how does HHS OIG work with DOJ on this front?

Answer. HHS-OIG and DOJ have a long and successful collaboration regarding AKS oversight and enforcement. DOJ has primary responsibility for enforcement of the AKS, which is a criminal statute. DOJ prosecutes criminal cases in Federal court. HHS-OIG's Office of Investigations (OI) investigates AKS cases, often in coordination with other law enforcement partners, including DOJ and the FBI. OI works closely with DOJ and U.S. attorneys to charge and resolve cases and HHS-OIG attorneys frequently consult to provide legal expertise regarding the AKS.

DOJ also brings or intervenes in False Claims Act cases predicated on AKS violations on behalf of the government; HHS-OIG investigates those cases, often in coordination with other law enforcement partners, and is signatory for HHS on settlement agreements. HHS-OIG's other roles with respect to the AKS include negotiating corporate integrity agreements with companies settling AKS cases, issuing advisory opinions and other guidance regarding the application of the AKS, and promulgating safe harbor regulations. HHS-OIG coordinates closely with DOJ on all matters related to the AKS and, as required by statute, consults with DOJ before issuing advisory opinions and safe harbor regulations. HHS-OIG also has administrative enforcement authority to impose civil monetary penalties, program exclusion, or both for violations of the AKS. In this area, we coordinate with DOJ to ensure that the government is pursuing the most appropriate remedy for the conduct in the particular case.

*Question.* Do you see areas for improvement or opportunity in terms of coordination between HHS OIG and DOJ?

Answer. I see tremendous opportunity to continue to build on our outstanding partnerships with DOJ and other law enforcement entities to best combat fraud and protect individuals served by HHS programs from harm. The Health Care Fraud Strike Force model has proven to be successful since the first team launched in March 2007. Strike Force partnerships between HHS-OIG, DOJ, U.S. Attorney's Offices, the Federal Bureau of Investigation, and the Drug Enforcement Administration are a force multiplier that utilize a coordinated and data-driven approach to identifying, investigating, and prosecuting fraud. Since its inception, Strike Force prosecutors have filed more than 2,100 cases charging more than 4,600 defendants who collectively billed Federal health-care programs and private insurers approximately \$23 billion; more than 3,000 defendants pleaded guilty and over 390 others were convicted in jury trials; and more than 2,800 defendants were sentenced to imprisonment for an average term of approximately 50 months.

Our coordinated law enforcement operations both remove bad actors from participation in HHS programs through convictions and exclusions and effect widespread change in behavior by serving as a deterrent for others. This coordination has also been critical to OIG's enforcement efforts and other work to address the prescribing and treatment dimensions of the opioid crisis, as discussed in HHS-OIG's testimony before the Senate Committee on Finance in a hearing entitled, "OIG Efforts to Ad-

dress the Prescribing and Treatment Dimensions of the Opioid Crisis”<sup>17</sup> on October 24, 2019.

Medicare payment trends demonstrate the positive impact of Strike Force enforcement and prevention efforts. As just one example, at its peak, Medicare was billed \$472 million in April 2019 for CPT codes covering genetic testing, and paid out \$111 million. The numbers were similar in May, June, and July, 2019. When we made our first arrest in August as part of an initiative known as Operation Double Helix, which was led by the Health Care Fraud Strike Force, billing dipped to \$154 million, with \$48 million paid. In October, the month after the coordinated law enforcement takedown, the numbers decreased to \$51 million billed, \$15 million paid, a roughly 87-percent drop in money out the door. That November, Medicare paid out only \$2 million for these codes—a 98-percent drop from the peak of \$111 million 6 months earlier.

HHS–OIG will continue to collaborate closely with DOJ and other law enforcement partners to direct investigative resources to areas of greatest need, and explore new opportunities to expand efforts, to best protect HHS programs and the individuals they serve.

*Question.* While HHS OIG has no oversight over Medicare Part D’s programmatic requirements or payment policies, its work to combat fraud and abuse can have implications for Part D beneficiaries, as well as a range of stakeholders across program and the health-care system more broadly.

Given that reports indicate the administration is unlikely to move forward with implementation of the Rebate Rule finalized in November 2020, does HHS OIG have any plans, at this point, to revisit prescription drug rebate reform, either through potential rulemaking or other policy mechanisms?

*Answer.* The rebate rule, which is a safe harbor rulemaking under the Federal anti-kickback statute, is the subject of ongoing litigation, and I cannot comment on it or any related matters. As a general matter, under the IG Act, HHS–OIG may audit, evaluate, and investigate program vulnerabilities in Medicare Part D and make recommendations to mitigate them. HHS–OIG does not, however, set program policy and implement reforms to the Medicare Part D program; these would be implemented by Congress or CMS, which administers the program.

Understanding what drives high drug spending for programs and beneficiaries is critical and a priority for HHS–OIG. HHS–OIG has conducted, and continues to conduct, a wide range of reviews addressing rebates and other drug-related topics in the Medicare and Medicaid programs. HHS–OIG’s goal is to identify opportunities to reduce drug spending for patients and HHS programs (*i.e.*, Part D, Part B, and Medicaid), while ensuring access for beneficiaries. HHS–OIG does this by focusing on three main areas: (1) determining whether HHS program and patients are overpaying for prescription drugs based on current HHS program and drug reimbursement rules, (2) assessing the impact of current HHS program and drug reimbursement rules on drug spending, and (3) assessing compliance with prescription drug reimbursement statutes and regulations. HHS–OIG would be happy to provide a briefing about our work in this area.

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QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* Recently, the Department of Justice, along with the HHS Office of Inspector General (OIG) and other law enforcement agencies, announced criminal charges against 138 defendants, including doctors and nurses, for over \$1.4 billion in alleged losses. The largest amount of fraud charged—more than \$1 billion—relates to telemedicine services. The second largest amount of fraud charged—more than \$29 million—relate to COVID–19 fraud. These figures are startling and represent lost taxpayer dollars. The Federal government must do all that it can to stop these fraudsters from taking advantage of the COVID–19 pandemic.

Please provide examples of the types of fraudulent conduct identified during HHS OIG’s recent enforcement action.

*Answer.* The majority of cases brought in the 2021 National Enforcement Action (NEA) are “telefraud” schemes, which accounted for over \$1.1 billion in allegedly false claims submitted by 43 defendants. “Telefraud” schemes use phone calls or

<sup>17</sup> [https://oig.hhs.gov/documents/testimony/68/20191024\\_-\\_Cantrell\\_Testimony.pdf](https://oig.hhs.gov/documents/testimony/68/20191024_-_Cantrell_Testimony.pdf).

sham remote visits to engage with a beneficiary to order or prescribe medically unnecessary testing, equipment, or prescriptions. Some characteristics of the alleged “telefraud” activities in the NEA include: paying illegal kickbacks and bribes to health-care providers in exchange for the referral of Medicare beneficiaries; preying on the elderly via telemarketing and health fairs; and providing orthotic braces, genetic testing, and compounded pain creams that were medically unnecessary, not eligible for Medicare reimbursement, and/or not provided as represented.

The NEA demonstrated the Government’s continued focus on investigating and prosecuting evolving COVID–19 health-care fraud and schemes involving the Provider Relief Fund. Examples of alleged fraudulent conduct include:

- Providing COVID–19 tests to Medicare beneficiaries to induce the beneficiaries to provide their personal identifying information and a saliva or blood sample. The defendants are alleged to have then misused the information and samples to submit claims to Medicare for unrelated, medically unnecessary, and far more expensive laboratory tests, including cancer genetic testing, allergy testing, and respiratory pathogen panel tests.
- Misappropriating Provider Relief Fund moneys to spend on personal expenses.

Additionally, the NEA included charges involving sober homes, where defendants allegedly referred patients to substance abuse treatment facilities where they could be subjected to medically unnecessary drug testing, as well as enforcement against defendants related to the illegal prescription and/or distribution of opioids.

*Question.* In your opinion, what are the contributing factors that have caused the increase in Medicare and Medicaid fraud we’ve witnessed during the pandemic?

Answer. As with past public health emergencies, the COVID–19 pandemic has resulted in rapid evolution of health-care fraud schemes that exploit the exigent circumstances of the moment. Although we are still in the midst of understanding the magnitude of fraud schemes that proliferated during the pandemic, HHS–OIG has received thousands of complaints related to purported COVID–19 fraud. In March 2020, when store shelves were emptied of hand sanitizer, the fraud scams offered “senior care packages” complete with hand sanitizer and a face mask. Later, we saw sham contact tracing to steal personal information. And then fake vaccines before vaccines were approved and available. Most recently, we see people selling fake proof of vaccinations. Additionally, the fraudsters specifically targeted Medicare beneficiaries recognizing that many were isolated at home during many parts of the pandemic.

In addition to exigent circumstances, fraudsters are aware of the increased funding and emergency flexibilities appropriately established to support the pandemic response. The risk of improper payments rises when funds are distributed fast to address an emergency, or rules are waived to help the vast majority of health-care providers seeking to provide needed care during a pandemic. As a result, there is increased risk of payments being calculated incorrectly, not being supported with reasonable and appropriate documentation, or not being paid to eligible providers.

HHS–OIG remains committed to taking swift action against bad actors who exploit the public health emergency. HHS–OIG continually monitors fraud trends—for example, by using our direct access to Medicare claims to spot outliers and aberrant trends—and share them with our Government program integrity partners, including other Offices of Inspectors General and law enforcement partners. This trend information helps identify potential targets and schemes for further investigation.

*Question.* I applaud the Federal Government’s efforts to prosecute COVID–19-related fraud, but these are reactive measures. What types of proactive measures can the Federal Government take now to prevent fraud before it occurs?

Answer. I wholeheartedly agree with the importance of preventing fraud before it occurs. If I am confirmed, I am committed to helping HHS identify proactive measures that can be adopted as new programs are established and existing programs improved. Integrating program integrity features into the programs early provides the best opportunity to prevent fraud before it occurs. In my experience, program integrity can be an afterthought during program implementation, and agencies later struggle to retrofit program integrity measures. To this end, for example, HHS–OIG provided technical assistance as HHS stood up the Provider Relief Fund so that program officials had an understanding of key program integrity risk factors and HHS–OIG insights from prior work on other funding programs. Similarly, HHS–OIG has been providing technical assistance to the Department on pro-

gram integrity for new programs under the American Rescue Plan. This technical assistance drew from HHS–OIG’s prior oversight work that made recommendations to improve program integrity activities in the administration for Children and Family’s Child Care and Development Fund (CCDF) block grant program.

Improving the availability and usability of data within programs is key to ensuring that agency officials have needed information to identify and mitigate emerging risks. Although preventing fraud entirely through data analysis may not be possible, improving transparency of program operations based on better data can allow program officials to identify problems early and mitigate the effects of fraud. HHS–OIG has consistently identified the need to improve HHS data operations and governance as part of the HHS Top Management Challenges.<sup>18</sup>

Additionally, more useable and accessible data will support deployment of modern tools to perform key program integrity functions, such as improving how the government authenticates or verifies who it is doing business with or paying. For example, effective deployment of artificial intelligence (AI) is primarily dependent on having access to large datasets that can be analyzed to teach the AI. With better data, programs may be able to deploy AI to assess claims for payments to rapidly identify risks or outliers. HHS–OIG is also assessing how multifactor authentication technology could be used to reduce the effect of medical identify theft, where a health-care provider’s identity is stolen to commit health-care fraud. Additional authentication may limit the opportunity for criminals to use stolen health-care provider identities to bill for wholly fraudulent claims.

HHS–OIG’s collaboration with private-sector stakeholders enhances the opportunities to prevent health-care fraud schemes from growing. The Healthcare Fraud Prevention Partnership and National Health Care Anti-Fraud Association are public-private partnerships that foster a proactive approach to preventing fraud through data and information sharing. Together, we examine emerging health-care fraud trends and develop key recommendations and strategies to address them. Enhancing these partnerships and ensuring resources are shared across Federal health-care programs, State programs, and private payors help mitigate the spread of fraud schemes and can prevent future losses.

Finally, as a general matter, I would urge that when Congress considers new programs, it also considers commensurate oversight and program integrity resources.

*Question.* In HHS OIG’s strategic plan to conduct oversight of COVID–19 response and recovery efforts, the OIG has indicated that it plans to “audit whether known cybersecurity vulnerabilities related to networked medical devices, telehealth platforms, and other technologies being used in COVID–19 response has been mitigated.” What is the status of this audit?

*Answer.* The remediation of known vulnerabilities is key to ensuring IT systems are properly secured from cyberattacks. Ongoing HHS–OIG audits related to known vulnerabilities associated with technologies being used for the COVID–19 response, networked medical devices, and telehealth technologies include:

1. Ongoing audit of HHS Protect and TeleTracking Systems, critical systems that HHS recently implemented to capture important COVID–19 data, such as hospital capacity, utilization, and inventory. The report (restricted distribution) will be issued soon.
2. An issued report in June 2021 entitled Medicare Lacks Consistent Oversight of Cybersecurity for Networked Medical Devices in Hospitals.<sup>19</sup> This work evaluated hospital surveyors’ oversight of networked device security, found that this issue is not sufficiently considered in the survey process, and recommended that CMS address this in its hospital quality oversight. CMS’s final management decision is due to OIG in December 2021.
3. Ongoing audit of the Indian Health Service’s newly implemented telehealth technologies. This audit is in the field work stage.

HHS–OIG continues to review the status of open audit recommendations related to the remediation of known vulnerabilities and plan audits that include follow-up work to confirm proper corrective actions. For example, HHS–OIG will begin new cybersecurity audits that will perform network cyber threat hunts at HHS. These audits will determine whether: (1) network defenses are effective to detect and mitigate threats or attacks, (2) there is an active threat on HHS’s or one of its Oper-

<sup>18</sup> <https://oig.hhs.gov/reports-and-publications/top-challenges/2020/index.asp>.

<sup>19</sup> <https://www.oig.hhs.gov/oei/reports/OEI-01-20-00220.asp>.

ating Division's networks, or (3) there has been a past cyber breach. This work builds on our significant body of cybersecurity work assessing HHS systems.

*Question.* Since the COVID pandemic began, I have engaged in oversight on two fronts: (1) the origins of the virus; and (2) the connection between the Department of Health and Human Services and the National Institutes of Health with the Wuhan lab and coronavirus research. In my July 27, 2021 Senate floor speech, I challenged the Federal Government's failure to oversee grants sent by NIH to EcoHealth which then sub-awarded the money to the Wuhan lab. In that speech, I also challenged the HHS Inspector General's audit, which focuses on NIH's compliance requirements and EcoHealth's as well. I stated, "I expect the Inspector General to be aggressive and unrelenting. Get the records, the emails and the memos. Run the transcribed interviews and question everyone up the leadership chain. Leave no stone unturned and make as much public as possible. If punches are pulled, this audit will be a waste of everyone's time and taxpayer money. The Inspector General has a tremendous responsibility to get this done the right way." I appreciate your responses to my questions at the September 22, 2021 Finance Committee nomination hearing. I also appreciate our conversation on September 29, 2021 to answer my follow-up questions on this work. With respect to the verbal answers that you provided to me on our September 29th call, I request that you provide written answers to the same in the interest of the Finance committee's work and for the purposes of public transparency.

Based on your testimony, I understand that your work does not include identifying the source of the coronavirus. I want to make sure that I understood your testimony with respect to gain of function research. Will your audit determine if gain of function research occurred at the Wuhan Institute of Virology and whether it was connected to taxpayer money? If not, in order to understand whether NIH and its components followed Federal rules, don't you have to determine if gain of function research was performed?

*Answer.* HHS-OIG's ongoing audit, Audit of National Institutes of Health and Grantee Compliance With Federal Requirements To Ensure Proper Monitoring and Use of Grant Funds by Selected Grantees and Subgrantees<sup>20</sup> is designed to assess whether NIH monitored grants to EcoHealth Alliance (EcoHealth) in accordance with Federal regulations and whether EcoHealth similarly provided oversight to ensure compliance by its sub-awardees. The audit will not examine the origins of coronavirus and will not assess research to determine whether gain of function research occurred during the grant performance period. For grants awards that may have included a specific prohibition of gain of function research, the audit will examine the oversight and monitoring activities performed by NIH and EcoHealth to ensure that the grantees and subgrantees adhered to the grant requirements.

HHS-OIG has coordinated this audit with the Government Accountability Office (GAO). They are performing additional oversight specific to gain-of-function research that will complement our audit. HHS-OIG will continue to closely coordinate with GAO and will ensure that our collective work provides the Senate Committee on Finance and Congress with independent, objective information about this issue.

In July 2021, HHS-OIG provided a scope and methodology briefing for your staff regarding this audit. We would be happy to provide additional briefings for you and your staff.

*Question.* Do you plan to run any transcribed interviews of government employees and EcoHealth employees? Have you done so already?

*Answer.* For this audit, the team held virtual meetings with officials at NIH and NIH's subcomponent, the National Institute of Allergy and Infectious Diseases (NIAID). In addition, the audit team held in-person meetings with EcoHealth officials. As standard audit practice, the interviews are documented in writing by the audit team and kept as part of the audit file. None of the interviews were recorded. As needed, HHS-OIG may request additional interviews of NIH or EcoHealth officials as HHS-OIG continues to conduct the audit.

*Question.* I asked you about how much taxpayer money had been sent to EcoHealth for coronavirus research in China. At the hearing, you said you didn't have those numbers yet. Do you now?

<sup>20</sup> <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000592.asp>.

Answer. Based on information collected for the audit referenced in the preceding responses, NIH has awarded EcoHealth approximately \$8 million from October 2014 to September 2021. The audit is still ongoing and HHS-OIG is still assessing the specifics of the EcoHealth awards. The technical nature of the grant awards does not provide for an easy classification as to whether the research is specifically for coronavirus. However, based on award titles and descriptions of planned research, it appears that of the \$8 million, approximately \$3,750,000 is for coronavirus research and \$4,210,000 could be coronavirus related research. In addition, EcoHealth made subawards to two Chinese organizations: Wuhan Institute of Virology was awarded approximately \$600,000 and Wuhan University School of Public Health was awarded approximately \$200,000. Both of these subawards relate to the \$3,750,000 awarded for coronavirus research.

*Question.* And finally, I asked about why you decided to do an audit versus an investigation. Can you explain that decision in more detail and under what circumstances an investigation would be opened?

Answer. HHS-OIG evaluates specific oversight work through an Engagement Committee. This committee meets weekly to assess potential work and includes representatives from all HHS-OIG components, including our Office of Investigations (OI). When the Engagement Committee assesses information regarding new work that assessment includes representatives from OI, which is the component that reviews to determine whether there are colorable violations of law that warrant criminal or civil investigations. For the specific work related to NIH and EcoHealth grants, HHS-OIG's Engagement Committee determined that an audit was appropriate based on the information it had at the time.

As with all of our oversight work, HHS-OIG continually assesses the specific facts and circumstances as oversight work is conducted. HHS-OIG's Office of Audit Services (OAS) has expertise in identifying potential referrals to OI for conduct such as grant fraud. HHS-OIG does not operate in silos and OAS teams may consult with OI investigators to assess specific facts and circumstances as warranted. To the extent that the audit teams and OI determine that a referral is appropriate (based on the specific facts and circumstances of the particular matter), OAS would make a referral and OI would begin an investigation.

*Question.* Based on concerns raised by Congress, NIH, and other Federal law enforcement agencies, OIG identified four priority areas for NIH oversight in their FY 2022 budget request: (1) cybersecurity protections, (2) compliance with Federal requirements and NIH policies for grants and contracts, (3) integrity of grant application and selection processes, and (4) intellectual property and research integrity. OIG recently released a report that found NIH did not consider national security risks when permitting and monitoring foreign principal investigators' access to U.S. citizens' genomic data. NIH did not concur with all of OIG's findings. Given that we still do not know the origins of COVID-19 and the startling information that continues to be released on NIH's involvement with institutions associated with the Chinese Communist Party, where does auditing and investigating relationships, financial or otherwise, between HHS and its subcomponents with problematic foreign governments and the potential information sharing between them fall in your list of priorities to tackle?

Answer. As an independent, objective oversight and enforcement agency, HHS-OIG follows the facts wherever they lead. To do so, HHS-OIG continually assesses risks to HHS that may jeopardize the economy, efficiency, effectiveness, and integrity of HHS programs. Through this approach of assessing vulnerabilities, HHS-OIG is aware of increased risks posed by foreign actors in a number of areas, including health-care fraud, cybersecurity, and medical research. If confirmed, I am committed to ensuring HHS-OIG continues to assess and address, as appropriate, risks to HHS programs due to inappropriate foreign influence that are within our jurisdiction as a top priority.

Our commitment to addressing these risks is exemplified by HHS-OIG's recent enforcement and oversight work that helps ensure the integrity of taxpayer-funded medical research against foreign threats. Although inappropriate foreign influence associated with taxpayer-funded medical research is a high-profile, complex issue, the cases under HHS-OIG's purview all involve aspects of grant fraud—which HHS-OIG has extensive experience in investigating. Oversight and enforcement of grant fraud and related grant program integrity is an HHS-OIG priority.

Our grant fraud investigations with a foreign influence nexus often involve close collaboration with our law enforcement partners at the Department of Justice, the

Federal Bureau of Investigation (FBI), and other Offices of Inspector General, as well as HHS awarding agencies and the Office of National Security (ONS). We also coordinate with various other agencies to protect the integrity of medical research. In some instances, we work on matters with the FBI's Joint Terrorism Task Forces and National Cyber Investigative Joint Task Force, the National Counterintelligence Taskforce, the Department of Homeland Security, and components at FBI Headquarters and local field offices. When appropriate, we work with NIH and ONS to develop follow-up approaches and/or mitigating strategies. Foreign influence research cases are investigated by the HHS-OIG in a similar manner to other grant fraud matters, with coordination and awareness of potential law enforcement sensitivities handled by our partners and other agencies. HHS-OIG is not involved in gathering counterintelligence data pertaining to inappropriate foreign influence.

In addition to the NIH audit referenced in your question, HHS-OIG has also recently issued five audits and studies to improve NIH vetting of peer reviewers, improve NIH policies and procedures related to foreign conflicts of interest, and review NIH grantee institutions' actions to strengthen policies to protect intellectual property and research integrity.

HHS-OIG briefed your staff twice in July 2021 on recent work in this area, including CMS's assessment of national security risks to genomic testing data and our ongoing audit related to NIH and EcoHealth. In addition, I wanted to thank you for your leadership in this area and for holding a hearing entitled "Foreign Threats to Taxpayer-Funded Medical Research: Oversight Opportunities and Policy Solutions"<sup>21</sup> on June 5, 2019 where HHS-OIG testified on foreign influence before the Senate Committee on Finance. The hearing was an excellent opportunity for HHS-OIG to discuss our work, in conjunction with HHS and law enforcement partners, to protect taxpayer-funded medical research. I look forward to continuing to work with you and your staff on this important topic.

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QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* As you know, in South Dakota, there have been far too many challenges with the Indian Health Service (IHS). This includes specific instances of abusive providers and facilities that fail to meet safety standards, as well as overall concern about the quality of care received there.

I appreciate the work that OIG has done thus far to examine these issues. If confirmed, how would you prioritize IHS in your work plan? How do you balance the need for proactive reviews versus those that are responsive to specific complaints?

*Answer.* HHS-OIG has a longstanding commitment to providing impactful oversight of Indian Health Service (IHS) to help ensure the quality and safety of services provided to the American Indian and Alaska Native community. If confirmed, I will continue that commitment.

Prioritizing work, including balancing proactive and responsive reviews, is part of our work planning process. HHS-OIG work is developed and considered through a process by which an Engagement Committee consisting of the Deputy Inspectors General for each HHS-OIG component carefully considers new work proposals with an eye toward ensuring that HHS-OIG's work has the greatest impact and makes the best use of limited resources. HHS-OIG's work planning process is dynamic, and adjustments are made throughout the year to meet priorities and to anticipate and respond to emerging issues with the resources available. If I am confirmed, HHS-OIG will continue to plan new oversight work based on risk assessment and focus on key vulnerabilities. We will leverage data, modern technology, specialized expertise, and strategic partnerships to conduct oversight and develop actionable recommendations.

HHS-OIG work has identified critical challenges that hinder IHS's ability to provide quality care, ensure sound management of Federal funds, and comply with standards. IHS has taken significant action to address the recommendations provided in our reviews.

During Fiscal Year 2021, we released seven reviews focused on IHS-funded care, including on topics such as adverse events, maternity care, opioids, and patient pro-

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<sup>21</sup> <https://www.finance.senate.gov/imo/media/doc/05JUN2019HollieSMNT.pdf>.

tection policies. Most recently, we released a report<sup>22</sup> finding that IHS use of critical care response teams helped to meet facility needs during the COVID-19 pandemic. The report also provides recommendations to further leverage the successes of the critical care response team model in support of IHS's broader care improvement efforts.

HHS-OIG has six additional reviews of IHS-funded care underway. This ongoing work will address such issues as whether IHS-operated facilities and tribally operated facilities met background verification requirements for employees, contractors, and volunteers in contact with children and IHS's coordination of the distribution, allocation, and administration of the COVID-19 vaccine to Tribal Health Programs. Information about our completed and ongoing IHS reviews and recent enforcement actions is available on the Indian Health and Human Services<sup>23</sup> featured topic page of our website. HHS-OIG would welcome the opportunity to provide you and your staff briefings on this work.

*Question.* Thank you for OIG's active engagement and responsiveness on projects related to telehealth and the pandemic. As we consider whether longer-term policy decisions need to be made on this issue, can you provide additional commentary to the committee about the timelines for the various reports the agency is working on?

*Answer.* Thank you for recognizing HHS-OIG's commitment to conducting oversight of telehealth. HHS-OIG has announced seven reviews and issued three reports addressing telehealth used to provide behavioral health services in Medicaid. We expect the remaining seven telehealth oversight reports to be completed in calendar year 2022, starting with Data Snapshot: Review of Beneficiaries Relationships With Providers for Telehealth Services.<sup>24</sup>

HHS-OIG is committed to keeping the Senate Committee on Finance, Congress, and other stakeholders informed in instances where HHS-OIG finds significant risks that are supported by data and our analysis, audits, evaluations, and investigations. HHS-OIG recognizes the importance of providing timely, independent, and objective information as policymakers consider telehealth expansion or other changes beyond the public health emergency. We have already provided technical assistance to Congress, including the Senate Committee on Finance, earlier this year that highlight potential risks based on high-level, early data analyses.

HHS-OIG looks forward to continued engagement with the Senate Committee on Finance on our telehealth oversight and enforcement work.

*Question.* HRSA has informed my office that it referred six pharmaceutical manufacturers to OIG for failing to provide 340B discounts to contract pharmacies. While I trust that you cannot divulge the details of a matter under active review, can you provide any additional context or timeline for the when the agency might complete the review and issue a decision?

*Answer.* I am somewhat limited in what I can share at this time regarding the 340B referrals issue, but I hope the following information is helpful.

HHS-OIG can confirm that we received the six referrals from HRSA on September 22 and are reviewing them. When considering whether to impose Civil Monetary Penalties (CMPs), HHS-OIG carefully reviews the applicable facts and available evidence relating to each matter. Based on the facts and evidence, HHS-OIG makes a decision about whether to pursue a CMP. General information on the CMP process can be found in HHS-OIG's CMP regulation at 42 CFR 1003,<sup>25</sup> and more specific information about the CMPs relating to the 340B program can be found in the 340B ceiling price and CMP final rule.<sup>26</sup> Unfortunately, HHS-OIG cannot discuss its ongoing review of the referrals, and HHS-OIG is not able to provide a timetable for review and decision-making. Our staffs have been in contact on this issue as recently as September 2021. We will keep you and your staff updated should there be any new information we are able to share on the referrals matter.

HHS-OIG also has an established body of public reports focused on 340B issues. We would welcome the opportunity to provide a briefing on our 340B related work.

<sup>22</sup> <https://oig.hhs.gov/oei/reports/OEI-06-20-00700.asp>.

<sup>23</sup> <https://oig.hhs.gov/reports-and-publications/featured-topics/ihs/index.asp>.

<sup>24</sup> <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000613.asp>.

<sup>25</sup> <https://www.ecfr.gov/current/title-42/chapter-V/subchapter-B/part-1003?toc=1>.

<sup>26</sup> <https://www.govinfo.gov/content/pkg/FR-2017-01-05/pdf/2016-31935.pdf>.

For example: some of our past work identified issues<sup>27</sup> with whether 340B entities were getting the discounts required by law and HRSA's ability to oversee the 340B program; HHS-OIG has looked at 340B duplicate discounts with Medicaid;<sup>28</sup> and HHS-OIG continues to recommend increased transparency for States to ensure compliance and that States get the rebates to which they are entitled.

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QUESTIONS SUBMITTED BY HON. RICHARD BURR

*Question.* Oversight is an important function of the Congress, and I look forward to working with you, should you be confirmed, to safeguard Federal programs and their beneficiaries from waste, fraud, and abuse. In order to work together, however, we need to have open lines of communication. Do you commit to providing me and my staff with information or documentation we request within a specified time frame?

*Answer.* I agree that open lines of communication are critically important. If confirmed, I commit to respond to all congressional requests within my authority under the IG Act and other applicable statutes. HHS-OIG endeavors to be timely and as responsive as possible to all requests from Congress for information. If I am confirmed, I commit to continuing that practice. HHS-OIG strives to meet deadlines and regularly coordinates with committee and member staff to set reasonable time frames for responses. For both pragmatic and legal reasons, HHS-OIG cannot serve as a conduit between Congress and the Department for information or document requests. It is important that HHS-OIG's maintain its independence, and there are statutory and other legal limits on information that HHS-OIG releases.

*Question.* Currently, Congress is undergoing a partisan mad dash to pass transformational legislation that would radically increase the Federal Government's role in the daily lives of Americans. These proposals would dramatically increase spending on health programs—on top of the more than \$1.5 trillion in existing annual HHS spending—without so much as a Senate hearing.

If you are confirmed and these efforts are successful, you will have the unenviable task of investigating the Department at a time when unprecedented amounts of taxpayer funds are being spent and new programs are being implemented in the midst of responding to a once-in-a-century pandemic. What specific steps will you take to ensure that the Office of the Inspector General is able to enhance its oversight capacity to keep pace with such an extreme influx of Federal resources that could have immediate impact on the American people? Will you provide regular reports to Congress on the expenditures of these funds?

*Answer.* I share your concern with the need to keep pace, and enhance oversight, to meet a growing portfolio of HHS programs. HHS-OIG has deep experience with oversight of large new programs and conducting work to ensure that they work as Congress intends. For example, after the passage of the Affordable Care Act, we conducted extensive oversight of issues ranging from eligibility for marketplace insurance to accurate subsidy payments, program management, and security of data. More recently, for example, we are conducting a series of audits of distributions from the Provider Relief Fund. HHS-OIG will continue monitoring new programs and providing regular reports to Congress on findings and recommendations from this oversight work. Moreover, in instances where HHS-OIG finds significant risks that are supported by data and our analysis, audits, evaluations, and investigations, HHS-OIG is committed to keeping this committee, Congress, and other stakeholders informed. HHS-OIG recognizes the importance of providing timely, independent, and objective information to policymakers. As a general matter, I would urge that when Congress considers new programs, it also considers commensurate oversight and program integrity resources.

In my current role, and if I am confirmed, HHS-OIG will continue to plan new oversight work based on risk assessment and focus on key potential vulnerabilities. To enhance the impact of this work, we will leverage data, modern technology, specialized expertise, and strategic partnerships to conduct oversight and develop actionable recommendations focused on high-risk programs and operations. We will use advanced data analytics and multidisciplinary, state-of-the-art investigative techniques to maximize our limited resources and bolster program integrity in HHS programs and services.

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<sup>27</sup> <https://oig.hhs.gov/oei/reports/oei-05-02-00072.pdf>.

<sup>28</sup> <https://oig.hhs.gov/oei/reports/oei-05-14-00430.asp>.

## QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

*Question.* The Office of Inspector General (OIG) at the Department of Health and Human Services (HHS) has previously reported on the pervasiveness of improper payments within the Medicaid program, failure by the Centers for Medicare and Medicaid Services (CMS) to adequately recoup Medicaid overpayments, and recommendations for improving upon these program integrity measures.<sup>29</sup> Despite OIG's findings and recommendations, the improper payment rate remains persistently high in Medicaid. In 2020, CMS estimated that improper payments accounted for 21.35 percent of Federal program expenditures, and for the 10 years prior, the improper payment rate was routinely above 9 percent.<sup>30</sup>

Congressional Democrats are now in the process of drafting and marking up a multi-trillion-dollar legislative package that would make substantial benefit expansions to the existing Medicaid program and establish a look-a-like program for certain individuals in non-expansion States. Such expansions certainly risk exacerbating fraud, waste, and abuse, especially since the proposals are unaccompanied by long-term, structural reforms to address program solvency.

While Congress still lacks a comprehensive understanding of the extent to which specific factors, such as eligibility errors and documentation mistakes, contribute to improper payments, it is nevertheless clear there remain critical gaps in program integrity. Based on OIG's previous findings, do you believe current oversight incentives for State Medicaid programs are sufficient?

*Answer.* I share your concern about the Medicaid error rate and addressing it is a top HHS–OIG priority. The high error rates indicate that the current oversight incentives for State Medicaid programs are not working as intended. More work is needed to better understand recent program changes directly related to how CMS measures Medicaid improper payments and how CMS works with States to address the causes of the errors. CMS's Payment Error Rate Measurement (PERM) program measures Medicaid and CHIP improper payments in all 50 States and the District of Columbia annually and produces a national improper payment rate for each program. In 2017, CMS published a new final rule implementing substantive changes to the PERM program that, among other things, were aimed at improving program integrity and promoting State accountability through policy and operational improvements.

These changes were a step in the right direction and have produced a more realistic picture of the beneficiary eligibility errors that are occurring at the State level. This estimated error rate increased since the reintegration of beneficiary eligibility testing in 2019. Based on the CMS PERM regulation, States should be taking action to correct the problems causing high error rates specific to their State programs.

HHS–OIG is currently conducting three audits that will assess the adequacy of the PERM program by determining the accuracy of determinations for the eligibility, fee-for-service, and managed care components of the PERM error rate. The results of this work may identify ways in which CMS and States can improve PERM and address causes of the high improper payment rate. HHS–OIG would be happy to brief you and your staff on this work.

*Question.* What are the most significant, outstanding recommendations that OIG has previously made to CMS with regard to improving the state of improper payments and overpayments, and what justifications has CMS provided for not implementing these recommendations?

*Answer.* HHS–OIG has a large body of work assessing several of the major causes of high Medicaid improper payment rates. For example, HHS–OIG audits have identified substantial improper payments identifying significant errors with State Medicaid eligibility determinations. The Senate Committee on Finance provided HHS–OIG with a much-appreciated opportunity to discuss our work on Medicaid beneficiary eligibility determinations and what more can be done to secure the future of this important program at an October 30, 2019 hearing, entitled "Medicaid: Compliance with Eligibility Requirements."<sup>31</sup> Additionally, HHS–OIG has conducted several studies assessing State Medicaid agency provider screening and enrollment. Fi-

<sup>29</sup> <https://oig.hhs.gov/reports-and-publications/compendium/files/compendium2020.pdf>.

<sup>30</sup> <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/PERMErrorRateFindingsandReport>.

<sup>31</sup> [https://oig.hhs.gov/documents/testimony/70/20191030\\_-\\_Ritchie.pdf](https://oig.hhs.gov/documents/testimony/70/20191030_-_Ritchie.pdf).

nally, HHS–OIG work has found that CMS has not always recovered the overpayments from State Medicaid agencies identified by HHS–OIG audit reports.

The following information provides examples of unimplemented recommendations made to CMS or specific State Medicaid agencies for three categories of work that have significant connection to improper payments and overpayments: Medicaid eligibility, provider screening and enrollment, and overpayment collection. OIG’s Compendium of Unimplemented Recommendations<sup>32</sup> includes more detail on our Medicaid unimplemented recommendations and HHS–OIG is happy to provide you and your staff with a briefing on any of this work.

#### MEDICAID ELIGIBILITY

HHS–OIG audited four States’ (New York, California, Colorado, and Kentucky) Medicaid eligibility determinations and found that during 2014 and 2015 Medicaid payments were made on behalf of 109 of 460 sampled newly eligible beneficiaries and 98 of 515 sampled non-newly eligible beneficiaries who did not meet or may not have met Medicaid eligibility requirements. On the basis of our sample results, we estimated that the four States made Federal Medicaid payments on behalf of newly eligible beneficiaries totaling almost \$1.4 billion for more than 700,000 ineligible or potentially ineligible beneficiaries. We also estimated that the four States made Federal Medicaid payments on behalf of non-newly eligible beneficiaries totaling more than \$5 billion for almost 5 million ineligible or potentially ineligible beneficiaries.

A majority of HHS–OIG’s recommendations to the States addressed the deficiencies related to our findings. Although the States concurred with all 31 recommendations, 18 recommendations remain unimplemented. Specifically, as of 2021, most States have not provided responses to our recommendations to demonstrate that: eligibility caseworkers accurately input case actions and properly verify eligibility requirements (12 unimplemented recommendations); eligibility verification systems are improved to properly and timely verify all eligibility information (3 unimplemented recommendations); and additional policies and procedures are developed to produce more accurate eligibility determinations and to resolve eligibility discrepancies timely (3 unimplemented recommendations).

States’ progress in implementing these recommendations varies.

#### PROVIDER SCREENING AND ENROLLMENT

Provider screening problems are a significant contributing factor to the high Medicaid PERM error rates. HHS–OIG has a noteworthy set of unimplemented recommendations related to Medicaid provider screening and enrollment. Across four reports, there are a total of 17 open recommendations.

We have six outstanding recommendations to CMS from HHS–OIG’s evaluation States Could Do More To Prevent Terminated Providers From Serving Medicaid Beneficiaries (OEI–03–19–00070),<sup>33</sup> issued in March 2020. These are that CMS should: recover from States the Federal share of inappropriate fee-for-service Medicaid payments associated with terminated providers; implement a method to recover from States the Federal share of inappropriate managed care capitation payments associated with terminated providers; follow up with States to remove terminated providers that HHS–OIG identified as inappropriately enrolled in Medicaid; confirm that States do not continue to have terminated providers enrolled in their Medicaid programs; safeguard Medicaid from inappropriate payments associated with terminated providers; and review States’ contracts with MCOs to ensure that they specifically include the required provision that prohibits terminated providers from participating in Medicaid managed care networks.

We have four outstanding recommendations from HHS–OIG’s evaluation Twenty-Three States Reported Allowing Unenrolled Providers To Serve Medicaid Beneficiaries (OEI–05–19–00060),<sup>34</sup> issued in March 2020. These are that CMS should: take steps to disallow Federal reimbursements to States for expenditures associated with unenrolled MCO network providers, including seeking necessary legislative authority; work with States to ensure that unenrolled providers do not participate in Medicaid managed care and assist States in establishing ways to do so; work with States to ensure that they have the controls required to prevent unenrolled order-

<sup>32</sup> <https://oig.hhs.gov/reports-and-publications/compendium/files/compendium2020.pdf>.

<sup>33</sup> <https://oig.hhs.gov/oei/reports/oei-03-19-00070.asp>.

<sup>34</sup> <https://oig.hhs.gov/oei/reports/oei-05-19-00060.asp>.

ing, referring, or prescribing providers from participating in Medicaid fee-for-service; and work with States to ensure that they are complying with requirements to collect identifying information and ownership information on Medicaid provider enrollment forms.

We have three outstanding recommendations from HHS–OIG’s evaluation *Problems Remain for Ensuring All High-Risk Medicaid Providers Undergo Criminal Background Checks*, OEI–05–18–00070 (July 2019).<sup>35</sup> These are that CMS should: ensure that all States fully implement fingerprint-based criminal background checks for high-risk Medicaid providers; amend its guidance so that States cannot forego conducting criminal background checks on high-risk providers applying for Medicaid that have already enrolled in Medicare unless Medicare has conducted the checks; and compare high-risk Medicaid providers’ self-reported ownership information to Medicare’s provider ownership information to help States identify discrepancies.

We have four outstanding recommendations from HHS–OIG’s evaluation *Medicaid Enhanced Provider Enrollment Screenings Have Not Been Fully Implemented*, OEI–05–13–00520 (May 2016).<sup>36</sup> These are that CMS should: help States implement fingerprint-based criminal background checks for all high-risk providers; develop a central system by which States can submit and access screening results from other States; strengthen minimum standards for fingerprint-based criminal background checks and site visits; and work with States to develop a plan to complete their re-validation screening in a timely way.

CMS responses to each of these reports and recommendations vary, and so has its progress in implementing the recommendations.

#### CMS UNCOLLECTED MEDICAID OVERPAYMENTS

Although uncollected overpayments are not part of the PERM error rate, CMS’s failure to collect and States’ failure to pay illustrates a significant financial stewardship vulnerability in the management of the Medicaid program. In a December 2018 audit report,<sup>37</sup> HHS–OIG found that CMS had recovered about \$900 million of the \$2.7 billion in Medicaid overpayments identified in prior HHS–OIG audit reports issued to State Medicaid agencies. However, CMS had not collected the remaining \$1.8 billion. In response, CMS informed us that they continue to explore options for improving the timeliness of recovering identified overpayments.

*Question.* What are the greatest obstacles for OIG when it comes to monitoring improper payments and overpayments within Medicaid, and what steps, if any, does OIG plan to take going forward to improve its abilities to conduct oversight within Medicaid?

*Answer.* Two of the most significant obstacles for monitoring improper payments relate to: (1) access to complete and accurate Medicaid data and (2) challenges involving State-level systems.

Effective oversight of Medicaid requires access to complete and accurate data. In an effort to improve the completeness and accuracy of Medicaid data, CMS established the Transformed Medicaid Statistical Information System (T–MSIS). Although access to Medicaid payment data made by States has improved for Medicaid fee-for-service payments, continued improvement is needed. Most States are not providing complete or accurate payment data in T–MSIS for managed care payments to providers. The lack of encounter data continues to be a challenge for overseeing States that heavily rely on managed care.

In addition to challenges related to complete and accurate data, HHS–OIG has continually found that States experience challenges in implementing the appropriate systems needed to properly administer their Medicaid programs and maintain the necessary documentation to support Medicaid services claimed for reimbursement. HHS–OIG encounters these same challenges during audits because the lack of developed systems and missing documentation can sometimes impede our ability to properly assess whether overpayments exist and to accurately quantify the overpayment amounts. For example, in prior audits of four States’ Medicaid eligibility determinations, we found that Medicaid payments were made on behalf of 31 of 460 sampled newly eligible beneficiaries and 78 of 515 sampled non-newly eligible beneficiaries who may not have met Medicaid eligibility requirements. In these instances, because States did not maintain all of the necessary documentation and

<sup>35</sup> <https://oig.hhs.gov/oei/reports/oei-05-18-00070.pdf>.

<sup>36</sup> <https://oig.hhs.gov/oei/reports/oei-05-13-00520.pdf>.

<sup>37</sup> <https://oig.hhs.gov/oas/reports/region5/51700013.asp>.

their eligibility verification systems were underdeveloped, we were not able to determine whether some beneficiaries were eligible for Medicaid, and whether overpayments related to these beneficiaries truly existed.

HHS–OIG has long been at the forefront of measuring, monitoring, and recommending actions to prevent improper payments. HHS–OIG’s future work will continue to identify root causes for improper payments and feasible action steps to reduce the percentages. To this end, HHS–OIG is crafting a comprehensive multidisciplinary strategy to will target three areas: (1) Medicaid payments made to managed care organizations for beneficiaries who are concurrently enrolled in multiple States; (2) the adequacy of the eligibility and other components of the PERM program review, as well as CMS’s oversight of the corrective action plans that States submit to address the causes of improper payments; and (3) States’ processes to screen providers for enrollment in the Medicaid program, along with the inappropriate enrollment of terminated providers. In addition, HHS–OIG will continue to review and report on HHS’s annual improper payment information as required by the Payment Integrity Information Act. We are happy to brief you and your staff on this strategy and on any work related to this issue.

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QUESTIONS SUBMITTED BY HON. BILL CASSIDY

*Question.* If confirmed, how would you plan to leverage artificial intelligence and machine learning to address fraud, waste, and abuse in HHS programs? Are there particular data where these tools are best suited or should be prioritized?

*Answer.* If confirmed, I am committed to expanding HHS–OIG’s use of sophisticated data analytics, including leveraging artificial intelligence (AI) and machine learning (ML), to proactively monitor and address fraud, waste, and abuse in HHS programs. Currently, HHS–OIG uses AI and ML to assist aspects of our oversight and enforcement. Primarily, we use advanced data analytics and AI to assess risk more effectively across HHS programs and geographic locations, and to efficiently deploy resources and increase the impact of our oversight and enforcement. In deploying AI and ML capabilities, HHS–OIG follows best practices to ensure that solutions are responsible, equitable, traceable, reliable, and governable.

HHS–OIG has successfully leveraged AI and ML to support oversight of HHS grants and contracts. Specifically, HHS–OIG developed a Grants and Acquisitions Analytics Portal (GAP) that streamlines access to and delivers a comprehensive view of HHS awards and single audit findings. We implemented ML and advanced AI capabilities, including neural networks and text mining, to identify audit findings buried in millions of pages of A–133 single-audit reports. The impact of this effort was immediate. The time needed for auditors’ and investigators’ researching has been reduced from a matter of months to minutes.

HHS–OIG has also deployed predictive models that use AI to assign risk scores to Medicare providers for professional services, prescribing, home health, hospice, and pharmacies. Results from these models assist HHS–OIG in identifying targets for investigation as well as in assessing highest risk among providers that are already known to investigators.

The size of the HHS program portfolio continues to increase, health-care systems are becoming more complex, and fraud cases are becoming more sophisticated. These factors—accompanied with a significant increase in the amount of health-care data—push HHS–OIG to streamline and automate time-consuming and manual analytic and business processes. If confirmed, I will continue to invest in our data and analytics infrastructure and improve capabilities that support AI, ML, natural language processing, robotics process automation, and predictive analytics. Further investment in cutting-edge technology for data will equip HHS–OIG’s teams with the ability to keep up with the growing size and complexity of HHS programs, especially Medicare and Medicaid.

In the near future, HHS–OIG is prioritizing deploying text analytics capabilities to draw insights from Medicaid managed care contracts, using predictive coding to support document review in preparation for prosecutions of health-care fraud, and automating audit process related to assessments of the quality and accuracy of Medicare and Medicaid claims.

## APPENDIX 1: HHS-OIG Behavioral Health Reviews

### HHS-OIG's Recently Published Reports on Behavioral Health

The following table contains a description of HHS-OIG's recently published reports related to behavioral health. Work related to behavioral health and telehealth is listed in Appendix 2.

	<b>Title of Review</b>	<b>Description</b>	<b>Issued</b>
1	Behavioral Health—Medication-Assisted Treatment Viewer <sup>1</sup>	The Behavioral Health—Medication-Assisted Treatment Viewer (BH-MAT) is a web mapping application that combines publicly available data to policymakers and program administrators to provide additional analysis for making decisions to improve access to medication-assisted treatment (MAT) for those with opioid use disorder.	May 2021
2	Choctaw Nation of Oklahoma Made Progress Toward Meeting Program Goals During the First Year of Its Tribal Opioid Response Grant <sup>2</sup>	The Choctaw Nation met some program goals for its Tribal Opioid Response grant during the first grant year. Specifically, the Choctaw Nation met program goals in the areas of prevention and recovery. The Choctaw Nation also made progress toward meeting treatment program goals but encountered some challenges that prevented it from increasing the availability of MAT services for Tribal members within its health-care system.	January 2021
3	New York Provided Projects for Assistance in Transition From Homelessness Grant Services to Ineligible Individuals and Did Not Contribute Any Required Non-Federal Funds <sup>3</sup>	New York did not always comply with Projects for Assistance in Transition From Homelessness (PATH) program requirements. Specifically, 7 of the 50 consumers we sampled lived in permanent housing settings and documentation in their case files did not indicate that they continued to need PATH services to prevent a recurrence of homelessness. In addition, New York did not meet its funding obligation for non-Federal contributions to its PATH program and did not have written agreements with PATH providers, as required.	December 2020
4	In Selected States, 67 of 100 Health Centers Did Not Use Their HRSA Access Increases in Mental Health and Substance Abuse Services Grant Funding in Accordance With Federal Requirements <sup>4</sup>	Most health centers in the 30 States did not use their AIMS (Access Increases in Mental Health and Substance Abuse Services) grant funding in accordance with Federal requirements and grant terms. Sixty-seven of the 100 health centers in our sample did not meet mental health and substance use disorder service expansion requirements (30), claimed unallowable costs (34), and did not properly allocate salaries and other expenditures to their AIMS grants (34).	November 2020
5	Opioid Treatment Programs Reported Challenges Encountered During the COVID-19 Pandemic and Actions Taken To Address Them <sup>5</sup>	Opioid treatment programs (OTPs) reported a variety of: (1) challenges they have encountered during the COVID-19 pandemic and (2) actions they have taken to address those challenges while ensuring the continuity of needed services and protecting the health and safety of their patients and staff.	November 2020

## HHS–OIG’s Recently Published Reports on Behavioral Health—Continued

The following table contains a description of HHS–OIG’s recently published reports related to behavioral health. Work related to behavioral health and telehealth is listed in Appendix 2.

	<b>Title of Review</b>	<b>Description</b>	<b>Issued</b>
6	HRSA’s Monitoring Did Not Always Ensure Health Centers’ Compliance With Federal Requirements for HRSA’s Access Increases in Mental Health and Substance Abuse Services Supplemental Grant Funding <sup>6</sup>	The Health Resources and Services Administration (HRSA) followed its policies and procedures for awarding AIMS grants but did not always follow its policies and procedures when monitoring health centers’ compliance with supplemental funding requirements. Specifically, HRSA did not follow its policies and procedures when monitoring health centers’ progress toward meeting AIMS grant award conditions related to ongoing and one-time funding and did not always respond timely to health centers’ requests to carry over grant funds.	July 2020
7	SAMHSA’s Oversight of Accreditation Bodies for Opioid Treatment Programs Did Not Comply With Some Federal Requirements <sup>7</sup>	The Substance Abuse and Mental Health Services Administration (SAMHSA) performed inspections at selected OTPs but did not: (1) meet its goal for the number of OTPs it would inspect, (2) take actions to address accreditation bodies’ noncompliance with survey requirements, or (3) determine whether OTPs complied with the Federal standards when patient charts were incomplete. In addition, SAMHSA reviewed accreditation bodies’ survey reports, but the reports were inconsistent and did not contain sufficient information to determine whether the OTPs met the Federal standards. Finally, SAMHSA’s evaluations of accreditation bodies’ accreditation elements were not documented or retained.	March 2020
8	ACOs’ Strategies for Transitioning to Value-Based Care: Lessons From the Medicare Shared Savings Program <sup>8</sup>	This report highlighted high-performing Medicare Accountable Care Organizations’ strategies to address behavioral health needs (among other strategies), including recruiting behavioral health providers and integrating behavioral and physical health care into primary care settings.	July 2019

<sup>1</sup> <https://hhs-oig-geo-hub-hhsigbeta.hub.arcgis.com/apps/b9963de2160f44839550115c4c37fdea/explore>.

<sup>2</sup> <https://www.oig.hhs.gov/oas/reports/region7/72004121.asp>.

<sup>3</sup> <https://www.oig.hhs.gov/oas/reports/region2/21902006.asp>.

<sup>4</sup> <https://www.oig.hhs.gov/oas/reports/region2/21902001.asp>.

<sup>5</sup> [https://www.oig.hhs.gov/oas/reports/region9/92001001.asp?utm\\_source=web&utm\\_medium=web&utm\\_campaign=covid-A-09-20-01001](https://www.oig.hhs.gov/oas/reports/region9/92001001.asp?utm_source=web&utm_medium=web&utm_campaign=covid-A-09-20-01001).

<sup>6</sup> <https://oig.hhs.gov/oas/reports/region2/21802010.asp>.

<sup>7</sup> <https://www.oig.hhs.gov/oas/reports/region9/91801007.asp>.

<sup>8</sup> <https://oig.hhs.gov/oei/reports/oei-02-15-00451.asp>.

## HHS–OIG’s Ongoing Work

The following table contains a description of HHS–OIG’s ongoing behavioral health audits and evaluations.

	<b>Title of Review</b>	<b>Description</b>	<b>Expected Issuance</b>
1	Medicare Part B Payments for Psychotherapy Services (Including Services Provided via Telehealth During the Public Health Emergency) <sup>1</sup>	In 2020, Medicare paid \$1 billion for psychotherapy services. We have a series of audits under way at selected providers and have started a nationwide audit of psychotherapy services. As part of our body of work related to psychotherapy, we are considering analyzing Medicare claims data to determine whether Medicare payment amounts for mental health services have decreased over the years. If so, we will also analyze whether this reduction in Medicare payment amounts has resulted in a decrease in the mental health providers that accept Medicare, which may impact beneficiary access to care.	FY 2022
2	Audit of SAMHSA’s Certified Community Behavioral Health Clinic Expansion Grants <sup>2</sup>	Certified community behavioral health clinics (CCBHCs) are designed to provide comprehensive 24/7 access to: (1) community-based mental health and substance use disorder services, (2) treatment of co-occurring disorders, and (3) physical health care in one location. For FY 2020, SAMHSA awarded 179 expansion grants to CCBHCs located in 32 States, totaling approximately \$450 million through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. We will determine whether SAMHSA followed its policies and procedures for awarding and monitoring CCBHC expansion grants. Subsequently, we will conduct additional audit to determine whether CCBHCs used expansion grant funds in accordance with Federal requirements and applicable grant terms.	FY 2023
3	Projects for Assistance in Transition from Homelessness Program <sup>3</sup>	HHS provides Federal funds to various States to administer the PATH program. The PATH program supports the delivery of outreach and various services to individuals with serious mental illness and those with co-occurring substance use disorders who are experiencing homelessness or are at imminent risk of becoming homeless. We will determine whether grant recipients complied with Federal requirements in providing PATH program services.	FY 2022
4	Post-Award State or Tribal Audits of Substance Abuse and Mental Health Services Administration’s Opioid Response Grants <sup>4</sup>	SAMHSA has awarded a series of grants to combat opioid use disorder. The purpose of these grants is to increase access to treatment, reduce unmet treatment need, and reduce opioid overdose related deaths. The audit will determine how select States or Tribal agencies implemented programs under these grants and whether the activities complied with Federal regulations and met program goals.	FY 2022

## HHS–OIG’s Ongoing Work—Continued

The following table contains a description of HHS–OIG’s ongoing behavioral health audits and evaluations.

	<b>Title of Review</b>	<b>Description</b>	<b>Expected Issuance</b>
5	Audit of States’ Administration of SAMHSA’s Substance Abuse Prevention and Treatment Block Grant Funding <sup>5</sup>	SAMHSA’s Substance Abuse Prevention and Treatment Block Grant (SABG) program is the largest Federal program dedicated to improving publicly funded substance abuse prevention and treatment systems. The program provides funds to all 50 States, the District of Columbia, and U.S. Territories to prevent and treat substance abuse. Federal requirements for the SABG program state that fiscal control and accounting procedures must permit the tracing of funds to a level of expenditure adequate to establish that such funds were not used in violation of block-grant restrictions and statutory prohibitions (45 CFR §96.30). We will determine whether the States’ SABG expenditures for subrecipients, including expenditures for contracted transitional housing providers, complied with Federal and State requirements.	FY 2022
6	Audit of Medicaid Applied Behavior Analysis for Children Diagnosed with Autism <sup>6</sup>	Autism spectrum disorder (autism) is a developmental disability that can cause significant social, communication, and behavioral challenges for children. A common treatment for autism is Applied Behavior Analysis (ABA), which can help an autistic child improve social interaction, learn new skills, maintain positive behaviors, and minimize negative behaviors. We will audit Medicaid claims for ABA services provided to children diagnosed with autism to determine whether a State Medicaid agency’s ABA payments complied with Federal and State requirements.	FY 2022
7	Utilization of Medication-Assisted Treatment in Medicare <sup>7</sup>	The opioid crisis remains a public health emergency. The current COVID–19 pandemic makes the need to focus on the opioid crisis even more pressing. Recent HHS–OIG studies have found that the utilization of drugs for MAT is low and that concerns exist related to access. This study will assess the extent to which Medicare beneficiaries with opioid use disorder are receiving MAT drugs through Medicare and the extent to which they are receiving counseling or behavioral therapies. It will also determine whether Medicare beneficiaries with opioid use disorder who are not receiving MAT drugs have certain characteristics in common.	FY 2022

<sup>1</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000241.asp>.

<sup>2</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000609.asp>.

<sup>3</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000371.asp>.

<sup>4</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000427.asp>.

<sup>5</sup><https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000602.asp>.

<sup>6</sup><https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000601.asp>.

<sup>7</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000484.asp>.

## APPENDIX 2: HHS–OIG Telehealth Reviews

### HHS–OIG’s Recently Published Reports on Telehealth

The following table contains a description of HHS–OIG’s recently published reports related to telehealth access. We would be happy to provide information on other work if requested.

	<b>Title of Review</b>	<b>Description</b>	<b>Issued</b>
1	Opportunities Exist To Strengthen Evaluation and Oversight of Telehealth for Behavioral Health in Medicaid <sup>1</sup>	This data brief provides insight into State evaluations and oversight of telehealth for behavioral health services as of January and February 2020, before the expansion of telehealth due to the COVID–19 pandemic. It provides a useful foundation to inform CMS and State decisions about how to evaluate the impacts of telehealth on access, cost, and quality of behavioral health services and to strengthen oversight of program integrity. Evaluating the effects of telehealth on access, cost, and quality is particularly important in helping States make decisions about how to best use telehealth and about which populations benefit most from these services. Understanding States’ efforts to oversee telehealth can help States protect their Medicaid programs. Further, States’ expansion of telehealth during the COVID–19 pandemic has been largely on a temporary basis. As States consider making telehealth expansions permanent, States can use information in this data brief to help determine which services best support enrollees. This data brief is a companion report to a data brief that describes the challenges States reported with using telehealth to provide behavioral health services to Medicaid enrollees.	September 2021
2	States Reported Multiple Challenges With Using Telehealth To Provide Behavioral Health Services to Medicaid Enrollees <sup>2</sup>	This data brief provides insight into States’ challenges as reported in January and February 2020, before the expansion of telehealth due to the COVID–19 pandemic. It provides a useful foundation for CMS and States by highlighting longstanding challenges with the use of telehealth that existed prior to the additional challenges caused by the pandemic. Understanding States’ challenges with using telehealth to provide behavioral health services can help States improve their Medicaid program and assist enrollees with accessing needed care. Further, States’ expansion of telehealth during the COVID–19 pandemic has been largely on a temporary basis. As States consider making telehealth expansions permanent, they can use information in this data brief to develop effective programs and troubleshoot challenges in implementation. This data brief is a companion report to a data brief that describes the extent to which States evaluate the effects of telehealth on access, cost, and quality of behavioral health services and the extent to which States oversee telehealth for fraud, waste, and abuse.	September 2021

### HHS–OIG’s Recently Published Reports on Telehealth—Continued

The following table contains a description of HHS–OIG’s recently published reports related to telehealth access. We would be happy to provide information on other work if requested.

	<b>Title of Review</b>	<b>Description</b>	<b>Issued</b>
3	Provider Shortages and Limited Availability of Behavioral Health Services in New Mexico’s Medicaid Managed Care <sup>3</sup>	Shortages of providers and difficulty arranging services has resulted in limited availability of behavioral health care for New Mexico’s Medicaid managed care enrollees. The challenges faced by New Mexico are likely shared by other States and require both State and national attention. Both CMS and New Mexico agreed with HHS–OIG’s recommendations to help address these challenges, including expanding the behavioral health workforce, improving transportation options for enrollees, and expanding the use of telehealth.	September 2019

<sup>1</sup> <https://oig.hhs.gov/oei/reports/OEI-02-19-00401.asp>.

<sup>2</sup> <https://oig.hhs.gov/oei/reports/OEI-02-19-00400.asp>.

<sup>3</sup> <https://oig.hhs.gov/oei/reports/oei-02-17-00490.pdf>.

### HHS–OIG’s Ongoing Work

The following table contains the full description of HHS–OIG’s ongoing telehealth audits and evaluations.

	<b>Title of Review</b>	<b>Description</b>	<b>Expected Issuance</b>
1	Data Snapshot: Review of Beneficiaries Relationships With Providers for Telehealth Services <sup>1</sup>	In response to the COVID–19 pandemic, both Congress and HHS expanded access to telehealth for a wide range of services. This expansion enhanced the ability of health-care providers to offer care to Medicare beneficiaries remotely during the COVID–19 pandemic. During the expansion, HHS used its enforcement discretion to relax the requirement that a beneficiary must have an established relationship with a provider to receive certain telehealth services. This data snapshot will describe the extent to which Medicare beneficiaries had established relationships with providers from whom they received telehealth services. We will also look for any differences in these relationships between traditional Medicare and Medicare Advantage and among the different types of telehealth services.	FY 2022

## HHS-OIG's Ongoing Work—Continued

The following table contains the full description of HHS-OIG's ongoing telehealth audits and evaluations.

	Title of Review	Description	Expected Issuance
2	Audit of Home Health Services Provided as Telehealth During the COVID-19 Public Health Emergency <sup>2</sup>	<p>On March 13, 2020, President Trump declared a national emergency in response to the COVID-19 pandemic, which allowed CMS to take proactive steps to support the response to COVID-19 through the use of section 1135 waivers. By means of this authority, CMS waived certain requirements to expand Medicare telehealth benefits to health-care professionals who were previously ineligible, including physical therapists, occupational therapists, speech language pathologists, and others. However, the waiver does not allow for payment of telehealth services on home health claims. In the COVID-19 Public Health Emergency Interim Final Rule With Comment, CMS amended regulations on an interim basis to allow home health agencies to use telecommunications systems in conjunction with in-person visits. In the CY 2021 Home Health Prospective Payment System Final Rule, CMS permanently finalized these changes. The final amended regulations state that the plan of care must include any provision of remote patient monitoring or other services furnished via telecommunications technology or audio-only technology, and that such services must be tied to patient-specific needs as identified in the comprehensive assessment. The regulations further state that telehealth services cannot substitute for a home visit ordered as part of the plan of care and cannot be considered a home visit for the purposes of patient eligibility or payment. We will evaluate home health services provided by agencies during the COVID-19 public health emergency to determine which types of skilled services were furnished via telehealth, and whether those services were administered and billed in accordance with Medicare requirements. We will report as overpayments any services that were improperly billed. We will make appropriate recommendations to CMS based on the results of our review.</p>	FY 2022

## HHS–OIG’s Ongoing Work—Continued

The following table contains the full description of HHS–OIG’s ongoing telehealth audits and evaluations.

	<b>Title of Review</b>	<b>Description</b>	<b>Expected Issuance</b>
3	Audits of Medicare Part B Telehealth Services During the COVID–19 Public Health Emergency <sup>3</sup>	Telehealth is playing an important role during the public health emergency, and CMS is exploring how telehealth services can be expanded beyond the public health emergency to provide care for Medicare beneficiaries. Because of telehealth’s changing role, we will conduct a series of audits of Medicare Part B telehealth services in two phases. Phase one audits will focus on making an early assessment of whether services such as evaluation and management, opioid use order, end-stage renal disease, and psychotherapy (Work Plan number W–00–21–35801) meet Medicare requirements. Phase two audits will include additional audits of Medicare Part B telehealth services related to distant and originating site locations, virtual check-in services, electronic visits, remote patient monitoring, use of telehealth technology, and annual wellness visits to determine whether Medicare requirements are met.	FY 2022
4	Home Health Agencies’ Challenges and Strategies in Responding to the COVID–19 Pandemic <sup>4</sup>	Home health agencies (HHAs) have faced unprecedented challenges to providing care during the COVID–19 pandemic. Reported challenges include, but are not limited to, procuring necessary equipment and supplies, implementing telehealth to treat patients remotely, and addressing staffing shortages. However, the full spectrum of these challenges, including how challenges have evolved over time, is unknown. HHAs have used strategies to address these challenges, but the array of strategies and the extent to which HHAs found them helpful are also unknown. This nationwide study will provide insights into the strategies HHAs have used to address the challenges presented by COVID–19, including how well their emergency preparedness plans served them during the COVID–19 pandemic.	FY 2022
5	Medicare Telehealth Services During the COVID–19 Pandemic: Program Integrity Risks <sup>5</sup>	In response to the COVID–19 pandemic, CMS implemented a number of waivers and flexibilities that allowed Medicare beneficiaries to access a wider range of telehealth services without having to travel to a health-care facility. This review will be based on Medicare Parts B and C data and will identify program integrity risks associated with Medicare telehealth services during the pandemic. We will analyze providers’ billing patterns for telehealth services. We will also describe key characteristics of providers that may pose a program integrity risk to the Medicare program.	FY 2022

## HHS–OIG’s Ongoing Work—Continued

The following table contains the full description of HHS–OIG’s ongoing telehealth audits and evaluations.

	<b>Title of Review</b>	<b>Description</b>	<b>Expected Issuance</b>
6	Use of Medicare Telehealth Services During the COVID–19 Pandemic <sup>6</sup>	In response to the COVID–19 pandemic, CMS made a number of changes that allowed Medicare beneficiaries to access a wider range of telehealth services without having to travel to a health-care facility. CMS proposes to make some of these changes permanent. This review will be based on Medicare Parts B and C data and will look at the use of telehealth services in Medicare during the COVID–19 pandemic. It will look at the extent to which telehealth services are being used by Medicare beneficiaries, how the use of these services compares to the use of the same services delivered in person, and the different types of providers and beneficiaries using telehealth services.	FY 2022
7	Medicaid—Telehealth Expansion During COVID–19 Emergency <sup>7</sup>	As a result of the COVID–19 pandemic, State Medicaid programs have expanded options for telehealth services. Rapid expansion of telehealth may pose challenges for State agencies and providers, including State oversight of these services. Our objective is to determine whether State agencies and providers complied with Federal and State requirements for telehealth services under the national emergency declaration, and whether the States gave providers adequate guidance on telehealth requirements.	FY 2022

<sup>1</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000613.asp>.

<sup>2</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000553.asp>.

<sup>3</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000556.asp>.

<sup>4</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000557.asp>.

<sup>5</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000535.asp>.

<sup>6</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000491.asp>.

<sup>7</sup><https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000488.asp>.

PREPARED STATEMENT OF NEIL H. MACBRIDE, NOMINATED  
TO BE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY

Thank you, Chairman Wyden, Ranking Member Crapo, and members of the committee, for the opportunity to appear before you today. Thank you, Senators Warner and Kaine, for your kind introductions. I am deeply honored that President Biden nominated me to be General Counsel for the Department of Treasury, and I am grateful to Secretary Yellen for her confidence in me.

I would like to begin by introducing my family: my amazing wife of 29 years Christina Jackson MacBride, and our three children, Duncan, Charlotte, and Alistair. As you all know, public service places great demands on one’s family, and I am very thankful to Chris and my children for their constant love and support throughout the last several months, and especially during my prior 15 years of public service.

I would also like to acknowledge my incredible parents: Ruth Parkerson MacBride—who just turned 90 and is watching today’s hearing from home—as well as my dad, Harvey MacBride, who passed away several years ago. And I’d like to acknowledge my wonderful in-laws, Rear Admiral Grady Jackson (USN Ret.) and Linda Jackson, who are watching from home.

My parents instilled in me a deep commitment to public service. They were children of the Great Depression and both from humble roots. My mom grew up in rural Indiana while my dad, the son of immigrants, was raised in the South Bronx. My parents modeled hard work and personal responsibility but also firmly believed that government had an obligation to help out those who were down on their luck, and

that Americans should give back to a country that had given them so much opportunity.

My parents' example led me to law school and subsequently into 15 years as a government attorney, serving in all three branches of government. The highlight of my public service, however, was spent right here in the United States Senate, when I was incredibly fortunate to spend 4 years as Chief Counsel to then-Senator Joe Biden on the Judiciary Committee.

I joined Senator Biden's staff 1 week before the September 11th terrorist attacks on our Nation and witnessed first-hand the strength, resolve, and resilience of this great body and its members during those challenging days. It is humbling to be seated on the "other side" of the dais in a Senate hearing room, after logging hundreds of hours on the back bench in Dirksen 226. Having spent 4 years working on the Judiciary Committee—including with Senator Cantwell, Senator Grassley, Senator Cornyn, and former Senator Hatch—I have enormous respect for the significant work of this committee in ensuring that the people's work is done.

I learned so much about the law and public service from then-Senator Biden, and I was privileged to work with him on important bipartisan legislation to protect vulnerable victims, whether of domestic violence, corporate fraud, or terrorism. I believe that experience, including seeing up close Congress enacting laws that are carried out by the executive branch, was incredibly helpful when I was later honored to serve as the United States Attorney in the Eastern District of Virginia. As U.S. Attorney, I partnered frequently with Treasury's enforcement offices to tackle banking and financial crimes—working closely with FinCEN, OFAC, SIGTARP, and IRS Criminal Investigation—and know first-hand the importance of their missions.

Treasury's responsibilities cover a range of issues that generate no shortage of complex, difficult legal questions. The Department has a crucial role to play in promoting a more fair and equitable economy, maintaining an effective tax system, bolstering our national security, and ensuring the continued dynamism of the U.S. economy.

My job as General Counsel will be, as Congress directed in its authorizing legislation, "the chief law officer of the Department." My role will not be to make policy or to oversee enforcement actions, but to provide legal advice to Secretary Yellen and other component heads, to manage Treasury's litigation positions, and to ensure that the Department's regulatory actions comply with the laws Congress enacts. I would be very fortunate to work alongside the Treasury Legal Division's dedicated, experienced, and immensely talented lawyers and professional staff.

If I am confirmed, I look forward to working closely with Congress, and especially members of this committee. I have enormous respect for this institution, and I am committed to maintaining a close working relationship between Treasury and Congress.

Thank you again, Mr. Chairman, for the opportunity to appear before this committee, and I look forward to answering your questions.

## **SENATE FINANCE COMMITTEE**

### **STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

#### **A. BIOGRAPHICAL INFORMATION**

1. Name (include any former names used): Neil Harvey MacBride.
2. Position to which nominated: General Counsel, U.S. Department of Treasury.
3. Date of nomination: June 8, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: October 14, 1965, Schenectady, New York.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:

8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):

University of Virginia School of Law, J.D., May 1992 (attended 8/89–5/92).

Houghton College, B.A., May 1987 (attended 8/83–5/87).

9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):

Partner

Davis Polk and Wardwell, LLP

901 15th Street, NW

Washington, DC 20005

April 2014–present

United States Attorney, Eastern District of Virginia

U.S. Attorney's Office

2100 Jamieson Avenue

Alexandria, Virginia 22314

September 2009–September 2013

Associate Deputy Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530

January 2009–September 2009

General Counsel and Vice President

Business Software Alliance

1150 18th Street, NW

Washington, DC 20036

November 2005–January 2009

Chief Counsel and Staff Director

U.S. Senator Joseph R. Biden, Jr.

United States Senate

Committee on the Judiciary

305 Senate Hart Office Building

Washington, DC 20510

August 2001–November 2005

Assistant United States Attorney

United States Attorney's Office for the District of Columbia

555 4th Street, NW

Washington, DC 20001

April 1997–August 2001

Associate

Verner, Liipfert, Bernhard, McPherson and Hand

901 15th Street, NW

Washington, DC 20005

September 1993–April 1997

Judicial Law Clerk

U.S. District Court Judge Henry C. Morgan, Jr.

U.S. District Court for the Eastern District of Virginia

600 Granby Street

Norfolk, Virginia 23510

August 1992–September 1993

Summer Honors Program Intern

U.S. Department of Justice, Antitrust Division

555 4th Street, NW

Washington, DC 20001

July 1991–August 1991

Summer Associate

Verner, Liipfert, Bernhard, McPherson and Hand

901 15th Street, NW

Washington, DC 20005

May 1991–July 1991

Summer Associate  
Green, Stewart and Farber  
2600 Virginia Avenue  
Washington, DC 20037  
May 1990–August 1990

Paralegal  
Brown and Wood  
One World Trade Center  
New York, New York 10048  
January 1989–August 1989

Deputy Press Secretary  
Frank Lautenberg for U.S. Senate Campaign  
Street Address Unknown  
New Brunswick, New Jersey  
March 1988–November 1988

Regional Field Coordinator  
Paul Simon for President Campaign  
Street Address Unknown  
Des Moines, Iowa  
November 1987–February 1988

Field Organizer  
Joe Biden for President Campaign  
Street Address Unknown  
Manchester, New Hampshire  
July 1987–September 1987

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

Former Member, U.S. Judicial Conference's Ad Hoc Committee to Review the Criminal Justice Act (2015–2017).

Former Ex Officio Member, Virginia State Bar Criminal Law Section Board of Governors (2010–2013).

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

None.

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

Member, Edward Bennett Williams Inn of Court (2005–present).

Member, National Association of Former U.S. Attorneys (2013–present).

Member, U.S. Supreme Court Historical Society (2018–present).

Member, White Collar Committee, American Bar Association (2017–present).

Board of Advisors, National Security Institute, George Mason University Law School (2016–present).

Board of Advisors, The Network Group, Inc. (2017–2020).

Former Board of Advisors, The Center on Law and Security, New York University Law School (2007–2009).

Former Co-Chair, Trans-National Crimes Subcommittee, American Bar Association (2014–2017).

Former Member, ABA Cybersecurity Legal Task Force, American Bar Association (2012–2014).

Member, Washington Golf and Country Club (2014–present).

Member, Metropolitan Club, Washington DC (2019–present).

Member, Cannon Club, Lothian Maryland (2015–present)..

Member, UVA Club of New York (2018–present).

Member, Overlee Community Association Pool, Arlington, Virginia (2004–2013).

13. Political affiliations and activities:

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

None.

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

None.

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

\$2,900 contribution to Sean Patrick Maloney for Congress (3/31/21).

\$2,900 contribution to Sean Patrick Maloney for Congress (3/31/21).

\$2,500 contribution to Terry McAuliffe (2/19/21).

\$1,250 contribution to Phil Weiser for Attorney General (2/7/21).

\$1,000 contribution to BackPAC Leadership Political Action Committee (10/21/20).

\$2,800 contribution to Abigail Spanberger for Congress (10/15/20).

\$25,000 contribution to Biden Victory Fund (9/29/20).

\$2,800 contribution to Biden Victory Fund (9/13/20).

\$2,800 contribution to Biden For President (4/13/20).

\$2,800 contribution to Sean Patrick Maloney for Congress (3/4/20).

\$2,800 contribution to Friends of Don Beyer (3/4/20).

\$5,000 contribution to Unite The Country (3/3/20).

\$2,800 contribution to Barry Grissom for U.S. Senate (7/17/19).

\$2,800 contribution to Biden For President (4/25/19).

\$2,800 contribution to John Walsh for Senate (4/17/19).

\$1,000 contribution to Friends of Don Beyer (2/25/19).

\$1,000 contribution to Theo Stamos for Arlington Commonwealth's Attorney (2/23/19).

\$5,000 contribution to Friends of Mark Warner (2/11/19).

\$500 contribution to Jennifer Wexton for Congress (10/12/18).

\$1,000 contribution for to Friends of Don Beyer (7/13/18).

\$1,000 contribution to Bob Casey for Senate (6/21/18).

\$5,000 contribution to Tim Kaine Victory Fund (5/21/18).

\$5,000 contribution to the American Possibilities PAC (3/14/18).

\$2,700 contribution to Sheldon Whitehouse for Senate (3/13/18).

\$1,000 contribution to Paul Pelletier for Congress (12/8/17).

\$1,000 contribution to Doug Jones for Senate (12/8/17).

\$1,000 contribution to Friends of Don Beyer (10/16/17).

\$2,700 contribution to Sean Patrick Maloney for Congress (9/30/17).

\$1,000 to Justin Fairfax for Lt. Governor of Virginia (4/25/17).

\$2,700 contribution to Sean Patrick Maloney for Congress (3/31/17).

\$500 contribution to Gene Rossi for Lt. Governor of Virginia (3/16/17).

\$1,500 contribution to Kaine for Virginia (3/13/17).

\$2,700 contribution to Evan Bayh Committee (10/24/16).

- \$2,700 contribution to Hillary for America (8/30/16).
- \$10,000 contribution to Hillary Victory Fund (8/30/16).
- \$7,300 contribution to Hillary Victory Fund (8/30/16).
- \$1,000 contribution to Conner Eldridge for Arkansas (2/18/16).
- \$1,000 contribution to Friends of Don Beyer (12/20/15).
- \$2,700 contribution to Sean Patrick Maloney for Congress (9/26/15).
- \$250 contribution to Theo Stamos for Arlington County Commonwealth's Attorney (4/21/15).
- \$250 contribution to Friends of Don Beyer (4/17/15).
- \$2,600 contribution to Sean Patrick Maloney (5/6/14).
- \$1,000 contribution to Friends of Don Beyer (3/11/14).

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

Phi Alpha Theta, History Honor Society (1986).

Merritt Memorial Pre-Law Scholarship, Houghton College, applied at University of Virginia School of Law (1989–1992).

U.S. Department of Justice Special Achievement Awards (1996, 1997).

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

"House passes insider trading bill," Davis Polk Client Alert Memorandum (May 25, 2021), <https://www.davispolk.com/>.

"SEC and CFTC enforcement update," Davis Polk Client Newsletter (May 4, 2021), <https://www.davispolk.com/>.

"SEC establishes Enforcement Division Climate and ESG Task Force," Davis Polk Client Memorandum (March 5, 2021), <https://www.davispolk.com/>.

"SEC changes enforcement practice for settlement offers in cases involving waivers," Davis Polk Client Alert Memorandum (February 12, 2021), <https://www.davispolk.com/>.

"SEC acknowledges that disgorgement principles in Liu apply to administrative proceedings," Davis Polk Client Memorandum (February 9, 2021), <https://www.davispolk.com/>.

"DOJ and SEC FCPA Resolution Tracker," Davis Polk Client Newsletter (January 29, 2021), <https://www.davispolk.com/>.

"Supreme Court relies on 'Bridgegate' case to vacate Second Circuit insider trading decision," Davis Polk Client Memorandum (January 26, 2021), <https://www.davispolk.com/>.

"Veto override enacts expanded SEC disgorgement authority," Davis Polk Client Memorandum (January 4, 2021), <https://www.davispolk.com/>.

"CFTC Reports Record Year for Enforcement," Davis Polk Client Memorandum (December 4, 2020), [https://www.davispolk.com/sites/default/files/cftc\\_reports\\_record\\_year\\_for\\_enforcement.pdf](https://www.davispolk.com/sites/default/files/cftc_reports_record_year_for_enforcement.pdf).

"SEC Announces 2020 Enforcement Results," Davis Polk Client Memorandum (November 3, 2020), [https://www.davispolk.com/sites/default/files/sec\\_announces\\_2020\\_enforcement\\_results.pdf](https://www.davispolk.com/sites/default/files/sec_announces_2020_enforcement_results.pdf).

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

None.

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

Over the last 20 years I have served in senior legal and management positions in the public and private sectors involving certain of the legal, policy and management issues I would face as Treasury General Counsel, including as United States Attorney for the Eastern District of Virginia, Associate Deputy Attorney General, a law firm partner (involving both office and practice group management positions), and as a General Counsel to a major trade association.

## B. FUTURE EMPLOYMENT RELATIONSHIPS

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

If confirmed by the Senate, I will sever all such connections. Note that pursuant to the defined benefit plan for Davis Polk and Wardwell, LLP partners, if I am confirmed by the Senate once I resign from my law firm I am eligible either (a) to receive a monthly lifetime retirement benefit in the form of a variable annuity starting at age 59½, or (b) to roll over the defined benefit plan. If confirmed by the Senate, I will remain a participant in this defined benefit, unless I elect to roll it over, but will not accrue additional benefits under these plans after I withdraw from my law firm.

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

No.

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

No.

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

### C. POTENTIAL CONFLICTS OF INTEREST

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Treasury's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department of Treasury's designated agency ethics official and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Treasury's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department of Treasury's designated agency ethics official and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

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

None.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Treasury's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department of Treasury's designated agency ethics official and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

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

Provided to the committee.

### D. LEGAL AND OTHER MATTERS

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

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details.  
No.
3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.  
No.
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.  
No.
5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.  
None.

#### E. TESTIFYING BEFORE CONGRESS

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

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#### QUESTIONS SUBMITTED FOR THE RECORD TO NEIL H. MACBRIDE

##### QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

*Question.* I want to discuss an issue that is of serious concern—our growing affordable housing crisis and the need to build millions more housing units in Washington State and nationwide.

I have been working with Senator Young, along with the chairman and Senator Portman, to expand and strengthen the Low-Income Housing Tax Credit.

Our legislation includes several critical increases to Housing Credit resources and improvements to the program: a 50-percent allocation increase for the credit overall, a reduction of the current 50-percent bond threshold to 25 percent so projects can more easily access much-needed Housing Credit equity, and important basis boosts to help extremely low-income populations as well as high need areas including rural and tribal communities.

This is something we have been able to make incremental progress on, most recently last December with the enactment of the 4 percent floor. But as we recover from the pandemic, now more than ever families need access to more affordable housing. We have much more to do here.

I was pleased to see that the House Ways and Means reconciliation title included \$29 billion in funding for LIHTC and included many of the eligible provisions of our bill, and I hope we can match that historic investment in affordable housing here in this committee.

I look forward to working with you to strengthen and expand LIHTC this Congress.

As we work towards these reforms, will you commit to do all you can to work with myself, Senator Young, and our colleagues on expanding and improving the Low-Income Housing Tax Credit?

Will you work to ensure that increasing the quantity and quality of affordable housing is a top priority for the Department of Treasury?

Answer. I am committed to increasing the quantity and quality of affordable housing through the Low-Income Housing Tax Credit (LIHTC). The measure that Con-

gress enacted through leadership from you and other members of this Committee is a critically important initiative that will help to make the LIHTC more effective and to increase housing affordability across the country. If I am privileged to be confirmed, I would be honored to work with you on additional measures to strengthen and improve the LIHTC.

*Question.* The American Rescue Plan provided \$350 billion for State, local, and tribal governments to address the impacts of COVID-19 and support the economic recovery of our communities. That included more than \$4.4 billion to the State of Washington.

Our State legislature has directed more than \$600 million of that funding to go towards the removal and replacement of culverts that block salmon passage—essentially, drainage systems that move streams and rivers under roads, rail and other man-made infrastructure.

Salmon are a big deal for us in the Northwest. They are vital to Washington's economy and our identity, and our Nation also has a treaty obligation to protect tribal fishing rights. But our salmon populations are declining, and we need to make every effort possible to restore those salmon runs.

We know that the most significant thing we can do is to clear these blockages that prevent salmon from returning to their native streams and restore their habitat. Our State agencies estimate that removing just those culverts owned by the State will increase the number of mature salmon by at least 200,000.

But our State hasn't been able to move forward on putting \$600 million in Federal funding towards these important projects because of a lack of clarity from Treasury. The Department's guidance on State and local funds includes eligibility for water infrastructure projects. But the State has not gotten any assurances from Treasury that culvert projects are included in this definition.

Will you work to address this issue and give the State of Washington the clarity it needs to move forward with being able to use these funds?

*Answer.* I understand the importance of salmon to Washington's economy and identity. If I am privileged to be confirmed I would be pleased to work with you on this important issue to provide clarity around Treasury's guidance on State and local funds.

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QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO

*Question.* As a former Associate Deputy Attorney General and U.S. Attorney for the Eastern District of Virginia, you oversaw criminal enforcement and civil litigation on behalf of the United States. You also served as a Federal prosecutor in the U.S. Attorney's Office for the District of Columbia.

Can you share with us how your experience will help inform and prepare you for this new role at Treasury?

*Answer.* I spent 15 years as a government attorney in public service, including in the U.S. Senate and the U.S. Department of Justice. My decade as a Federal prosecutor focused on protecting public safety and defending vulnerable victims, whether of domestic violence, corporate fraud, organized crime, or terrorism. As the United States Attorney in the Eastern District of Virginia, I targeted corporate fraud, bank fraud and consumer fraud—with a focus on real world victims—using all the criminal and civil tools at my office's disposal. This included standing up the Virginia Financial Fraud Task Force, working closely in partnership with other Federal and State agencies (*e.g.*, FBI, Securities Exchange Commission, Commodity Futures Trading Commission, U.S. Postal Inspection Service, Federal Reserve and FDIC Inspectors General Offices, Virginia Corporation Commission). I also partnered closely with Treasury's enforcement offices to tackle national security threats and financial crimes, including with OFAC, FinCEN, SIGTARP, and IRS Criminal Investigative Division. Including my work as a Senate counsel, I believe my extensive experience at the intersection of law enforcement, national security, and financial enforcement matters have prepared me well to serve as Treasury General Counsel, if I am privileged to be confirmed.

*Question.* How will you ensure—through your role—that Treasury and its agencies are proactive, responsive and fair in addressing taxpayer's needs in an equitable manner?

Answer. Based on my 15 years of public services in all three branches of government, I am firmly committed to our government working fairly, efficiently, and responsibly for the American people. That belief will guide my work every day if I am privileged to be confirmed.

*Question.* In your opening statement, you noted the importance of “promoting a more fair and equitable economy, maintaining an effective tax system, bolstering our national security, and ensuring the continued dynamism of the U.S. economy.” These are important goals to bring to the Treasury and its broad mission. Given your service and work as a government official on law enforcement, national security, and financial enforcement, how will you address difficult legal questions on these matters?

Answer. While Treasury’s responsibilities cover a range of issues that generate no shortage of complex, difficult legal questions, if confirmed I would be very fortunate to work alongside the Treasury Legal Division’s dedicated, experienced, and immensely talented lawyers and professional staff. As the “chief legal officer” of Treasury, my job would be to ensure that the Department carries out its mission in fidelity to the law.

*Question.* What do you think is a particular area or issue of emerging concern that may arise during your time in this role at Treasury?

Answer. There are likely several emerging or priority areas which will confront the Treasury Legal Division in the next few years, including cryptocurrency, climate change, the Department’s sanctions review, and the implementation of anti-money laundering authorities under the Corporate Transparency Act.

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QUESTIONS SUBMITTED BY HON. ELIZABETH WARREN

*Question.* We have now spoken multiple times regarding my concerns about your previous private-sector employment and your numerous trips through the revolving door. Given your recent work on behalf of clients like ExxonMobil, S&P, Wells Fargo, J.P. Morgan, Morgan Stanley, Facebook, AstraZeneca, and Cisco Systems, I have asked you to make some commitments that will help at least reduce the speed of the revolving door and reassure the American public that you are working for them and not clients, past or future.

You have not made those commitments to date, so let me ask one more time.

Will you commit to recuse yourself from working on any matters related to your former clients—including ExxonMobil, Wells Fargo, Morgan Stanley, AstraZeneca, and others—for 4 years if confirmed?

Answer. I have no financial interests in any of my former clients. If I am privileged to be confirmed, I will comply with the requirements set forth in my Ethics Agreement to terminate my outside position with and divest my financial interest in my law firm. I have dedicated over half my career to serving and protecting our country. I will always seek to serve the good of our country and the good of the American people. I have made extensive ethics commitments as requested by the Office of Government Ethics and documented in a written agreement, which I have signed. My Ethics Agreement and the President’s Ethics Pledge will require me, if confirmed and appointed, to recuse myself for a period of 2 years from participating personally and substantially in any particular matter involving specific parties in which I know that a former employer or client identified in my Ethics Agreement is a party or represents a party, unless I am first authorized to participate by the appropriate ethics official. If confirmed, I agree to extend this term of my Ethics Agreement from 2 years to 4 years. I will ensure that I have a robust screening process in place to help implement these recusals.

*Question.* Ethics law requires a 2-year recusal commitment, and other administration officials, including Defense Secretary Lloyd Austin, were able to commit to extending their recusal period for 4 years. But even if you commit to a 4-year recusal period, you could still seek waivers to that recusal that would allow you to participate in matters that directly affect the financial impacts of your former clients.

Will you commit, if confirmed, not to seek any waivers from any ethics recusals that prohibit you from working on matters related to your former clients?

Answer. I have no intention to seek a waiver and no expectation that it will be required, but if unanticipated circumstances were to arise, I would consider available alternatives to a waiver before seeking one and would consult very carefully

with career Department ethics officials. If I am privileged to be confirmed, I can pledge to you I will be mindful of not only the legal requirements that govern my conduct but also of appearances to ensure that the public has no reason to question my impartiality. I will consult with career Department ethics officials on these issues and require everyone who serves with me to ensure public service is and will remain a public trust.

*Question.* The revolving door centers on conflicts of interest related to what work people do before they enter government, but also what they do after government service. For example, *The New York Times* just reported this month that “the largest U.S. accounting firms have perfected a remarkably effective behind-the-scenes system to promote their interests in Washington,” with their employees “tak[ing] senior jobs at the Treasury Department, where they write policies that are frequently favorable to their former corporate clients,” after which “the firms welcome them back with loftier titles and higher pay.”<sup>1</sup> The American public deserves to know that if confirmed to this key role at the Treasury Department, you will be working from them, not on behalf of companies that you may be seeking employment from in the near future.

Will you commit not to seek employment with or be compensated by any company you interact with during your time in government for 4 years after you leave government service?

*Answer.* I have promised to abide by the extensive post-government employment ethics rules required by Federal law and the Biden administration, just as I have complied with the ethics rules throughout my 29-year career in public service and private industry. These statutory and administration provisions set forth comprehensive restrictions relating to communicating back to the Federal Government on behalf of any future employers and clients. I believe that these existing rules are appropriate and sufficient to protect the public interest. If confirmed, I will carry out the responsibilities of the Treasury General Counsel honorably, and I will seek any post-government employment in full compliance with the applicable ethics rules.

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QUESTIONS SUBMITTED BY HON. MIKE CRAPO

NATIONAL DEBT/SOCIAL SECURITY AND MEDICARE TRUST FUNDS

*Question.* I appreciate the commitment you expressed in the hearing to share information with the Finance Committee regarding Treasury and the Fed’s plans to prioritize payments in the event of a breach of the national debt limit.

I am deeply concerned about the long-term stability of our government finances and their impact on Americans’ economic prospects. At a time of significant economic uncertainty created by the COVID-19 pandemic, the Biden administration delayed by almost five months the release of the Social Security and Medicare Trustees Reports, even as it has advocated for unprecedented increases in Federal spending.

If confirmed as General Counsel of the Treasury Department, will you commit to urging Secretary Yellen, the Managing Trustee of the Social Security and Medicare Trust Funds, to release future Trust Fund Annual Reports each year by April 1 as required by the Social Security Act?

*Answer.* I deeply respect the oversight function of this Committee. If I am privileged to be confirmed, I would very much like to work in a collaborative way with members of the Committee to provide timely, complete, detailed, and accurate information in line with the traditional partnership that Treasury and the Committee have had in the past. I would need to be fully briefed by Treasury staff to better understand the timing issues mentioned as part of this question. If I am privileged to be confirmed, I would very much welcome this conversation so that we can provide satisfactory and timely information to the Committee.

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<sup>1</sup>*The New York Times*, “How Accounting Giants Craft Favorable Tax Rules From Inside the Government,” Jesse Drucker and Danny Hakim, September 19, 2021, <https://www.nytimes.com/2021/09/19/business/accounting-firms-tax-loopholes-government.html>.

## TAXPAYER PRIVATE INFORMATION/PROPUBLICA

*Question.* On June 8, advocates at ProPublica, in the interest of a clear political agenda, began disclosing private, legally-protected taxpayer information and named particular individuals in an ongoing series of articles. ProPublica claimed that it had obtained a “vast trove of Internal Revenue Service data on the tax returns of thousands of the Nation’s wealthiest people, covering more than 15 years.” Section 6103 (26 U.S. Code) of the Internal Revenue Code, intended to reinforce privacy protections for American taxpayers, provides for confidentiality, privacy, and penalties for certain disclosure of returns and return information.

Please describe your understanding of how section 6103 applies to ProPublica’s release of legally-protected, private taxpayer information and identify whether, if confirmed, you feel any obligation to investigate ProPublica’s releases of private information, including contacting authors and executives at ProPublica.

*Answer.* I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 U.S.C. section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney’s Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.

## CONFLICTS OF INTEREST

*Question.* If confirmed, your ethical conduct, including conduct related to conflicts of interest, is very important particularly when serving in such an important position such as General Counsel of the Treasury Department.

Will you commit to recuse yourself from any decisions involving previous clients or employers for 2 years after being confirmed, in accordance with the Biden administration’s ethics pledge?

*Answer.* I have no financial interests in any of my former clients. If I am privileged to be confirmed, I will comply with the requirements set forth in my Ethics Agreement to terminate my outside position with and divest my financial interest in my law firm. I have dedicated over half my career to serving and protecting our country. I will always seek to serve the good of our country and the good of the American people. I have made extensive ethics commitments as requested by the Office of Government Ethics and documented in a written agreement, which I have signed. My Ethics Agreement and the President’s Ethics Pledge will require me, if confirmed and appointed, to recuse myself for a period of 2 years from participating personally and substantially in any particular matter involving specific parties in which I know that a former employer or client identified in my Ethics Agreement is a party or represents a party, unless I am first authorized to participate by the appropriate ethics official. If confirmed, I agree to extend this term of my Ethics Agreement from 2 years to 4 years. I will ensure that I have a robust screening process in place to help implement these recusals. I have no intention to seek a waiver and no expectation that it will be required, but if unanticipated circumstances were to arise, I would consider available alternatives to a waiver before seeking one and would consult very carefully with career Treasury ethics officials.

I have committed to abide by the extensive post-government employment ethics rules required by Federal law and the Biden administration, just as I have complied with the applicable ethics rules throughout my 29-year career in public service and private industry. If confirmed, I will carry out the responsibilities of the Treasury General Counsel honorably and will seek any post-government employment in full compliance with the applicable ethics rules.

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 QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* In your written testimony you note that you’ve worked with the Criminal Investigation division of the IRS. Therefore, I assume you realize how important it is that tax information provided to the IRS is protected and is kept confidential.

Since June 8th, ProPublica has been publishing stories based on the apparent illegal disclosure of confidential tax information. Despite my efforts as ranking member of the Judiciary Committee and Ranking Member Crapo's here at Finance, we've been provided very little information as to the status of any investigations.

Do you agree that maintaining the confidentiality of taxpayer information is very important, and that any possible breach must be thoroughly investigated?

If confirmed, do you pledge to work with me and other Senators, to carry out our constitutional duty of oversight, and keep us informed on the status of any such investigation? And, would you advise Secretary Yellen to do the same?

What is the current status of active investigations into the source of the information ProPublica is publishing? If you are not able to answer this question because you are not yet confirmed, will you commit to provide me a briefing if you are confirmed?

Answer. I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including taxpayer information, is illegal and must be taken extremely seriously. If I am privileged to be confirmed, I pledge to work with the Finance Committee on oversight requests. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. While I am not privy to non-public information about the current status of the investigation, if I am privileged to be confirmed I commit to make sure the Treasury Department continues to work with relevant oversight bodies, to gather the facts, ensure accountability, and work to prevent unauthorized access or disclosure to the fullest extent possible.

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QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* Should you be confirmed, will you agree to provide timely and thorough responses to questions from members of the Senate Finance Committee?

Answer. I deeply respect the oversight function of this Committee. If I am privileged to be confirmed, I would like very much to work in a collaborative way with the Committee to provide timely, complete, detailed, and accurate information in line with the traditional partnership that Treasury and the Committee have had in the past.

*Question.* How would you ensure the Treasury Department acts in fidelity to the law?

Answer. Congress's authorizing statute, 31 U.S.C. section 301, defines the Treasury General Counsel as the Department's "chief law officer." Moreover, the specific responsibilities of the Treasury General Counsel are set forth in Treasury Order 107-04 (issued September 29, 2020), and include providing legal advice to the Secretary, Deputy Secretary and the other component heads related to Treasury's statutory responsibilities; managing Treasury's position in lawsuits; and reviewing the Department's regulatory actions. If I am privileged to be confirmed as Treasury General Counsel, I would be bound by the authorizing statute to ensure the Department acts in fidelity with the laws Congress enacted and the binding case law of the Federal courts. Having previously spent 4 years as a Senate counsel, I am fully committed to ensuring the Department's legal positions comport with the laws as Congress enacted.

*Question.* In response to the recent breach of private taxpayer information at the Internal Revenue Service (IRS), of which that information was leaked to ProPublica, the Treasury Department said that the unauthorized disclosure of confidential government information is illegal. However, it is unclear what actions the Treasury Department and IRS have taken to provide accountability over the significant security lapse, or what steps have been taken to prevent such an event from happening again.

If confirmed, how would you provide accountability at Treasury in regard to this particular breach of private taxpayer information?

If confirmed, will you commit to providing me a timely and thorough update on this particular data breach and the measures Treasury has taken to provide accountability?

Answer. I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 U.S.C. section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.

*Question.* The administration has proposed requiring banks, credit unions, and other financial institutions to report annual financial account activity from their customers to the IRS, including certain deposits, withdrawals, and transactions.

Given the expansive breadth of this particular proposal, what privacy and security concerns would such an initiative present to taxpayers? Should private taxpayer information be compromised in such a process, how would the Treasury Department provide accountability?

Answer. My understanding is the proposed financial institution reporting provisions advanced in the President's tax compliance agenda will help shed light on taxpayers who evade their tax obligations. The tax gap is concentrated at the top of the income distribution, with the top one percent of earners with the highest incomes responsible for nearly 30 percent of unpaid taxes which totaled over \$160 billion in tax year 2019. This inequity is closely tied to gaps in information reporting, namely the disparity between when information is reported to the IRS by a third-party source to facilitate verifying the accuracy of taxpayer filings, and when it is not. My understanding is that the proposal would simply add two additional pieces on information on the Form 1099-INT (or successor form) that banks are already required to file. I take the issue of private taxpayer information extremely seriously and if I am privileged to be confirmed look forward to working with my Treasury colleagues to ensure that privacy and security issues are fully addressed.

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QUESTIONS SUBMITTED BY HON. ROB PORTMAN

*Question.* Part of your responsibilities as General Counsel of the Treasury Department will be reviewing regulations and other guidance issued by the Department. It is my understanding that the attorneys of the Office of Tax Policy and the IRS Office of Chief Counsel have primary responsibility for legal analysis of tax regulatory actions; whereas the Office of General Counsel examines their analysis and expertise in the review of all tax regulatory actions. Furthermore, what principles of statutory interpretation will you apply in developing and reviewing regulations?

Answer. If I am privileged to be confirmed, I will seek to ensure that the Department of the Treasury's approach to all Federal statutes, including the tax laws, is guided by the traditional tools of statutory interpretation. Those traditional tools include the text, structure, and context of the statute, as well as any relevant precedent.

*Question.* The bipartisan Infrastructure Investment and Jobs Act includes a provision which updates current information reporting requirements under Internal Revenue Code sections 6045 and 6045A to explicitly include cryptocurrency brokers. There is a general consensus that there should be better and more consistent reporting on cryptocurrency transactions, and that this would be good for holders of cryptocurrency. This reporting requirement would standardize basic information reporting by crypto brokers for tax purposes to help provide certainty for everyday Americans looking to invest in these digital assets.

During and after the passage of this act in the Senate there was concern about who would be included in the definition of a cryptocurrency brokers. The Treasury Department and the nonpartisan Congressional Joint Committee on Taxation and have indicated that the current language is clear and that the reporting requirements do not include entities which many feared might be considered brokers, par-

ticularly those involved with validating distributed ledger transactions, such as miners, and certain software and hardware providers. Senator Warner and I sought to clarify this provision with a colloquy to address the concern. We wanted to make it clear that a broker is defined as quote “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.” The congressional intent of the provision was that a broker would not include miners, stakers, hardware and software sellers for digital wallets, and certain others who play a key role in validating transactions.

Can you assure me that if the bipartisan Infrastructure Investment and Jobs Act becomes law, the regulations promulgated by the Treasury Department would be appropriately scoped according to congressional intent?

Specifically, can you commit that ancillary digital asset entities or players who do not have and cannot get information intended to be captured by the reporting requirements for brokers, will not be considered a broker under this provision?

Further, will you commit to working with Congress to implement any laws and accompanying regulations under the purview of the Treasury Department in a manner that is both timely and reflective of our intent?

Answer. Congress’s authorizing statute, 31 U.S.C. section 301, defines the Treasury General Counsel as the Department’s “chief law officer.” Moreover, the specific responsibilities of the Treasury General Counsel are set forth in Treasury Order 107–04 (issued September 29, 2020), and include providing legal advice to the Secretary, Deputy Secretary and the other component heads related to Treasury’s statutory responsibilities; managing Treasury’s position in lawsuits; and reviewing the Department’s regulatory actions. If I am privileged to be confirmed as Treasury General Counsel, I would be bound by Treasury’s authorizing statute to ensure the Department acts in fidelity with the laws Congress enacted and the binding case law of the Federal courts. Having previously spent 4 years as a Senate counsel, I am fully committed to ensuring the Department’s legal positions are appropriately scoped according to congressional intent and the statutory text.

*Question.* Section 170(h) of the Internal Revenue Code provides that land conservation and historic preservation easement transactions can qualify for charitable tax deductions provided certain conditions are met. This provision was codified in 1980, and the policy was meant to encourage land conservation and the preservation of historic buildings. In the legislation, the IRS was directed to issue detailed regulations so that potential donors of easements could be “secure in the knowledge that a contemplated contribution will qualify for a deduction.” Today, 40 years later, model easement agreements, sample deeds, or other detailed regulatory guidance have not been provided by the IRS. This guidance is needed to ensure that taxpayer have clarity on what is needed to properly claim the deduction. Instead, attorneys at the IRS have told the National Taxpayer Advocate that they will issue “guidance through litigation.” In one recent example, the IRS denied a charitable tax deduction because a historic building owner installed a wheelchair ramp to comply with the Americans with Disabilities Act (ADA). Eventually, Chief Counsel issued advice clarifying that the installation of an ADA ramp was permissible and in line with the congressional intent of the ADA. Thousands of taxpayers who have donated easements on their properties are working their way through audits, appeals, and the U.S. Tax Court. All of this generates unnecessary expense for taxpayers and the government, and is completely counterproductive. Straightforward regulations could clear the decks of a large majority of tax controversy over conservation easements.

If confirmed, will you pledge to direct the Chief Counsel of the IRS that office revisit this “guidance through litigation” strategy related to conservation easements?

Will you pledge to issue sample easement agreements, model deeds, and detailed guidance to taxpayers so that they can be secure in the knowledge that a contemplated easement contribution will qualify for a deduction?

Will you work with the IRS Chief Counsel to establish policies that differentiate legitimate actors utilizing this congressionally authorized tax incentive from those engaging in abusive transactions?

I have posed similar questions of the Treasury Secretary, Deputy Secretary, and Assistant Secretary for Tax Policy and have received generic answers. I would like to request yes or no answers to all three of these specific asks.

Answer. Taxpayer certainty with regard to tax treatment in all issues is an important goal for the system at large. While I am not familiar with the important issue you raise, if I am privileged to be confirmed I will confer with my Office of Tax Pol-

icy colleagues to understand these matters. I very much appreciate the importance of creating certainty for taxpayers on this issue and commit to work with you once I am briefed on these issues.

*Question.* During COVID-19, the IRS has struggled with processing tax forms and returns in a timely fashion as well as answering its phones to provide assistance to taxpayers. These failures and delays include significantly slower processing times for requests for Form 6166, Certification of U.S. Tax Residency, than before the pandemic.

U.S. investors—including pension funds—need Form 6166 to demonstrate to foreign countries that the U.S. investor is eligible for a lower tax rate on their investments because of the treaty between the U.S. and the foreign country. Without a Form 6166, U.S. investors pay foreign taxes at a higher rate than agreed to under our tax treaties and effectively gift a portion of their investment gains to foreign governments. It can be difficult or impossible for U.S. investors to claim a refund of these excess taxes from foreign countries at a later date, meaning that U.S. investors can be permanently harmed when they do not receive a Form 6166 in a timely fashion. Some countries may offer a tax reclaim procedure in theory but this has proven to be unoperable and cumbersome in practice, with U.S. investors being unsuccessful in obtaining retrospective refunds. In those cases, relief at source is the only viable relief procedure available, stressing the importance of receiving a Form 6166 in a timely manner so tax relief is not permanently lost.

By some estimates, the IRS has issued approximately 40 percent of the Forms 6166 requested by U.S. investors in 2021. For comparison, the IRS typically has issued more than 95 percent of the Forms 6166 requested by U.S. investors by this point in a non-COVID year. In addition, it has been difficult to get through to the IRS by phone to determine the status of a request or resolve outstanding issues in receiving a Form 6166. Hundreds of millions of dollars in refunds that U.S. investors are entitled to are at stake. This includes refunds for pension funds that help hardworking Americans fund a comfortable retirement.

If you are confirmed, what will you do to ensure that the IRS makes it a priority to process all forms in a timely manner including the outstanding requests for Forms 6166 and increases telephone assistance for taxpayers?

Specifically, what steps will you take to ensure that the 2022 issuance process, which begins on December 1, 2021, does not suffer the same delays and other problems that have occurred during the 2021 issuance process?

Answer. I agree with the importance of timely issuance of Forms 6166 and, if I am privileged to be confirmed, commit to being fully briefed on these important issues. In my capacity as Treasury's chief legal officer, I will ensure that I provide my best legal advice in a timely fashion.

*Question.* As you know, Treasury serves as a powerful stabilizing force for our country. Part of that stability is preserved by insulating Treasury from politics, which is central to the role of the General Counsel.

Do you agree that Treasury's work to combat illicit financial activity, impose sanctions, and conduct national security reviews through the CFIUS process should be free from political interference? Do you believe the same is also true for tax administration and enforcement at the IRS?

Answer. I agree completely that the Treasury Department's important work, including both through the CFIUS process and through the IRS's tax administration and enforcement, should be done in a fair and even-handed manner, keeping politics out of the process.

*Question.* Can you further commit to doing everything within your power to prevent the unauthorized disclosure of taxpayer information? Furthermore, please describe the steps the Department of the Treasury and Internal Revenue Service are taking to prevent any further unauthorized disclosure of taxpayer information.

Answer. I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 U.S.C. section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged

to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.

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QUESTION SUBMITTED BY HON. PATRICK J. TOOMEY

PILLAR ONE IMPLEMENTATION

*Question.* During the Senate Finance Committee hearing on September 22, 2021, I asked if you share the view that implementation of Pillar One of the OECD/G20 Two-Pillar Solution would require a treaty vote in the Senate. You responded that you would need to dig into this issue.

As you stated, your job as General Counsel would be to “ensure the department carries out all of its activities in compliance with law.” Implementation requirements of the Two-Pillar Solution are a pressing legal issue as the administration continues international discussions regarding this agreement.

As a follow up to my question during the hearing, Mr. MacBride, do you agree that Pillar One would need to be approved by two-thirds of the Senate, in the same matter that all current tax treaties were approved by the Senate?

*Answer.* Among other things, Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.

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QUESTIONS SUBMITTED BY HON. TIM SCOTT

*Question.* Under the Consolidated Appropriations Act of 2021, the Secretary of the Treasury is statutorily required to testify before the House Committee on Small Business on the operation of the COVID-19 relief programs within 120 days of the enactment of the Act. To date, Treasury Secretary Janet Yellen has flouted U.S. law by refusing to testify. If confirmed as the Treasury’s top legal advisor, will you advise and counsel Secretary Yellen to follow the law and testify before Congress as legally required?

*Answer.* I deeply respect the oversight function of this Committee as does Secretary Yellen. If I am privileged to be confirmed, I would like very much to work in a collaborative way with the Committee to provide timely, complete, detailed, and accurate information in line with the traditional partnership that Treasury and the Committee have had in the past.

*Question.* Please answer the following with a “yes” or “no” response. Do you believe that an agreement (or agreements) with foreign governments that are intended to modify the current treatment of taxing rights and allow residual profits to be taxed in market jurisdictions where goods or services are used or consumed should be considered as a treaty (or treaties) in the United States, requiring ratification by two-thirds of the Senate?

Please further elaborate upon your “yes” or “no” answer.

*Answer.* Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.

*Question.* Is it your opinion that the United States Government would lose or gain revenue from enactment of the OECD/G20 Pillar One agreement as outlined in the

July 1, 2021 “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy”?

Answer. The U.S. Pillar One tax revenue modeling involves estimating the impact of reallocating taxing rights to the U.S. from foreign jurisdictions, from the U.S. to foreign jurisdictions, and among U.S. MNE affiliates in foreign jurisdictions. The tax impact is both direct and indirect (*i.e.*, change in foreign tax credits).

In general, as a large consumer market the U.S. benefits from reallocations of profit from foreign jurisdictions. To the extent that the U.S. market is more profitable than other markets and depending on the methodology for determining the relieving jurisdiction, some profit may be reallocated to foreign markets. However, to the extent that profit reallocations occur among foreign subsidiaries of U.S.-parented MNEs, that reduces any impact on U.S. revenues.

In general, there are both positive and negative considerations, and the estimates depend on the details of the Pillar One proposal. While many of those are not final, we are confident that any revenue impacts on the United States will be relatively small. In some scenarios, they total in the millions rather than billions, and in some cases are approximately zero.

*Question.* Please answer the following with a “yes” or “no” response. If the Biden administration sought implementation (domestically and globally) of the OECD/G20 Pillar One agreement referenced above, would you advise your principals at Treasury and the White House that this agreement should be implemented through a tax treaty requiring ratification by the Senate?

Please further elaborate upon your “yes” or “no” answer. If you believe the agreement can be implemented through means other than a tax treaty, please provide detail as to what action would be required, and by which branch or body of government, and the process by which approval would be obtained.

Answer. Please see my answer to the question above.

*Question.* In your opinion, what might be the effect on compliance costs for U.S. entities subject to a GILTI calculation that shifts to a country-by-country basis?

Answer. At this time, I have not been briefed on the issues you raise and thus am not in a position to proffer any opinions. If I am privileged to be confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.

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QUESTIONS SUBMITTED BY HON. JAMES LANKFORD

*Question.* Over the course of the last several months, we have seen countless articles from ProPublica, a news organization that has somehow, we’re told, gotten access to thousands of taxpayers’ confidential tax data. Despite countless letters and inquiries, we have yet to be provided any explanation of how this happened, who will be held responsible, and what the Treasury Department and Internal Revenue Service are doing to make sure that it stops. I understand that, if confirmed, your role as General Counsel is separate from the Inspector General’s office. However, I am not convinced that the Treasury Department is giving the issue the attention and haste that it deserves.

If confirmed, how will you approach this issue once in the building?

How will you engage with the IRS General Counsel’s office to ensure that Americans’ tax data is protected?

How will you ensure that this possible breach, which jeopardizes the privacy of thousands of Americans, is given the attention and priority it deserves?

Answer. I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 U.S.C. section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney’s Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure

accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.

*Question.* Section 6103 of the Internal Revenue Code provides that “returns and return information shall be confidential,” and prohibits any officer or employee of the Federal or State government from disclosing such information unless authorized by the taxpayer or provided under Federal law. Further, section 7213 states that the unauthorized disclosure of returns or return information is unlawful and is a felony punishable by a \$5,000 fine and/or imprisonment of up to 5 years. Section 7213(a)(3) provides that it is unlawful for someone who receives return or return information disclosed in an unauthorized manner to willfully print or publish this return or return information.

Given this, if confirmed, how will you engage with ProPublica regarding their publication of private taxpayer data?

What steps will you take to stop ProPublica from publishing this information in the future?

*Answer.* I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 U.S.C. sections 6103 and 7213, must be taken extremely seriously.

*Question.* The Treasury Department’s Greenbook articulates a new financial account reporting regime. This would require financial institutions to report data on financial accounts of individuals, families, and businesses. This could lead to massive amounts of taxpayer data flowing into the Internal Revenue Service.

Given the apparent vulnerability of taxpayers’ private information, as evidenced by numerous ProPublica stories, how will you ensure that the Treasury Department and the IRS adequately protect taxpayers’ information under this proposal?

*Answer.* My understanding is the proposed financial institution reporting provisions advanced in the President’s tax compliance agenda will help shed light on taxpayers who evade their tax obligations. The tax gap is concentrated at the top of the income distribution, with the top one percent of earners with the highest incomes responsible for nearly 30 percent of unpaid taxes which totaled over \$160 billion in tax year 2019. This inequity is closely tied to gaps in information reporting, namely the disparity between when information is reported to the IRS by a third-party source to facilitate verifying the accuracy of taxpayer filings, and when it is not. My understanding is that the proposal would simply add two additional pieces on information on the Form 1099-INT (or successor form) that banks are already required to file. I take the issue of private taxpayer information extremely seriously and if I am privileged to be confirmed look forward to working with my Treasury colleagues to ensure that privacy and security issues are fully addressed.

*Question.* Unfortunately, both recently and in the past, we’ve seen inappropriate treatment of certain organizations by the IRS. Most recently, it was in the proposed denial of tax-exempt status for a religious nonprofit.

How will you work with the IRS General Counsel to ensure that our tax laws are both enacted responsibly and neutrally and that they are then carried out in the same manner?

*Answer.* If I am privileged to be confirmed, I would be committed to ensuring that the Treasury Department and the IRS administer tax laws in a fair and even-handed manner, keeping politics out of the process.

*Question.* Do you believe that entities engaged in the production, manufacturing, or sale of items listed in the Controlled Substances Act should be exempt from this classification, or afforded other protections and benefits, under other Federal statutes within the purview of the U.S. Treasury Department?

*Answer.* I understand from public reporting that the IRS is focused on tax compliance for the cannabis industry, which remains a Schedule 1 controlled substance under Federal law. If I am privileged to be confirmed, I would want to be briefed by my Treasury colleagues on the issues you raise to better understand these issues and would look forward to discussing them further with you.

*Question.* The General Counsel of the U.S. Treasury Department has the ability to review every regulation that moves through the building. Should you be confirmed, your role requires you to follow the law as it is written.

How will you balance that with what you believe to be congressional intent?

Answer. Congress's authorizing statute, 31 U.S.C. section 301, defines the Treasury General Counsel as the Department's "chief law officer." Moreover, the specific responsibilities of the Treasury General Counsel are set forth in Treasury Order 107-04 (issued September 29, 2020), and include providing legal advice to the Secretary, Deputy Secretary and the other component heads related to Treasury's statutory responsibilities; managing Treasury's position in lawsuits; and reviewing the Department's regulatory actions. If I am privileged to be confirmed as Treasury General Counsel, I would be bound by the authorizing statute to ensure the Department acts in fidelity with the laws Congress enacted and the binding case law of the Federal courts. Having previously spent 4 years as a Senate counsel, I am fully committed to ensuring the Department's legal positions comport with the laws as Congress enacted.

*Question.* Currently, congressional Democrats are working to move ahead with their \$3.5 trillion reconciliation package, which would contain a litany of new programs and changes to the Internal Revenue Code. At this point in time, many of my Democrat colleagues' proposals are moving forward without a single Senate markup and little to no legislative history.

Given that, how will you determine congressional intent?

Answer. The U.S. Supreme Court has explained that "[t]he starting point in discerning congressional intent is the existing statutory text." *Lamie v. U.S. Trustee*, 540 U.S. 526, 533 (2004). My understanding is that in a situation where there are no other indicia of congressional intent, the statutory text and the canons of construction should be the endpoint as well.

*Question.* Next month, the OECD will meet again to work on their ongoing project to modify international profit allocation and minimum tax rules. While there are preliminary agreements on certain items, details remain unfinished and several countries have yet to endorse the current negotiations. Given that any final agreement would involve the ceding of taxing rights, the modification of several bilateral tax treaties, and the need for a new multilateral tax treaty, my understanding is that any such agreement would require the advice and consent of two-thirds of the Senate.

Do you agree that an OECD agreement will require the adoption of a treaty, meaning  $\frac{2}{3}$  of the Senate vote affirmatively?

Answer. Among other things, Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.

*Question.* On their April 2021 list of preferential regimes, the OECD Forum on Harmful Tax Practices (FHTP) identified the United States' tax treatment of foreign-derived intangible income (FDII), found in section 250 of the Internal Revenue Code and put in place by Congress in 2017. In addition, the FHTP identified FDII as "in the process of being eliminated," stating that "The United States has committed to abolish this regime."

I find it concerning that FDII, which was created in the Tax Cuts and Jobs Act to incentivize companies to put their IP in the United States, was listed as a preferential regime, and I am also concerned that the U.S. Treasury Department, representing the United States at the OECD, would be forward enough to commit to abolishing the provision.

Does the U.S. Treasury Department or any official of the U.S. Treasury Department have the authority to abolish a provision of the Internal Revenue Code?

Doesn't Congress, and only Congress, have the authority to abolish or otherwise repeal, a provision within the Internal Revenue Code?

Answer. I am not familiar with the incident you note here, but I agree that the only way to repeal a Federal statute is for both houses of Congress to pass a bill.

*Question.* It's my understanding that there has been a top-level agreement at the OECD on a Pillar One regime in which market countries would be awarded the taxing rights on at least 20 percent of profit exceeding a 10-percent margin for the big-

gest multinationals, and a Pillar Two that includes a global minimum tax of at least 15 percent on a country-by-country basis.

As you know, the U.S. was the first to enact a global minimum tax when Congress enacted the GILTI as part of the Tax Cuts and Jobs Act. No other country currently has a global minimum tax.

Should the OECD be successful in adopting a more detailed, conclusive agreement this fall, you—should you be confirmed—would have a major role in implementation of such an agreement and corresponding legislation.

How will you keep Congress, who will have a role in enacting corresponding domestic legislation and treaties, aware of your implementation plan?

Please provide your expected timeline of U.S. implementation, should an OECD agreement be met.

Do you think it is prudent to make changes to our own global minimum tax rates before a detailed OECD agreement is met?

Would it not be more prudent to wait until an OECD agreement is confirmed, not only because it could be difficult to reach a final deal, but also because any resulting deal could take years to implement?

Answer. If I am privileged to be confirmed, I am committed to updating members of the committee on the implementation of any agreement and corresponding legislation. I am not aware of the timeline of U.S. implementation, should an OECD agreement be met. If confirmed, I would advise Secretary Yellen on legal matters, not policy matters, so would defer to the policy experts at Treasury on the timing issue you raise.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* As I mentioned during our questioning period in the hearing, I want to follow up on your views regarding the proper use of sanctions based upon your deep experience and expertise in sanctions law, as noted by your selection as one of “The DC sanctions lawyers to have on speed dial” by Global Investigations Review and your representation in matter such as *Exxon Mobil Corporation, et al. v. Mnuchin, et al.* Please note that this series of questions asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

What is your view on the legal standard and evidence necessary to confirm “serious human rights abuses” in the context of our sanctions programs?

What is your view on the legal standard and evidence necessary to confirm corruption of foreign government officials in the context of our sanctions programs?

How do you view Global Magnitsky sanctions implementation and enforcement as a tool to address human rights and corruption?

In your view, does the U.S. Department of the Treasury have the resources and authorities necessary to target serious human rights abuses and corruption with sanctions?

What additional resources do you believe would be effective in the Treasury’s mission to address serious human rights abuses and corruption through sanctions? Are there any current systems or practices you believe are ineffective?

Answer. Global Magnitsky sanctions are an important tool to address human rights and corruption. Targeted sanctions, including against those who violate or abuse human rights and engage in corruption, are an effective tool to discourage malign actors and promote accountability. In 2021, the Treasury Department has applied such sanctions in a number of contexts, including against two Chinese Government officials in connection with serious human rights abuses against ethnic minorities in the Xinjiang Uyghur Autonomous Region; various Cuban authorities for their role in suppressing peaceful protests; and corrupt actors in Paraguay. If I am privileged to be confirmed, I will apply the same legal standard and seek the same evidence that the Treasury Department has applied in those contexts. I would also look forward to being briefed by my colleagues at the Treasury Department regarding existing systems and practices. If confirmed, I would also welcome the opportunity to collaborate with you in ensuring that these critical efforts have the resources they need to succeed.

*Question.* During your hearing, we touched briefly on President Biden's Executive Order 14032 regarding the need for the United States to ensure domestic markets are not being used by the Chinese military industrial complex. Please note that this series of questions asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

What additional steps can the U.S. Department of the Treasury take to protect U.S. financial markets from the Chinese military industrial complex?

Does Executive Order 14032 and its focus on firms that operate in the surveillance technology sector include targeting of monetary surveillance entities?

*Answer.* I share your concerns about the significant threats posed by the military-industrial complex of the People's Republic of China (PRC), including the use of Chinese surveillance technology outside the PRC to facilitate repression or serious human rights abuse. If I am privileged to be confirmed, I look forward to being briefed by my colleagues at the Treasury Department and other Federal agencies about whether additional legal authorities may be needed to address these serious threats.

*Question.* On August 23, 2021, the International Monetary Fund (IMF) allocated \$650 billion in Special Drawing Rights (SDRs) with the approval of the U.S. Department of the Treasury—the largest allocation of Special Drawing Rights in history. The approved amount was just below the level that would have required congressional consultation under the Special Drawing Rights Act. Since this funding is distributed to all members of the IMF, I have concerns that the new SDR allocation could represent a bonanza and a lifeline for dictators and regimes around the world. This creates a disconnect in Treasury's stance. On the one hand, we are sanctioning regimes such as Iran, Venezuela, Nicaragua, Belarus, and Burma. And now on the other hand, the U.S. Department of the Treasury has approved millions and millions of dollars that will go to support those very same regimes.

How are our sanctions policies compatible with Treasury's approval of this new allocation of IMF Special Drawing Rights? Please note that question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

What steps can the Department of Treasury undertake to ensure that SDRs do not provide a lifeline to dictators? Please note that question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

If confirmed, how would you advise Treasury conduct oversight on the use of SDRs among IMF members?

*Answer.* IMF Special Drawing Rights (SDRs) are important tools in mitigating economic stagnation in global growth, particularly as low-income and developing countries reemerge from the COVID-19 pandemic. Addressing the long-term global need for reserve assets through the recent SDR allocation will help support the global recovery from the COVID-19 crisis, which in turn will help increase demand for U.S. exports of goods and services—creating U.S. jobs and supporting U.S. firms.

The United States can refuse SDR transactions with any countries that we choose, including those under U.S. sanction regimes, and the Biden administration is working to coordinate with other countries to do the same. Likewise, not all countries will necessarily be able to exchange their SDRs for hard currencies. The country would need to find a willing counterparty country to provide them with hard currency in exchange for their SDRs, which can be difficult for certain countries. Moreover, primary and secondary sanctions may deter IMF members from being willing counterparties in certain SDR transactions. The United States and other IMF members are also working with the IMF to increase transparency in how SDRs are used. All of these are important steps that the government can take in balancing its goals of global economic growth with robust enforcement of its sanctions policies.

*Question.* As you know, Article II, Section 2 of the United States Constitution states: [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; . . .

On September 28, 2021, Treasury Secretary Yellen said the following before the Senate Banking Committee: “I believe there are a number of ways in which Congress could implement [Pillar One], but certainly ratification of a treaty would be one way in which Congress could authorize. And certainly Congress has to authorize the transfer of taxing rights that’s contemplated in Pillar One.”

Based upon your training and experience as an attorney, do you believe there is a way other than approval of a resolution of ratification by two-thirds of the Senate for Congress to approve the Organisation for Economic Co-operation and Development’s “Pillar One” plan? Please answer “yes” or “no.” Note that an answer other than “yes” or “no” will be deemed unresponsive to this question. Please also note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

If your answer is “yes,” please explain the other way(s) Congress could authorize Pillar One. If your answer is “no,” please explain your reasoning. Please note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

Answer. Among other things, Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.

*Question.* Section 321(b) of the bipartisan Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260) states:

Testimony.—Not later than the date that is 120 days after the date of enactment of this Act, and not less than twice each year thereafter until the date that is 2 years after the date of enactment of this Act, the Administrator and the Secretary of the Treasury shall testify before the committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding implementation of this Act and the amendments made by this Act.

Based upon your training and experience as an attorney, what is your interpretation of the meaning of “the Secretary of the Treasury” in the legislation cited above? Please note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

Based upon your training and experience as an attorney, do you believe that section 321(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, cited above, requires the Secretary of the Treasury to appear personally before the Senate Committee on Small Business and Entrepreneurship Act? Please answer “yes” or “no.” Note that an answer other than “yes” or “no” will be deemed unresponsive to this question. Please also note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

If your answer is “yes,” if confirmed, will you commit to advising Secretary Yellen that the law requires her to appear personally before the Senate Committee on Small Business and Entrepreneurship? Please answer “yes” or “no.” Note that an answer other than “yes” or “no” will be deemed unresponsive to this question.

If your answer is “no,” please explain your reasoning and please reference other examples found in the law where requirements for the Secretary of the Treasury to testify before a congressional committee have been interpreted to authorize officials other than the Secretary of the Treasury (when such Secretary has been duly confirmed and is currently serving) to testify in his or her place.

Answer. I deeply respect the oversight function of this committee as does Secretary Yellen. If I am privileged to be confirmed, I would like very much to work in a collaborative way with the committee to provide timely, complete, detailed, and

accurate information in line with the traditional partnership that Treasury and the committee have had in the past.

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

The Finance Committee meets this morning to discuss two nominations for key roles in the Biden administration—jobs that both deal with sound management and good government within major Federal agencies. Christi Grimm is the President's nominee to serve as the Inspector General for the Department of Health and Human Services. And Neil MacBride is the President's nominee to serve as General Counsel of the Treasury Department.

Christi Grimm brings to her nomination more than 2 decades of experience within the HHS Office of the Inspector General—an office she first joined in 1999. She's held a variety of roles over the years, but she currently serves as Principal Deputy Inspector General, and she's been performing the role of the IG for more than a year.

Ms. Grimm knows the office inside and out. She knows the importance of working with the Congress and this committee in particular. She's got a proven commitment to maintaining and strengthening the integrity of America's health-care programs.

I appreciate that she is willing to take on the top job as Inspector General during such a challenging time. Setting every other issue aside, studying the Nation's response to the pandemic would keep the IG and its staff of more than 1,500 busy through the end of the decade. The pandemic response, however, is just one of many challenges ahead for the HHS Inspector General. This committee takes its oversight role very seriously, so we look forward to continuing to work closely with Ms. Grimm, if and when she's confirmed.

Neil MacBride also brings decades of experience to his nomination. Currently in private practice, Mr. MacBride previously served during the Obama administration as Associate Deputy Attorney General for Criminal Enforcement and as the U.S. Attorney for the Eastern District of Virginia. He also served as Chief Counsel to then-Senator Biden on the Judiciary Committee, which means he knows his way around these parts of the Dirksen office building.

If and when he's confirmed, Mr. MacBride will join a Treasury Department that's working hard to build back better from the economic crash that wiped out tens of millions of jobs during the early stages of the pandemic.

Democrats in Congress are working hard with Secretary Yellen and her team on policies that will create high-wage, high-skill jobs, make it easier to support a family, build more affordable housing, and ensure that mega-corporations and the ultra-wealthy pay a fair share. Members of this committee will count on Mr. MacBride to support those efforts.

As I mentioned, the Finance Committee is committed to oversight. I spoke with Mr. MacBride about those issues during a recent meeting, particularly certain abuses by the previous administration. I was pleased to have his commitment to work with the committee on oversight going forward.

Bottom line, these are two highly qualified nominees. I want to thank them for their willingness to serve in challenging roles at a time when the HHS IG and the Treasury Department are working nights and weekends due to the pandemic. I'm looking forward to Q&A.

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**United States Senate**

Washington, DC 20510-4607

September 20, 2021

Dear Chairman Wyden and Ranking Member Crapo:

I write to you in support of Principal Deputy Inspector General Christi Grimm for confirmation as the Inspector General for the Department of Health and Human Services (HHS). Ms. Grimm has served as the Acting Inspector General at HHS since January of 2020. During this time, and throughout her career, she has demonstrated the attributes and skills necessary to serve as the Inspector General

through her consistent commitment to leadership, strong work ethic, and personal integrity.

As the Principal Deputy Inspector General, Ms. Grimm has combated health care fraud, waste, and abuse and has improved the efficiency and efficacy of HHS programs. She leads an independent and objective organization of more than 1,600 auditors, evaluators, investigators, lawyers, and management professionals who carry out the Office of the Inspector General's (OIG) mission of protecting the integrity of HHS programs as well as the health and welfare of program beneficiaries. She ensures the effective use of OIG's approximately \$411 million budget to oversee \$1.6 trillion in HHS expenditures. She also oversees OIG's administration of \$290 million in grants to states for the purposes of Medicaid fraud control. Now, more than ever, as we continue to address and recover from the pandemic, we need strong leadership and committed staff throughout HHS to protect the programs essential to the health and well-being of all Americans.

Ms. Grimm knows that independence and objectivity are essential to the work of an Inspector General, and work produced under her leadership has reflected these qualities. Ms. Grimm is an experienced and highly accomplished manager, as evidenced by HHS OIG's most recent Federal Employee Viewpoint Survey results identifying her office as one of the best places to work in government, with an employee engagement score of 86.9 percent. Ms. Grimm has a demonstrated commitment to public service and has proven herself to be an invaluable asset to the work of the HHS OIG. I support Ms. Grimm's nomination for Inspector General for HHS, and I trust that this Committee will give her due consideration.

I ask that this letter of support be made part of the Committee's official record.

Sincerely,  
Tim Kaine  
United States Senator

21 September 2021

The Honorable Ron Wyden  
Chairman  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

Dear Chairman Wyden and Ranking Member Crapo:

We write in bipartisan support of the nomination of Neil H. MacBride to be General Counsel for the Department of the Treasury. Each of us has served as Treasury General Counsel, in Democratic and Republican administrations reaching back to 1977. We all believe Neil to be a superb choice to serve as General Counsel and as a senior advisor to Secretary Yellen.

Neil's prior public service and his work in the private sector demonstrate that he is particularly well-suited to serve as General Counsel. Neil has extensive experience in many subject matters central to the Treasury Department's work, and he possesses deep insight into how those matters affect our Nation's position in the world. Neil's experience in the public sector—as United States Attorney for the Eastern District of Virginia, Associate Deputy Attorney General, and as Chief Counsel and Staff Director for the Senate Committee on the Judiciary—has centered on complex legal judgments involving public policy, government litigation, enforcement of the law and national security. In the course of his public service, Neil addressed the significant legal issues of the day, and we are confident he will bring to the role of Treasury General Counsel the same sound judgment, integrity and temperament.

As former occupants of the Treasury General Counsel position, we believe that Neil's experience will position him to provide seasoned and expert advice, with the highest adherence to the rule of law, on the array of issues for which the Treasury is responsible. Being respectful of the important role the Senate plays in the confirmation of the President's nominees, we urge the Committee and the Senate to approve Neil's nomination to be General Counsel for the Department of the Treasury.

Sincerely,

Brian Callanan  
2019–2021

Christopher J. Meade  
2013–2015

Robert F. Hoyt  
2006–2009

David Aufhauser  
2001–2003

Edward Knight  
1994–1999

Robert M. Kimmitt  
1985–1987

Robert H. Mundheim  
1977–1980

Brent J. McIntosh  
2017–2019

George W. Madison  
2009–2012

Arnold I Havens  
2003–2006

Neal S. Wolin  
1999–2001

Edith E. Holiday  
1989–1990

Peter J. Wallison  
1981–1985

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September 21, 2021

The Honorable Ron Wyden  
Chairman  
U.S. Senate  
Committee on Finance  
221 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate  
Committee on Finance  
239 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Confirmation of Neil H. MacBride for General Counsel of the Treasury Department**

Dear Chairman Wyden and Ranking Member Crapo:

We are 149 former U.S. Department of Justice officials of both parties who served in every Administration over the last five decades. We write today in strong and enthusiastic support of the nomination of former U.S. Attorney Neil H. MacBride as General Counsel for the U.S. Department of the Treasury.

As former senior Justice Department officials, we are well positioned to evaluate the qualifications of one of our own to serve as the senior legal adviser to the Treasury Secretary and senior staff and as the leader of the Treasury Department's Legal Division. Many of us served alongside Neil, know him personally, and can vouch for his outstanding reputation—both as an extraordinarily effective lawyer and manager and as a person of the highest integrity.

Neil is an exceptional lawyer and public servant. He has a keen and analytical mind, a tireless work ethic and excellent judgment, and his record of achievement demonstrates those traits. He graduated from Houghton College, *magna cum laude*, and earned his J.D. from the University of Virginia. He then served as a law clerk for Judge Henry Coke Morgan, Jr. of the United States District Court for the Eastern District of Virginia. After his clerkship and a few years in private practice, Neil joined the Justice Department in 1997 as an Assistant U.S. Attorney for the District of Columbia under then-United States Attorney Eric Holder, where he was lead prosecutor on more than 50 grand jury investigations and 25 jury trials and also co-authored the U.S. Attorney's Office training manual. For his exceptional service, Neil received two Justice Department Special Achievement Awards.

Neil left the Justice Department in 2001 and joined the Senate Judiciary Committee staff for then-Senator Joe Biden. He served for four years as Chief Counsel to Senator Biden on the Judiciary Crime Subcommittee and worked in the critical areas of national security, intelligence, civil rights, constitutional law, corporate fraud, environmental crimes, violence against women, assistance to state and local law enforcement, and criminal justice reform; he also assisted Senator Biden in enacting key legislation, including criminal provisions of the Sarbanes-Oxley Accounting Reform Act and the reauthorization of the Violence Against Women Act, and advised him on federal court nominations including to the United States Supreme Court.

In 2008, Neil served on the Obama-Biden Transition Team and later was appointed as an Associate Deputy Attorney General where he served as a member of

Attorney General Holder's senior leadership team. In 2009, President Obama nominated, and the Senate unanimously confirmed, Neil as the United States Attorney for the Eastern District of Virginia. As that district's chief law enforcement officer, Neil was responsible for overseeing all criminal and civil matters in one of the most significant U.S. Attorneys' Offices in the nation. During his four years in that position, he led and managed an office of over 300 attorneys and professional staff, oversaw the enforcement of matters across Virginia and the world, defended federal agencies and laws from legal challenges, and handled a number of the most challenging and high-profile prosecutions in the country. Under Neil's leadership, his office stood up the Virginia Financial and Securities Fraud Task Force, working with their federal and state enforcement and regulatory partners to target bank and consumer frauds, securing important convictions against banks and CEOs.

Neil's lengthy tenure as a government attorney demonstrates his commitment to public service. He served our nation for 15 years, over half his career as a lawyer, and in all three branches of government. It has been a remarkable tour of duty that reflects Neil's deep devotion to public service and his constant willingness to answer the call of duty, as seen most recently in his service on the 2020 Biden-Harris Transition Team.

Neil's record also demonstrates his integrity and independence. As a federal prosecutor, Neil aggressively investigated large corporations and corporate officers, prosecuted government officials and public-corruption cases, and pursued fraudsters of all types, without fear or favor. In the process, he earned the deep respect of the Bench and defense bar for his fair and even-handed exercise of prosecutorial discretion, for his constant focus on civil liberties and the rights of the accused in the criminal justice system, and for his insistence that his office always take the high—and fair—road in every decision it makes and in every prosecution it brings. Also, with his warm and caring personality, he also earned the affection of his colleagues in the U.S. Attorney's Office and of many throughout the Justice Department who—like us—were fortunate to work alongside Neil in the cause of justice.

In sum, Neil epitomizes the ideal qualities of a public servant—honesty, decency, humility, sound judgment and devotion to duty and the nation—and we have no doubt that he will serve with the greatest distinction as General Counsel of the Treasury Department. We are therefore honored to offer our unqualified support for his nomination, and we respectfully request that you support his confirmation.

Kent Alexander  
United States Attorney  
Northern District of Georgia (1994–97)

Malcolm Bales  
United States Attorney  
Eastern District of Texas (2009–16)

Alan Bersin  
United States Attorney  
Southern District of California (1993–98)

Daniel G. Bogden  
United States Attorney  
District of Nevada (2001–07, 2009–17)

Dana J. Boente  
United States Attorney  
Eastern District of Virginia (2008–09,  
2013–18)

James S. Brady  
United States Attorney  
Western District of Michigan (1977–81)

Lanny A. Breuer  
Assistant Attorney General  
Criminal Division (2009–13)

Greg Brower  
United States Attorney  
District of Nevada (2008–09)

Robert Balfe  
United States Attorney  
Western District of Arkansas (2004–09)

Brian A. Benzckowski  
Assistant Attorney General  
Criminal Division (2018–20)

Mark Calloway  
United States Attorney  
Western District of North Carolina  
(1994–2001)

J.A. Canales  
United States Attorney  
Southern District of Texas (1977–80)

Robert Capers  
United States Attorney  
Eastern District of New York (2016–17)

Don Casayoux  
United States Attorney  
Middle District of Louisiana (2010–13)

Paul K. Charlton  
United States Attorney  
District of Arizona (2001–06)

Robert J. Cleary  
United States Attorney  
District of New Jersey (1999–2002)  
United States Attorney  
Southern District of Illinois (2002)

Kenyon Brown United States Attorney Southern District of Alabama (2009–17)	Sanford Coats United States Attorney Western District of Oklahoma (2009–16)
John Brownlee United States Attorney Western District of Virginia (2001–08)	Tristram J. Coffin United States Attorney District of Vermont (2009–15)
Dan Bryant Assistant Attorney General Office of Legal Policy (2003–05)	Donna Bucella United States Attorney Middle District of Florida (1999–2001)
James M. Cole Deputy Attorney General (2010–15)	Paul Coggins United States Attorney Northern District of Texas (1993–2001)
Richard Cullen United States Attorney Eastern District of Virginia (1991–93)	Vincent H. Cohen, Jr. United States Attorney District of Columbia (2015)
William B. Cummings United States Attorney Eastern District of Virginia (1975–79)	Conner Eldridge United States Attorney Western District of Arkansas (2010–15)
Kelly Currie United States Attorney Eastern District of New York (2015)	Zach Fardon United States Attorney Northern District of Illinois (2013–17)
Gregory Davis United States Attorney Southern District of Mississippi (2012–17)	David Fein United States Attorney District of Connecticut (2010–13)
Steven M. Dettelbach United States Attorney Northern District of Ohio (2009–16)	Wifredo Ferrer United States Attorney District of Florida (2010–17)
Carol DiBattiste United States Attorney Southern District of Florida (1991–93)	Mark Filip Deputy Attorney General (2008–09) Attorney General (2009)
Tammy Dickinson United States Attorney Western District of Missouri (2013–17)	Stephanie A. Finley United States Attorney Western District of Louisiana (2010–17)
Christopher Droney United States Attorney District of Connecticut (1993–97)	Alice S. Fisher Assistant Attorney General Criminal Division (2005–08)
Jenny A. Durkan United States Attorney Western District of Washington (2009–16)	Paul J. Fishman United States Attorney District of New Jersey (2009–17)
Terry Flynn United States Attorney Western District of New York (2006–09)	Robert B. Fiske, Jr. United States Attorney Southern District of New York (1976–80)
Matt Friedrich Assistant Attorney General Criminal Division (2008–09)	Patrick J. Fitzgerald United States Attorney Northern District of Illinois (2001–12)
Deborah R. Gilg United States Attorney District of Nebraska (2009–17)	Hal Hardin United States Attorney Middle District of Tennessee (1977–81)
Benjamin Glassman United States Attorney Southern District of Ohio (2016–19)	Nancy Harr United States Attorney Eastern District of Tennessee (2016–17)
Wendy Goggin United States Attorney Middle District of Tennessee (1998–2000)	Richard S. Hartunian United States Attorney Northern District of New York (2010–17)
Jonathan L. Goldstein United States Attorney District of New Jersey (1974–77)	Tim Heaphy United States Attorney Western District of Virginia (2009–15)

Booth Goodwin United States Attorney Southern District of West Virginia (2010–15)	Rodger A. Heaton United States Attorney Central District of Illinois (2005–09)
Walt Green United States Attorney Middle District of Louisiana (2014–17)	Thomas B. Heffelfinger United States Attorney District of Minnesota (1991–93, 2001–06)
Barry R. Grissom United States Attorney District of Kansas (2010–16)	Karen P. Hewitt United States Attorney Southern District of California (2007–10)
Melinda Haag United States Attorney Northern District of California (2010–15)	David J. Hickton United States Attorney Western District of Pennsylvania (2010–16)
Dwight Holton United States Attorney District of Oregon (2010–11)	Faith S. Hochberg United States Attorney District of New Jersey (1994–99)
John Horn United States Attorney Northern District of Georgia (2015–17)	Eric H. Holder, Jr. United States Attorney District of Columbia (1993–97) Deputy Attorney General (1997–2001) Attorney General (2009–15)
Robert K. Hur United States Attorney District of Maryland (2018–21)	Nicholas A. Klinefeldt United States Attorney Southern District of Iowa (2009–15)
David C. Iglesias United States Attorney District of New Mexico (2001–07)	Kathryn Landreth United States Attorney District of Nevada (1993–2001)
Marcos Daniel Jiménez United States Attorney Southern District of Florida (2002–05)	Jim Letten United States Attorney Eastern District of Louisiana (2001–12)
Brendan V. Johnson United States Attorney District of South Dakota (2009–15)	James A. Lewis United States Attorney Central District of Illinois (2010–16)
Doug Jones United States Attorney Northern District of Alabama (1997–2001)	Jessie K. Liu United States Attorney District of Columbia (2017–20)
Todd Jones United States Attorney District of Minnesota (1998–2001, 2009–13)	Karen Loeffler United States Attorney District of Alaska (2009–17)
John P. Kacavas United States Attorney District of New Hampshire (2009–15)	Loretta E. Lynch United States Attorney Eastern District of New York (1999, 2010–15) Attorney General (2015–17)
David N. Kelley United States Attorney Southern District of New York (2003–05)	Ronald C. Machen United States Attorney District of Columbia (2010–15)
William C. Killian United States Attorney Eastern District of Tennessee (2010–15)	Kenneth Magidson United States Attorney Southern District of Texas (2011–17)
Damon Marinez United States Attorney District of New Mexico (2014–17)	Jerry Martin United States Attorney Middle District of Tennessee (2010–13)
Jay P. McCloskey United States Attorney District of Maine (1993–2001)	Peter Nehonra United States Attorney District of Rhode Island (2009–17)

Mike McKay United States Attorney Western District of Washington (1989–93)	William N. Nettles United States Attorney District of South Carolina (2010–16)
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Barbara McQuade United States Attorney Eastern District of Michigan (2010–17)	Charles Oberly United States Attorney District of Delaware (2010–17)
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Tom Monaghan United States Attorney District of Nebraska (1993–2001)	Thomas J. Perrelli Associate Attorney General (2009–2013)
Michael B. Mukasey Attorney General (2007–09)	Richard J. Pocker United States Attorney District of Nevada (1989–90)
Florence Nakakuni United States Attorney District of Hawaii (2009–17)	Timothy Purdon United States Attorney District of North Dakota (2010–15)
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James H. Reynolds United States Attorney Northern District of Iowa (1976–82)	Scott N. Schools United States Attorney District of South Carolina (2001) United States Attorney Northern District of California (2007–08)
John C. Richter Assistant Attorney General Criminal Division (2005)	McGregor W. Scott United States Attorney Eastern District of California (2003–09, 2017–21)
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Jose Rivera United States Attorney District of Arizona (1998–2001)	Ronald W. Sharpe United States Attorney District of the Virgin Islands (2009–17)
Stephen Robinson United States Attorney District of Connecticut (1998–2001)	Gregory Sleet United States Attorney District of Delaware (1993–98)

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United States Attorney  
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DEA Administrator (2015–17)

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Middle District of Georgia (1981–87)  
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(1993–99)

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Donald K. Stern  
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2001)

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Deputy Attorney General (2015–17)  
Attorney General (2017)

Stephanie Yonekura  
United States Attorney  
Central District of California (2014–15)

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## COMMUNICATION

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STATEMENT OF CHARLES N. W. KECKLER, FORMERLY SENIOR ADVISOR TO THE  
SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Re: *Hearing to Consider the Nominations of Christi A. Grimm, to be Inspector General, Department of Health and Human Services; and Neil H. MacBride, to be General Counsel, Department of the Treasury.*

Date: Wednesday, September 22, 2021

To the Committee:

From May 1, 2017 until January 20, 2021, I was a member of the non-career senior executive service assigned to the Immediate Office of the Secretary of Health and Human Services, and during that time, interacted extensively with Ms. Christi Grimm, whose nomination is under consideration by the Committee. In July 2019, I was designated as Senior Advisor to the Secretary for *inter alia*, the Office of Inspector General (OIG), and was thus the Departmental liaison to the OIG during the period in which Ms. Grimm became its leader in January 2020 and over the course of the first year of her leadership, meeting with her generally on a biweekly or more frequent basis. This statement for the record represents my personal and unsolicited views in strong support for the confirmation of this outstanding public servant as Inspector General.

While I have confidence that Ms. Grimm will ultimately be confirmed, I write to urge a bipartisan and ideally unanimous vote by the Committee and the Senate for this position and this nominee. A strong vote of support provides important value for officials throughout their tenure, as I can attest, having been twice confirmed by the Senate myself. The HHS OIG has crucial responsibilities of stewardship over hundreds of billions of taxpayer dollars, and empowering her in this way will, in my estimation, likely have a meaningful effect in helping her do her job. This translates into greater government accountability, and given the scope of her responsibilities, and the massive spending which has occurred and is still occurring within her oversight purview, any help you give now to strengthen the hand of the IG at HHS will yield cost savings and better Congressional oversight in the future.

Christi Grimm well deserves your trust. She became leader of the OIG just as the pandemic was beginning and unprecedented challenges for the nation, Department, and OIG were right around the corner. Tested, she rose to the occasion by finding ways new ways her talented staff could contribute positively to the response. As the line staff went remote in the Spring and Summer, I would sometimes walk over to the OIG offices and find Ms. Grimm—a new mother with more reason than most to work remotely—holding down the fort, alone. Put under incredible pressure from the highest levels early in her tenure, she remained resolutely professional. All too many people in her position would have buckled and blamed their subordinates, or else reacted with anger and rancor. She did neither of these things: although ready to listen to and learn from legitimate concerns, she chose to take the heat on herself and maintain a firm defense of the integrity and independence of the OIG's work.

The OIG under Ms. Grimm's leadership worked innovatively and productively with the Department during 2020 on several key projects, despite the increased workload of the pandemic. Showing a sophisticated understanding of the value of deregulation, her team was crucial in helping reform the Anti-Kickback regulations to lighten the burden of these rules on the public while maintaining needed oversight. The OIG also aided us in developing new waivers for telemedicine during the pandemic, providing important warnings from their wealth of law enforcement experience, and guiding rather than obstructing our reforms. Ms. Grimm was also active in promoting advanced technologies for the OIG; in my review of the existing artificial in-

telligence projects in the Department, it became apparent that the OIG's AI strategy was among the most sophisticated among all the domestic agencies, and it provided a key inspiration and template for the Departmental strategy and our interagency discussions. At the same time that she looked for ways to partner with the Department to help foster good government, she always stayed true to her statutory independence and dual reporting responsibilities, and was a fierce pursuer of the miscreants who produce bad government—no matter who they were.

Should Ms. Grimm be confirmed, I have no doubt all members of the Senate will find in her a strong and vigilant partner in oversight over the current Administration. With that understanding, I can therefore comfortably urge all members of the Committee to stand behind her in voting favorably on her nomination.

