

**FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS FOR FISCAL YEAR 2025**

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**HEARINGS**

BEFORE A

SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES SENATE  
ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

ON

**H.R. 8773/S. 4928**

AN ACT MAKING APPROPRIATIONS FOR FINANCIAL SERVICES AND  
GENERAL GOVERNMENT FOR THE FISCAL YEAR ENDING SEPTEMBER  
30, 2025, AND FOR OTHER PURPOSES

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**Commodity Futures Trading Commission  
U.S. Department of the Treasury  
U.S. Securities and Exchange Commission**

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**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2025**

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**TUESDAY, JUNE 4, 2024**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2:39 p.m., in room SD-138, Dirksen Senate Office Building, Hon. Chris Van Hollen (Chairman), presiding.

Present: Senators Van Hollen, Murray, Coons, Manchin, Hagerty, Collins, and Kennedy.

**UNITED STATES DEPARTMENT OF THE TREASURY**

**OPENING STATEMENT OF SENATOR CHRIS VAN HOLLEN**

Senator VAN HOLLEN. Good afternoon, everybody. This hearing will come to order.

And I will begin by making an analogy. The Ranking Member of this subcommittee, Senator Bill Hagerty, my colleague and partner, we and our staff have maintained a solid working relationship based on mutual respect.

And Senator, I look forward to continuing our good work together this year.

Madam Secretary, welcome. Welcome back to this subcommittee. You, of course, are here to talk about the fiscal year 2025 budget request, but I want to first thank you for the work you and your team did on the fiscal year 2024 request, because the input and discussions between our teams, both Senator Hagerty's team, and my team, and your team, helped us deal with a tight budget, I think, in the best way we could. So I want to thank you and your team for that.

As we look to this year's budget request, fiscal year 2025, the Treasury Department requests \$14.4 billion, which is an increase of \$180 million, or 1 percent over the last fiscal year.

I look forward, Madam Secretary, to hearing more from you today about how this request can advance the Treasury Department's important missions here at home and abroad. The Department of Treasury plays a central role in supporting a strong economy and promoting opportunity for all Americans, and it does this through a variety of efforts and initiatives.

Madam Secretary, I do want to commend you and the President for your efforts to address the lack of affordable housing, a chal-

lenge that predates the pandemic, but continues with us to this day. The lack of housing supply has driven up costs to where now nearly half of all renting households spend more than 30 percent of their income on housing costs. So I was pleased to see the Treasury Department continue to take and propose steps as recently as March to increase the stock of affordable housing and lower costs through a variety of proposals, including tax credits.

With respect to the IRS, which, of course, is a major part of the overall Department of Treasury budget, the request this year is for \$12.3 billion in discretionary funds, essentially flat funding with last year. Of course, the Inflation Reduction Act did provide substantial resources to the IRS, and I am pleased to see those additional resources are already making an important difference.

And I know, Madam Secretary, you will talk a little bit more about them, but they include, in summary: Dramatic improvement to taxpayer services, really beginning to modernize antiquated IRS systems, and of course, utilize the resources to make sure that very, very wealthy people, millionaires, billionaires, and big corporations pay more of the taxes that are already due and owing on the enforcement side.

On the taxpayer services front, the IRS has made a number of improvements: reducing call wait times for taxpayers, adding more customer service representatives, reducing the backlog of paper returns, and staffing up taxpayer assistance centers. I want to thank you and the team at the IRS for your efforts to do that.

I also do want to salute you for the success of the recently concluded year-long Direct File Pilot Program, which allowed taxpayers in 12 States the option of filing their Federal tax returns online for free directly to the IRS, and I was pleased to see the announcement of the plan to extend that nationwide. All Americans deserve a free and easy filing option, and I am pleased to see the progress the IRS is making on that.

On the enforcement side, we have estimates ranging from \$500 billion to a trillion dollars a year that are due and owing but not paid. To be clear, this is not about going after small businesses or households earning less than \$400,000 a year, and you have made that very clear, Madam Secretary.

The Inflation Reduction Act, of course, has also made a big investment in our clean energy objectives, helping generate over \$850 billion in clean energy and manufacturing investment from the private sector. And I want to thank you and your team for the work that you are doing to implement the provisions of that legislation.

On the global front, and Senator Hagerty and I have worked together on a number of global initiatives, I want to applaud your continued efforts to implement tough sanctions on Russia, including the price cap to reduce Russian oil revenues as Putin continues his attacks on the people of Ukraine. I would like to highlight your commendable work implementing the Rebuilding Economic Prosperity and Opportunity for Ukrainians, or REPO, Act. You have made it clear that the United States will work to build consensus with our G7 allies on a plan to utilize the value of immobilized Russian sovereign assets to help address the issues within Ukraine.

There is much more, of course, to talk about on the international front, as well as the domestic front, which we will get to in questions. But let me end where I began by thanking you, Madam Secretary. Thank you and your team. It is wonderful to have you back.

And let me turn over now to Senator Hagerty for his opening statement.

OPENING STATEMENT OF SENATOR BILL HAGERTY

Senator HAGERTY. Well, Chairman Van Hollen, I want to thank you for holding this hearing. And I look forward to having many more during the course of this fiscal year.

The agencies within the jurisdiction of this subcommittee have a far-ranging impact on the American economy and on the operations of the Federal Government. As the Ranking Member of the subcommittee, I look forward to working alongside you and our colleagues to conduct rigorous oversight to strengthen U.S. financial institutions, and ensure that the dollars the taxpayers have entrusted to us are spent responsibly.

I also want to welcome our witness, Secretary Yellen. Thank you for appearing before the subcommittee, Secretary. It is a critical time for our economy, and I am glad to see you here today.

The Department of the Treasury has a fundamental role in managing our Nation's debt and collecting its taxes. The President, with the advice and consent of the Senate, has conferred upon you a great responsibility and obligation to provide sound economic guidance. At the same time, it is your duty to respect the rights of taxpayers who rely on you to treat them fairly.

The Department has a deep impact on a broad range of issues, from issuing debt to reviewing foreign investments to imposing sanctions. Sanctions under the Trump Administration worked, but they are not working now because this administration has deliberately relaxed enforcement.

When I served as U.S. Ambassador to Japan, I helped implement the Maximum Pressure Campaign against Iran. In particular, because Japan was a major buyer of Iranian oil, I persuaded then Prime Minister Abe to support U.S. secondary sanctions and stop buying Iranian crude oil. President Trump's maximum pressure campaign against Iran yielded powerful results. Iran's revenue from the export of crude oil products dropped from \$60 billion in 2018 to below \$20 billion in 2019, to below \$8 billion in 2020.

President Biden, however, has abandoned the Maximum Pressure strategy, under the Biden administration, Iran's revenue from exports of oil products has risen to over \$100 billion. Iran is the world's biggest State sponsor of terrorism, and they have used this financial windfall to increase funding and support for Hamas, for Hezbollah, and for the Houthis. Think about the Houthis that are attacking ships in the Red Sea, Hezbollah, Hamas, menacing our ally, Israel, every day. Sanctions only work when they are enforced.

Another area that I am deeply concerned about is that the Department may have let politics influence the amount of debt issued and the manner in which the Treasury issues its debt. Any action that fails to provide stability and minimize risk to taxpayers deviates from the Department's core mission, and I am concerned about the risk that this presents.

In regard to the IRS, I am concerned about their spending decisions. The IRS is using one-time funding to hire 1,700 people on a permanent basis, staff that it can't afford and would need to furlough without a new transfer authority from this Committee. The current IRS budget assumes this one-time spending would be made permanent. That forces Congress to make a difficult decision in the future, either provide billions of dollars of more funding or potentially fire hundreds, if not thousands, of IRS employees.

The IRS needs to figure out how to operate within the funds that Congress has already appropriated and within the authority that Congress has already authorized.

Another shell game that the IRS is playing is with Direct File, the IRS, the General Services Administration, and the U.S. Digital Service, jointly, developed the Direct File, but the IRS either cannot or will not share the total cost of Direct File with Congress. The IRS reported its own cost at only \$24 million. Still, that works out to be \$179 per successfully filed return, but that excludes the cost to GSA and to the USDS.

When combined, the total cost to the U.S. Government, and that is not just the IRS, of a successfully filed return could easily exceed the most expensive commercial off-the-shelf tax preparation software. It doesn't look like a good economic result for American taxpayers.

Additionally, 3.3 million taxpayers were curious enough at least to inquire about Direct File. They actually began the eligibility screening process, but of those 3.3 million taxpayers, only 140,000 actually succeeded in filing a return. Yet, the IRS isn't curious about why the other 3.2 million didn't complete the Direct File process, and they don't seem to have any plans to ask why. I don't understand why you would agree to make Direct File permanent without understanding why the program has only a 4 percent adoption rate.

Finally, I think American taxpayers would also like to understand why the IRS leaker, Charles Littlejohn, who has started serving his prison sentence, was charged with only one count of unlawful tax return disclosure. He stole more than 8,000 tax returns over a period of 2 years. He did it for the purposes of damaging his victims' reputation, and affecting the outcome of the presidential election.

Based on the sentencing hearing transcript, the lack of charges seemed to frustrate the judge, and it is certainly baffling to me.

Secretary Yellen, I hope you will address these and other concerns, and I look forward to your testimony. Thank you.

Senator VAN HOLLEN. Thank you, Senator.

Secretary Yellen, you are well known to this Committee, so I am going to keep my introduction very brief. Secretary Yellen is the first person to have led the White House Council of Economic Advisors, the Federal Reserve, and the Department of Treasury. Madam Secretary, the floor is yours.

**STATEMENT OF HONORABLE JANET L. YELLEN, SECRETARY, U.S. DEPARTMENT OF TREASURY**

Secretary YELLEN. Thank you, Senator Van Hollen.

Chairman Van Hollen, Ranking Member Hagerty, and Members of the Subcommittee; thank you for the invitation to testify, and for your support of the Treasury Department.

Over the past 3 years Treasury has helped drive a historic economic recovery and put our economy on a strong path for the medium and long term. GDP growth has been strong, growing 3 percent over the past four quarters. Inflation has declined substantially since its peak, even as we have more work to do to address high costs, and give families more breathing room. The labor market is remarkably healthy, and companies have announced over \$850 billion in clean energy, and manufacturing investments since the start of this administration, including in places that historically had not received significant investment, or where investment had declined.

To support this, Treasury has played a leading role in implementing the American Rescue Plan and the Inflation Reduction Act. We have also been focused on taking action beyond our borders to strengthen America's economic leadership and national security.

I am heartened that Congress passed crucial support for Ukraine and for other allies. Treasury continues to impose sanctions to constrict Russia's ability to wage war, and we are working with our partners to unlock the economic value of immobilized Russian sovereign assets. Treasury is also using the tools at our disposal to respond to conflict in the Middle East and to responsibly manage the U.S.-China economic relationship, including making sure that American workers and firms can compete on a level playing field, and protecting our national security.

Let me now highlight several key requests in the President's fiscal 2025 budget that will enable Treasury to continue advancing America's economic interests.

First, the budget requests \$12.3 billion in discretionary resources for the Internal Revenue Service. Thanks to IRA funding and annual appropriations, we have already seen unprecedented improvements. This filing season we made it easier for taxpayers to file their taxes and get the credits they are owed, including by providing 11,000 additional hours of in-person assistance.

140,000 taxpayers saved millions in tax preparation fees through the pilot of Direct File, an easy and free way to file taxes, online, directly with the IRS. We have also increased enforcement to make sure wealthy taxpayers and large corporations pay their fair share, collecting millions in unpaid tax debt from millionaires.

We need resources so that we can continue saving the American people time and money and helping reduce the deficit. The IRS is inviting all States to participate in Direct File as soon as next filing season and intends to expand it to support all of the most common tax situations over the next few years. And we will keep working to close the tax gap driven by wealthier Americans, which costs us over \$600 billion a year.

Second, the budget requests funds to allow Treasury to address emerging threats, such as \$312 million for Treasury's Departmental Offices, including to support investment security in sensitive technologies and the stability of the financial system, and

\$150 million to enhance cybersecurity and protect our systems against intrusion by malign State actors.

And third, the budget requests \$231 million for the Office of Terrorism and Financial Intelligence, which provides critical financial intelligence and sanctions-related economic analysis, including to support sanctions related to Hamas, Iran, and Russia. It also requests \$216 million for the Financial Crimes Enforcement Network to protect the financial system and combat illicit finance.

Thank you. I am happy to now take your questions.

[The statement follows:]

PREPARED STATEMENT OF HON. JANET L. YELLEN

Chairman Van Hollen, Ranking Member Hagerty, and Members of the Subcommittee: Thank you for the invitation to testify and for your support of the Treasury Department.

Over the past 3 years, Treasury has helped drive a historic economic recovery and put our economy on a strong path for the medium- and long-term. GDP growth has been strong, growing 3.0 percent over the past four quarters. Inflation has declined substantially since its peak, even as we have more work to do to address high costs and give families more breathing room. The labor market is remarkably healthy. And companies have announced over \$850 billion in clean energy and manufacturing investments since the start of this Administration, including in places that historically had not received significant investment or where investment had declined. To support this, Treasury has played a leading role in implementing the American Rescue Plan and the Inflation Reduction Act.

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I am happy to now take your questions.

Senator VAN HOLLEN. Thank you, Madam Secretary. And we will do 5-minute rounds, 7-minute rounds; 7-minute rounds per member.

I do want to start on some of your more recent work with respect to meeting with our G7 partners and others to address what seems to be an increase or ongoing transfer of technology from China to Russia to support Putin's war machine efforts. I think that while China has not provided any direct military support in the form of weapons, we have seen, according to American assessments, a large surge of Chinese sales to Russia of machine tools, microelectronics, and other technology that Moscow is using to produce missiles, tanks, aircraft, and other weaponry for use in the war against Ukraine.

I know the President and our allies a number of years ago made it clear that any direct military support from China to Russia would be seen as a red line. While this is not direct military transfers, and I do want to make that clear based on what we know today, what is happening is clearly benefiting the Putin war machine.

So Madam Secretary, can you talk about how we can work with our allies, whether we collectively impose sanctions on Chinese companies that are engaged in this kind of transfer? Or other options on the menu that you are looking at?

Secretary YELLEN. Yes. We, as you noted, are very concerned. There are substantial exports. We have seen an increase in exports from China to Russia, and particularly of certain dual-use goods that may be critical to Russia's war effort. And let me say that I have been extremely clear at the highest levels of the Chinese Government that this is something we will not tolerate, and that we intend to sanction this activity.

We are putting sanctions both in place on firms that are engaged in this activity, and a new executive order allows us to sanction financial firms that are promoting the export of these dual-use items or military goods to Russia.

We know that our sanctions will be most effective if we work closely with our allies, and this is something I have discussed with all of our—all of my Finance Minister colleagues, the need for us to coordinate our sanctions behavior.

I know that this set of concerns was recently conveyed by President Macron, by President von der Leyen, and by Chancellor Scholz in their recent engagements with President Xi, and while I don't have anything to preview today, I will just say, we are committed to working closely with our allies on this issue, and believe it is essential to reduce the flow of these goods to Russia.

Senator VAN HOLLEN. Well, I appreciate that update, and I do hope action will be taken soon, because the trajectory, as you indicated and as I outlined, is clearly in the wrong direction. And these dual-use items, as you described them, are being put to use by Putin directly to advance and support of the war against the people of Ukraine. So I think concerted action is necessary to be effective, and I hope it will be taken soon.

On a related matter, we, the United States, have worked with our allies to try to prevent the transfer of very high-end technologies to China in the first place, whether they be very high-end

semiconductors, AI, or other technologies, and part of that strategy has been implemented through the Department of Commerce. But another component of that, as you well know, to put in place some outbound investment screening to prevent U.S. companies, some of the companies are allied countries, from investing in China in areas that could then be used by the PRC for military purposes.

That, too, of course, requires joint action in order to be effective. So Madam Secretary, can you just speak to where we are in the effort to develop very clear boundaries and guidelines when it comes to outbound investment, number one? And number two, our progress in coordinating with our key allies?

Secretary YELLEN. So you know, we completed an advanced notice of proposed rulemaking on outbound, we have received many comments which we are digesting, and preparing, as soon as possible, to release a Notice of Proposed Rulemaking. And really over year, or more, we have been involved in discussions with our allies, about the necessity of doing similar kinds of investment screening. And this would apply both to inbound investment screening, something similar to our CFIUS process, and also outbound screening.

And we have ongoing discussion. Our allies are looking at this carefully, working on their own systems. I think all of us recognize that this is something where joint action is more effective, and we continue to focus on trying to help our allies get up to speed on this as well.

Senator VAN HOLLEN. Well, I appreciate that. You know better than anybody that capital flows can move really at the speed of light across border. So joint action, collective action is going to be essential for that to be successful.

Senator Hagerty.

Senator HAGERTY. Secretary Yellen, one of the most important jobs of the Treasury Secretary, is to issue and manage US debt. Given rising deficits, this is an increasingly difficult task. Nonetheless, proper management of our Nation's debt keeps our funding costs low, and maintains the dollar status as the world's reserve currency.

In light of this, I am very concerned about the recent rise in the issuance of Treasury bills. The Treasury Borrowing Advisory Committee T-bills comprise 15- to 20 percent of the total U.S. debt. But right now, T-bills supply is 25 percent above that range.

This means that the Department has issued more than one trillion in short-term bills that normally would have been issued as longer-term notes and bonds. This surge in bill issuance severely impedes the market's ability to price risk. It also, typically, only occurs during recessionary periods. And I am perplexed by this decision to issue so much on the short end of the curve while yields are inverted.

Given current yields, excessive reliance on bills cost taxpayers more money in interest expenses, because of the need to roll over short-term financing at elevated rates. It also constrains our country's ability to respond to future economic shocks.

And perhaps most alarmingly, this approach to debt management undermines the Treasury's credibility because it creates the perception that the administration could be easing financial conditions for political purposes.

This chart will help us visualize what I am talking about.

[Chart display on poster board:]

Senator HAGERTY. What you can see here is during the 2008 crash, a spike in the issuance of short-term bills. Again in 2020, you see the next spike in short-term bill issuance right here. Again, we got the pandemic in 2020. We have got the Great Recession in 2008, and now we see the spike here.

Madam Secretary, are we in a recession?

Secretary YELLEN. No. No, we are not in a recession.

Senator HAGERTY. I thought you might say that. Then that begs the question, as I see it, there only three reasons, why the Treasury could be issuing so much on the short end of the curve.

One, it could be that you are concerned about inadequate demand for longer term treasuries. I hope that is not the case.

Second, it could be that you are waiting to lock in longer-term issuances until the Fed has cut rates, if that is the case, I would like to know what informational basis you might be using to time the market in this manner.

But the most dangerous could be that you are suppressing rates in order to ease financial concessions—sorry—to ease financial conditions for President Biden in an election year leading up to November. And I think that creates an extreme concern. Which one of these three would it be, Secretary Yellen?

Secretary YELLEN. Well, first of all, let me say we never time the market, a tenet of Treasury debt management is that issuance should be regular and predictable, and that is appropriate over time to enhance the government—

Senator HAGERTY. And yet it is spiking, you can see from the chart that it is spiking right now.

Secretary YELLEN. Well, we had a substantial increase in the deficit in connection with the pandemic.

Senator HAGERTY. But what underlies the decision to do it so much weighted toward the short end while the yield curve is inverted?

Secretary YELLEN. Well, actually, if you look at history, the weighted average maturity of Treasury debt overall is about 71 months, and that is above the long-run average, which is shorter, at 61 months. And issuance of bills, in spite of what you are showing there, is in line with historical averages as a percent—

Senator HAGERTY. Well, it is certainly above the recommended range Madam Secretary.

Secretary YELLEN [continuing]. As a percent of overall issuance, Treasury bills with a maturity of 1 year, or less, currently represent just under 22 percent of Treasury debt, and the long-run average is 22.4. It is very close to being in line with the guidelines suggested by market participants who take part in the Treasury Borrowing Advisory Committee and the primary dealers.

Senator HAGERTY. I would very much like to get a better understanding of this. And I have introduced legislation that would have the Treasury report to us, report to this Committee on the debt issuance process and how you are thinking about it, so we can get a better understanding, because the concerns that I raised are real, I hear them very often, and I think it would be quite helpful for us to clarify this.

Secretary YELLEN. I think we would be glad to do that.

Senator HAGERTY. Thank you. Thank you. Let us turn our discussion to sanctions now, Secretary Yellen. Iran is the world's foremost state sponsor of terrorism. They send hundreds of millions of dollars per year to terrorist proxies like Hamas, Hezbollah, and the Houthis who have murdered scores of American citizens, and who desire to wipe Israel from the face of the map.

And Secretary Yellen, is it the policy of the Biden Administration to minimize revenue that Iran derives from illicit oil sales?

Secretary YELLEN. Yes, it is. And I agree with what you just said, it is our priority to sanction Iran to diminish its ability to export oil. We are taking—

Senator HAGERTY. But you have said—you have said it is a priority. However, I just went through the results of the Maximum Pressure Campaign. We had Iran down to below 8 billion in exports in the previous administration. In this Administration, the sanctions enforcement has failed miserably. They are back up over a \$100 billion. What has changed there? And if the policy hasn't changed, what has?

Secretary YELLEN. Well, we have continued to take action against those in Iran who are facilitating the export of oil. There is a shadow fleet that it has proven difficult for our sanctions to touch. Our sanctions are most effective when they target financial institutions. But we continue to take sanctions actions. We are very active in addressing terrorist financing by the Iranian regime and its proxies.

Senator HAGERTY. I am running short of time, Madam Secretary. I would just like to close with this comment. I have been involved in the imposition of sanctions. It is hard work. The program right now is not working, obviously, because what we have seen is illicit oil sales dramatically increase under this administration. I understand that there are complex reasons why that may be the case. But it requires difficult work, hard work. And I encourage this Administration to take its sanctions enforcement seriously because we are failing right now. Thank you.

Thank you, Mr. Chairman.

Senator VAN HOLLEN. Thank you. Thank you, Senator Hagerty. Senator Coons.

Senator COONS. Senator Van Hollen; Chairman Van Hollen, thank you. Thank you, thrilled to see your leadership here at FSGG, Ranking Member Hagerty.

Madam Secretary, thank you for the chance to work closely with you in the last year in my role as chair of State and Foreign Operations. We had a great partnership in meeting our commitments to the multilateral development banks in unlocking 21 billion to the IMF through the PRGT, and in finding ways to help developing countries deal with the consequences of COVID, of heightened debt, of the consequences of Russia's aggression in Ukraine, and principally meet competition from the PRC, which is seeking to capitalize on the vulnerabilities of developing countries.

So I look forward to working with you on continuing that work. I just returned from a trip to Southeast Asia where I got to meet with the leadership of the Asian Development Bank, and look at

how the Luzon Economic Corridor may well be a key part of our Indo-Pacific strategy.

Focusing on the issues before us for this year's appropriation, though, for your Committee—your Department when Congress passed the CHIPS and Science Act, a key part of our goal was revitalizing American semiconductor manufacturing. I was just in Taiwan, and the Philippines, and met with leaders in semiconductor manufacturing. I am concerned about Treasury's implementation of tax credits, and making sure that they reach upstream players in the semiconductor industry.

I was encouraged by your recent remarks in a House Hearing that Treasury and Commerce are working together to cover the entire supply chain. But when do you think we could expect final rules that would make credit available to manufacturing facilities that are producing semiconductor materials that are critical components of the semiconductor supply chain?

Secretary YELLEN. So this is an issue that we are working on very hard. We are trying to get the final rules out as quickly as possible. This is an issue that we explicitly have far up the supply chain to go. We ask for comment on this. We have received a great deal of feedback, we understand the need for certainty on the part of businesses, and we will try to get the regulations out just as soon as possible.

But we are working closely with the Department of Commerce. They have direct funding, and we want to make sure that we are providing adequate support.

Senator COONS. And I respect and understand, and I have talked to the Secretary, the role that Commerce has in the grant funding for Fabs. My concern is that we also support the other businesses and industries that are part of semiconductor manufacturing.

Let me move on. There are some key decisions also not yet made in terms of 45V Rulemaking. There are, I think, seven regional hydrogen hubs that have been chosen through the Inflation Reduction Act that will help support regional economic renewal across the country. My concern is that we need to hit the right balance in 45V to actually provide the opportunity for takeoff for a future hydrogen industry in the United States.

I do not think that it is assured that that will happen. The hubs, which were selected 8 months ago, can't move ahead without certainty about how this investment profile will look. Does Treasury need more resources in order to finalize the 45V Rulemaking? Is that part of the limitation in terms of getting these rules out?

Secretary YELLEN. It is not a matter of resources; it is really a matter of the complexity of the issues that are involved here and the working through. I believe there were over 40,000 comments received on the guidance that we put out on 45V. We recognize the issues that the hydrogen hubs face and are working hard, we are working jointly with the Department of Energy and also with EPA to try to figure out how to address this.

Senator COONS. Well, I know—

Secretary YELLEN. We have received a lot of comments making suggestions, which we are taking seriously.

Senator COONS. I know some of the comments you have received are from my region, from Delaware, from Pennsylvania, from New

Jersey, where the MACH2 Regional Hub leadership is very concerned about what impact the Treasury rules will have on whether or not they are going to be viable. So I would urge careful consideration of those comments.

Secretary YELLEN. I understand, and we will.

Senator COONS. Let me conclude, if I could, with an issue I think of real interest to both of us, which is financial inclusion, and the development of a national strategy. Too many Americans still lack access to basic financial services, and those with access are unable to effectively reap the benefits of access to financial services.

This is something the financial services, and some of the consumer advocacy groups in my State have long been passionate about. Treasury, I think, is nearing the completion of the strategy that was required in last year's bill. It is an opportunity to make sure Federal agencies are coordinating with each other, with the private sector, with State and local governments, with nonprofit groups. And Treasury will have to keep leading in the implementation of this strategy for financial inclusion.

What do you see as the most important steps in finalizing and implementing your financial inclusion strategy, and how could we be helpful in Congress?

Secretary YELLEN. So you have been extremely helpful. Let me say how much I appreciate your leadership on this issue. We have made a lot of progress. We have been engaging in robust public and stakeholder outreach and engagement. We have met with over 150 stakeholder organizations, and we are hoping to finalize these recommendations this summer.

Senator COONS. Well, thank you, Madam Secretary. We are going to have a very busy summer finalizing some rules, some strategy, and then moving forward with them. And I appreciate the opportunity to partner with you across these three important areas.

Secretary YELLEN. Thank you, Senator.

Senator MANCHIN. [Presiding] Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Madam Secretary, always good to see you.

Secretary YELLEN. Likewise.

Senator KENNEDY. Right now, in our current fiscal year, by "our", I mean the Federal Government, we are running about—it looks like about a \$1.1 trillion deficit; is that correct?

Secretary YELLEN. About \$1.6, I believe.

Senator KENNEDY. \$1.6 trillion? I am sorry, it is even worse than I thought. And that of course means that we are spending \$1.6 trillion more than we are taking in, in revenues; is that right?

Secretary YELLEN. That is correct.

Senator KENNEDY. Okay. And we are filling the hole by borrowing money; is that correct?

Secretary YELLEN. That is correct.

Senator KENNEDY. Now, if you personally were borrowing money, would you rather pay 5.4 percent interest or 4.4 percent interest?

Secretary YELLEN. The less, the better.

Senator KENNEDY. Ma'am?

Secretary YELLEN. The less, the better.

Senator KENNEDY. Okay. Then why aren't you doing that with Federal borrowing?

Secretary YELLEN. Well, in Federal borrowing our objective is to issue at least cost over time and not to try to time the market.

Senator KENNEDY. Yes. But you are timing the market, you issued a press release back in November that you were going to try to time the market. I mean, right now you can issue 3-month Treasuries, these are yesterday's yields, at roughly 5.4 percent?

Secretary YELLEN. Yes.

Senator KENNEDY. But you could issue a 10-year Treasury note for 4.4 percent and save—let me finish—and save the taxpayer a lot of money. And then last November, you said—you issued a press release you said: We are going to start borrowing more short-term debt than we normally would. At the beginning of 2023, our short-term debt was about 15 percent, and last November, you said, we are going to increase that. And now it is about 22–23 percent.

Secretary YELLEN. Correct.

Senator KENNEDY. You are costing the taxpayers billions. Why are you doing that?

Secretary YELLEN. So Senator, you say it costs 5.4 percent. That is what it costs this year.

Senator KENNEDY. No. That is what it cost yesterday.

Secretary YELLEN. No. But when you issue 10-year bonds, you are locking in the 10-year rate over 10 years, and that 10-year rate, the reason that holders of 10-year Treasury bonds are willing to accept a 4.3–4.4 percent yield is because when those same individuals could be investing at 5.4 percent they—

Senator KENNEDY. Madam Secretary?

Secretary YELLEN. No. I am sorry. I would like to—

Senator KENNEDY. But Madam Secretary that is just—no offense—that is double talk.

Secretary YELLEN. It isn't double talk because—

Senator KENNEDY. Here is my—

Secretary YELLEN [continuing]. It is expected—

Senator KENNEDY. Let me—maybe it is my fault.

Secretary YELLEN [continuing]. It is expected for interest—

Senator KENNEDY. Maybe it is my fault.

Secretary YELLEN. No—

Senator KENNEDY. Today, you can borrow for 3 months at 5.4 percent, but instead you are choosing—

Strike that.

Today you can borrow for 10 years at 4.4 percent; instead you are choosing to borrow at 5.4 percent.

Secretary YELLEN. Market participants believe that—

Senator KENNEDY. That makes no sense.

Secretary YELLEN. Market participants believe that short-term interest rates will come down, and they will come down to a level substantially below—

Senator KENNEDY. So you are trying to time the market?

Secretary YELLEN [continuing]. The current 10-year rate, and so—

Senator KENNEDY. You are trying to time the market?

Secretary YELLEN. No, it isn't a question of timing the market. It is, we issue across the curve in a regular and predictable way—

Senator KENNEDY. Well, you know—you announced last November—

Secretary YELLEN [continuing]. And the reason that we—

Senator KENNEDY [continuing]. You announced last November, I can show you the press release, where you said that: We have decided to start issue—start issuing an inordinately large amount of short-term debt; didn't you?

Secretary YELLEN. We did make an announcement of that.

Senator KENNEDY. And because of the inverted yield curve, that means that you are going to pay more in interest on short-term debt than, say, 10-year debt.

Secretary YELLEN. Only for a short time.

Senator KENNEDY. Now, that is a fact. Okay, you can go check the numbers of Treasuries yesterday. First, that costs taxpayers a lot more money in interest. And number two, you are working at cross purposes with the Federal Reserve, because what you are doing is stimulating the market. You are pumping money into the economy, and Jay Powell is over here beavering away trying to reduce inflation. And you are beavering away trying to increase it by paying an interest rate—

Secretary YELLEN. There is nothing that we are doing that is—

Senator KENNEDY [continuing]. That is 100 basis points higher than you would have to pay. And the only way I can—reason I can figure that you all are doing that is, is to try to give the economy a sugar high, 5 months before an election. Why else would anybody want to borrow at 5 percent when you can borrow at 4 percent?

Secretary YELLEN. Well, there is a good reason that investors are willing to accept just over 4 percent on a 10-year Treasury bond when they can earn 5.4 percent on a 1-year Treasury bill.

Senator KENNEDY. I am not worried about the investor.

Secretary YELLEN. Well, the same—

Senator KENNEDY. I am worried about the investor. I am worried about the taxpayer.

Secretary YELLEN [continuing]. It is the same—it is the same market—

Senator KENNEDY. Okay. And let me ask you again, because I am going to run out of time and you—look, you are smarter than me. I know that. But I can grasp this concept. You are borrowing at 5 percent when you could borrow at 4 percent to deficit spend.

Secretary YELLEN. If I borrow at—if I—

Senator KENNEDY. And it makes absolutely no sense to me why you would do—

Secretary YELLEN. I am sorry. If I borrow—the reason is—

Senator KENNEDY [continuing]. Other than to try to artificially stimulate the economy—

Secretary YELLEN. If I borrow at 4 percent—

Senator KENNEDY [continuing]. And help Joe Biden get reelected.

Secretary YELLEN [continuing]. If I borrow at 4.5 I am locking in that cost over 10 years. If I borrow—

Senator KENNEDY. But you just said you weren't trying to time the market.

Secretary YELLEN [continuing]. Well it—

Senator KENNEDY. You are just trying to time the market.

Secretary YELLEN. It isn't trying to time the market, because this is something that is a regular part of our policy. When short-term rates are high, and long-term rates are lower, the reason for that is that market participants expect short rates to go down. And they expect them to decline over 10 years, to substantially under 4.5 percent, so even if we pay more this year than it would cost to borrow at a 10-year rate of 4.5 percent the expected cost over the 10-year life of that borrowing can be the same or less than it would be if we issued a 10-year note.

Now, we are not trying to time the market we have a policy that we want to hold the issuance of short-term bills in line with recommendations of the Treasury Borrowing Advisory Committee, and if—

Senator KENNEDY. May I say something now? Madam Secretary, I am going to say it again, you are a lot smarter than me, but my mama didn't raise a fool and if she did it was one of my brothers. And what you are doing, you know it and I know it, and all those people sitting behind you know it, you are paying 5 percent to borrow money when you could pay 4 percent to borrow money. You announced you were going to do that back in November 2023. You are working cross purposes with Jay Powell.

Secretary YELLEN. We are not working at—

Senator KENNEDY. And the reason you are doing this, the reason you are doing this is try to give the economy a sugar high 5 months before an election. Now, you know that and I know that.

Secretary YELLEN. There is nothing about issuing short-term debt that creates a sugar high—

Senator MANCHIN. Senator?

Senator KENNEDY. I am out of time.

Secretary YELLEN [continuing]. For the economy.

Senator KENNEDY. Well, my Chairman says I am out of time. It is good to see you.

Senator MANCHIN. He is such affable—he is just very nice.

Madam, I am going to continue with the questioning now, if I may. I am going to go ahead and start. But anyway it is good to have you. Thank you for your service.

And first of all, I want to talk about the Bureau of Fiscal Service, as far as the office in Parkersburg, West Virginia. Okay. The employees are not coming back to work. Now, Senator Romney and I have introduced a piece of legislation that would say that at least 60 percent of the time they have to be in their office at work, okay, and I think that basically, a relatively small increase above the 50 percent mark mandated by the Office of Management and Budget, OMB.

I don't know if you know this or not, but that office in Parkersburg, West Virginia, the people only have to be there 2 days a pay period. Two days a pay period. What they end up doing: they come at the end of the first pay period, stay 2 days, the beginning of the second pay period, stay 2 days. There are 4 days out of a total of two pay periods. It is ridiculous, absolutely ridiculous. And it is destroying the economy, and the people that should be coming to work. They are living anywhere, and they fly in.

And this has got to stop. And you have to stop it, Madam Secretary, because it is not going to happen unless you clamp down

tight. The rules from OMB say, at least 50 percent, we will accept 50 percent. At least they are getting 10 days out of 20. Okay?

Secretary YELLEN. I appreciate the problem that this is causing, and I know that you have written a letter to Treasury and that is—

Senator MANCHIN. Well, we have specifics now we can help you all with. And now my next round is going to be—I want to be as respectful as I can, because I totally disagree with what you all are implementing the EV credits.

Secretary YELLEN. The?

Senator MANCHIN. The EV credits, electric vehicle credits, I know that because we wrote the bill, my Committee wrote the bill completely.

Secretary YELLEN. I know.

Senator MANCHIN. And we wrote the intent of the bill. We have all the findings of what we did and how we did it. But let me just show this right here, Madam Secretary.

[Chart display on poster board:]

Senator MANCHIN. The Bill was very much written so that we would bring America back, bring manufacturing back to America, that we would not be relying, we would not be relying on unreliable supply chains, especially four countries of concern: China, Russia, Iran, and North Korea. And as we know, Russia has—I mean China has dominated the critical minerals industry.

But here is what you all have done, your permanent rules, these are your permanent rules, it came from you all, this is how we wrote the Bill, it is in the Bill specifically. First year, 2023, 40 percent; and you all cut it in half to 20.

Secretary YELLEN. I am sorry. I can't see that.

Senator MANCHIN. Okay. This is, here, this is 40 percent. Let us get it closer.

Secretary YELLEN. What are you—

Senator MANCHIN. Let us get closer. Let us get it up here closer. You can see how it does, okay, first year, second year, third year, you have cut everything in half, everything in half. It makes no sense, because you are going to get sued on all of this from people who have been damaged. The manufacturers that are investing money that thought that they would not be inundated with lower prices and unfair competition, especially from China. You have given them a—you have given the ability to come after them now. Okay? You can see this all the way through.

Secretary YELLEN. So why do you think we have cut this in half? You are talking about the—

Senator MANCHIN. This is your rule.

Secretary YELLEN [continuing]. The requirements from—

Senator MANCHIN. The requirements of what should be from—

Secretary YELLEN [continuing]. Batteries and battery components and for minerals—

Senator MANCHIN. Processing, mineral sourcing, and processing. You have even tried to change the definition of processing, to where some of the manufacturing can be done and considered in processing. You have done that, we have all of that. The only thing I am trying to show, and to be very respectful, you are going to be

sued. And we are going to do an amicus brief, to help the people that are suing you.

Because this is how we wrote the Bill, we wanted it to be America. We wanted it to be with Free Trade Agreement countries. We wanted not to be relying on China. This absolutely allows China in the market and staying in the market for the entire extent of the IRA.

Secretary YELLEN. I am sorry, you know, we put out the FEOC restrictions that pertain to China, and those restrictions mean that this year you can't have battery components that are made in China, and next year a vehicle can—

Senator MANCHIN. Why cut it in half then? Why did you cut it in half?

Secretary YELLEN. Cut what?

Senator MANCHIN. You cut basically requirement of how much had to come from where. This had to come from America Free Trade Agreements, this can come from non-free, anywhere else in the world, this is what is happening. I can go into it in detail, but this is—I have been raising absolutely “holy Cain” from day one.

Now, we wrote the IRA as a very balanced Bill to have energy, as far as basically—if we are going to basically change our entire transportation mode, it is the first time in the history of the United States of America we cannot, basically, provide all the components for a transportation mode. We are willing to be relying on, especially, of China which had a total lock on the EVs.

Secretary YELLEN. We share the objective that you have which is to rid ourselves of dependence on China, and I—

Senator MANCHIN. You and your staff changed this in half, and I would say—

Secretary YELLEN. I am not sure. I am not sure—I think we need to have a technical discussion on this, because—

Senator MANCHIN. We have been calling you about it. Did anybody here—did any of you all work on this?

Secretary YELLEN [continuing]. Because I believe that the rules we wrote are in accord with what is in the statute that we have acquired—

Senator MANCHIN. And again, I want to be—I am trying to be as respectful as I can, they absolutely are not, and I am encouraging every manufacturer to sue you.

Secretary YELLEN. Well the—

Senator MANCHIN. And I will do the amicus brief on their behalf and we will show you exactly how we wrote the Bill, the intent of the Bill. And you will lose every suit. I know that. So in order to avoid all of that: Why can't we just basically implement the Bill the way it was written? And I have said this, you all, and basically the administration, and these are people I have known forever, you are trying to implement a Bill you never passed. This is not the BBB, this is the IRA.

Secretary YELLEN. Well, we share the objective that you had in writing the Bill.

Senator MANCHIN. I know—

Secretary YELLEN. And I believe we have implemented it in accordance with the—what is in the law.

Senator MANCHIN. Let us go one step further, if I may. Senator Coon is based on the Hydrogen Hub. Okay. Now, let me explain to you. The Hydrogen Hub, we wrote that in the Bipartisan Infrastructure Bill, and then we came back and funded it in the IRA. This is how we wrote. This is how we wrote the Bill, this is how we wrote it, and we are happy to share all this with you. I think, hopefully, some of your staff knows this.

Where did additionality come in? Where did time matching come in? Where did regionality come in? Who made that up?

Secretary YELLEN. Well—

Senator MANCHIN. We never had one iota of a word in that written, and we wrote the Bill. But then all of a sudden these are the conditions to get the credits. Now with that, where is the other one, let me show you this one.

[Chart display on poster board:]

Senator MANCHIN. This is from the seven hubs, every one of the hubs have written to you all. Now, can you have the California Hub and a West Virginia Hub that agree? Something is wrong. We must be on the right track. But you all, every hub to agree said, it is no longer commercially viable if you do what you are doing, the implementation of the Hydrogen Rules. This is what we are dealing with, it is killing us. We shouldn't be fighting within ourselves.

Just implement, write the rules the way the Bill was intended to write, we wrote it.

Secretary YELLEN. Well, the Hydrogen Rule has to abide by the Clean Air Act definition of lifecycle, emissions—

Senator MANCHIN. And the whole thing is basically—

Secretary YELLEN [continuing]. And that means taking account of indirect emissions, which is where the complications come into play.

Senator MANCHIN. The complication is, that this administration doesn't want anything that comes out of the ground. I am fighting them tooth and nail. We are producing more energy than ever in the history of the United States of America. If it wasn't for that, your inflation would be sky high, prices of gas would be at \$5, and what we are doing, because we are using blue hydrogen, is where they are going nuts on. That is it. But you are going to have to have it in this mix or we will not be energy independent.

Secretary YELLEN. We recognize that there is an issue with respect to the hydrogen hubs, and we have asked explicitly, in the guidance we put out, how people suggest addressing it, and we are reviewing the comments and—

Senator MANCHIN. And I am out of time. But I would love to sit down. We were trying to give you the benefit of the doubt and so many things, trying to work with you, but it just seems that is impossible because they are hell-bent on implementing things that were never intended in the Bill, and were not written in the IRA or any of the Bipartisan Infrastructure Bill. And we are going to continue to fight to make sure that they can confirm—

Secretary YELLEN. Well, I would like to have a—

Senator MANCHIN. We will be happy to do that.

Secretary Yellen[continuing]: Understand why you think we have halved.

Senator MANCHIN. Well, we can definitely show you word by word. And I hope that whoever is in this audience with you right now, or whoever wrote some of these things, I would like to have them in the room too.

Secretary YELLEN. Yes. I agree.

Senator MANCHIN. All right. I am sorry.

Senator VAN HOLLEN. Madam Secretary, I apologize. I had to leave to chair a—to join a hearing with FBI Director Wray. It is good to be back.

And I recognize the Chair of the Full Committee, Senator Murray.

Senator MURRAY. Thank you very much, Chair Van Hollen.

Thank you, Secretary Yellen, for joining us. We all know that Treasury plays a pretty crucial role keeping our economy strong and stable, and strengthening our families' financial security as well, and it plays an indispensable role in keeping our country safe. That is why I have been insisting that we find a solution to address the extremely tight spending caps we are facing, and that any increase in defense spending is at least matched by a much-needed boost in domestic priorities here at home.

For starters, Treasury is responsible for absolutely vital sanctions enforcement work to choke off funds to our adversaries like Russia, and Iran, not to mention drug cartels and traffickers. It also regulates banks to keep our economy sound, protect our families, and prevent Main Street from paying for Wall Street's mistakes.

So I want you to know I am going to keep working with my colleagues to underscore the need to increase vital nondefense resources at Treasury and so many other agencies.

So with that, I do have some questions for you. I wanted to ask you about the Inflation Reduction Act, invested significant resources in the IRS to improve and modernize the Agency, and we have seen immediate benefits like call-wait times decreasing from 28 minutes to 3 minutes, new enforcement initiatives to ensure large corporations and their ultra-wealthy are paying their fair share, and new tools like the Direct File, which has made it easier than ever for people to file their taxes, and get their refunds.

Nearly 14,000 people in Washington State used Direct File for their taxes this year, and I am really excited that the IRS is going to be expanding it to all 50 states next year. It is paramount we preserve these achievements through the annual appropriations process now. So I want to ask you, how does the fiscal year 2025 budget request build upon the success of IRA investments?

Secretary YELLEN. Well, Direct File was made possible by resources in the Inflation Reduction Act. They enabled us to invest in the IRS and deliver world-class service and develop the Direct File. And we intend to continue using those resources to support Direct File. We have recently decided to make it permanent, will extend to all 50 States, hopefully they will all want to partner with IRS, and that those resources will be critical to covering the cost.

Senator MURRAY. Did your budget request—does your budget request allow—enable you to be able to expand it to all 50 States?

Secretary YELLEN. Yes, in the sense the request includes both in appropriation, annual appropriations, and also an increase in man-

datory funding for the IRS, and that combination would enable us to do that.

Senator MURRAY. Okay. Very good. The Inflation Reduction Act has tasked the Treasury Department with an indispensable role in fighting the climate crisis. That law included a suite of clean energy tax credits, including the 45V for the production of clean hydrogen. Now, unfortunately, your proposed 45V Rulemaking has thrown up some major roadblocks which a vast coalition, including States, industry, labor, have made very clear they are not workable.

Washington State is home to one of the cleanest grids and some of the strongest State climate legislation in the country, and is already seeing some of the investments put on hold as a result of the proposed rule. It is no exaggeration to say that getting this rulemaking right may deliver tens of thousands of high-wage jobs while reducing emissions.

So I want to ask you, how you plan to address the concerns you are hearing and make sure that the final 45V Rule helps rather than hinders the development of clean hydrogen projects?

Secretary YELLEN. Thank you for that question. We have heard a great deal of input on the issue of hydrogen hubs. We asked for input when we issued proposed regulations on how we could identify circumstances where there is minimal risk of significant induced grid emissions, and one of the issues there is how to take account of State policies. So we have received input, and we are going to take that input into account as we revise the regulation.

Senator MURRAY. Okay. So can you assure me when the final regulation comes out, we will see a better regulation to make sure our States can actually use these investments?

Secretary YELLEN. We will certainly try to address this issue.

Senator MURRAY. Okay. I will look forward to seeing that. It is really critical for our hydrogen Hub.

Secretary YELLEN. I hear you.

Senator MURRAY. Two years ago, I helped pass a sweeping Bipartisan Retirement Bill, SECURE 2.0 Act. It is really important to me that Americans can retire with dignity. So I want to thank you for Treasury's guidance on the emergency savings. I know stakeholders are anxiously awaiting further guidance on provisions like the student loan match. Do you have at Treasury sufficient resources to implement these popular bipartisan measures?

Secretary YELLEN. Yes, we do. And we appreciate the support that you provided us this fiscal year, and we don't need additional resources. This is something we are going to get done.

Senator MURRAY. Okay. Very good. And finally, in the American Rescue Plan, Democrats expanded the Child Tax Credit and lifted 5.3 million people out of poverty. That expansion nearly cut child poverty rates in half from the previous year, but that progress is being reversed with the expiration now of the CTC.

I helped reintroduce that, Childcare Tax Credit, which would expand and make it permanent. Can you talk about the immediate and long-term benefits expanding the CTC would have on working and middle-class families?

Secretary YELLEN. Well, I think it would be dramatic. And as you pointed out, in 2021 CTC is credited with having—it is the leading

driver behind a 46 percent reduction in child poverty. There were record lows in Black, Hispanic, Native American, and Asian, and White child poverty.

And you know, beyond the immediate reduction in child poverty, research also suggests that this kind of income support brings long-term gains in children's health, education, and earnings. So I think this is something that can have a profound effect on children and their well-being and futures.

Senator MURRAY. Talk a little bit about how the President's budget request addresses child poverty?

Secretary YELLEN. Well, the President has requested in this budget request to expand the Child Tax Credit and to make permanent full refundability and also advanceability. So we certainly would like to see the amounts increased and full refundability.

Senator MURRAY. Okay. I really appreciate it. Thank you very much.

And thank you, Mr. Chairman.

Senator VAN HOLLEN. Thank you, Madam Chair.

And now we will hear from the Vice Chair of the Full Appropriations Committee, Senator Collins.

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

Welcome, Madam Secretary.

Secretary YELLEN. Thank you, Senator.

Senator COLLINS. The IRS is relying on automation very heavily to answer taxpayers' questions. This filing season, about half of the callers received an automated response, while the other half were able to speak with a customer service representative. Now, I understand that there are certain taxpayer service functions that can be automated, and that can be an efficient and good way to serve the customer. But many taxpayers want to have contact with a live person, want to not deal with going through a menu trying to figure it out, or they may have a more complex system.

So how can the IRS increase the availability of customer service representatives to those taxpayers who want to speak with someone rather than go through a complicated menu that may not answer their question?

Secretary YELLEN. So I will confess, I am not sure exactly how people are routed when they call the main number. But what I can tell you is that the amount of resources, the number of customer service representatives, and the service that has been achieved through the IRA investments, many, many people—more people are reaching live operators who answer their questions. Call wait times have declined, on average, to 3 minutes.

And a standard metric that IRS uses, the level of service, increased above 85 percent, which is just a vast improvement from where we were 2 years ago. Taxpayer assistance centers are being staffed. There is a great deal more available in terms of customer service. You know, I am not positive just what happens when people reach an automated thing, but I can look into that.

Senator COLLINS. Thank you. I would appreciate that. Let me bring up a related issue. As of May 5, the IRS expects its employees to return to the office for half of all their workdays. My first question would be, why only half?

Secretary YELLEN. Well, you know, the guidelines that we have put in effect for all Treasury employees, including IRS, conform with OMB and Administration guidance, which is half. Now, in many cases, and this certainly applies to IRS employees, I mean, what is required for many people is to be there full time. And this is true for large numbers of IRS employees.

It is true for our employees who work in the Bureau of Engraving, and Printing, and for the mint and manufacturing processes. So this differs. It is only half, if that is something that is compatible with getting the job done. So our guidance throughout Treasury employees is, we need to see what is necessary to effectively serve the American public. And only when telework is compatible with that, is it permitted.

Senator COLLINS. Well, I looked at the latest data from the Treasury Inspector General for Tax Administration, and the Inspector General found that IRS employees teleworked 22 percent of the time, worked in person 37 percent of the time, and engaged in some sort of hybrid work 40 percent of the time, on average, during the first quarter of the fiscal year.

So I am trying to reconcile the data that is reported by the Inspector General to the IRS's goal of having its employees work half of their workdays in the office. It seems to me that the Inspector General found that they are not working half of their workdays in the office.

Secretary YELLEN. Your Honor, some of the employees are covered by collective bargaining agreements. They are members of the Union. And to enforce those rules requires an agreement with the Union.

Senator COLLINS. Let me just ask you one final question. And let me suggest that I think those contracts need to be renegotiated with the taxpayers' interest in mind.

Secretary YELLEN. Agreed.

Senator COLLINS. Let me ask you about the Main Treasury Building. It has been identified as an underutilized building by the GAO in July. And I apologize if this has already been brought up by anyone. By GAO's estimate, less than 50 percent of the usable space was being utilized.

Now, I understand that is an historic building, and that may limit—that may pose some challenges to using the entire building. But it concerns me that we are paying for a costly building if it is being so dramatically underutilized, when less than half of the building is being utilized. Is that due to the fact that people are working from home? Does the Treasury Department need to downspace its offices, or bring more people back? What are your comments on that?

Secretary YELLEN. We are looking at our space requirements carefully. There are some programs that are growing and need more space, and some that need less. I believe that we have, as the leases expired, I need to get back to you with the details. But have relinquished one Treasury building, the Main Treasury Building, I am not aware. My impression was that it was fully utilized, but I will get back to you with details on that.

We are certainly looking at our space needs, but it is not simple because there are programs that are growing, while others are shrinking, their needs are shrinking.

Senator COLLINS. Thank you. Thank you, Mr. Chairman.

Senator VAN HOLLEN. Thank you, Madam Vice Chair.

And Madam Secretary, I have a few more questions here that I would like to get to. We talked a little bit earlier about your ongoing efforts to implement the REPO Act, the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act, using some of the Russian assets to help the people of Ukraine. Could you just update the Committee on where that effort stands in discussions with our partners, with the G7, and elsewhere?

Secretary YELLEN. Yes. Well, I personally believe that it is necessary and urgent for our International Coalition to find a way to unlock the economic value of those immobilized Russian Sovereign assets to support Ukraine. And the REPO Act was an important step. It enables us to do a whole variety of useful things. We want to work, if possible, and I believe it is possible, with our partners in the G7 and the European Union to settle on a coordinated way to unlock the value of these assets.

And the G7 leaders will be meeting in June, in just a couple of weeks, in Apulia, in Italy, and we are working together to try to find a way forward. Now, the European Union has taken a very important step. That there are substantial assets at Euroclear, which the assets are frozen, they are Russian sovereign assets.

Euroclear is earning interest on these assets. It doesn't belong to Russia, and it had been accruing to Euroclear. And the European Union has now taken action to take that, it is called the windfall profits, and to dedicate most of it for Ukraine. So that is a flow that amounts to somewhere in the \$3- to \$5 billion range per year, and will accrue as long as they remain immobilized.

We have been discussing the possibility of giving Ukraine, the G7, a loan and allowing the windfall, this flow of windfall profits to be used to pay off those—the loans that would be given. And this is an approach that seems to be commanding considerable support, so we are hopeful that this can be worked into something to be presented to the leaders at the G7, the upcoming G7 Meeting.

Senator VAN HOLLEN. Well, I want to commend you and the Deputy Secretary, and others, on coming up with these creative, innovative proposals.

Secretary YELLEN. Thank you.

Senator VAN HOLLEN. To garner the support of other countries that we need to work with as part of this effort. Another ongoing effort, as you know, which was launched a number of years ago now, was to put a price cap on Russian oil in order to reduce Russian oil revenues, overall, without impacting the global market price for oil. Those efforts have been, I think, somewhat successful. I think there is room for improvement. But could you provide a very brief update on where that effort stands?

Secretary YELLEN. Yes. So first year, the price cap, I think, was very successful. We saw a 40 percent decline in the Kremlin's oil revenues. And as you mentioned, the second goal is to keep the market well supplied. Russia continued to sell oil. Now, Russia was able, after that, to build up a fleet, a so-called shadow fleet, and

to find ways, often, to provide services like insurance that Western—had been provided by Western companies. And by providing those services, they were able to continue selling oil, particularly to India and China.

This was a considerable expense for Russia to have to do that. And there remains a significant discount on Russian oil. So essentially, although the oil continues to be sold, we forced Russia to make a hard choice, either abide by the cap and sell at a very low price, or invest massively resources, drawing money away from the war effort.

One estimate is that Russia has to pay \$36 a barrel to actually export a barrel of oil. So even if they are getting more than the \$6 price cap, their expenses are considerable.

Recently, their top oil official, the Deputy Prime Minister, attested that price cap enforcement, which we have made stricter recently, has been costly to Russian energy exports and is driving down their profits. So we do have the Russians saying that they are being harmed by this. We have upped our sanctions activity. We sanctioned Russia's largest shipping company with required stricter enforcement by Western service providers that they are abiding by the price cap, and those steps seem to be effective.

So I would describe the price cap as continuing to be somewhat effective at limiting Russia's revenue, and that includes driving up their expenses to sell this oil.

Senator VAN HOLLEN. Thank you, Madam Secretary. I also have one question, which I think will be a simple yes or no. But there is a lot of misinformation going around with respect to the Biden administration's effort to use some of the resources from the Inflation Reduction Act to go after only very high-end, very wealthy people who have not paid their taxes that are due and owing.

So I just want to confirm for the record that your direction to the IRS was that audit rates are not to increase relative to historic levels for small businesses or households earning less than \$400,000 a year.

Secretary YELLEN. That was my directive, and Commissioner Werfel has committed that he will not increase audit rates for families earning under \$400,000 or small business taxpayers, they will not rise above 2018 levels.

Senator VAN HOLLEN. And does the administration have any future plans to alter that very clear direction?

Secretary YELLEN. No. That the resources are intended to go after wealthy individuals who are not meeting their tax responsibilities, complex partnerships, and corporations, which is where most of the tax gap is estimated to originate.

Senator VAN HOLLEN. Well, thank you for that. I do have one final area that I just want to convey some thoughts about, and then maybe you and your team can get back to me later.

Secretary YELLEN. Sure.

Senator VAN HOLLEN. I want to applaud you and the Biden Administration for issuing the executive order on imposing certain sanctions on persons undermining peace, security, and stability in the West Bank. This was the executive order issued by the President, February 1st of 2024.

The Chairman of three committees with jurisdiction over this area, Senator Cardin on the Foreign Relations Committee, Senator Reed, Armed Services Committee; Senator Warner on the Intelligence Committee, have all written to the administration commending this action and urging you, and the President, and the Secretary of State to consider further actions with respect to addressing extremist settler violence on the West Bank, which, as you know, has created a very, very dangerous and combustible situation. “Combustible” is actually not the right word because it is already combusting.

And I really hope that the administration will use its authorities to send very clear signals as to what is acceptable and what is not.

In that regard, though, I would just bring to your attention a New York Times Magazine piece from May 16. It is the cover story. It goes into great detail, not only about extremist settler violence but the conditions under this very extreme Netanyahu Government that have allowed a lot of that violence to continue.

And it especially talks about the actions of Mr. Smotrich, who wears two hats; one is as the Minister of Finance, where as you know, he has really tried to prevent the Palestinian Authority’s own tax revenues that are collected by Israel from being returned to the Palestinian Authority. Thank you for your efforts to keep the pressure on, because that just creates more and more instability.

The PA, as you know, actually works with the United States and Israel on security cooperation, among other things, and so undermining and under—and unfunding them obviously creates an even more unstable situation. But in addition to that, that hat that he wears as Minister of Finance, Smotrich also has a very important portfolio overseeing the West Bank.

And in this New York Times Magazine piece, which, by the way, was written by two veteran investigative reporters, including an Israeli investigative reporter, it says, and I quote, “One document describes a meeting in March when Major General Yehuda Fox, the Head of Israel’s Central Command responsible for the West Bank, gave a withering account of efforts by Bezalel Smotrich, an ultra-right leader and the official in Prime Minister Benjamin Netanyahu’s Government with oversight over the West Bank, to undermine law enforcement in the occupied territory.”

“Since Smotrich took office”, Fox wrote, again Fox is with the IDF of Central Command; “Since Smotrich took office”, Fox wrote, “The effort to clamp down on illegal settlement construction has dwindled to the point where it has disappeared”; unquote. “Moreover”, Fox said, “Smotrich and his allies were thwarting the very measures to enforce the law that the Government had promised Israeli courts it would take.”

So Madam Secretary, my point is this, as I read this executive order, and what actions qualify to be sanctioned, it says: Those covered actions include directing, enacting, implementing, enforcing, or failing to enforce policies that threaten the peace, security, or stability of the West Bank. And by my reading, Mr. Smotrich’s actions clearly meet that definition and that test.

So I would urge the administration to consider imposing these sanctions on Mr. Smotrich. I think it is the right thing to do to send a signal that the kind of instability that he is creating both

through his efforts to cut off all funding to the PA, and I will say that he said in a letter to Prime Minister Netanyahu, with respect to the Palestinian Authority, this a quote, “We must bring about its downfall.” That is in direct contradiction and violation of U.S. policy, and at least my understanding of the policy of the Government of Israel.

And yet you have this individual taking those actions against the Palestinian Authority, which the President, President Biden, of course, has seen as a partner in a Government once we get the hostages freed, and bring about a ceasefire in Gaza, as a partner with respect to governance in Gaza.

So I would suggest that these actions he is taking, both to quote, “Dismantle the PA,” as well as to encourage and enable extremist settler violence and the expansion of settlements that are deemed illegal under even Israeli law, it seems to me it is an action that the administration should consider. And I would recommend it taking.

I don’t expect an answer today, but I would, Madam Secretary, ask you for your commitment to meet with me and my team to talk about this issue.

Secretary YELLEN. I would be glad to do that. And let me say, we share your concerns about what is happening in the West Bank. As you mentioned, we have taken some actions. I have been very disturbed about the withholding of these revenues. And I think it was week before last, our G7 Finance Ministers meeting, our communique expressed joint concerns about this.

I have written a letter to Prime Minister Netanyahu expressing my concerns about this, and the general deterioration of economic conditions in the West Bank. And I would be glad to have follow-up conversations with you and your staff on this matter.

But please know that we are also deeply, deeply concerned by, and disturbed by what is happening here.

Senator VAN HOLLEN. Thank you, Madam Secretary. I have been following and appreciate the efforts you have taken, and look forward to continuing to work with you and your team on this. Thank you, of course, for being here today.

#### ADDITIONAL COMMITTEE QUESTIONS

[The following questions were not asked at the hearing, but were submitted to the agencies for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED TO THE HONORABLE JANET L. YELLEN SECRETARY OF THE TREASURY

##### QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

*Question 1.* Native communities have some of the highest barriers to accessing capital and financial services. In Washington state, Native Community Development Financial Institutions play a major role in supporting Native-owned small businesses and economic growth in Tribal communities. How does the President’s fiscal year 2025 budget request support economic development in Tribal communities?

*Answer.* Treasury works on Tribal economic development matters through its Office of Tribal and Native Affairs (OTNA), the Community Development Financial Institutions (CDFI) Fund, and the State Small Business Credit Initiative (SSBCI). OTNA advises on Treasury’s programs and policies that have Tribal implications and manages the Department’s Tribal consultation process. This includes work on Tribal tax matters and the \$30 billion in Tribal recovery set-asides.

For fiscal year 2025, Treasury has requested approximately \$1.6 million to fund staff positions. For the CDFI Fund, the President's Fiscal Year 2025 budget request supports economic development in Tribal communities by including a \$25 million request for the Native American CDFI Assistance (NACA) Program. The NACA Program provides two types of monetary awards—Financial Assistance (FA) awards and Technical Assistance (TA) grants. Native CDFIs lend where other mainstream financial institutions do not and often serve the most financially distressed individuals, families, and businesses in Native communities. In addition, the NACA Program provides training to increase the capacity and expertise of Native CDFIs. Further, Native CDFIs are eligible to apply for and receive awards from other CDFI Fund-administered programs that are included in the President's Fiscal Year 2025 budget request.

On SSBCI, the majority of Tribal SSBCI capital program applications have been approved as of October 2024. These approvals correspond to a majority of funding available to Tribes, with up to \$522 million for 234 Tribes approved as of October 11, 2024. The SSBCI program is now refocusing resources from Tribal application support to Tribal program implementation. Tribal governments have been supported by robust outreach staffing on the SSBCI team. SSBCI is offering a combination of in-person and virtual meetings to Tribal governments to explain possibilities with the program, identify hurdles, answer questions from Tribal governments and partners, and convene financial institutions that are critical to the success of Tribal SSBCI. Earlier this year, Treasury and the Federal Reserve co-hosted the first Tribal SSBCI conference, and several Tribal governments attended the SSBCI Midwest regional conference at the Federal Reserve Bank of Kansas City.

*Question 2.* In response to a Government Accountability Office (GAO) report (GAO-12-560) in 2013, the IRS identified more than 15.6 million taxpayers who did not seem to be claiming the American Opportunity Tax Credit or Lifetime Learning Credit despite having received a 1098-T, Tuition Statement. Updated information would be helpful to the Committee in determining the efficacy of IRS outreach to these taxpayers. For each of the previous five tax years, including tax year 2023, please provide an estimate of the total number of tax filers who received a Form 1098-T (and A) filed taxes and/or B) had an associated Form 8863, Education Credits (American Opportunity and Lifetime Learning Credits), respectively.

*Answer.* Eligible educational institutions must file a Form 1098-T for each student they enroll and for whom a reportable transaction is made. Not all students receive a Form 1098-T. A Form 1098-T does not need to be filed for:

- Courses for which no academic credit is offered, even if the student is otherwise enrolled in a degree program;
- Nonresident alien students, unless requested by the student;
- Students whose qualified tuition and related expenses are entirely waived or paid entirely with scholarships administered by the school; and
- Students for whom the institution does not maintain a separate financial account and whose qualified tuition and related expenses are covered by a formal billing arrangement between the institution and the student's employer or a governmental entity, such as the Department of Veterans Affairs or the Department of Defense.

There are three main reasons why a taxpayer who has a student who receives a Form 1098-T does not claim an education credit. First, not all Form 1098-T recipients are in tax units that are eligible for an education credit. For example, the American Opportunity Tax Credit (AOTC) is allowed only for the first 4 years of postsecondary education and is allowed for a tax year only if the student is enrolled at least half time for at least one academic period beginning in the tax year. In addition, tax units whose modified adjusted gross income (modified AGI) exceeds certain amounts may not claim education credits.<sup>1</sup> Second, students who receive a Form 1098-T whose tax units are eligible only for a nonrefundable education credit may not have enough tax liability to use a nonrefundable credit, and thus the tax unit may choose to not file Form 8863. Third, the student may have additional

<sup>1</sup> The AOTC may not be claimed if the tax unit's modified AGI is more than \$90,000 (\$180,000 in the case of a married couple filing a joint return). For tax year 2019, the Lifetime Learning Credit (LLC) could not be claimed if the tax unit's modified AGI was more than \$68,000 (\$136,000 in the case of a married couple filing a joint return). For tax year 2020, the LLC could not be claimed if the tax unit's modified AGI is more than \$69,000 (\$138,000 in the case of a married couple filing a joint return). For tax years 2021–2023, the LLC could not be claimed if the tax unit's modified AGI was more than \$90,000 (\$180,000 in the case of a married couple filing a joint return).

scholarship income in excess of their eligible expenses or be paying their eligible expenses with tax preferred savings.<sup>2</sup>

Individual Tax Filers with Form 1098-T Tuition Statements and with Form 8863 Education Credits, Tax Years 2019 – 2023<sup>a</sup>  
(counts in millions)

Tax Year	Number of Students with a F1098-T <sup>b</sup>	F1040 Returns with a F1098-T match <sup>c</sup>	F1040 Returns with a F1098-T match who also file F8863 <sup>d</sup>
2019	22.1	19.1	8.2
2020	22.1	19.1	7.9
2021	21.5	18.4	8.2
2022	21.1	17.5	7.6
2023	20.8	15.7	6.7

Notes:

<sup>a</sup> The tax year 2023 filing season is ongoing. Estimates reflect data available as of 10/8/2024.

<sup>b</sup> Count of unique students with valid TINs with a F1098-T Tuition Statement.

<sup>c</sup> F1040 returns with valid TINs associated with at least one student with a F1098-T. Count excludes returns that may be claimed as a dependent on another return as those returns are ineligible for education credit claims.

<sup>d</sup> F1040 returns with valid TINs associated with at least one student with a F1098-T who also file F8863 Education Credits. Count excludes returns that may be claimed as a dependent on another return as those returns are ineligible for education credit claims.

Source: IRS, RAAS, October 11, 2024

*Question 3.* Please summarize recent IRS activities within the last three tax years to identify taxpayers potentially eligible for the education credits, or students in higher education who could benefit from tax filing, and to conduct outreach to these populations.

*Answer.* The Internal Revenue Service (IRS) regularly conducts studies on how to improve the participation rate for refundable credits. The IRS also partnered with the U.S. General Service Administration and a four-year public university to learn about effective communication strategies to increase uptake of the American Opportunity Tax Credit (AOTC). Also, the IRS understands the important role tax professionals play in assisting taxpayers claim refundable credits for which they are eligible. Therefore, the IRS strategy entails outreach to tax professionals because of their significant influence on taxpayer uptake. The IRS's outreach efforts to tax professionals include the annual IRS Nationwide Tax Forum (NTF), which is held in five cities over the summer, where sessions are conducted on refundable credits eligibility requirements, including education credits. The IRS also conducts similar seminars at the annual Latino Tax Festival (LTF) to help expand its outreach to Hispanic communities. Furthermore, during the 2024 NTF and LTF, the IRS hosted

<sup>2</sup> Generally, any given dollar of educational expenses may receive at most one tax preference (no "double dipping").

focus group sessions with tax professionals on ways to increase the use of refundable credits. The findings from these sessions may help the IRS identify additional populations that may be eligible for education credits.

The IRS conducts webinars, symposia, and working group sessions on refundable credits with tax professionals and other stakeholders. At the start of the filing season, the IRS conducts a webinar on refundable credits to provide tax professionals with information they need to assist their clients claim education credits. The IRS hosts 'Back-to-School' symposia to encourage our outreach partners to promote education credits. The IRS meets with stakeholders and external organizations through quarterly working group sessions to relate current refundable credit outreach activities, identify underserved populations, share research findings, and brainstorm strategies for improving uptake.

The IRS continues to share information about education credits with taxpayers through traditional and new media. The IRS provides publications to its outreach partners. The IRS also promotes the education credits webpage on IRS.gov that provides information on eligibility requirements, a benefits comparison chart between the AOTC and the Lifetime Learning Credit, access to marketing publications, IRS tax tips, and an interactive tool to help taxpayers determine whether they are eligible for education credits. The IRS also promotes education credits to various professional organizations.

*Question 4.* Please provide an update on conversations between the U.S. Departments of the Treasury and Education regarding the establishment of a data-sharing agreement to conduct outreach to financial aid applicants in higher education about tax benefits for which they may be eligible, such as the Earned Income Tax Credit, Child Tax Credit, or education credits, as authorized under Section 483(c)(3) of the Higher Education Act.

*Answer.* The IRS is always interested in partnering with Federal, state and local agencies, including the Department of Education, to identify and collaborate on outreach efforts to underserved populations. The IRS maintains numerous resources directed toward students, including Publication 970, Tax Benefits for Students, as well as a resource center on tax benefits for education. I would refer you to the IRS Commissioner for more information about the IRS's work to educate taxpayers about tax benefits for which they may be eligible, as well as its work with the Department of Education.

*Question 5.* Please provide an update on conversations between the U.S. Departments of the Treasury and Education regarding the establishment of an interagency coordination plan to increase the application for Federal financial aid from individuals who file Federal tax returns, as specified under Section 485E(c)(2)(A)(i) and Section 485E(c)(2)(C) of the Higher Education Act.

*Answer.* The IRS does not maintain a data-sharing agreement with the Department of Education to conduct outreach to financial aid applicants and does not have plans at this time to establish an agreement of this type. I would refer you to the IRS Commissioner for more information about the IRS's work with the Department of Education.

*Question 6.* The U.S. Department of Education has recently indicated publicly that it has not resolved the remaining data-exchange issues in the Free Application for Federal Student Aid (FAFSA) which prevent students and contributors without Social Security Numbers (SSNs) from matching their data with the IRS, thereby preventing them from directly retrieving their tax data. Please provide an update on the timeline for resolving this issue, including when the IRS expects full functionality of the data-matching and data-retrieval processes for individuals without SSNs and whether these issues will be fully resolved for the upcoming 2025–26 FAFSA cycle.

*Answer.* We are aware of the prior limitations on the Department of Education's FAFSA system for students and contributors without SSNs, but note that Education posted a notice on August 2, 2024, that the issue was resolved.

Update on August 2, 2024: The Department is revising this announcement to reflect the extension of a process change that allows those without an SSN to immediately access the online FAFSA form after creating a StudentAid.gov account, as announced in the July 30, 2024 electronic announcement (GENERAL–24–95).

This issue was a limitation of the FAFSA system, not with the IRS data retrieval or exchange process. Individuals are required to furnish an identifying number, ei-

ther an SSN or an Individual Taxpayer Identification Number (ITIN), to file a tax return with the IRS. Each request for tax data to the IRS must include an SSN or ITIN to retrieve the individual's tax records. If the student or contributor does not have an SSN or ITIN, then the IRS would not have any tax information to provide.

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QUESTIONS SUBMITTED BY SENATOR RICHARD DURBIN

*Question 1.* With the passage of the Inflation Reduction Act (IRA), Democrats provided unprecedented support for climate-smart technologies. Through a tech-neutral, tax incentive-based approach, the IRA has unlocked hundreds of billions of dollars in public and private investment for wind and solar energy, heat pumps, electric vehicles, and other energy efficient technologies. The IRA supports one of those technologies, clean hydrogen, through the creation of the Clean Hydrogen Production Tax Credit, also known as 45V. When produced with power from a zero-emissions energy source—like wind, solar, hydropower, or nuclear—hydrogen offers a powerful tool to reduce emissions in hard-to-decarbonize sectors like shipping and heavy manufacturing. With the 45V credit, Congress intended to supercharge the United States' nascent hydrogen production industry and support a suite of projects, including the Department of Energy's (DOE) Regional Clean Hydrogen Hubs. However, in December 2023, Treasury proposed rules for the implementation of 45V that would place strict limits on which projects can qualify for the credit, including by restricting projects that rely on existing sources of clean energy. This "additionality" limitation all but prohibits hydrogen produced using nuclear power from qualifying for the credit. If these proposed rules are maintained, hydrogen producers and the nuclear industry have indicated they will downsize or outright cancel projects across the country, including those in the DOE Hydrogen Hubs. Without these projects, the United States is unlikely to reach the DOE's goal of producing 10 million metric tons of clean hydrogen annually by 2030.

*a. Does Treasury support the DOE's goal of producing 10 million metric tons of clean hydrogen by 2030?*

*Answer.* The Section 45V Clean Hydrogen Production Credit is an important tool for building out a clean hydrogen industry in the United States, complementing other Federal programs. Together, the Inflation Reduction Act and Bipartisan Infrastructure Law represent by far the most ambitious policy support globally to enable the development of a clean hydrogen industry and realize the potential of clean hydrogen to reduce emissions in hard-to-abate sectors.

In developing guidance under section 45V, Treasury has worked in concert with other Federal agencies including the Department of Energy and the Environmental Protection Agency given their expertise. The Notice of Proposed Rulemaking (NPRM) that Treasury and IRS issued in December 2023 was aimed at providing guidance to enable projects to move forward while ensuring the environmental safeguards firmly established in the law. The NPRM sought public input on many issues including on how generation from existing clean generators could be considered to meet the incrementality requirement.

As we continue to review and evaluate the nearly 30,000 comments received on the proposed rules, we are working to include appropriate adjustments and additional flexibilities to help grow the industry and move projects forward, while adhering to the law's emissions standards, including the requirement to consider indirect emissions.

*b. If so, how does Treasury believe this goal can be met while prohibiting the use of nuclear energy to produce clean hydrogen under its proposed guidance for 45V?*

*Answer.* See response to Question 1a (above).

*c. Does Treasury support the projects outlined by the seven DOE Regional Clean Hydrogen Hubs?*

*Answer.* See response to Question 1a (above).

*d. If so, how will Treasury work with these Hubs to ensure their success given that all seven have indicated that the strict additionality requirements proposed in 45V will hamper their efforts?*

*Answer.* See response to Question 1a (above).

## QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN, III

*Question 1.* Fossil fuel communities have historically broken their backs mining coal, pumping oil, and powering our homes, hospitals, factories and cities. Those communities that powered our nation to greatness are now the biggest economic losers in this energy transition, and they deserve to be first in line for reinvestment. That's why we included a bonus for power generation projects located in these energy communities—to drive new investment and jobs in the communities that need it most. So, I was appalled when Treasury extended the bonus to cover expensive offshore wind projects that, by their very nature out at sea, cannot be located in this type of community. Let me be clear—this bonus wasn't intended to sweeten the deal for the struggling offshore wind industry, it was intended to help communities like mine in West Virginia that have been left behind.

*a. Do you plan to fix this interpretation?*

*Answer.* The energy communities bonus is critical to our efforts to ensure all Americans benefit from the growth of the clean energy economy by driving investment in communities that have often been overlooked.

Treasury and IRS issued initial guidance on the energy communities bonus in April 2023 and additional guidance, Notice 2024-30, in March 2024. Among other clarifications, Notice 2024-30 clarifies that an offshore wind project can qualify for the bonus if the supervisory control and data acquisition (SCADA) equipment used to remotely monitor and control the project's operations is located in an energy community as defined by the law. Under the guidance, the SCADA equipment must also be located in a port that is used either full or part-time to facilitate maritime operations necessary for the installation or operation and maintenance of the project, and have a significant long-term relationship with the wind project, with staff and contractors performing functions essential to the operations of the wind project based there. This clarification reflects the fact that onshore SCADA equipment at ports is critical to offshore wind projects and that offshore wind projects make significant investments and create jobs at these ports over the duration of the projects.

Treasury and the IRS welcome additional feedback as we implement this important provision of the Inflation Reduction Act.

*b. Do you think your guidance will drive up the cost of the bonus tax credit or will it instead shift investment offshore and away from struggling communities?*

*Answer.* See response to Question 1a (above).

*Question 2.* The Organization for Economic Cooperation and Development (OECD), in conjunction with you and this Administration, has been working to implement a new, global tax regime that would, among other things, require countries to implement a qualifying corporate tax rate of at least 15%. While many countries and jurisdictions have agreed and have already begun implementing these rules, there are a number that haven't, including the United States. Madam Secretary, I am concerned about the rules that this Administration agreed to, without direct input from Congress. We have no guarantees that our existing tax framework, including the newly created 15% Corporate Alternative Minimum Tax, will serve as a qualifying tax for this agreement. We have no mechanisms in place to prevent the implementation of these rules until all countries have established the appropriate tax frameworks, which will negatively impact the U.S. revenue base and U.S. based multi-national enterprises (MNEs). And we have no guarantees that some of the world's largest economic players, specifically China and India, will ultimately put this agreement into practice.

*a. Why did the Administration exclude Congress when negotiating with the OECD and its members on this agreement?*

*Answer.* Congressional input has been valuable in developing our negotiating positions, and that input is reflected in the current substance of the OECD/G20 Inclusive Framework Two-Pillar Solution, including the "Pillar Two" global minimum tax rules and related guidance. Our Office of Tax Policy staff has briefed Congressional staff on a bipartisan, bicameral basis throughout the negotiations, and we will continue briefing Congress to develop the negotiating positions we put forward in the future. Among other issues, our Congressional/Executive partnership has resulted in outcomes that promote broad compatibility with the U.S. system on topics such as the allocation of Global Intangible Low-Taxed Income (GILTI) taxes, tax equity partnerships, and transferrable credits.

*b. What assurances have you been given that the existing US tax regime satisfies some portion of the OECD agreement?*

*Answer.* As noted above, the Administration is committed to working with Congress to ensure that Pillar Two-related policy, both in the form of guidance and potential legislation, is compatible as possible with the U.S. tax code. Already the Administration has secured consensus agreement that, as currently drafted, tax paid by U.S. taxpayers under GILTI will be taken into account in determining whether the required 15% tax rate has been paid, preventing double taxation. To achieve further compatibility, the Fiscal Year 2025 Greenbook's proposal on a modified GILTI regime presents one way to approach Pillar Two-related reforms that are based on the existing tax regime. We will continue to work with both Congress and our negotiating partners in the Inclusive Framework on these issues.

*c. How confident are you that nations like China and India will ultimately implement the OECD tax agreement?*

*Answer.* While we broadly recognize domestic tax sovereignty as a key principle in all of our negotiations, we continue to seek commitments and monitor Pillar Two adoption and implementation status across all jurisdictions that have joined the October 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy. We understand that Pillar Two will be most successful if implemented broadly and in a way that focuses on protecting the integrity of the existing Pillar Two Model Rules, which are aimed at preventing inefficient and unfair tax competition. The global minimum tax was crafted to achieve the goal of ending the race to the bottom on corporate tax rates even if not every country adopted the rules into their domestic law. We will continue to work with our Inclusive Framework negotiating partners on to encourage widespread and consistent implementation.

*Question 3.* As you are well aware, under the Inflation Reduction Act, Congress provided \$80 billion to the IRS for activities ranging from taxpayer services, to tax enforcement, to business system modernization. Under the Fiscal Responsibility Act and related agreements, roughly \$21 billion from the amounts provided to the IRS under the IRA were rescinded, with the majority being repurposed for funding other programs in fiscal years 2024 and 2025. Nevertheless, nearly \$60 billion remains for the IRS to continue to strive and provide excellent customer service to American taxpayers, update the IT systems of the agency, and ensure that everyone is following the tax code as written.

*a. Has the investment Congress provided to the IRS begun to yield the intended revenue effects, as estimated by the Congressional Budget Office?*

*Answer.* The IRA's investment in the IRS has provided the agency with the resources it needs to rebuild enforcement capacity with respect to large corporations, complex partnerships, and high-income and high-wealth individuals. This work is already paying dividends:

- In February 2024, the IRS launched an initiative to pursue 125,000 high-income, high-wealth taxpayers who have not filed taxes since 2017. These are cases where IRS has received third party information—such as through Forms W-2 and 1099s—indicating these people received income between \$400,000 and \$1 million or more than \$1 million, but failed to file a tax return. In the first 6 months of this initiative, nearly 21,000 of these wealthy taxpayers have filed, leading to \$172 million in taxes being paid.
- In fall 2023, the IRS launched a new initiative to pursue high-income, high-wealth individuals who have failed to pay recognized tax debt, with dozens of senior employees assigned to these cases. This work is concentrated on taxpayers with more than \$1 million in income and more than \$250,000 in recognized tax debt. After successfully collecting \$38 million from more than 175 high-income, high-wealth individuals last year, the IRS expanded this effort last fall to around 1,600 additional high-income, high-wealth individuals. Nearly 80% of these 1,600 millionaires with delinquent tax debt have now made a payment, leading to over \$1.1 billion recovered.

The revenue effects from the IRA's investment in the IRS will continue to grow over time, consistent with CBO's analysis of the legislation at the time it was enacted.

*b. Your Department and the IRS recently announced that it was making the IRS Direct File Program permanent. You will recall that under the text of the IRA, the IRS was only authorized to study the feasibility of creating Direct File not to establish it as a permanent program. Do you plan to utilize IRA resources to establish this now permanent program? If not, how do you expect to fund it?*

*Answer.* The IRS allocated some IRA funding for Direct File in fiscal year 2025. The total costs of Direct File will depend on the scope of the product and service offered as well as the number of filers that elect to use it. The IRS is in the process of preparing Filing Season 2025 cost estimates to share.

*Question 4.* We cannot allow incentives Congress provided in the IRA for domestic manufacturers and our Free Trade Agreement partners to be hijacked by adversaries engaging in “mineral laundering.” I am also concerned that the Administration is exploring limited trade agreements with countries like Indonesia where Chinese investment in the nickel sector reached \$3.6 billion in the first half of 2022. Indonesia is not an FTA partner and to go behind Congress’ back and give them eligibility just because they produce a lot of nickel is a slap in the face to those of us who wrote the law to secure our supply chains.

*a. Do you agree it is a bad idea to allow minerals from countries like Indonesia, where China controls the supply chain, to qualify for the consumer EV tax credit?*

*Answer.* The section 30D regulations are strengthening domestic supply chains for batteries and safeguarding our national security so that the U.S. leads the clean vehicle transition. Under the final rules, as under the statute, starting in 2024, if a vehicle’s battery has battery components manufactured or assembled by a foreign entity of concern (FEOC), the vehicle is not eligible for the section 30D Clean Vehicle Credit. Starting in 2025, batteries cannot contain critical minerals that are extracted, processed, or recycled by a FEOC. Treasury’s final rules detail how automakers must comply with those restrictions, including the due diligence they must undertake and the certifications they must provide under penalty of perjury. The final rules also provide an upfront review process to ensure that manufacturers are submitting robust information to verify compliance with the section 30D FEOC rules.

The definition of “foreign entity of concern” for the IRA’s Clean Vehicle Credit is based on the Bipartisan Infrastructure Law definition, and specifically, the battery grant program that the Department of Energy administers. Under DOE’s interpretive guidance, the government of China and companies controlled by the government of China are foreign entities of concern.

Congress is a key partner in efforts to strengthen our supply chains and reduce our reliance on China for critical minerals. The Office of the U.S. Trade Representative and Treasury have engaged extensively with Congress on this issue. The term “free trade agreement” is not defined in the IRA or elsewhere in statute. Consistent with the final regulations, the Secretary will carefully consider specific criteria in identifying whether a country is one with which the United States has a free trade agreement in effect for the purposes of the section 30D credit. These factors include whether an agreement between the United States and a country reduces or eliminates trade barriers on a preferential basis and reduces or eliminates restrictions on exports, including exports of critical minerals.

*Question 5.* I was frustrated to see that the final rule for the EV credit creates several loopholes that will allow China to benefit from the EV tax credit by weakening the Foreign Entity of Concern restrictions. First, the rule will allow vehicles with battery components sourced from Foreign Entities of Concern to still be eligible by ignoring the content of an individual vehicle and allowing automakers to claim prorated credits based on the amount of FEOC materials across their supply chain. The rule also creates an unlawful exemption from FEOC requirements for battery materials they consider to be “low-value” or “hard to trace” until 2027. The most egregious exemption is for graphite contained in anode materials, even though “graphite” is explicitly listed as an applicable critical mineral in the law. I don’t understand how this Administration could give up so easily and continue to let foreign nations control America’s transportation.

*a. Where did these loopholes come from?*

*Answer.* The section 30D Clean Vehicle Credit, together with other provisions of the IRA, is helping spur a boom in U.S. manufacturing and strengthening energy security by building secure, resilient supply chains with our allies and partners. Companies have already announced \$173 billion in battery and EV supply chain investments in America since President Biden took office. The section 30D regulations are strengthening domestic supply chains for batteries and safeguarding our national security so that the United States leads the clean vehicle transition. Under the final rules, as under the statute, starting in 2024, if a vehicle’s battery has battery components manufactured or assembled by a foreign entity of concern (FEOC), the vehicle is not eligible for the section 30D Clean Vehicle Credit. These regula-

tions, which were developed in close consultation with the Department of Energy, provide temporary transition rules to facilitate the transition of battery and EV supply chains to meet the statute's requirements. We anticipate that the development of detailed traceability mechanisms and the production of certain impracticable-to-trace battery materials such as domestic graphite will ramp up in preparation for the sunset of these temporary transition rules.

Moreover, although battery suppliers may be able to trace the origin of all of their battery materials, critical minerals may be commingled during processing such that manufacturers and their suppliers cannot physically track specific masses of minerals to specific battery cells or batteries. The approach in the final regulations limits manufacturers to claiming the credit only to the degree they have fully compliant critical minerals, while still acknowledging existing practical limitations regarding tracking and supply chain management.

The definition of "foreign entity of concern" for the IRA's Clean Vehicle Credit is based on the Bipartisan Infrastructure Law definition, and specifically, the battery grant program that the Department of Energy administers. Under DOE's interpretive guidance, the government of China and companies controlled by the government of China are foreign entities of concern.

*b. Are you concerned this sends a message that we are OK with allowing China to benefit from taxpayer dollars?*

*Answer.* See response to Question 5a (above).

*Question 6.* One of the other most important benefits of the IRA—as I know you will agree—is that it will help the IRS process tax returns in a timely manner and provide better customer service. One of the biggest issues I continue to hear about from West Virginians is that they struggle to receive answers to some of the most basic questions about taxes and tax refunds. West Virginia residents, like many of those living in rural areas, rely on IRS walk-in centers for many of their pressing tax questions, particularly during filing season which recently began. Unfortunately, many of our assistance centers have been unable to fill vacant positions, meaning there are minimal in-person resources for taxpayers in those communities. While I applaud the Department and the IRS for opening a number of assistance centers in the last 2 years, the fact of the matter is that they are still woefully under-staffed and unable to tend to the needs of my constituents.

*a. Will you commit to working with the IRS and the Taxpayer Advocate Service to prioritize staffing rural customer service facilities?*

*Answer.* I am committed to working with the IRS and the Taxpayer Advocate Service to prioritize customer service and support for rural communities. As you know, in Filing Season 2024, the IRS opened or reopened 54 Taxpayer Assistance Centers using Inflation Reduction Act funding. The IRS achieved more than 11,000 additional hours of service at Taxpayer Assistance Centers, exceeding its goal of providing more than 8,500 hours additional hours of service. Overall, the IRS served more than 170,000 additional taxpayers in-person at Taxpayer Assistance Centers than Filing Season 2023. The IRS also increased the number of taxpayers receiving free tax preparation through volunteers by around 200,000 returns, exceeding its goal of 50,000.

Looking forward, in Filing Season 2025, the IRS is committed to expanded staffing levels at TACs and expanding utilization of "Pop-up Live Assistance Centers" to serve rural areas and other areas not located near a TAC. They will also expand service through Volunteer Income Tax Assistance (VITA) partnerships and provide free tax return preparation assistance through community partners, as well as leverage outreach channels to increase taxpayer awareness of all available credits and benefits, boosting uptake for those eligible including rural communities.

*b. What are other steps is Treasury taking to ensure that improved IRS customer service reaches rural communities?*

*Answer.* See response to Question 6a (above).

*Question 7.* I have always said that the strict sourcing requirements in the EV credit are tough but achievable. The reason I say they are achievable is because in addition to the EV credits, the IRA also included the 45X Advanced Manufacturing Production Credit which incentivizes extraction and processing right here in the U.S. So, I was disheartened to learn that the guidance released in December for 45X has excluded all material costs from eligibility, such as mining costs or the cost of chemicals and materials needed for mineral processing. This greatly reduces the usefulness of the credit to U.S. critical mineral producers and processors and will ultimately result in them looking to move their projects outside of the U.S.

*a. Are you planning to address this issue in the final guidance for this credit?*

*Answer.* Expanding production of critical minerals in the United States is an Administration priority, and the section 45X Advanced Manufacturing Production Credit is a key part of our strategy to do that. On October 24, 2024, Treasury and the IRS issued final regulations on section 45X that provide clarity and certainty to taxpayers and include changes to further accelerate the buildout of domestic critical mineral supply chains.

Notably, the final regulations allow taxpayers to include both direct and indirect materials costs and domestic extraction costs, in the calculation of production costs for applicable critical minerals and electrode active materials, provided certain conditions are met. Included direct and indirect materials costs must not relate to the purchase of an existing eligible component, and included domestic extraction costs must be incurred by the taxpayer that claims the credit for the applicable critical mineral or electrode active material. These requirements maximize the incentive for domestic critical mineral production, while safeguarding against potential abuse and over-crediting.

We carefully considered all feedback, including yours, before issuing final regulations.

*Question 8.* Madam Secretary, I am concerned about the treatment of matured, unredeemed debt (MUD) accounts, otherwise known as the unclaimed U.S. savings bond. In previous years, this Committee, along with the Finance Committee, has passed legislation to fund the digitization of MUD account records and directed Treasury to share the information with the states, therefore allowing states to utilize their Unclaimed Property Administration and policies to help find bondholders. However, it appears that to this point the records have not been shared, seemingly due to the interpretation of language included from the SECURE 2.0 Retirement Savings Act.

*a. Can you provide an update as to when Treasury plans to share these digitized records with relevant states?*

*Answer.* Following the passage of the Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022, which directs Treasury to share matured unredeemed bond information with the states, Treasury published a Notice of Proposed Rulemaking (NPRM), requesting public comments within 60 days of publication. Treasury is currently working to review the comments received in response to the NPRM and publish a final rule. Treasury is also developing the technical solution which will be used to share the savings bond records with the states. The estimated date for completion is approximately late summer 2025.

*b. Can you speak to the importance of ensuring that unpaid bondholders are able to redeem their bonds?*

*Answer.* Treasury values the importance of reuniting the public with their matured, unredeemed bonds. To bring awareness to these bonds and encourage customers to redeem them, Treasury leverages data matching, provides an online search tool, and has conducted an outreach campaign. As a result of these initiatives,

—Treasury mailed over 845,000 letters to veterans (and spouses/dependents). To date, nearly 667,000 bonds have been redeemed worth more than \$264 million.

—To date, there have been over 3.4 million searches with nearly 829,000 matches through the Treasury Hunt website, the Department's online search tool that allows people to search for their bonds.

—Treasury's outreach campaign, which ran from April 2024 through June 2024, included organic social media posts, publishing two news articles, running Google Ads, and holding an interview with ABC Cleveland (has not yet aired). Treasury also delivered 113,000 emails to targeted MUD bondholders which resulted in the redemption of nearly 32,000 bonds worth over \$24.5 million.

#### QUESTIONS SUBMITTED BY SENATOR JOHN BOOZMAN

*Question 1.* A constant complaint I hear from Arkansans is how long Employee Retention Credit (ERC) returns are taking to process.

*a. I appreciate the IRS trying to stop abuse, but my casework team can't even get IRS liaison's to pick-up the phone or update them. Sometimes it takes 75 days just for the liaison to call us back. Will you commit to raising the issue with the IRS Commissioner and working with him to try and address this backlog?*

*Answer.* Commissioner Werfel takes the challenges of administering the ERC seriously. On October 10, 2024, the IRS announced that it was accelerating work on ERC claims, with processing underway on about 400,000 claims, including about \$10 billion of eligible claims.

*Question 2.* I wrote to the banking regulators with House Ag Chair Thompson about the Basel III proposal and its impact on client clearing services in derivatives markets.

*a. Basel III will make client clearing more expensive, which will ultimately make it more expensive for end-users to access the markets. We have seen fewer and fewer banks offering client clearing services, and I'm concerned the Basel III proposal will only make that worse. Related to that, as you know the SEC recently mandated central clearing for U.S. Treasuries. So we'll have cash US Treasuries being cleared, but we'll also have fewer banks clearing in treasury futures because of capital requirements. Are you concerned that these proposals would work at odds with each other in a way that could ultimately harm the functioning of the U.S. treasury market?*

*Answer.* Treasury believes that strong bank capital and liquidity levels promote a healthy financial system that supports continued economic growth. We support the banking regulators' work to implement the final Basel III standards here in the United States and believe that the regulators are best placed to decide on the optimal method of implementation. Vice Chair Barr recently highlighted significant revisions to the Basel III Endgame proposal that the banking agencies are currently contemplating.

*Question 3.* The SEC is significantly reforming how capital markets are regulated, whether we're talking about equities, derivatives, Treasuries, or fixed income.

*a. I'm concerned we don't really have a handle on the impact that all of these major rule changes will have on markets, particularly if these SEC rules and the Basel III proposal come at the same time. My worry is that all of these coming at once will change the role that banks play in providing liquidity and resilience to global markets, which could lead to market turmoil. I know you don't head the SEC or banking regulators, but you do head FSOC. Secretary, what is FSOC doing to look at the cumulative effect of all of these proposals, and the effect they will have on the functioning of U.S. capital markets?*

*Answer.* The Federal Stability Oversight Council (FSOC) remains focused on continuing to carry out its mandate pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act charges FSOC with responsibility for identifying risks to financial stability, promoting market discipline, and responding to emerging threats to the stability of the U.S. financial system. Treasury strongly supports the Council's work to bring together its member agencies to identify and address potential risks to financial stability.

The Council will continue to run a coordinated process among our member agencies to advance our mission of identifying, evaluating, and responding to potential risks to financial stability, such as those described in detail in the Council's recent annual report. We take that mission seriously and will continue to bring regulators together to promote the resilience of the financial system.

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#### QUESTIONS SUBMITTED BY SENATOR JOHN KENNEDY

*Question 1.* Is it the position of the Treasury that in 2022, Congress preempted the states' right to escheat savings bonds that have been abandoned by the citizens of that state? Please answer yes or no.

*a. If no, where does Treasury find the congressional intent to prohibit states from using the information to escheat the bonds for the benefit of trying to find the bondholder or their rightful heir?*

*Answer.* Section 122 of the SECURE 2.0 Act of 2022 (SECURE 2.0), requires Treasury to share certain information about certain unredeemed savings bonds with the states. Section 122 expressly limits the purpose for which a state may use the information to facilitate a state's efforts to locate the owner of a matured and unredeemed savings bond with a last known address in that state. SECURE 2.0 did not authorize the states to escheat or take possession of the savings bonds, nor did it override Treasury regulations that do not allow states to escheat savings bonds not in a state's possession.

## QUESTIONS SUBMITTED BY SENATOR BILL HAGERTY

*Question 1.* Please provide an itemized list of the IRS Standard Operating Plan's 42 initiatives and 475 projects. For each initiative and project, provided the estimated cost, FTE, and timeline from development to deployment; the outcome and key results; the funding source by Treasury appropriation fund symbol(s); a map tracing the interdependence among the initiatives and projects; and estimated out-year operation and maintenance costs.

*Answer.* In May 2024, the IRS released an update on the Strategic Operating Plan (SOP), which includes outcomes for priority efforts in 2024–2025 under each objective outlined in the SOP. It also includes estimated IRA spending (Table 3) and FTEs (Table 4) through fiscal year 2031 and a deeper dive on business systems modernization and operations support mandatory funding through fiscal year 2025 (Table 7).

*Question 2.* What is the current estimated total cost of fully implementing the IRS Standard Operating Plan?

*Answer.* The ultimate cost of the initiatives outlined in the SOP plan will be refined, and the specific estimates of the funding required to achieve our vision may change over time. In the absence of additional funding, the IRS estimates that its business systems modernization (BSM) account is currently short by nearly \$3 billion through fiscal year 2031 which means the IRS will only partially modernize, leaving a sizeable legacy footprint that will prevent the IRS from enabling a near real-time tax processing system that provides taxpayers with instant account updates, faster refund processing and payment posting, and near real-time status updates. The cost to operate and maintain the IRS technology will continue to rise having to manage both modern and legacy systems, requiring tradeoffs that will likely impact taxpayer services and enforcement of the tax law. The legacy technology that remains will operate inefficiently and with greater risks of outages affecting access to taxpayers and IRS employees. The President's fiscal year 2025 budget proposal to extend the IRA funding through fiscal year 2034 is critical to the IRS's ability to better serve taxpayers. With this additional funding, the IRS will be able to enable better functionality and improve overall data security as well as hire sufficiently to meet the taxpayer services and enforcement goals outlined in the SOP.

*Question 3.* Which of the IRS Standard Operating Plan's 42 initiatives and 475 projects are considered transformational?

*Answer.* The SOP outlines a vision for a transformed IRS where “All taxpayers can meet all of their responsibilities, including all interactions with the IRS, in a completely digital manner if they prefer” and “Noncompliant taxpayers, in particular the largest and most complex filers, pay what they owe because the IRS has the workforce and advanced technology needed to enforce fairness in the tax system and narrow the tax gap.”

The IRS is focused on critical work across the agency, including shoring up its core technology infrastructure to enable better functionality and improve overall data security. Modernized technology will significantly improve not just the underlying systems but ultimately customer service and the employee experience. With integrated data systems that update customer service representatives on customer questions in near real-time and through one system, taxpayers who reach out to the IRS will get prompt and near real-time information through the phone or digital solution that works best for them. IRS will also use advanced analytics, new compliance treatments, and near real-time data to identify high-risk filings and pursue exams that are more likely to uncover tax evasion. Along with modernizing systems, IRS technology delivery will itself be transformed into a product- and platform-centric service. This transformation enabled by resources provided through the Inflation Reduction Act (IRA) will ensure that the systems we are investing in today will remain persistently modern for many years to come.

*Question 4.*

*a.* Is reducing IRS call wait times from 28 minutes to 3 minutes considered transformational?

*Answer.* Filing Season 2024, exceeding its goal of call wait times of five minutes or less on the agency's main taxpayer helpline during filing season. During Filing Season 2022—prior to receiving Inflation Reduction Act resources—call wait times averaged 28 minutes. This achievement is in a broader context of transformational investments in taxpayer services. For example, this Filing Season, taxpayers bene-

fitted from important updates to the “Where’s My Refund?” tool, which is the most popular IRS customer service tool. Taxpayers have used “Where’s My Refund” 275 million times this Filing Season, with around 31 million views of the new and improved status updates as of April 6, 2024. Prior to this Filing Season, “Where’s My Refund” provided limited information, often leading taxpayers to call the IRS to inquire about their refund status. The updates to “Where’s My Refund” allowed taxpayers to see more detailed refund status messages in plain language. These updates have also ensured “Where’s My Refund” works seamlessly on mobile devices. Taxpayers often see a generic message stating that their returns are still being processed and to check back later. With the new and improved “Where’s My Refund,” taxpayers see clearer and more detailed updates, including whether the IRS needs them to respond to a letter requesting additional information. The new updates reduce the need for taxpayers to call the IRS for answers to basic questions about their refund.

*b. Is the 3 minutes specific to 35 accounts management phone lines?*

*Answer.* The IRS three-minute average wait time refers to the agency’s main taxpayer helpline during filing season.

*c. What was the average wait time for the IRS’s 55 other types of phone lines, especially the ones for collections and taxpayer protection?*

*Answer.* The National Taxpayer Advocate 2023 Annual Report to Congress includes Level of Service (LOS) figures for a range of IRS phone lines, including the top ten IRS enterprise telephone lines by volume of calls (figure 2.4.2).

*Question 5.* Please provide a table of the full cost of the government of Direct File by Federal agency, including a break out of development and operation and maintenance activities by cost. Please provide a list of the private sector partners that contributed to Direct File and estimated market value of these contributions.

*Answer.* Through April 20, 2024, the IRS spent \$24.6 million on Direct File, which includes \$11.6 million in costs for the development of last year’s report to Congress. Of the \$13.0 million spent on pilot development and implementation, \$10.6 million is technology and product development costs and \$2.4 million is operational costs (customer service, cloud computing, user authentication, etc.). The limited design of the pilot means that the IRS was not able to benefit from economies of scale. If the number of Direct File users were to increase, the cost per return would decrease.

These totals include costs associated with vendor support and an interagency agreement with GSA’s 18F. To build and run the pilot, the IRS also engaged 29 employees from the U.S. Digital Service (USDS) to supplement the IRS employees and other team members. The USDS costs are not included in the \$24.6 million spent on Direct File. The IRS estimates that the annualized cost for the USDS team is \$7.2 million.

*Question 6.* Please provide the data, data source(s), and methodology for the estimated \$5.6 million in tax preparation fees saved by using Direct File for the 2024 tax filing season and \$9.04 average cost per return using Direct File for the 2024 tax filing season.

*Answer.* Treasury’s estimate of \$5.6 million in tax preparation fees saved due to the 2024 Direct File pilot is based on the \$40 out-of-pocket cost estimate for 1040EZ filers for tax year 2017, which is the last year before that form was discontinued. The costs of the 1040EZ are used since both the 1040EZ and the 2024 Direct File pilot cover a narrow scope. As such, Treasury estimates that the 140,803 taxpayers who filed their returns via the 2024 Direct File pilot saved an average of \$40 each, or \$5.6 million total, in Federal tax preparation fees.

*Question 7.* Please provide the estimated cost of further developing, deploying, and operating Direct File for the 2025 tax filing season.

*Answer.* Total costs for Direct File for Filing Season 2025 will depend on the scope of the product and service offered as well as the number of filers that elect to use it. The IRS is preparing estimates to share and will continue to share cost information each year as it becomes available.

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QUESTIONS FOR SUBMITTED BY SENATOR MARCO RUBIO

*Question 1.* Since the early days of the Biden Administration in 2021, there has been one undeniable difference between the Department of Treasury’s leadership and other major Federal agencies. In general, other key Secretaries have, at the

very least, rhetorically emphasized the existential national security and economic threats posed by the Chinese Communist Party's (CCP) strategic takeover of critical industries through repeated trade abuses and non-market strategies. Yet, you have appeared to downplay the threats posed by the CCP at several critical junctures. Throughout 2022, for example, you took great care to describe the U.S.'s economic posture toward the People's Republic of China as a state of "competition," not "conflict." In April 2023, when you delivered remarks before the Chinese Embassy in Washington, you argued that the U.S. and communist China had a responsibility "to find a way to live together and share in global prosperity." In January 2023, you urged Chinese Vice Premier Liu He "to closely communicate" with the U.S. "on global macroeconomic and financial conditions," suggesting that the solution to this economic "competition" is to increase communication, cooperation, and complacency with a genocidal communist regime. Yet, despite this track record, of diminishing the threat of the CCP's trade abuses and attempts to flood the U.S. market with artificially cheap critical goods, you appear to have shifted rhetoric recently. For example, in your early April visit to the PRC, you issued a strong warning to Chinese Vice Premier He Lifeng over the CCP's "overcapacity" of clean energy goods and dumping of fentanyl precursor chemicals into the U.S. and Mexico. Within the context of these dialogues, you argued that the U.S. would not accept additional "decimated industries" as a result of the CCP's trade abuses.

*a. What prompted this stark shift in your posture toward U.S. trade with the PRC?*

*Answer.* My views have been consistent over time and fully aligned with President Biden's priorities. The Administration's approach to the economic relationship between the United States and China secures our national security interests and those of our allies and partners, seeks a healthy economic relationship contingent on a level playing field for our workers and businesses, and allows for cooperation on the urgent global challenges of the day. We continue to advance these goals through a combination of steadfast competition and engagement, often undertaken in parallel with one another. Throughout this process, we have been candid with the American people, our partners and allies, and indeed our Chinese counterparts about the harmful effects of China's non-market policies and practices.

*b. Considering that the CCP has a long track record of achieving non-market advantages over critical U.S. industries (such as steel, automobiles, and solar) through significant state subsidies, financing incentives, tax breaks, slave labor, and intellectual property theft, was there any new information or industry analysis that prompted your perspective on trade issues to change so quickly?*

*Answer.* See response to Question 1a (above).

*Question 2.* The Cuban system notoriously lacks transparency, with scant regulatory oversight. Examples of this can be seen daily through frequent cash shortages, currency conversion challenges made worse by highly fluctuating exchange rates, ineffective anti-corruption measures that preserve and enrich the ruling class, and the lack of access to government records and information. This enables illicit financial activities to go unnoticed, posing a significant risk to institutions engaged in financial transactions with Cuban entities. It is clear that Cuba's financial framework falls short of international standards. The Financial Action Task Force (FATF) has consistently pinpointed deficiencies in Cuba's Anti-Money Laundering (AML) laws and enforcement, underscoring the risks involved in transactions with Cuban financial institutions.

*a. What is the rationale behind your agency's changes to U.S.-Cuba policy as reflected in the amendments to the Cuban Assets Control Regulations, (31 CFR Part 515), which allow certain Cuban nationals to open bank accounts in the U.S.? How will these changes address the lack of Financial Oversight and Transparency in the Cuban financial system?*

*Answer.* The U.S. Department of the Treasury (Treasury) shares your goal that changes to U.S. policy should genuinely benefit the Cuban people and not inadvertently support the Cuban government or its backers. On May 28, 2024, Treasury's Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations (CACR), 31 CFR part 515, including to update and clarify authorizations to support independent Cuban private sector entrepreneurs and access to the Internet, and expand access to certain financial services for the Cuban people. These regulatory changes were crafted following extensive consultations with the Department of State, which engaged with Cuban independent private sector entrepreneurs and the U.S. private sector to identify which specific changes would most benefit inde-

pendent private sector entrepreneurs in Cuba while maintaining restrictions against the Cuban government and its military, intelligence, and security services.

Regarding authorizations for certain Cuban nationals to open accounts with U.S. banking institutions, the May 28, 2024 amendment to the CACR included a narrowly scoped authorization in the general license at 31 CFR § 515.584(h)(2) for U.S. banking institutions to open and maintain accounts solely in the name of Cuban nationals who are independent private sector entrepreneurs, as defined in 31 CFR § 515.340, for the purpose of conducting only authorized or exempt transactions under the CACR. These U.S. banking institutions bring the rigor of AML/CFT (Combating the Financing of Terrorism) controls to any bank account opened by them. Pursuant to 31 CFR § 515.340, the definition of an independent private sector entrepreneur continues to exclude any Cuban national who is a prohibited official of the Government of Cuba, as defined at 31 CFR § 515.337, and prohibited members of the Cuban Communist Party, as defined at 31 CFR § 515.338. This authorization serves to facilitate new opportunities for independent private sector entrepreneurs in Cuba, while continuing to deny benefits to the Cuban government or its backers.

*b. What changes has your agency seen regarding Cuban AML mechanisms that give you reason to believe that U.S. AML standards, and other related financial crime laws, will be followed in Cuba?*

*Answer.* The Financial Action Task Force (FATF) leads global action to tackle money laundering, terrorist and proliferation financing. The FATF publishes reports and case studies on money laundering and terrorist financing, promotes global standards to mitigate the risks, and assesses whether countries are taking effective action. As a FATF member, the United States plays an active role in developing and promoting FATF standards.

Cuba is part of the Financial Action Task Force of Latin America (GAFILAT), a FATF-Style Regional Body, where it is subject to a mutual evaluation review of its AML/CFT compliance with the FATF standards. The Mutual Evaluation is a comprehensive review of a country's AML/CFT framework and a key gauge to assess a country's illicit finance risks and effectiveness in combating illicit finance threats. Cuba's most recent mutual evaluation review was adopted in July 2015 and the next mutual evaluation assessment is expected to be conducted in 2026. The mutual evaluation will provide a comprehensive overview of Cuba's compliance with FATF standards, which are designed to promote transparency in a country's financial system.

Cuba regularly provides follow-up reports on its progress in addressing deficiencies identified in its mutual evaluation. For example, in a January 2024 follow-up report, Cuba addressed measures to identify and assess money laundering and terrorist financing risks associated with new technologies, such as virtual asset service providers (VASPs). The GAFILAT report concluded that Cuba has made efforts through the approval of various regulations related to virtual assets and VASPs, which establish a regime to conduct risk assessments, licensing, supervision or control, sanctions, preventive measures and AML/CFT obligations for VASPs. The FATF is a key mechanism for the United States to monitor Cuba's compliance with international standards on money laundering.

*c. The Cuban economy is heavily influenced and controlled by regime-owned enterprises, which are fertile grounds for corruption and misuse of funds. This environment provides ample opportunities for money laundering, particularly given the integration of MIYPMES into the regime-controlled licensing system. How will your agency measure corruption in a regime-dominated economy?*

*Answer.* Treasury shares concerns related to state-owned enterprises facilitating corruption and other misuse of funds. As noted previously, Cuba is part of GAFILAT and is assessed on its compliance with the FATF standards. The FATF standards include assessment of a country's top money-laundering risks. The 2015 mutual evaluation of Cuba found that the top money laundering risks were drug trafficking, embezzlement, bribery, and fraud. Treasury will continue to monitor money-laundering risks associated with state-owned entities.

Furthermore, the CACR broadly prohibits financial activity with Cuba from the United States, which limits the potential linkages of this activity to the U.S. financial system.

*d. Given the predominantly cash-based nature of the Cuban tourism sector and its implications for money laundering through various hospitality and tourism-related businesses, how do you plan to address the additional complexity this adds to AML efforts?*

*Answer.* Due to the broad prohibitions on Cuba-related activities by persons subject to U.S. jurisdiction in the CACR, there is limited permissible financial activity in Cuba and limited categories of permissible travel by U.S. persons to Cuba. Treasury monitors follow-up reporting required of Cuba by GAFILAT. Treasury intends to hold Cuba to compliance with FATF standards.

*e. Considering the high risk of MIYPMES being exploited to circumvent U.S. sanctions, and given the lack of transparency and oversight in Cuba's financial system along with the regime-controlled nature of the economy, how do you plan to mitigate the potential for sanctions evasion?*

*Answer.* OFAC takes seriously concerns related to Cuban government involvement in the private sector and expects banking institutions to conduct due diligence commensurate with their overall risk profile and internal compliance policies and procedures with respect to transactions involving Cuba or a Cuban national, including transactions under general licenses that authorize certain dealings with independent private sector entrepreneurs. Further, our recent Cuba regulatory amendment does not authorize transactions prohibited by other sanctions programs.

We also take allegations of possible sanctions violations seriously. While we do not comment on possible or pending investigations, Treasury regularly investigates activity that might undermine the integrity of our sanctions. We will not hesitate to take action against persons who violate our sanctions authorities or who engage in sanctionable conduct, when appropriate.

*f. Given the combination of a weak AML framework, a regime-controlled economy, and a cash-intensive tourism sector that creates an environment ripe for exploitation by criminal elements, how do you plan to address the risk of MIYPMES being exploited, whether knowingly or unknowingly, to launder money or facilitate other illicit activities?*

*Answer.* Treasury will continue to hold Cuba to compliance to the FATF standards. The future mutual evaluation of Cuba will provide the best assessment of possible risk associated with MIYPMES or the tourism sector, as well as the controls Cuba has implemented to mitigate illicit-finance risk.

Due to the comprehensive nature of the CACR prohibitions on transactions with Cuba, there is very limited connectivity of the U.S. financial system to Cuba.

*Question 3.* The U.S. Department of Treasury has established the Outbound Investment Security Program to implement President Biden's executive order on outbound investment, "Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern." While any effort by the United States to limit the Chinese Communist Party's access to U.S. capital and industry knowledge is positive, there are several reasons for concern regarding Treasury's implementation of this executive order.

*a. The Departments of Treasury and Commerce are tasked with implementing the order. What steps, if any, have you taken to coordinate with the Department of Commerce over implementation of this executive order, and what specific roles will the Department of Commerce play in the Outbound Investment Security Program?*

*Answer.* Treasury, Commerce, and other departments and agencies are working closely on the implementation of Executive Order 14105. The Executive Order directs Treasury to consult with Commerce on the implementing regulations and industry engagement and analysis of notified transactions, among other things. Commerce has been a key partner in shaping the proposed regulations to implement the Executive Order, drawing upon its industry and technical expertise to provide input on the implications for military, intelligence, surveillance, or cyber-enabled capabilities of covered national security technologies and products, and has conducted extensive stakeholder engagement alongside Treasury. Commerce will continue to be closely involved in the Outbound Investment Security Program, including working with Treasury to periodically review the effectiveness of the regulations that were issued on October 28 and assessing aggregate sector trends evident in notifiable transactions and related capital flows in covered national security technologies and products under the Executive Order.

*b. Your agency has repeatedly failed to sufficiently enforce sanctions with private investment firms such as Sequoia Capital investing in PRC drone maker, DJI. How will you ensure that private investment firms like Sequoia comply and restrict access to private equity and venture capital?*

*Answer.* The Treasury Department's final rule, issued on October 28, places obligations on U.S. persons to notify the Treasury Department regarding certain transactions and prohibit certain other transactions.

As noted in the final rule, the Treasury Department plans to monitor compliance by leveraging a variety of data and information sources, both internal and external. After identifying an instance of apparent non-compliance, the Treasury Department may initiate outreach to the relevant parties, or work with other agencies with equities, including law enforcement equities, to investigate the apparent non-compliance or initiate an enforcement action.

*c. Your agency has previously indicated that it will rely on investors to disclose whether or not their investment in the PRC is prohibited and that disclosure must be within 30 days after the investment has been made. What steps are you taking to effectively monitor and prohibit investments flowing to the PRC?*

*Answer.* The Treasury Department's final rule places obligations on U.S. persons to notify the Treasury Department regarding certain transactions and prohibit certain other transactions. More specifically, the final rule requires that a transaction requiring notification be filed with the Treasury Department no later than 30 days after the transaction is completed.

As noted in the final rule, the Treasury Department plans to monitor compliance by leveraging a variety of data and information sources, both internal and external. After identifying an instance of apparent non-compliance, the Treasury Department may initiate outreach to the relevant parties, or work with other agencies with equities, including law enforcement equities, to investigate the apparent non-compliance or initiate an enforcement action. The Treasury Department's investigation of potential violations and enforcement of the final rule will, as appropriate, also involve coordination with law enforcement agencies.

*d. How will you prevent outbound investments in Artificial Intelligence, Semiconductors, and Quantum Technology if it is relying on investors to self-certify? Have you established any mechanism to independently validate the information U.S. investors provide?*

*Answer.* As noted above and in the final rule, the Treasury Department plans to monitor compliance by leveraging a variety of data and information sources, both internal and external. Additionally, the Treasury Department will work closely with the Commerce Department on industry engagement and analysis of notified transactions, pursuant to the Executive Order.

Further, as noted above, after identifying an instance of apparent non-compliance, the Treasury Department may initiate outreach to the relevant parties or work with other agencies with equities, including law enforcement equities, to investigate the apparent non-compliance or initiate an enforcement action. The Treasury Department's investigation of potential violations and enforcement of the final rule will, as appropriate, also involve coordination with law enforcement agencies.

*Question 4.* National Students for Justice in Palestine's (NSJP) is a national umbrella network that represents more than 250 university chapters of Students for Justice in Palestine (SJP) across the United States and Canada. Both NSJP and SJP have led pro-Hamas, antisemitic protests on campuses since October 7, 2023. They're at the forefront of antisemitic activity on campus, coordinating student organizations, working with radical, pro-Hamas faculty, and distributing propaganda on campus. Some campuses across the country have banned or suspended their chapters, but that's only served as a band-aid to the spew of antisemitic hatred from our elite universities. Neither NSJP nor SJP are 501(c)(3) tax-exempt organizations, but NSJP benefactors are. NSJP and SJP supporting entities include Westchester Peace Action Committee (WESPAC); American Muslims for Palestine (AMP), an organization with ties to pro-Hamas individuals and organizations; and Americans for Justice in Palestine (AJP), which is the Virginia attorney general is investigating whether it has provided support to terrorist organizations.

*a. How concerned are you about the wave of antisemitic protests that have swept U.S. Institutions of Higher Education since October 7, 2023?*

*Answer.* Since Hamas' atrocious terrorist attacks on October 7, 2023, murdering 1,200 innocent civilians and taking over 200 hostages, there has been a concerning growth in antisemitic incidents and harassment. As a part of the U.S. National Strategy to Counter Antisemitism, Treasury will continue to engage with financial institutions to assist with identifying financial activity associated with violent extremists. Treasury will continue to work to counter the financing of all violent extremists, regardless of ideology, but also recognizes the broad protections provided by the First Amendment and other rights secured by the U.S. Constitution.

*b. In what ways is your department cracking down on antisemitic terrorist activity and support of such activity?*

*Answer.* The Treasury Department works to actively identify and disrupt terrorist financing in all forms, regardless of ideology. In the year since October 7, 2023, Treasury has embarked on a sustained pressure campaign to counter Hamas financing and has targeted numerous sources of funding, financial facilitators, and complicit actors in their financial enterprise, releasing eight tranches of designations related to Hamas, some in coordination with international partners. Treasury has also released several advisories for financial institutions on Iran and its proxies, including Hamas. Treasury continues to work with partners to take collective public or private actions against Hamas' financing across the globe.

*c. On May 9, 2024, colleagues and I sent a letter to IRS Commissioner Werfel asking for an investigation to determine whether NSJP supporters have engaged in conduct warranting revocation of their tax-exempt statuses. Will you remove the tax-exempt status of anti-Semitic entities that provide material support to foreign terrorist organizations, and thus breaking Federal law?*

*Answer.* On June 26, 2024, Commissioner Werfel responded to you and your colleagues thanking you for your May 9 letter and acknowledging your concerns. As his letter explains, the IRS takes seriously any information that a tax-exempt organization is not in compliance with applicable tax laws. Commissioner Werfel's letter details the actions taken with respect to referrals regarding exempt organizations.

*d. Will you commit to investigating NSJP benefactors, including those mentioned in my letter and those in this recent report? Please describe to what extent your department has already investigated these benefactors.*

*Answer.* Treasury cannot comment on ongoing or potential investigations.

*e. Given the recent lawsuit in the U.S. District Court for the Eastern District of Virginia filed against AJP and NSJP that claims that AJP serves as Hamas' propaganda division in the U.S. and the Virginia attorney general's October 2023 investigation into AJP on whether it used funds raised for providing support to terrorist organizations, do you think that there should be heightened scrutiny of this organization?*

*Answer.* Treasury will continue to work with the interagency and law enforcement colleagues to ensure Hamas is not abusing the U.S. financial system in any form. This includes working closely with U.S. law enforcement and interagency partners to hold individuals and entities accountable if they are engaged in illegal conduct such as materially supporting a terrorist organization.

*f. Do you share my concern over pro-Hamas demonstrators on campuses who have claimed that they are Hamas?*

*Answer.* Treasury will continue to utilize all tools available to target and disrupt Hamas' financial capabilities, to limit their capabilities to raise funds, carry out further terrorist attacks, and threaten U.S. and Israeli security interests in the region.

*g. How do demonstrators' claims that they are Hamas play into the department's investigations of organizations' support of Hamas, a foreign terrorist organization?*

*Answer.* OFAC regularly and aggressively investigates cases of U.S. persons who engage in prohibited activities involving Hamas and other sanctioned terrorist organizations. OFAC also retains the ability to sanction persons for material support or other sanctionable activity involving such an organization. OFAC considers all sources of information as part of its investigations for violations of OFAC-administered sanctions and for possible designations for supporting designated terrorist groups and works closely with interagency partners, including the Department of Justice, in holding accountable those who engage in conduct that contravenes U.S. sanctions. OFAC does not sanction persons for their engagement in activities subject to U.S. constitutional protection such as protected speech or religious beliefs and practices; nor do U.S. persons violate OFAC sanctions for engaging in such constitutionally protected activity.

*h. The founder of AMP, Hatem Bazian, is linked to the charity "Kindhearts," which had its assets frozen and a prohibition on transactions with Americans by the department because it has provided support to Hamas. Do you agree that there should be heightened scrutiny of AMP?*

*Answer.* OFAC regularly and aggressively investigates cases of U.S. persons who engage in prohibited activities involving Hamas and other sanctioned terrorist organization. OFAC also retains the ability to sanction persons for material support or other sanctionable activity involving such an organization. OFAC does not comment on possible or pending sanctions actions or investigations regarding specific targets.

*Question 5.* Secretary Yellen, the Chinese Communist Party has identified Light Detection and Ranging (LiDAR) as a critical technology and is leveraging a growing Chinese LiDAR sector to support its national defense and military industry. There is also evidence of Chinese LiDAR sensors being used for surveillance activities in the Xinjiang region. That same technology has flooded the U.S. market, undercutting American companies through unfair market practices. The Department of Defense (DoD) recently found that the leading Chinese manufacturer of LiDAR sensors is a “Chinese Military Company” operating directly in the United States. That same manufacturer, Hesai, is trading on a U.S. stock exchange, enabling U.S. investors to potentially fund a company that supports the People’s Liberation Army. Through a mixture of PRC government support theft of US technology, and access to US capital, Hesai has captured 47 percent of the global LiDAR market by sales revenue. I find it extremely troubling that the Treasury Department has not done anything to prevent U.S. investments from supporting LiDAR companies, like Hesai, that undermine the national security of the United States by directly supporting the military ambitions of foreign adversaries.

*a. Given these facts, why hasn’t your agency added Chinese LiDAR companies, including Hesai, which the DoD recognizes as a “Chinese Military Company,” to the Chinese Military Industrial Complex List to cut off their access to U.S. financial support?*

*Answer.* Treasury shares your concerns regarding the flow of investment to certain companies in the People’s Republic of China (PRC), including those that operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC. While we do not comment on possible or pending investigations regarding specific targets, OFAC will continue to use the full range of tools at our disposal, including economic sanctions, to combat these activities. We welcome information, including sources, on potential sanctions and look forward to our ongoing work with Congress to support U.S. interests and address national security threats.

SUBCOMMITTEE RECESS

And the hearing record will remain open until Tuesday, June 12, to allow Senators to submit additional questions for the record. Thank you again for joining us. Thank you for your service.

[Whereupon, at 4:07 p.m., Tuesday, June 4, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2025**

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**THURSDAY, JUNE 13, 2024**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10:05 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Chris Van Hollen (Chairman), presiding.

Present: Senators Van Hollen [presiding], Durbin, Hagerty, Boozman, and Kennedy.

U.S. SECURITIES AND EXCHANGE COMMISSION  
COMMODITY FUTURES TRADING COMMISSION  
OPENING STATEMENT OF SENATOR CHRIS VAN HOLLEN

Senator VAN HOLLEN. This hearing of the FSGG Subcommittee the Appropriations Committee will come to order.

Welcome everyone. My partner on this Committee, Senator Hagerty, and I have agreed to forego opening statements in the interest of allowing more time for questioning.

So I will introduce both of our witnesses, and if you could make sure you provide your testimony within 5 minutes, your full statements will be provided for the record. We will proceed from there and then have 7 minutes of questioning by members, in one or two rounds.

So let me introduce our witnesses here. We have the Chairman of the Securities and Exchange Commission, Gary Gensler, who was sworn in as Chairman in April 2021. Before joining the SEC, Mr. Gensler has had a variety of positions in and out of Government. He was formerly the chair of the U.S. Commodities Future Trading Commission, CFTC. He also served as Under Secretary of the Treasury for Domestic Finance and as Assistant Secretary of the Treasury from 1997 to 2001. He also did a stint at MIT teaching cryptocurrency and other related matters.

Prior to his public service, Chairman Gensler worked at Goldman Sachs as a partner in the Mergers and Acquisition Department. He received his undergraduate degree in economics, and his MBA from the Wharton School at the University of Pennsylvania. Welcome, Chairman Gensler.

Chairman Ross Behnam was sworn in as Chairman of the CFTC in January 2002. His arrival at the CFTC follows extensive experience in financial and agricultural markets. Before joining the CFTC, Chairman Behnam served as senior counsel to our colleague, Senator Debbie Stabenow of Michigan, who is the Chair of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry.

During his time in the Senate, Chairman Behnam advised on and helped implement The Dodd-Frank Wall Street Reform and Consumer Protection Act. Chairman Behnam is a graduate of Georgetown University and Syracuse University's School of Law.

Colleagues, I am proud to say both of these gentlemen live in the great City of Baltimore.

With that, let me turn it over; first to you, Chairman Gensler.

**STATEMENT OF HONORABLE GARY GENSLER, CHAIR, U.S. SECURITIES AND EXCHANGE COMMISSION**

Mr. GENSLER. Thank you. Good morning, Chair Van Hollen, Ranking Member Hagerty, Senator Kennedy. Thank you for inviting me to testify today on the SEC's fiscal year 2025 budget request. As is customary, I would like to note that my views are my own, as the Chair of the SEC. I am not speaking on behalf of my fellow Commissioners or SEC staff.

I also want to thank you. I think I was with you last year at this time, but also I was with you 12 years ago, and I was in Chair Behnam's seat, because I was with Chair Mary Schapiro. So I have done one of these partner hearings once before.

Last week at the SEC, we had our 90th birthday. Congress and President Roosevelt set our agency up June 6, 1934, in the aftermath of the Great Depression to ensure that our capital markets work for investors and issuers alike. They knew this was critical to restoring trust in the markets, promoting the economy. The SEC they created serves investors building for a better future, and issuers raising money to fund innovation while overseeing the capital markets in the middle. But it is really about the issuers and the investors.

The SEC is a cop on the beat, watching out for the investing public and those issuers. I believe the Securities' laws, and the agency set up by Roosevelt and Congress have been a significant contributor to our economic success in those 90 years. I also think it is a key agency in terms of our standing around the globe.

Our \$110 trillion capital market is 40 percent of the world's capital market, even though our economy is only about 23 percent of the world's capital market. So we punch above our weight class, and I think this gives us certain advantages as a Nation, and for investors and issuers.

But I don't think we can take the leadership for granted. Today, our limited resources contrast against tremendous growth and change in our markets. In the face of the significant growth in registrants' complexity, individual investor engagement in the markets that are outlined in the written testimony, I think that you might think that had grown, but in fact, the SEC actually shrank between 2016 and 2022.

With Congress' help, we were authorized to hire 400 people in 2023, on about a base of 4,600, so to get back to approximately 5,000, to bring us back just modestly above 2016.

While our funding was kept flat in 2024, growth in the market activity was anything but flat. We are losing pace with an ever-increasing scale of the capital markets' transaction volume, just to name one thing, in the equities market doubled in the last 5 years, tripled in the last 17 years.

Today, we have 15,000-plus registered investment advisors advising 57 million clients. Just 6 years or 7 years ago, it was 12,000 and only 43 million. So you can see all this growth in the markets. I would note also that the \$32 trillion mutual fund business, registered funds, the \$30 trillion private funds, each in and of themselves are bigger than our entire banking system, which is only 23 trillion.

Such growth and rapid change also means more possibility for wrongdoing. We have seen the number of tips, complaints, and referrals, we get climbed from 16,700 just 5 years ago, to 40,000 last year.

Allow me to put flat funding into context: 70 percent of our budget is for staff, 15 percent for technology, about 5 percent for facilities, 10 percent for everything else. So staff is the bulk of it. Flat funding means cutting staffing, technology, and real estate. It is pretty straight math. We have paused on nearly all job postings and backfilling departing staff since last September. We currently have about 325 positions that were authorized that we are not filling.

While the agency's rule set gets outsized attention, and I am sure we will talk about some of that rulemaking, the vast majority of our staff work on oversight of the markets, responding to inquiries, and collectively we get tens of thousands of those a year. And without additional resources, I think the markets and our oversight are at risk, our ability to find bad actors are at risk, our responsiveness to market participants is at risk, I think capital formation and innovation are at risk.

So as this Committee continues to work, I know our funding is also deficit neutral, because we have these Section 31 fees that we charge, so that is a good thing. Sorry, Ross, but we do have that built in.

I am glad to take your questions. And thank you.

[The statement follows:]

PREPARED STATEMENT OF GARY GENSLER

Good afternoon, Chair Van Hollen, Ranking Member Hagerty, and members of the Subcommittee. Thank you for inviting me to testify today on the Securities and Exchange Commission's Fiscal Year (FY) 2025 budget request. As is customary, I'd like to note that my views are my own as Chair of the SEC, and I am not speaking on behalf of my fellow Commissioners or the SEC staff.

THE SEC AT 90 YEARS

At the SEC, we had our 90th birthday just one week ago.

After the 1929 market crash, President Franklin Roosevelt signed the first of the Federal securities laws in 1933. He followed a year later with the passage of the Securities Exchange Act—making June 6, 1934, our birthday at the SEC.

The SEC was created to ensure that the markets worked free of fraud and manipulation—and that investment advisers carried their duties to the clients they advised.

Congress and Roosevelt understood how important our capital markets are to investors, issuers, and more broadly our economy. Today, the \$110-plus trillion U.S. capital markets are the deepest, most liquid in the world. At 40 percent of the world's capital markets,<sup>1</sup> they outpace our roughly 24 percent of the world's economy.<sup>2</sup> The U.S. capital markets also play an integral role in the dollar's dominance.<sup>3</sup>

We cannot, however, take this leadership for granted.

The SEC is a remarkable agency. We serve investors building for a better future and issuers raising money to fund innovation, while overseeing the capital markets where they meet. The essence of this is captured in our three-part mission to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets.

The SEC is the cop on the beat watching out for the investing public and issuers. The dedicated staff of this agency does extraordinary work with limited resources.

#### GROWTH AND CHANGE IN THE MARKETS

Our limited resources contrast against the tremendous growth and change in our markets. The U.S. capital markets benefit from significant engagement from everyday investors.

About 58 percent of U.S. households own stocks, up from 52 percent in 2016.<sup>4</sup> More than half of American households, representing nearly 121 million individual investors, own registered funds.<sup>5</sup>

The U.S. has long benefitted from robust competition between nonbanks and banks. The Commission plays a key role in overseeing many aspects of the nonbank sector. Each of the registered funds and private funds sectors surpasses the size of the banking sector.

Further, U.S. debt capital markets facilitate 75 percent of debt financing of non-financial corporations. In Europe, the U.K., and Asia, only 12–29 percent is raised in capital markets.<sup>6</sup>

Today, more than 15,400 registered investment advisers advise 57 million clients.<sup>7</sup> This includes advising on more than \$32 trillion in registered funds,<sup>8</sup> \$30 trillion in private funds,<sup>9</sup> and nearly \$50 trillion in separately managed accounts.<sup>10</sup>

At the end of 2016, by comparison, 12,000 registered investment advisers advised 43 million clients.<sup>11</sup>

Let me put this in context. The entire U.S. banking system is \$23 trillion.<sup>12</sup> Thus, the capital markets are nearly five times the size of our banking sector.

<sup>1</sup>See Securities Industry and Financial Markets Association, “2023 Capital Markets Fact Book” (July 2023), Page 7, available at <https://www.sifma.org/wp-content/uploads/2022/07/2023-SIFMA-Capital-Markets-Factbook.pdf>.

<sup>2</sup>See Carol Bertaut et al., “The International Role of the U.S. Dollar” (June 23, 2023), Figure 1, available at <https://www.Federalreserve.gov/econres/notes/feds-notes/the-international-role-of-the-us-dollar-post-covid-edition-20230623.html>.

<sup>3</sup>See Gary Gensler, “Exorbitant Privilege: Responsibilities and Challenges” (Dec. 4, 2023), available at <https://www.sec.gov/news/speech/gensler-prepared-remarks-council-foreign-relations-12042023>.

<sup>4</sup>See Federal Reserve Board, “Changes in U.S. Family Finances from 2019 to 2022” (October 2023), Page 19, available at <https://www.Federalreserve.gov/publications/files/scf23.pdf>.

<sup>5</sup>See ICI, “2024 Investment Company Fact Book,” Page 2, available at <https://www.icifactbook.org/pdf/2024-factbook.pdf>.

<sup>6</sup>See SIFMA, “2023 Capital Markets Fact Book” (July 2023), Page 6, available at <https://www.sifma.org/wp-content/uploads/2022/07/2023-SIFMA-Capital-Markets-Factbook.pdf>.

<sup>7</sup>See Investment Adviser Statistics (Tables 1.1 and 3.2), available at <https://www.sec.gov/files/im-investment-adviser-statistics-20240515.pdf>.

<sup>8</sup>See Securities and Exchange Commission, “Registered Fund Statistics” (Table 2.1), available at <https://www.sec.gov/files/im-registered-fund-statistics-20240418.pdf>, See also Securities and Exchange Commission, “Money Market Fund Statistics” (Table 2), available at <https://www.sec.gov/files/investment/mmf-statistics-2024-03.pdf>.

<sup>9</sup>Latest numbers are \$23.557 trillion reported by RIAs + \$6.954 trillion reported by ERAs = \$30.511 trillion in private fund gross assets reported on Form ADV, Section 5 of Investment Adviser Statistics.

<sup>10</sup>ADV statistics report (Table 4.1).

<sup>11</sup>See Investment Adviser Statistics (Tables 3.2 and 2.1), available here <https://www.sec.gov/files/im-investment-adviser-statistics-20240515.pdf>.

<sup>12</sup>See Board of Governors of the Federal Reserve System, “Assets and Liabilities of Commercial Banks in the United States,” available at <https://www.federalreserve.gov/releases/h8/current/default.htm>. Total assets of approximately \$23 trillion as of week ending May 29, 2024 (Table 2, Line 33).

The Commission has a role in both public and private markets, each of which offer investors and companies opportunities. Our public markets have approximately 7,400 actively reporting issuers, of which more than 4,000 companies list on U.S. exchanges.

We now oversee approximately 40,000 entities—including more than 13,000 registered funds, more than 15,400 investment advisers, more than 3,300 broker-dealers, 24 national securities exchanges, 103 alternative trading systems, 10 credit rating agencies, 33 self-regulatory organizations (SROs), and six active registered clearing agencies, among other external entities.

The SEC oversees the Public Company Accounting Oversight Board (PCAOB), the Financial Industry Regulatory Authority (FINRA), the Municipal Securities Rule-making Board (MSRB), the Securities Investor Protection Corporation (SIPC), and the Financial Accounting Standards Board (FASB).

Technology is rapidly transforming markets and business models. These changes range from electronic trading and the cloud to artificial intelligence and predictive data analytics, just to name a few. There has been dynamic change in communications to and among investors, from Reddit forums to celebrity influencers. Further, we've seen the Wild West of the crypto markets, rife with noncompliance, where investors have put hard-earned assets at risk in a highly speculative asset class. Many of those investments have disappeared after a crypto platform or service went under due to fraud or mismanagement, leaving investors in line at bankruptcy court.

Today, there are more than 54 million separately managed accounts; in 2018, there were 37 million.<sup>13</sup> Transaction volume in listed equities has doubled in the last 5 years and tripled in the last 17 years.<sup>14</sup>

Such growth and rapid change also mean more possibility for wrongdoing. We've seen the number of tips, complaints, and referrals we get at the SEC climb from about 16,700 in 2019 to more than 40,000 in 2023. As the cop on the beat, we must be able to meet the match of bad actors.

Despite the increasing workload, the SEC staff again has rated us among the best places to work in the Federal government; this year we ranked third among midsized agencies.<sup>15</sup> Our attrition this fiscal year is at historically low levels, so far averaging around 3 percent at an annualized rate.

#### BUDGET REQUEST

I am pleased to support the President's FY 2025 request of \$2.594 billion for SEC operations in support of 5,621 positions and 5,073 full-time equivalents (FTEs). In addition, we've requested \$8.4 million for needs supporting General Services Administration (GSA)-led real estate projects. As this Committee considers this request, it's worth noting the SEC's funding is deficit-neutral; our appropriations are offset by transaction fees.

In the face of significant growth in registrants, complexity, and individual investor engagement in markets, one may have thought that our agency would have grown over the last 8 years. Unfortunately, the reverse was the case—the SEC actually shrank between 2016 and 2022. With Congress's help, we were authorized to hire 400 people in FY 2023 to bring us just modestly above where we were in 2016.

While our funding was kept flat for FY 2024, the growth in market activity was anything but flat. We are losing pace with the ever-increasing scale of the capital markets we oversee.

Allow me to put flat funding into the context of the SEC's overall budget. Approximately 70 percent of our budget is for staff, about 15 percent is for technology, 5 percent is for facilities, and 10 percent is for everything else. This agency doesn't give out grants or other programmatic money. Thus, given year-over-year price and wage increases, flat funding means cutting staffing, technology, and real estate.

At the start of FY 2024, we paused on nearly all job postings and backfilling for departing staff. As a result, we are currently more than 300 positions below the level authorized by Congress for both FY 2023 and FY 2024.

While the agency's rules get outsized attention in the media, it's worthwhile noting that the vast majority of the SEC's staff works on day-to-day oversight of the markets and responding to public and registrant inquiries. We collectively review

<sup>13</sup> Investment Adviser Statistics (Table 3.2).

<sup>14</sup> See CBOE "Historical Market Volume Data," available at [https://www.cboe.com/us/equities/market\\_statistics/historical\\_market\\_volume/](https://www.cboe.com/us/equities/market_statistics/historical_market_volume/).

<sup>15</sup> See Partnership for Public Service, "2023 Best Places to Work in the Federal Government" available at <https://bestplacetowork.org/rankings/detail/?c=SE00>.

tens of thousands of filings a year.<sup>16</sup> More than 10 percent of the agency reviews disclosure documents, more than half of the agency is within the Divisions of Enforcement and Examinations, and 13 percent of the agency is in support operations. Shrinking any of these efforts will inevitably mean that the agency will be less responsive to the public and less able to protect the public.

As it relates to technology, we cut IT spending by roughly a quarter in FY 2024. These reductions in technology spending will delay transitions to the cloud, investments in data analytics, modernizations of key systems, and important enhancements to our technology infrastructure. As a result, we are scaling back our technology programs at a time when the markets we oversee are growing more technologically complex with each passing year.

As it relates to facilities, in fiscal years 2021 to 2024, we will have shed 275,000 usable square feet from the SEC's real estate footprint. This includes vacating one of our three headquarters buildings in Washington, DC, at the end of FY 2023, resulting in approximately \$14 million per year in savings. Furthermore, the SEC announced it will close our Salt Lake City office early in FY 2025.

As it relates to other expenses, we also have reduced spending on contracts that support mission critical efforts. An example includes our ability to update and improve the Division of Enforcement's document management and review systems—tools that are critical to reviewing massive document productions during the course of investigations and litigations.

If we are again flat funded, there will be significant further implications on our ability to monitor the markets, maintain SEC programs, adequately resource technology, and meet the agency's critical mission.

Without additional resources, the oversight of markets is at risk. Our ability to find bad actors is at risk. Our responsiveness to market participants is at risk. American capital formation and innovation are at risk as issuers will have to wait longer to hear from us.

The SEC currently has 30 Divisions and Offices across our 11 regional locations<sup>17</sup> and Washington, DC, headquarters. I'm summarizing below the budget requests for our six Divisions and will briefly touch on technology and real estate. For further details as well as a review of the other offices of the SEC, please reference the FY 2025 Congressional Budget Justification.<sup>18</sup>

#### ENFORCEMENT AND EXAMINATIONS

As I mentioned, the Divisions of Enforcement and Examinations account for more than half of the SEC's staff. Without examination of our registrants and enforcement of rules and laws when they are broken, we can't instill the trust necessary for our markets to thrive. Stamping out fraud, manipulation, and abuse lowers risk in the system. It means that fewer bad actors will get away with misconduct. It protects investors and reduces the cost of capital. The whole economy benefits from that.

##### *Division of Enforcement*

As I noted, in FY 2023, the SEC received more than 40,000 separate tips, complaints, and referrals from whistleblowers and others, a 13 percent increase over FY 2022.

Even with limited resources, the Division brought 784 enforcement actions in FY 2023, a 3 percent increase over fiscal year 2022. When looking only at the 501 original, or "stand-alone," enforcement actions we file—whether settled or litigated—it's an 8 percent increase over the prior fiscal year. Our actions resulted in orders for \$4.9 billion in penalties and disgorgement. The SEC distributed \$930 million to harmed investors in FY 2023.<sup>19</sup>

Meanwhile, rapid technological innovation in the financial markets has led to misconduct in emerging and new areas, not least in the crypto space. Further, the complexity of the frauds we are investigating—and the sophistication of the fraudsters—is ever increasing.

Addressing this requires new tools, expertise, and resources. When the cars become faster and the highways more congested, you want more cops, not fewer.

<sup>16</sup> See Securities and Exchange Commission, "Fiscal Year 2025 Congressional Budget Justification" (Tables on Pages 24–33), available at <https://www.sec.gov/files/fy-2025-congressional-budget-justification.pdf>.

<sup>17</sup> When the Salt Lake City office closes in FY 2025, there will be 10 regional offices.

<sup>18</sup> See Securities and Exchange Commission, "Fiscal Year 2025 Congressional Budget Justification" available at <https://www.sec.gov/files/fy-2025-congressional-budget-justification.pdf>.

<sup>19</sup> See Securities and Exchange Commission, SEC Announces Enforcement Results for Fiscal Year 2023" (Nov. 14, 2023), available at <https://www.sec.gov/news/press-release/2023-234>.

This year's request would grow the team by 27 FTEs to 1,447. The additional staff will provide the Division with more capacity to meet these challenges, investigate misconduct on a larger scale, accelerate the pace of enforcement investigations to resolution, and represent the Commission and protect investors in increasingly complex litigations.

#### *Division of Examinations*

The Division of Examinations serves a critical role in helping to ensure firms comply with the law.

In FY 2023, we conducted more than 3,100 examinations across our tens of thousands of registrants. From investment advisers to broker-dealers to exchanges, the Division helps ensure that registrants are following their legal obligations to customers and clients, including seniors and other vulnerable investors.

Importantly, the Division is the first line of defense for the investing public relying on investment advisers. It is responsible for examining and overseeing a growing registrant population, including more than 15,400 investment advisers and approximately 800 investment company complexes.

Further, we work in parallel with SROs to examine the more than 3,300 broker-dealers with roughly 150,000 branch offices.

This stretches thin the limited resources of the Division.

Our FY 2025 request would help the Division grow 20 FTE to reach 1,156 FTEs.

These additional resources are the minimum just for the Division to stay abreast of the growth in market participants and make key investments to help protect the American public regarding emerging cyber and information security risks.

#### PROGRAMMATIC DIVISIONS

Next, I will turn to our three programmatic Divisions.

#### *Corporation Finance*

The Division of Corporation Finance oversees the disclosures of new issuers and public companies so that investors can make informed investment decisions. It's important for investors to receive useful, timely, and accurate disclosure. It's important that issuers can get timely feedback on their registration statements and other filings. Today, there are more than 7,400 active reporting companies, up from about 6,800 in 2020.

In FY 2023, the Division reviewed the filings of more than 3,700 reporting companies and new issuers.<sup>20</sup>

The 2025 budget request would grow the team to 447 FTEs. With this increase of 16 FTEs, the Division would still be 30 FTEs under the 2016 level.

Additional resources would allow the Division to serve investors and issuers more ably as markets grow and evolve.

#### *Investment Management*

The Division of Investment Management oversees the 13,000 registered funds and 15,400 investment advisers that steward nest eggs for 57 million clients. At the end of 2016, by comparison, 12,000 registered investment advisers advised 43 million clients.

As noted earlier, both the registered funds market and the private funds market are each bigger than the banking sector, and we've seen significant growth in both. More than half of American households, representing more than 115 million individual investors, own registered funds. When I started on Wall Street 45 years ago, household penetration was less than 6 percent.

In FY 2023, the Division reviewed more than 4,200 annual and periodic reports as well as more than 8,600 total portfolios and insurance contracts.<sup>21</sup>

Given this growth in the markets, we've asked to grow the division by nine FTEs to a total of 237.

#### *Trading and Markets*

The Division of Trading and Markets serves on the front line for maintaining fair, orderly, and efficient markets. Market monitoring and supervision are essential parts of the Division's activity—especially during times of market stress.

<sup>20</sup> See Securities and Exchange Commission, "Fiscal Year 2025 Congressional Budget Justification" (Page 24), available at <https://www.sec.gov/files/fy-2025-congressional-budget-justification.pdf>.

<sup>21</sup> See Securities and Exchange Commission, "Fiscal Year 2025 Congressional Budget Justification" (Page 32), available at <https://www.sec.gov/files/fy-2025-congressional-budget-justification.pdf>.

The Division oversees 24 national securities exchanges, 103 alternative trading systems, more than 3,300 broker-dealers, 51 security-based swap dealers, six active registered clearing agencies, and more than 200 transfer agents, among other entities.

In FY 2023, the Division responded to more than 16,000 public inquiries. In FY 2023, the Division also reviewed more than 660 filings of broker-dealers as well as more than 1,700 SRO proposed rule changes and advance notices.<sup>22</sup>

As market centers, broker-dealers, and clearance and settlement systems continue to grow in size and activity, so does the need for robust supervision of these entities and intermediaries.

In FY 2025, we've requested 14 additional FTEs, for a total of 293, to support this important function of the Commission.

#### ECONOMIC AND RISK ANALYSIS

Economic analysis is critical to all of the agency's work. The Division of Economic and Risk Analysis provides impartial economic analyses that consider the costs and benefits of our rules as well as their effects on efficiency, competition, and capital formation.

We get feedback from the public on these economic analyses, which benefits our rulemaking. Our economic analyses also benefit the markets broadly because making data available creates a public good.

In the Enforcement context, the Division's staff is instrumental in assisting Enforcement staff with identifying potential wrongdoing, assessing ill-gotten gains, and working to return funds to harmed investors.

DERA assists the Commission in its efforts to identify, analyze, and respond to economic and market issues, including those related to new financial products, investment and trading strategies, systemic risk, and fraud.

Given the critical nature of the Division's work, for FY 2025, we've asked for funding to support 196 FTEs total, just one additional FTE.

#### ADDITIONAL MATTERS

##### *Technology*

Technology and data continue to fuel rapid change in our markets. The rise of big data, algorithms, and AI in our markets has put more pressure than ever on the SEC to keep pace. For example, the data processing by the Division of Enforcement alone has grown 20 percent year over year for the last 3 years. Cyber threats represent an ever-increasing threat to the agency and our markets alike.

Yet, as I mentioned, the SEC is cutting its IT program by about a quarter this fiscal year because of budget pressures. We have had to delay technology upgrades, some migrations to the cloud, and enhancements in data analytics. For example, we cut back significantly our investments in Enforcement case management; Enforcement, Exams, and DERA analytics capabilities; implementation of the government-wide Zero Trust security program; and the workflow system supporting the Division of Corporation Finance's disclosure review program.

Thus, we have requested \$457 million for information technology. This would help support the Commission's cybersecurity, migration to the cloud, modernization of key systems like EDGAR, implementation of the Financial Data Transparency Act, and other critical IT needs. This request assumes full use of an additional \$50 million from the SEC Reserve Fund for multi-year IT projects and programs. To put these figures in context, this spending is dwarfed by what some of the biggest market participants spend in a month on technology.

##### *Facilities*

We currently have offices in Washington, DC, and 11 regional offices. The total facilities cost in FY 2024 is only 5 percent of our budget. We continue to work with GSA to manage it prudently, significantly reducing our space footprint as I described earlier.

Part of the SEC's FY 2025 request is \$8.4 million for lease procurements managed by GSA. This amount represents the additional funds needed for GSA's recompetes of the lease for the SEC's Chicago Regional Office.

We will continue looking for opportunities to achieve cost savings across our leasing footprint in the years to come.

<sup>22</sup> See Securities and Exchange Commission, "Fiscal Year 2025 Congressional Budget Justification" (Pages 27 and 28, filings with regard to broker-dealers filing form 17-H, risk supervision of alternative net capital broker-dealers, and over-the-counter derivatives) available at <https://www.sec.gov/files/fy-2025-congressional-budget-justification.pdf>.

## CONCLUSION

The U.S. capital markets are the deepest, most liquid in the world. We cannot, however, take this leadership for granted. The SEC needs to be funded to meet the match of the growing and evolving markets we oversee. I thank the Committee for providing me the opportunity to summarize this budget request.

I am pleased to take your questions.

Senator VAN HOLLEN. Thank you, Chairman Gensler.  
Chairman Behnam.

**STATEMENT OF HON. ROSTIN BEHNAM, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION**

Mr. BEHNAM. Thank you, Chairman Van Hollen, Ranking Member Hagerty, Senator Kennedy; great to be with you today. Appreciate the opportunity to testify before you today on the President's fiscal year 2025 budget for the Commodity Futures Trading Commission. And as with Chair Gensler, these views are my own.

For over a century, derivatives markets have played a key role in the U.S. economy, promoting economic growth and contributing to financial stability and the predictability of prices that impact all Americans.

This October, the CFTC will commemorate its 50th anniversary, and this milestone provides a natural inflection point as we consider how the past 50 years will impact the next. I have witnessed the massive expansion of the CFTC's jurisdiction through Title VII of the Dodd-Frank Act, also organic growth in our historic markets, the introduction of new products, including the Digital Commodity Asset Class, and the significant expansion of market participants, both institutional and retail.

Given this exponential global growth, I have prioritized a collaborative working relationship with our domestic and international regulatory partners to ensure regulatory harmonization, market efficiency, and reducing unintended and negative consequences to U.S. derivatives markets.

For fiscal year 2025, the Commission is requesting a total of \$399 million, and 725 FTE. The request for its operational budget was developed with the Fiscal Responsibility Act of 2023 in mind. We have sought to focus on the most critical areas to reach this number that represents about a 2.9 percent decrease below the fiscal year 2024 budget request and just over a 9 percent increase above the fiscal year 2023 and 2024 enacted budget.

As Chair, I have focused on: Identifying and addressing regulatory gaps and uncertainty, strengthening the agency organizationally so that we are an operationally effective, diverse, and competitively attractive employer, better understanding and incorporating the digital asset ecosystem, artificial intelligence, and cybersecurity into our decisionmaking, and addressing the needs for guidance regarding emerging product and market structures such as voluntary carbon credit derivative contracts and vertical integration.

To date, and thanks to my fellow Commissioners and the incredibly hardworking staff of the CFTC, the agency has stayed on course following an agenda I outlined in early 2023. I describe the action items by themes, including risk management and resilience, customer protections, efficiency and innovation, reporting and data

policy, duplicative regulatory requirements, and international comity.

Fundamental to all of these topics is the need to update our rule set to address the derivatives industry's current course, which is driven by technology and seeks to both leverage and, in some instances, move away from traditional and familiar models. The dominant disruptors of our current era raise important questions about conflicts of interest, the strength of capital, margin and segregation requirements, the role and responsibilities of self-regulatory organizations, affiliate risk management, and of course, customer protections.

As the CFTC's Chair, I have made very conscious and intentional decisions aimed at ensuring that we not only exemplify good stewardship of taxpayer dollars but also provide genuine organizational support for our valued employees. My first priority included directing an agency-wide strategic approach to human capital management focused on rebalancing and upskilling our workforce through succession planning and building a bench of future expertise through pathways, and recruiting that brings diversity of thought, experience, and background.

It has been over 4 years since our people left their offices and we assumed an expansive telework posture. I believe that while we have been productive and achieved success in certain mission-critical areas, we are keenly aware of the benefits of being together, in person, in the office.

In addition, I have led reforms in how the Commission collects, interprets, and reports on market data. This data connects our infrastructure security, surveillance, analytical and enforcement needs and duties, and will significantly impact how we meet our mission in the tech-driven future.

The CFTC has moved to the cloud, achieved significant advancement in cybersecurity protections, reorganized, increased the visibility of and added new leaders, including our Division of Data. And our goal is the long game, building capabilities over time toward organizational maturity and technical achievement.

Additionally, I am proud to say that under my direction, the CFTC's new AI Task Force issued a request for comment on the use of AI in CFTC-regulated markets. The proposed budget reflects the minimum resources needed for the CFTC to perform its role as a primary regulator of the U.S. futures, swaps, and options markets; and to properly enforce the law to protect markets and market participants.

It provides the resources we need to ensure that the agency has the appropriate and necessary capabilities to keep up with innovation shaping our markets in 2024 and beyond. It optimizes resources to ensure the protection of market data we receive and keeps the agency systems and infrastructure shielded from emerging risks and cyber threats. It funds oversight and surveillance responsibilities generated by an increasing number of derivatives exchanges offering products that require consideration of new and emerging risks.

Additionally, the budget ensures that our enforcement program continues its proactive approach in identifying and addressing misconduct within our ever-expanding and transforming markets. This

is especially critical in light of growing retail participation and the need for greater protections in the digital asset space.

As we move through 2024, I am proud of the CFTC's undeniable record of using regulation, innovation, and collaboration to ensure our markets function well, and providing risk management and transparency for all stakeholders, including and most notably, America's commercial end users who rely on derivatives markets to manage risk.

More than ever in these uncertain times, both domestically and internationally, we need thorough and thoughtful regulation to ensure confidence and accountability in the derivatives markets, to continue delivering results to the derivatives markets and American public, we need consistency and certainty so that we can allocate resources towards critical and multi-year investments.

Thank you again for the opportunity to appear before you today. And I look forward to your questions.

[The statement follows:]

PREPARED STATEMENT OF ROSTIN BEHNAM

Thank you, Chairman Van Hollen, Ranking Member Hagerty, and members of the Subcommittee. I appreciate the opportunity to testify before you today on the President's fiscal year 2025 budget request for the Commodity Futures Trading Commission (CFTC or Commission).

For over a century, derivatives markets have played a key role in the U.S. economy, promoting economic growth and contributing to financial stability and the predictability of prices that impact the daily lives of all Americans. This October, the CFTC will commemorate its 50th anniversary as an independent agency with exclusive jurisdiction over futures trading in all commodities. This milestone provides a natural inflection point as we consider how the past 50 years will impact the next.

Over the last nearly 15 years, I have witnessed the massive expansion of the CFTC's jurisdiction through Title VII of the Dodd-Frank Act, organic growth in our historic markets, the introduction of new products, including the digital commodity asset class, and the significant expansion of market participants, both institutional and retail as a result of technological disruption. To put a number on it, trading volumes in exchange-traded futures and options have more than doubled; and the swaps market is now over \$350 trillion,<sup>1</sup> which is approximately half of the estimated \$715 trillion global market. Given this exponential global growth, and working individually, through our operating divisions, and the Office of International Affairs (OIA), I have prioritized a collaborative working relationship with our domestic and international regulatory partners to ensure regulatory harmonization, market efficiency, and reducing unintended and negative consequences to U.S. derivatives markets.

As Chairman, I am focused on: identifying and addressing regulatory gaps and uncertainty; strengthening the agency organizationally so that we are an operationally effective, diverse, and competitively attractive employer; better understanding and incorporating the digital asset ecosystem and artificial intelligence (AI) into our decisionmaking; and addressing the need for guidance regarding emerging product and market structures such as voluntary carbon credit (VCC) derivative contracts and vertical integration.

Today, technology is driving change in the financial markets, and the CFTC must keep pace in order to fulfill its mission and Congressional mandate. Our work centers on customer protection and market resiliency, while supporting continued growth and innovation that will take the agency into the next 50 years.

To date, and thanks to my fellow Commissioners and the incredibly hardworking staff of the CFTC, the agency has stayed on course following an agenda I outlined in early 2023 to consider and vote on roughly 30 new regulatory and policy matters in addition to all proposed rules and orders from the prior year. I bucketed these actions into themes that address: risk management and resilience; customer protections; efficiency and innovation; reporting and data policy; duplicative regulatory requirements; and international comity. Fundamental to all of these themes is the

<sup>1</sup>CFTC, Weekly Swaps Report, Weekly Swaps Report | CFTC.

need to update our ruleset to address the derivatives industry's current course, which is driven by technology and seeks to both leverage and, in some instances, move away from traditional and familiar models. The dominant disruptors of our current era raise important questions about conflicts of interest, the strength of capital, margin, and segregation requirements, the role and responsibilities of self-regulatory organizations, affiliate risk management and customer protections.

As the CFTC's Chairman, I have made very conscious and intentional decisions aimed at ensuring that we not only exemplify good stewardship of taxpayer dollars, but also provide genuine organizational support for our valued employees. My first priority as Chairman included directing an agency-wide strategic approach to human capital management focused on rebalancing and upskilling our workforce through succession planning and building a bench of future expertise that brings diversity of thought, experience, and background. It has been over 4 years since our people left the confines of their offices and we assumed an expansive telework posture. I believe that while we have been productive and achieved success in certain mission critical functions, we are keenly aware of the benefits of being together in person in the office. In fact, we have heard from some of our staff and supervisors their desire to return to the office. A resolution to the impasse in our negotiations will allow staff to plan their lives accordingly. The CFTC has always been a place that valued its peoples' needs to balance work and home life, and we will continue to do so as we negotiate the next steps.

In addition, I have led reforms in how the Commission collects, interprets and reports on market data. This data connects our infrastructure, security, surveillance, analytical, and enforcement needs and duties, and will significantly impact how we meet our mission in the tech-driven future.<sup>2</sup> The CFTC has, under my direction, moved to the cloud, achieved significant advancement in cybersecurity protections, reorganized, increased the visibility of, and added new leaders to, our Division of Data (DoD)—including our first Chief Data Scientist who will lead our AI training and implementation— and launched a CFTC-wide technical training initiative. Our goal is the long game: building capabilities over time towards organizational maturity and technical achievement.

Additionally, I am proud to say that under my direction, the CFTC's new AI Task Force issued a request for comment (RFC) on the use of AI in CFTC-regulated markets.<sup>3</sup> The AI RFC is part of a greater vision to advance analytical capabilities through building talent, leveraging the cloud, and developing a forward-looking culture. We have a process in place for exploring AI use cases to help the agency better monitor, regulate, surveil, identify pockets of stress, and enforce compliance. We are currently reviewing the RFC comments to better understand what, if any, policy changes are needed. Further, the Office of Customer Education and Outreach (OCEO), the agency's education arm, issued a Customer Advisory in January warning the public about emerging AI-driven fraud and scams.<sup>4</sup> Consistent with mandates by the Administration and OMB guidance, I recently announced that our Chief Data Officer and DoD Director will serve as the CFTC's first Chief Artificial Intelligence Officer responsible for promoting the agency's use of AI and guide us in managing AI risks.<sup>5</sup>

Said a bit differently, my goal is to modernize the CFTC to ensure our continued success well into the future. We are seeing changes in market structure and in the demographics of market participants. I believe that institutions, products, and processes that prove valuable enough to producers, consumers, investors, and the general public—however such value is determined—will inevitably find a way to integrate with established regulatory systems. It is our role to ensure market safety and integrity by enforcing existing standards under our governing statute and regulations, and by determining new approaches when warranted and consistent with the law.

<sup>2</sup>See, e.g., See Rostin Behnam, Chairman, CFTC, Keynote of Chairman Rostin Behnam at the 2023 U.S. Treasury Market Conference (Nov. 16, 2023), Keynote of Chairman Rostin Behnam at the 2023 U.S. Treasury Market Conference | CFTC.

<sup>3</sup>See Press Release Number 8853–24, CFTC, CFTC Staff Releases Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets (Jan. 25, 2024), CFTC Staff Releases Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets | CFTC.

<sup>4</sup>See Press Release Number 8854–24, CFTC, CFTC Customer Advisory Cautions the Public to Beware of Artificial Intelligence Scams (Jan. 25, 2024), CFTC Customer Advisory Cautions the Public to Beware of Artificial Intelligence Scams | CFTC.

<sup>5</sup>See Press Release Number 8903–24, CFTC, Chairman Behnam Designates Ted Kaouk as the CFTC's First Chief Artificial Intelligence Officer (May 1, 2024), Chairman Behnam Designates Ted Kaouk as the CFTC's First Chief Artificial Intelligence Officer | CFTC.

The proposed budget before you today reflects the minimum resources needed for the CFTC to perform its role as the primary regulator of the U.S. futures, swaps, and options markets, and to properly enforce the law to protect markets and market participants. It provides the resources we absolutely need to ensure that the agency has the appropriate and necessary capabilities to keep up with technological innovation shaping our markets in 2024 and beyond. It optimizes resources to ensure the protection of the market data we receive and keeps the agency's systems and infrastructure shielded from emerging risks and cyber threats. It funds oversight and surveillance responsibilities generated by an increasing number of derivatives exchanges offering products that require consideration of new and emerging risks. Additionally, the budget ensures that our enforcement program continues its proactive approach in identifying and addressing misconduct within our ever expanding and transforming markets. This is especially critical in light of growing retail participation and the need for greater protections in the digital asset space. The planned prioritization in these areas will help the CFTC fulfill its mission in a rapidly changing marketplace.

#### THE CFTC'S BUDGET REQUEST FOR FISCAL YEAR 2025

The Commission is requesting a total of \$399 million and 725 FTE for FY 2025. The request for its operational budget was developed with the "Fiscal Responsibility Act of 2023" in mind. With the understanding that the budgetary challenges we are currently addressing will likely bleed into the coming year, and that some difficult decisions will be made, we have sought to focus on the most critical areas to reach this number that represents about a 2.9 percent decrease below the FY 2024 budget request, and just over a 9 percent increase above the FY 2023 and 2024 enacted budget.

#### DIVISION OF ENFORCEMENT (DOE)

The Commission requests \$74 million and 163 FTE to protect the public and preserve market integrity by detecting, investigating, and prosecuting violations of the Commodity Exchange Act (CEA) and Commission regulations through the activities of its Division of Enforcement. This is an increase of \$5.5 million over the FY 2024 enacted budget.

The Commission's exercise of its enforcement authorities to address misconduct that has a direct impact on CFTC jurisdictional markets, affects the larger economy, causes public harm, or interferes with market integrity is one facet of our approach to innovation and the evolution of financial markets. This increase will, among other things, support the development of innovative approaches utilizing cutting edge technologies and upskilling of Commission staff with the goal of identifying misconduct earlier and addressing bad actors expediently.

A review of the filings for FY 2024 demonstrates that while digital asset related cases are rightfully demanding significant attention,<sup>6</sup> DOE is ensuring that we take necessary action in all of our directly regulated markets and in the retail fraud space involving precious metals and forex (foreign exchange). We are also building even stronger networks and partnerships through cooperative enforcement efforts with other civil and criminal agencies domestically and internationally. Looking at the matters that have stood out this fiscal year, several in the agricultural, energy, and financial sectors exemplify our unwavering commitment to ensuring that registrants meet their regulatory obligations, that customers receive the protections they deserve, that our markets remain free from manipulation and fraud, and that misconduct in the digital asset space receives swift attention.

Nowhere have we been more active than in the digital asset space. In FY 2023, we brought 47 actions involving conduct related to digital commodities, representing more than 49 percent of all CFTC actions filed during that period. A staggering statistic given the fact that no Federal agency retains any direct regulatory authority over the underlying (or cash) digital commodity asset market. We can only act on digital asset fraud or manipulation when we uncover or discover anomalies through regulated market surveillance and oversight, or through tips and complaints we can pursue. With many agency resources which are not considered in our budget appropriation being allocated to an unregulated market, I fear the current trajectory is unsustainable. Namely, we will continue to see rampant fraud and manipulation in

<sup>6</sup>See, e.g. Ian McGinley, CFTC, Remarks of Enforcement Director Ian McGinley at the City Bar White Collar Institute: "Trends in the CFTC's Recent Crypto Enforcement Actions" (May 23, 2024), Remarks of Enforcement Director Ian McGinley at the City Bar White Collar Institute: "Trends in the CFTC's Recent Crypto Enforcement Actions" | CFTC.

the digital asset market that will hurt American customers, and possibly infect the traditional financial markets.

To date, FY 2024 is demonstrating a similar cadence. The lack of legislation addressing the regulatory gap over the digital commodity asset spot market has not hindered the public's enthusiasm for digital assets, and I continue to believe Congress must act, as the 2022 FSOC (Financial Stability Oversight Council) report highlighted,<sup>7</sup> and as I have mentioned publicly on multiple occasions.<sup>8</sup> Until such time, the Commission will continue to use its expertise and the tools it has to protect our markets and the public.

#### DIVISION OF MARKET OVERSIGHT (DMO)

The Commission requests \$36 million and 88 FTE for the Division of Market Oversight to continue its commitment to maintaining the integrity of the markets as it reviews new applications and monitors ongoing compliance with core principles and regulatory requirements.

DMO is expecting growth in 2024 and 2025 given the growing interest in offering novel, innovative, and increasingly complex products. Currently, there are seven exchange or DCM (designated contract market) applications in review. Each registration application requires both intra-divisional and inter-divisional teams of staff to review the application and the applicant's planned operations, and determine compliance with the CEA and Commission regulations. The Division will need to train and dedicate additional staff to registrations as the number and variability of applicants continues to grow.

In FY 2025, the Commission's system safeguards examinations—an essential component of the examination program for DCMs, SEFs (swap execution facilities), and SDRs (swap data repositories)—will remain crucial to economic stability. Effective cybersecurity practices and system safeguards of regulated entities requires increased direct surveillance and vigilance for the scope of examinations conducted each year.

With respect to rule and product filings, in FY 2023, the Commission continued to receive a diverse array of product filings from exchanges seeking to meet market participants' varying needs, including many innovative products. The number of filings and the diversity of product offerings require additional resources to ensure Division staff can complete their reviews, and stay abreast of market developments and the technological advancements underlying these new products and attendant rules. For example, since 2021, there has been a significant uptick in the number of event contracts listed for trading by CFTC-registered exchanges. From 2006 through 2020, DCMs listed for trading an average of approximately five event contracts a year. In 2021, this number increased to 131, and the number of newly-listed event contracts per year has remained at a similar level in subsequent years.

With respect to rulemakings, in FY 2024 the Division continues to plan and undertake rulemakings to amend Commission rules, as appropriate, to address changes in the constantly evolving derivatives markets. The Division expects efforts in proposing, adopting, and implementing rules to ensure the Commission's regulatory framework keeps pace with recent market innovations, to continue in FY 2025.

#### DIVISION OF CLEARING AND RISK (DCR)

Market events and the volatility in the global financial markets linked to geopolitical issues, continued pandemic recovery and reformation, weather and climate-related risk, and monetary and fiscal policy consistently raise challenges related to liquidity and margin requirements. These factors also fuel active debate on the need for additional tools and resources to manage risks, including collateral management. Given the importance of clearing to the financial system, and the role of U.S.-regulated central counterparties (CCPs) as among the strongest in the world, the Commission requests \$35.6 million and 86 FTE for the Division of Clearing and Risk. These funds are necessary to maintain current capabilities and expand examination and surveillance of activities that will impact clearing markets, credit, liquidity, and

<sup>7</sup> Financial Stability Oversight Council, Report on Digital Assets and Financial Stability Risks and Regulation (Oct. 2022), Report on Digital Asset Financial Stability Risks and Regulation 2022 (treasury.gov).

<sup>8</sup> See, e.g., Rostin Behnam, Chairman, CFTC, Keynote of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Commission Winter Meeting (Jan. 26, 2024), Keynote of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting | CFTC.

modeling risks, enhance cyber and operational resilience, and support the safety and soundness of derivatives clearing organizations (DCOs).

Currently, the CFTC has ten registered DCOs in the United States, including two DCOs that have been designated as systemically important by FSOC. In addition, the Commission regulates five registered DCOs located outside the United States, including some that have a direct impact on U.S. markets, given the volume of swaps and futures cleared for U.S. entities. DCO examinations, which are time and staff resource intensive, help the Commission identify issues that may affect a DCO's ability to identify, manage, and monitor its risks. DCOs represent single critical points of managing risk in the global financial system where the failure or disruption to the functioning of these DCOs could create or increase the risk of liquidity or credit problems spreading among other financial institutions.

There are four DCOs outside the United States exempted from registration by the Commission that are permitted to clear proprietary swap transactions for U.S. entities. Although the CFTC relies principally on foreign authorities for oversight, it does engage in limited monitoring and surveillance of these exempt DCOs. The Commission maintains an active, data-driven quantitative risk surveillance function. It expects to continue investing additional resources in human capital, data, and technology to improve its current analytical capabilities and keep up with growth in both the scale and complexity of risk transmission in the derivatives markets—both cleared and uncleared.

#### MARKET PARTICIPANTS DIVISION (MPD)

The Commission requests \$28.5 million and 69 FTE for the Market Participants Division to maintain effective oversight of registered market participants using current delegated authorities and improved cooperative oversight policies. The CFTC oversees the registration and compliance of thousands of derivatives market participants, including swap dealers (SDs), major swap participants (MSPs), Futures Commissioners Merchants (FCMs), retail foreign exchange dealers (RFEDs), introducing brokers (IBs), commodity trading advisors (CTAs), commodity pool operators (CPOs), floor brokers, and floor traders. MPD also oversees the self-regulatory organizations (SROs), including the Chicago Mercantile Exchange (CME) and the National Futures Association (NFA), by assessing whether the SROs' compliance programs over member firms meet established regulatory standards.

Regulated market participants are a cornerstone of the Commission's regulatory framework. To date, 62 registered FCMs hold more than \$474 billion in customer funds, and 106 registered SDs collectively transact hundreds of trillions in notional value swap contracts annually, serving as a vital source of liquidity for financial institutions and commercial end users seeking to hedge their risk. As such, the CFTC directs its registration and compliance resources to provide critical policy and regulatory guidance to registered market participants, both directly and in coordination with the SROs. In addition, the Commission oversees the National Futures Association (NFA) in its role implementing delegated authorities to register and oversee compliance by registered market participants. The Commission ensures that registration rules, standards, and reporting requirements continue to be responsive to the needs of the evolving marketplace.

#### DIVISION OF DATA

The Division of Data develops and implements the CFTC's enterprise data strategy, providing the specialized technical, analytical, and related services necessary for the Commission to standardize, acquire, process, examine, govern and exploit mission critical market and industry data. As the agency's designated authority on data issues, DoD provides CFTC regulatory and enforcement staff with the data and analytical capabilities needed to perform mission work, develops and oversees data sharing and protection agreements with external entities, and enables policymakers to make data-driven decisions for overseeing the U.S. derivative markets. In accordance with this mission, the responsibilities of DoD include establishing the Commission's data strategy, data standards, data architecture and governance, and building/maintaining the agency's core data infrastructure. The Commission requests \$42.1 million and 41 FTE to continue leveraging cloud and other new technology to enhance and transform its ability to collect, analyze and draw informed conclusions from market data to both conduct and support effective enforcement actions, oversee rapidly evolving markets, and formulate sound regulatory policy.

## WHISTLEBLOWER INCENTIVES AND PROTECTION

A key to the effectiveness of our enforcement division is the CFTC's whistleblower program. The Dodd-Frank Act established the Customer Protection Fund<sup>9</sup> that supports our Whistleblower Program<sup>10</sup> and the OCEO. As of FY 2023, the Whistleblower program has issued 41 orders granting awards totaling almost \$350 million since its inception in FY 2010.<sup>11</sup> In fiscal year 2024, the program has, thus far, awarded \$18 million to whistleblowers. The total sanctions ordered in all whistleblower-related enforcement actions has surpassed the \$3 billion milestone.

As this Committee knows, the overwhelming success of the Whistleblower Program has unintentionally led to the potential for disruptions in these two vital offices due to their funding mechanisms. In addition to the importance of a long-term fix to avoid depletions greater than the total balance of the fund, I believe Congress should amend the statutory provisions to clarify the permitted uses of the Customer Protection Fund by the OCEO.<sup>12</sup> This change would allow the Commission to implement a host of new investor protection programs and provide information aimed at ensuring American families have the knowledge and tools to not only protect themselves from fraud and manipulation, but to more fully engage with the Commission and the markets we oversee.

## CONCLUSION

I know I speak for all the Commissioners when I thank CFTC staff for their commitment to the agency and its mission. My team and I are working closely with staff and their union representatives in order to find a suitable work posture, post-pandemic, that honors the importance of being present and together in the office with appropriate flexibility, and ensures our accountability as good stewards of taxpayer money. The agency's long-term health and success depend on it.

As we move through 2024, I am proud of the CFTC's undeniable record of using regulation, innovation, and collaboration to ensure our markets function well, and of providing risk management and transparency for all stakeholders, including, most notably, America's commercial end-users who rely on derivatives markets to manage risk. More than ever, in these uncertain times both domestically and internationally, we need thorough and thoughtful regulation to ensure confidence and accountability in the derivatives markets. To continue delivering results to the derivatives markets and American public, we need consistency and certainty so that we can allocate resources towards critical and multi-year investments.

Thank you again for the opportunity to appear before you today. I look forward to your questions.

Senator VAN HOLLEN. Thank you, Chairman Behnam.

So I am going to start with you, Chairman Gensler. You summarize well in your written testimony the mission of the SEC as, quote, "The cop on the beat watching out for the investing public and issuers." That sums up, I think, the mission well. And just to emphasize a point that you closed on, you do that without taxpayer dollars; is that right?

Mr. GENSLER. Yes, we have been able to charge fees, called Section 31 Fees, and another small fee, and then that goes to the Treasury, so basically we are about neutral.

Senator VAN HOLLEN. Right. And so I am looking at our House counterparts, that FSGG Subcommittee in the House and the actions they have taken, which include significant cuts to the enforcement budget, to the cop on the beat, and a provision that would prohibit the SEC from implementing the Consolidated Audit Trail, in terms of your enforcement efforts.

As I look at it, the consequence of these actions could be—significantly weaken the cop on the beat who is looking out for the invest-

<sup>9</sup> CEA § 23(g), 7 U.S.C 26(g).

<sup>10</sup> COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER PROGRAM, CFTC's Whistleblower Program | Whistleblower.gov.

<sup>11</sup> See CFTC, FY 2023 Whistleblower Program & Customer Education Initiatives 2023 Annual Report (Oct. 2023), FY 2023 Whistleblower Customer Education Report to Congress.pdf.

<sup>12</sup> See CEA section 23(g)(2); 7 USC 26(g)(2).

ing public. Could you describe what the impact of these actions would be if they were implemented?

Mr. GENSLER. I think on each, they would significantly impinge upon our ability to be that cop on the beat, but also to answer questions. We get tens of thousands of filings from mutual fund companies, from companies wanting to go public, seeking accounting guidance, things like that. It is the day-to-day bread and butter of our agency. About half our agency is either examination or enforcement, another 10 or 15 percent is this disclosure review, and in every place, it would be constrained, and we literally have 40,000 tips, complaints, and referrals per year.

Now, we can't pursue all of them, but right now in this public figure, we generally run about 1,500 to 2,000 investigations at any one time that are happening.

In terms you asked about the Consolidated Audit Trail, this is a really important source of information for the self-regulatory organizations, for the stock exchanges, so to speak, and the agency to piece together whether somebody, for instance, is front-running a market, or trading on insider information, that we can see patterns in the trading and the security, so both are critical to our mission.

Senator VAN HOLLEN. It has been said that the Consolidated Audit Trail discloses very sort of sensitive, personal information. Could you respond to that claim?

Mr. GENSLER. So that is an important sensitivity that everything that we deal with at our agency, could be confidential market-moving information. But in terms of personal information, under Chair Clayton, he actually skimmed back the collection of any personal information. And the only information that goes into this Consolidated Audit Trail is a name, address, and birth year. No other social security information, no other details about it. It is just to know who is behind the account. I mean, if we are going to look at insider trading, for instance, you have got to know is it Joe or Jane.

Senator VAN HOLLEN. Thank you. I am going to ask if you can give me an update on a provision in law that Senator Kennedy and I actually teamed up on years ago, the Holding Foreign Companies Accountable Act. The idea was to make sure that companies, no matter where they are in the world, that are accessing our markets and using our exchanges, play by the same rules as American companies here. We had concerns, especially about what was happening in China, with companies in China.

More recently, Senator Kennedy introduced, and I am pleased to be his co-sponsor, legislation to make sure that companies and executives of companies, no matter where they are operating, comply with the same processes for disclosure regarding insider trading, as we have in the States. Could you give us an update on implementation of the first, and your views on the second?

Mr. GENSLER. I am glad to. First, a shout out to both of you, because I think it was with that bill, the Holding Foreign Companies Accountable Act, that the SEC and the PCAOB were given the sufficient leverage to negotiate an arrangement with the Chinese authorities, Ministry of Finance, and Chinese Securities Regulatory Commission, a statement of protocol in the summer of 2022, where

they would give the complete access to inspect those auditors, and also bring investigations.

In 2021 and 2022 the Public Company Accounting Oversight Board went over to Asia, actually in Hong Kong, and inspected numerous auditors there. Right now, in China, I can't remember if it is in Beijing or Shanghai, but they are in China right now doing this for the third year. And for the third year, the Chinese authorities are allowing that access.

Now, I would say one cautionary note: the auditing there is not as high quality as the auditing here in the U.S. or in Europe, but they are giving the full access to conduct the inspections. And that wouldn't have happened, I think, without the leverage you gave us to negotiate that.

On the bill itself, I did take a quick look. I know that our staff has given you technical assistance, but as I understand the bill, the Holding Foreign Insiders Act, is to close a gap, because foreign private issuers, and there is about 1,000 companies that have that designation, about 1,000 European, Asian, South American issuers that have that designation. If you are a foreign private issuer, you don't come under Section 16(a) of the Securities and Exchange Act, which has to do, simply put that directors, and officers, and 10-percent holders have to file within 2 days if they are selling stock. And you are closing that gap, so that if you want to have access to the U.S. markets, you have to comply like U.S. issuers do.

Senator VAN HOLLEN. That is exactly right. It is just to make sure that we have a complete, even playing field again to protect the investing public, and that everyone has got to play by the same rules. We appreciate your summary of it. That is, that captures what it does, and we hope to get it done.

Senator HAGERTY.

Senator HAGERTY. Thank you, Chairman Van Hollen, and welcome to the two chairmen today.

Mr. Gensler, I want to start with you. You may recall that last September, in a Banking Committee meeting, you and I discussed the SEC is tortured, in my view, legally baseless interpretation of Section 913 of Dodd-Frank. And you have relied on Section 913 to justify, I think, some of the most controversial rulemakings you have done, notably: The Private Funds Rule, the Predictive Data Analytics Rule.

Just last week, the Fifth Circuit struck down the Private Funds Rule. It acknowledged what I think many market participants had warned about, other commissioners had warned about, Members of the Senate had warned about.

Yet, you are back now asking for \$2.6 billion for fiscal year 2025, and it concerns me that SEC staff resources are being wastefully deployed on rulemakings that wind up not affecting the markets as you would hope.

In fact, they are way outside of your remit. I would like to ask you, Mr. Chairman, how many SEC employees, you mentioned 70 percent of your budget is people, I would like to understand what percentage of the staff have been tied up working on the Private Funds Rule, the Predictive Data Analytics Rule, the Climate Disclosure Rule, the Dealer Rule, the Safeguarding Rule, the Stock Buyback Rule, the Best Execution Rule, and the Order Competition

Rule? Can you tell me how many of your staff resources have been dedicated to these more partisan, baseless, in my view, interpretations of the law?

Mr. GENSLER. I thank you, and I do remember the conversation. If I might say, what we did in that rule, I think, was to help investors in private funds get quarterly statements on their fees, performance, and any side deals with other investors. And it was based upon, as you rightly said, a new provision in Dodd-Frank from 12 or 14 years ago, from Dodd-Frank. We thought and believed that it was within the law. The Fifth Circuit found——

Senator HAGERTY. I think you found that it wasn't——

Mr. GENSLER [continuing]. Found otherwise, and we respect, you know, we do things within the law and how courts interpret it. On your general question about staffing, I think it is less than probably 5 percent of our 5,000 people at any given time that are working on rulemaking. It is people in our Chief Economist Office, people in our Office of General Counsel, people in the various policy divisions, of course, the Commissioners themselves.

But on the order of magnitude, you know, it could be 200, it could be 300 people in the whole agency that, in part, are working on it. They are not full-time. The economists are working on other things as well, of course.

Senator HAGERTY. Well, let us go back to how you prioritize resources, because instead of staffing resources outside of the remit, which I think that full litany of rules that I just read, are outside of your boundaries and outside of your remit, you are also not prioritizing staff, and you are not prioritizing rulemaking for areas that desperately need it.

And here I am talking about setting in place a constructive set of rules of the road for the crypto industry, this is an innovative industry. It is an industry that the United States should be leading on. Yet other jurisdictions in other countries are setting up rules for their ecosystems. Yet what happens here with the SEC, and with the CFTC is constant roadblocks and a lack of certainty.

And what is happening is that this innovative industry is finding itself increasingly pushed offshore. I don't think that is the result that we want to have here in America. And I certainly think a far better allocation of resources, rather than putting it against the Private Funds Rule, or Predictive Data Analytics Rule, would be to focus on setting in place rules of the road for innovative markets like this.

I want to take, for example, the years-long process that it took to approve bitcoin's ETF, and that only happened recently, and it happened in the wake of a court finding that your grounds for disapproval was warrantless. And I am just very puzzled then, in light of the most recent court ruling, why we haven't fully approved the issuance of Ether ETFs.

Chair Behnam, I want to turn to you. Is Ether a commodity? A yes or no answer will do.

Mr. BEHNAM. Yes.

Senator HAGERTY. Chairman Gensler, the same question. Is Ether a commodity?

Mr. GENSLER. Senator, we actually, as an agency, did approve Ethereum exchange-traded funds——

Senator HAGERTY. Only partially, it is not—the approval is not complete.

Mr. GENSLER. Well, we address ourselves to the filings in front of us, and we approved it and—

Senator HAGERTY. So you are saying that all Ether applications have been approved by the SEC, they have been—

Mr. GENSLER. The Ethereum exchange-traded product of filings that were in front of us from stock exchanges, I think there were eight or nine of them, were all jointly approved. Individual issuers still are working through the registration process. That is working smoothly, and I would envision sometime over the course of this summer, they will—you know, those are just disclosure kinds—

Senator HAGERTY. That is great news. If you are committing to me that those applications will be approved by the end of the summer. I appreciate that. We have got to get this market—

Mr. GENSLER. Yes. We have already approved, and if I can say just a little bit further, the Ethereum exchange-traded product, we actually, last summer, had already—based upon a well-regulated market—the Chicago Mercantile Exchange has Ethereum futures contracts that are 3 or 4 years old already, based upon that well-regulated market, even last summer we had, there were Ethereum exchange-traded products, that was called ETFs, based upon those Ethereum futures, last summer. That has already happened.

Senator HAGERTY. Well, I take it from your answer then that the applications that are still pending for Ether, this would be very helpful to the marketplace to get this clarified. Are you are ready to approve those, and you will get before the summer is—

Mr. GENSLER. Well, again, that is done at a staff level, but it is just disclosure and registration, and those registration statements have to have the proper disclosures and go through before they go, what is called effective. But we have already—

Senator HAGERTY. Well, the point if you have approval that was supported—

Mr. GENSLER [continuing]. The Commission has already approved the (crosstalk)—

Senator HAGERTY [continuing]. Ether needs to be approved as well, completely. I am going to move quickly on to another question here that I have got, and that has to do with—and Chairman Van Hollen brought this up, the Consolidated Audit Trail Data.

And I think this is a concern, Mr. Chairman, that a number of us feel it is an extensive amount of data, billions of dollars' worth of equity and option trading data, and it does have personally—excuse me—personally identifiable information on investors associated with that, as you mentioned, Mr. Chairman.

But I think all of us are concerned, if we look at other agencies, for example, the IRS. The IRS has had a very, very terrible track record of being able to maintain and protect individual taxpayer's data. There is a person sitting in jail right now, who disclosed thousands of taxpayer returns and their data just so they could go after political enemies.

If you think about the FISA context, we found out that in 2021, the number was 278,000 times in 2021, there was unauthorized access of Americans' personal data, including political figures. And so there is a deep concern there about this type of data availability,

and what is being done to protect it. You mentioned at any time, you have got 1,500 to 2,000 investigations underway, presumably relying on this data. What are you doing to protect it? And what law requires you to protect it and to penalize anybody that might disclose it?

Mr. GENSLER. It is a very important matter to us. First, only a limited number of people at the SEC even have access to—

Senator HAGERTY. Can you give us the numbers, Mr. Chair, to give a sense for that?

Mr. GENSLER. It is less than 3 or 4 percent of the agency. We can come back to you and give you, but it is in that 100 to 200 range. So it is not even the whole 1,300 people in enforcement, to give you a sense. It is a much narrower group of people, and that is a really, they all go through particular training, and so forth, of how to access it.

Senator HAGERTY. How did they get permission to access it?

Senator VAN HOLLEN. With respect, so we have seven minutes allocated for colleagues. If we are about a minute 45 seconds over here in terms of exchange, if you wouldn't mind just a quick answer, because I just want to make sure we get to other members. And we are going to have another round.

Senator HAGERTY. Okay.

Senator VAN HOLLEN. Just, I have 7 minutes, so people could have plenty of time.

Mr. GENSLER. And I am also willing, Senator, to meet with you later today, or tomorrow, or to get on the phone and chat this through with you, or any matter with you.

Senator HAGERTY. Yes.

Senator VAN HOLLEN. We can come back to it on the second round, too. I just want to make sure.

So let me, let me pick up, if I could, Chairman Gensler, Senator Hagerty raised the issue of crypto assets, cryptocurrency, obviously, this is an area where Chairman Behnam has been involved as well. And we all are very aware of the fact that there is a big debate going on Capitol Hill right now regarding whether these things are fish or fowl, and which agency should have jurisdiction.

But I would hope that we would all be able to agree on a couple things, which is that we want to protect consumers and the public, number one, and number two, however we move forward, we deal with the anti-money laundering equivalent part of this, making sure that these assets cannot be used for nefarious purposes.

So again, our House subcommittee counterpart included a provision, Chairman Gensler, regarding SEC crypto regulation, and specifically, it reads, "None of the funds made available by this Act may be used to carry out an enforcement action related to a digital asset transaction except for enforcement actions related to fraud or market manipulation." And last, and it goes out and sets out some conditions; could you speak to what the consequences would be with respect to the goal of protecting consumers and the public if this were adopted?

Mr. GENSLER. It would seriously undercut our efforts. While not all crypto are crypto securities, some are under Chair Behnam's jurisdiction, those that are have an obligation to disclose to the pub-

lic, it is called a registration, to disclose to the public full, fair, and complete information. We would lose that.

Secondly, intermediaries, so-called exchanges, broker-dealers, and the like, register, and then the public gets protection. For instance, a really key protection is that your funds are segregated and protected. And so our securities laws are not solely about fraud manipulation. Stamping out fraud manipulation is really important, but it is also about, if you register, in this case, a crypto security token, you have to then give disclosure so the investing public gets the benefit of that.

If you register a crypto broker or crypto exchange, you get the benefit of things like segregation, you get the benefit of a rulebook on the exchange, like we have on, let us say, the New York Stock Exchange. There is a lot of benefits, but it would also undercut ongoing current cases that we have in front of courts right now. And we have been very successful in a number of these cases where, at least on the law, on motions to dismiss, and so forth, the judges have found we have got the appropriate reading of the law, and then they will move on to the fact part of the cases.

Senator VAN HOLLEN. So just to be clear on that last point, this would interfere directly in ongoing cases?

Mr. GENSLER. It would interfere directly on ongoing cases that we have in front of various circuits—or various district courts.

Senator VAN HOLLEN. Thank you. Chairman Behnam, I mentioned the importance of making sure that these assets, currencies, cannot be used for nefarious purposes, and the need to apply the equivalent of the anti-money laundering standards to these assets. Regardless of how we decide to treat them, would you agree with that? And what measures should we use? Should we just simply apply existing AML provisions to these currencies?

Mr. BEHNAM. Senator, thanks for the question. You know, from a CFTC perspective, and as I have said publicly for many years now, it is a legal authority issue, we, to Chair Gensler's point, in the earlier question, have anti-fraud and anti-manipulation authority for digital commodity assets. So we have been quite successful over the past 10 years, really, in bringing enforcement cases.

But the weakness that we have, or the shortcoming, is that we have to rely on folks coming to us, providing tips, and complaints. We don't have those traditional regulatory tools, registration, custody, surveillance, oversight that have really made American capital markets and derivatives markets so strong. As it relates to AML, KYC, again, it is a legal authority issue. If Congress were to move on some authority for the CFTC, certainly that would be a key component of this, given what we have seen and experienced in this digital asset space around AML and KYC.

I don't think we need to stray too far from existing law. A lot of AML, KYC enforcement is conducted through the Treasury Department. We work very closely with FinCEN on certain authorities we have, but it is limited in scope, but I would think, you know, the current AML, KYC structure, at a bare minimum, is adequate. I do think that technology would require some rethinking of how we need to consider both anti-money laundering and know your customer.

Senator VAN HOLLEN. Thank you. Chairman Gensler, any comment on that?

Mr. GENSLER. Yes. One of the real challenges is that these crypto tokens are transferable outside of the traditional financial sector on what is called permissionless ledgers. And so one of the real challenges is, it is not as easy to apply the anti-money laundering law. So for instance, bitcoin is the token of choice by ransomware attacks. I mean, that is, you know, "Pay us in Bitcoin." And you can imagine there is a whole cottage industry in, you know, Eastern Europe preying upon U.S. companies.

Senator VAN HOLLEN. So Chairman Behnam, you know, last year, I joined with several of my colleagues here to send you a letter urging you to reject a pending proposal by a private prediction market operator that could allow for illegal gambling on U.S. elections and their outcomes. I was pleased to see the CFTC reject this proposal shortly after. I understand this is an ongoing matter. But could you just speak to the potential harms of legalized election gambling, given all the challenges we are already facing to our democracy today?

Mr. BEHNAM. Thanks, Senator. And, you know, you make the point directly. There is a lot of issues around election integrity, and you know, from an agency perspective and from an existing legal perspective, there are certain parts or products that are prohibited to be traded on CFTC-regulated exchanges.

Quickly, anything that has to deal with war, assassination, terrorism, anything that is against Federal or State law, against the public interest, or, as you point out, something like gaming. So the Commission has long held a position that prediction markets, or derivatives contracts on elections are illegal. We have faced a number of entities, as you suggested, that continue to want to list these contracts.

We have stayed them in certain circumstances. We are facing litigation in other circumstances. But more recently, just a few weeks ago, we proposed a rule that would ban prediction markets on election contracts.

And I think the one thing this Committee should know, and your colleagues throughout the Senate, is as we pointed out in the digital asset space, our authority over non-traditional assets or assets we don't have direct oversight over in the cash or underlying market, is limited to fraud and manipulation.

So in an instance where you had a derivative contract that was based on an election, local, State, or Federal, if there was allegations of fraud or manipulation, whether it was a news story alleging a candidate was ill, or was not running, or some news story that wasn't necessarily accurate, a voting machine perhaps was broken and sort of deterred folks from voting, we then, the CFTC, because of that allegation of fraud or manipulation, would have to police that market. We would have to police that allegation because that allegation, whether true or not, could have an impact on the markets we regulate.

So to your point about election integrity, I think the last thing we need right now is sort of commoditizing elections. But again, more clearly, this, in my view, is clearly against existing law, and we are taking steps to make sure they are banned.

Senator VAN HOLLEN. Thank you. And I see we went over a little bit here as well.

Senator KENNEDY. Mr. Chairman

Senator VAN HOLLEN. Are you next, Senator Kennedy, or Senator Boozman.

Senator KENNEDY. No. I think Senator Boozman is, but I just want—I love you like a brother, Chris, but John and I would like a chance to ask questions.

Senator VAN HOLLEN. Well, that is what I am getting to now.

Senator HAGERTY. No.

Senator HAGERTY. I think the question is, that the order, if there is not another Democrat here, I think it was my staff just raised it with me, too. We should let the other Republicans go before—

Senator VAN HOLLEN. Oh. Okay. Let me—

Senator HAGERTY [continuing]. Are you going to go back and forth?

Senator VAN HOLLEN. Let us figure this out. Well, whoever is going to go next, is going to go next. I mean the normal pattern is to go back—well, we want to be accommodating the members.

Senator KENNEDY. Yes.

Senator VAN HOLLEN. So who is next on your side? Senator Kennedy.

Senator KENNEDY. Okay. I will try to be as quick as I can. First, Mr. Chairman and Mr. Chairman, welcome. You know, thanks for being here. You are both looking well.

Chairman Gensler, do you remember—do you remember, I know you do, back in October 2020, Ant Group, a subsidiary of Alibaba, announced an IPO, and everybody was all a titter, you know, to go and invest in this extraordinary IPO because Alibaba is such a successful company. And the CEO of Alibaba got crossways with President Xi, and unsurprisingly, President Xi won, and he cancelled the IPO, “he” meaning President Xi, for Ant Group, subsidiary of Alibaba.

And of course, after the announcement of the cancellation was made, Alibaba stock dropped about 8 percent. Do you remember that? I did some checking and 2 days before the announcement that the IPO was cancelled, a bunch of insiders at Alibaba dumped about \$150 million worth of Alibaba stock, therefore avoiding an 8 percent loss which other investors who didn’t know about the IPO cancellation had to swallow; insider trading; and I said, how can this be?

Well, our law provides, I am not blaming it on you, this is Congress’ fault, our law says that if you are the CEO of an American company and you sell your stock, you have got to report it to the SEC within 2 days of the sale, and you have got to report it electronically. You can’t use snail mail. And you post it there, in front of God and country on your Internet, on your website.

But a foreign executive doesn’t have to do this. The foreign executive, he has weeks to inform you that he has executed an insider trade and he can then send it to you by snail mail, and it is not even posted on the website.

So Senator Van Hollen and I have a bill to basically say the foreign investors and the foreign executives have to follow the same rules as the American executives. I mean, insider trading is insider

trading. Will you support that? We talked to my Democratic colleagues?

Mr. GENSLER. I think that you are addressing something, Senator Van Hollen, and you are addressing a gap in our current regime. We have about a thousand of these foreign private issuers, and you are right that they don't have to currently file within 2 days electronically their trades, and I think that would help close a gap.

There is another gap that is actually a 25-year-old rule and I have asked staff to look at called Regulation Fair Disclosure, or FD, when it was under Chair Levitt, some years ago that he put in place. It is a simple concept, if you share material nonpublic information to analysts, or Wall Street, or to the press, you have got to put it out to everybody, and it has helped protect the public, fair disclosure.

But guess what? There is an exemption there for foreign private issuers as well. So I have asked staff to take a close look. We would have to go through Notice and Comment rulemaking to change that.

Senator KENNEDY. It is a good idea, a good idea. Well, we are going to try to move our bill by usually unanimous consent. I can't imagine anybody who will object, but I have seen it happen before. So any help you can give us.

I wanted to ask, last weekend, I know, I need to get a life, but I sat down and read Judge Engelhardt's opinion in the—I forget the name of the case—National Association of Private Funds Managers v. SEC. It is the private funds rule case, and I thought the opinion was, regardless of what you think about the result, I thought it was well-reasoned, well-written, far-reaching, and what I wanted to get your thoughts—and I know the Fifth Circuit en banc, can change it, and the Supreme Court might review it, but I wanted to get your thoughts about the consequences of the holding in that case, holdings, on your other rulemaking procedures?

Mr. GENSLER. I am glad that you read the case, and of course if it is in the Fifth Circuit, that is in New Orleans.

Senator KENNEDY. Yes.

Mr. GENSLER. But we are still reviewing and thinking about our next steps. But I think that what it said, and Senator Hagerty and I were talking about it, is this new provision 14 years ago, in Dodd-Frank, Section 913 of that which—

Senator KENNEDY. Which is part of the Adviser's Act?

Mr. GENSLER. Part of the Adviser's Act, you might remember, and it is 211(h) of the Adviser's Act, that talks about new authorities about investors, the court read that to be just about retail investors, and so we are looking at that but, you know, if you are asking me, that means that narrows that authority. Of course, we do everything within the law and how courts interpret it, but we are still—we are still thinking about the next steps, but it would narrow that authority to, I think as they read it, I am using a colloquial word, "retail" investors.

Senator KENNEDY. One of the things, Mr. Chairman, that got my attention, and you can debate whether it is part of the holding or not, but the court seemed to seize on the fact that in terms of your fraud rule based on the SEC's experience, out of the thousands and

thousands of these private funds, you have only found 0.5 percent, not 5 percent, 0.5 percent instances of fraud, but yet the requirement to comply with the private funds rule was going to cost the private funds industry over \$5 billion a year. Obviously, it was a cost-benefit analysis. That made sense to me. What do you think?

Mr. GENSLER. Well, with all respect to any court and so forth, we put certain things in a filing and so we listed, I don't remember, a couple dozen examples there, exemplars, we in our enforcement and what we do in enforcement is we have cases when it comes to our attention and we pursue that fraud and then we either settle or we litigate, and so we were giving some of those examples.

But again, we are still looking at that case, we are looking at the opinion, trying to determine next steps. But I think that in any area in the law if we have examples of fraud that is to help protect the public, and it is not whether there is tens of thousands of them but, you know, in that case, a couple dozen real cases, real cases that we were able to point to.

Senator KENNEDY. But the question was being raised—and I am going to shut it down, Chris, cost-benefit, okay, and the court was saying that there are only 0.5 percent, half of 1 percent instances of fraud based on SEC experience. But the SEC issued a rule that was going to cost everybody \$5 billion a year, and does that make sense? And I think he was raising that issue.

Mr. GENSLER. Well, we address ourselves to cost-benefit I think in a very serious way as to what problem we are trying to solve. In this case, what we were trying to solve is information for the limited partners investing in private funds, and behind those limited partners, of course, are pension funds, endowments, your State pension funds probably, in your State, to have quarterly reports to them on the performance fees, and arrangements with other investors.

And this was not meant to be public information. It was just to provide information to those. I think that would promote greater competition and efficiency in that market but again, the court had a different view on this important Section 913.

Senator KENNEDY. Thank you, Mr. Chairman.

Senator VAN HOLLEN. Thank you, Senator Kennedy.

Senator Durbin, and then Senator Boozman.

Senator DURBIN. Thank you, Mr. Chairman. It is good to see you both. Most people know, but it bears repeating that the CFTC, in particular, has a special connection to my State and the City of Chicago. Mr. Gensler, having served in that capacity, you know that full well, and the SEC, of course, is a highly respected institution as well; thank you for being here today. There is a difference between the way that your two agencies are funded, is there not?

Mr. GENSLER. As I understand it, but having had Ross' seat and having once had that special relationship with the Senator from Illinois, we are fully funded or budget neutral because of fees we can assess on transactions.

Senator DURBIN. Chairman Behnam.

Mr. BEHNAM. We do not have a user fee appropriated on an annual basis by Congress.

Senator DURBIN. And as I understand it, in the President's request, \$2.6 billion for the SEC, \$399 million for the CFTC; is that about right?

Mr. BEHNAM. Yes.

Mr. GENSLER. Yes.

Senator DURBIN. I raise that point as my initial observation because I want to join the chorus in asking about the future of crypto. This is an amazing phenomena, 88 percent of the American people have heard about it, one in five have invested in it, 75 percent say they are not confident in the safety and reliability of crypto, 45 percent report that their investments have performed worse than they had expected, and most do not realize that there is no insurance involved in this, no Federal guarantee. You are on your own when you go into crypto, correct?

Mr. BEHNAM. Yes.

Mr. GENSLER. Yes. It is a field that is rife with abuse and fraud and, at least in the—those tokens that are crypto securities are not properly giving people the disclosure that you would get for any other offering.

Senator DURBIN. You have been quoted, Mr. Gensler, saying, "It is rife with fraud, scams, and abuse." I think you just about repeated that?

Mr. GENSLER. Yes. And some of the leaders, 2 years ago, in this whole field are either in jail, about to go to jail, or awaiting extradition. I mean, tens of billions of dollars have been put at risk.

Senator DURBIN. Despite the House Bill, Chairman Behnam, we have those who worry that CFTC is biting off a hell of a lot more than it can chew when it says they want to play in crypto and regulate the industry, at least some aspects of it. What in the world makes you think that you can get into this fast-moving, capacious world and be effective as a regulator?

Mr. BEHNAM. Senator, you know, using the word "play", I think I would sort of disagree with that respectfully. This is our responsibility, this is my responsibility as chair to make observations about commodity markets, and to relay what I observe to all of you. And currently, there is a gap in regulation over non-security commodity tokens.

Our enforcement record at the CFTC, I think, demonstrates our success and our expertise. Over the past 10 years, we have brought 135 crypto cases. We have brought in billions of dollars, and we have successfully policed a market where we don't have direct authority or jurisdiction, which ultimately leads to all of this fraud, and rampant abuse in markets, and ultimately, public mistrust, lack of confidence, and loss of funds.

So, we are one of two market regulators in the U.S. financial system. We are adequately equipped to oversee the markets that we traditionally oversee—

Senator DURBIN. Let me stop you there.

Mr. BEHNAM. Yes.

Senator DURBIN. What makes you think you are adequately equipped to deal with this market?

Mr. BEHNAM. Finishing that statement, we are adequately equipped to oversee the markets we are mandated to oversee. But

if we were to be given authority over crypto markets, I would certainly expect there to be an increase in our budget.

Senator DURBIN. Let me ask you, Chairman Gensler, having lived the life of Chairman of the CFTC, do you think that agency is capable of handling the responsibilities we are talking about?

Mr. GENSLER. I am going to be conditional. I think it depends on what they are given. I think that the Congress' wisdom was to have an agency to oversee disclosure-based markets where issuers are asking the public to buy and sell their securities, and are investing in those—and most of the crypto market is that—there is 15- to 20,000 of these tokens, and without prejudging any one of them, most investors expecting to benefit from the efforts of others, that disclosure-based regime has not been set up at the CFTC. The CFTC, I love, it is a great agency, but it was set up to do the derivatives. There is not disclosure for instance, mandated, required, nor as Congress suggested, own corn, wheat, oil, or interest rates.

So it is this disclosure-based regime that we have at the SEC. And I would say that largely the crypto field has been thumbing its nose at it and been non-compliant.

Senator DURBIN. And the differences are not as significant when it comes to the investigative resources and mission of the SEC as opposed to the CFTC.

Mr. GENSLER. I think, having had the honor to chair both, I mean, they are both great agencies. We have about, I don't know, maybe nine times the staff or so, roughly. So we have got a greater remit. And also our standards and rules around exchanges, and protecting the public that there is not as many conflicts, you know, and the New York Stock Exchange can't trade against their customers and run a hedge fund on the side, as sometimes happens in this crypto field, for instance.

And so the New York Stock Exchange can't actually also run a hedge fund on and trade against their customers, or make markets ahead of their customers. But in the crypto field, that is what is happening on a lot of exchanges. That they are commingling all these functions, they are taking the customer's assets. So they are taking custody. They are often then using those assets and trading against them. I mean, it, it was very public what happened in FTX.

But that is not unique. It has happened in multiple places that there is this commingling. The intermediaries are really presenting themselves as exchanges, but they are doing an awful lot of other things to put their interest ahead of their customers.

Senator DURBIN. So they are telling their customers, go long. They are telling their internal investors, go short?

Mr. GENSLER. They may be, depending upon the company, depending upon the day, they may also be buying into the tokens and then listing them. And when you list a token, you get a pop in the value of the token. And so that is good for the intermediary in the middle as well.

Senator DURBIN. It seems it is like a chia pet. It looks like a good idea for a gift until you buy it.

Mr. GENSLER. It is really, it is really, this is a field that is not serving the public well right now.

Senator DURBIN. Mr. Chairman, I yield.

Senator VAN HOLLEN. Thank you, Senator Durbin.

Senator Boozman.

Senator BOOZMAN. Well, thank you. That is hard to follow. We appreciate you all being here very much. I would like to start with the CAT, and my understanding is, you know, prior to the Consolidated Audit Trail, and the sense bought a stock, that information remained with her or her broker. Now, it is going to, to you, the SEC and FINRA. That seems to be very much Big Brother. My main concern is, I don't think the SEC has the authority to set up the CAT, but I am also concerned that SEC and FINRA don't have the ability to secure it.

When I was working with you when you are at CFTC, we had the OPM breach. We had the SEC breach. The list goes on and on. And again, I don't see any special ability of yours to secure that information, nor is the need for that information to be brought to a central depository, unless you have got a problem. And then, you know, you can subpoena it or do whatever you want to do.

On top of that, there is no accountability, no oversight, which is a huge problem given their pay scale and remote work schedule. So we are going to be writing a letter about that and see if we can dig into some of those things.

I was going to ask the question about how many people work—how many people have access? But you mentioned 100, 200, you don't even know, you know, how many people have access to the data that is coming in? So maybe you can tell us how often they are using the CAT data and how many enforcement cases have been used as a result of the CAT data.

Mr. GENSLER. I thank you for the question, reminding me about when we worked together when I was in that chair.

Senator BOOZMAN. Right.

Mr. GENSLER. But in 2010, when I was in that chair, there was something called the "flash crash" and one of the things that happened as a result is that CFTC within 24 to 48 hours understood all the movements in the futures, or at least had the data, we had to analyze it. Good staff, it takes time. I was struck when I was in Ross' job—in Chair Behnam's job at the time, the SEC did not have that ability to have the data to assess what happened. It took months of special calls and getting the data.

So that is what Chair Shapiro tried to address back then, and wrote a rule, Notice-and-Comment Rulemaking long ago. I came in in 2021 and the Consolidated Audit Trail had already been stood up. There is a National Market System plan on that.

In terms of your specific question, it is a narrow group. And I did say to Senator Hagerty, we can come back to the specifics. I just didn't want to misstate if it is 122 or 142. And there is a lot of limitation on people using the data and tapping into the data, even at the SEC, in enforcement. It is not everybody in enforcement, it is not everybody in our trading and markets, it is very limited.

But the reason that it is important information is we have a market system that has—and I might be off like 15 to 20 different exchanges. I mean we all know the big ones, like New York Stock Exchange, and NASDAQ, and Chicago Board, but there is multiple exchanges, and trades can go across these different venues and so it is tying it together, thus called the Consolidated Audit Trail, something that Chair Behnam had, you know, the Chicago Mer-

cantile Exchange and could get that data more readily, as I remembered 14 years ago.

So that is where it helps us, in terms of the number of enforcement matters. From time to time we do include that in a public release. I mean there are some notable ones in insider trading where the data itself helped us understand what was happening in the markets.

Senator BOOZMAN. How many? How Many?

Mr. GENSLER. I want to be careful because I have to think about how many have we publicly disclosed in the enforcement matter that some of the information came from CAT, which is a smaller number than actually has been used? So I think I am just going to have to be careful and come back to you, but it is an important tool that is used by our market oversight. And also if I might say, the stock exchanges, and there is eight different stock exchange groups that use it for their market surveillance.

Senator BOOZMAN. Well, we could eliminate a lot of problems if we knew what everybody was doing all the time, but we have protections, you know, in place or should have protections in place as to prevent, again, this 100, 200 people having the ability to pour through data. And then the other concern is the security, and I think that is a huge issue, and I don't think—I simply don't think you have the ability to do that.

Chair Behnam, interest rate volatility is up and U.S. firms want to hedge their interest rate risk through derivatives clearing houses. I know you agree that incentivizing clearing is a good thing but U.S. customers are prohibited from clearing rates in several foreign jurisdictions, including Japan and elsewhere. The problem is that foreign customers aren't prohibited so U.S. customers are at a disadvantage. Will you commit to allowing U.S. customers the ability to hedge their global interest rate risk to ensure a level of playing field?

Mr. BEHNAM. Thanks, Senator. We have a very clear regulatory structure around access to U.S. customers, this is all driven around customer protections and bankruptcy protections, and as we at the agency evaluate non-U.S. clearing houses who have the ability to register with the CFTC fully, or fall under an exempt clearing house model which was created in Dodd-Frank 14 years ago, we have to respect those boundaries of bankruptcy protections and customer protections, which I think you and your colleagues can agree are the sort of pinnacle of what we do, and what we care about.

So as it relates to U.S. customers and access to foreign markets, certainly commit to working with other jurisdictions, other institutions who want to register with us fully or fall within an exempt classification, but I feel very strongly that whatever we do with respect to non-U.S. entities who want access to U.S. markets, we have to ensure that the same protections that apply for U.S. entities, whether it is a U.S. Clearing House, or U.S. broker in FCM, or U.S. exchange, apply to those non-U.S. entities.

And there are certain jurisdictions that don't necessarily have parallel bankruptcy law, or parallel regulations that would either allow them to register with us fully, or provide those bankruptcy protections which are paramount to U.S. derivatives laws.

Senator BOOZMAN. Thank you. Thank you, Mr. Chairman.

Senator VAN HOLLEN. Thank you, Senator Boozman. So for those interested, we will do one more round, and the way we are going to do it, is we will have Senator Hagerty, Senator Kennedy, Senator Boozman, if he wants to stay, and then I will ask my round of questions last and close out the hearing. Senator Hagerty.

Senator HAGERTY. Thank you. I am going to come back to the exchange Chair Gensler that you just had with Senator Durbin. I think it raises an interesting question. It may seem like a broken record, but this is a serious concern of mine. You were describing the circumstances around FTX in its ability to do many things that they could upset most regulators, that it should, the Wild West manner in which they are performing.

But I think there is a root issue here. In what jurisdictions did FTX choose to domicile itself?

Mr. GENSLER. They had legal entities here in the U.S., they had legal entities overseas, and this is I think, you have hit—

Senator HAGERTY. Who were in Hong Kong and Bahamas?

Mr. GENSLER. Yes.

Senator HAGERTY. That is where their operations were located. The presence here in the United States was minimal and I think that was intentional.

Mr. GENSLER. But they were offering and selling securities to Americans here in the U.S. You could access through websites. And this is the case for a number of these other crypto exchanges as well. They are trying to paper it and layer to make it harder for agencies, both of our agencies to bring the—be the cop on the beat. But American investors are accessing them here in the U.S. and under our authority.

Senator HAGERTY. I know, that is a grave concern. I just think that the important thing here is that FTX chose to avoid the U.S. market because we don't have certainty here, we don't have regulatory clarity here that would allow these exchanges is to come and operate clearly. And as I mentioned in our first discussion, it is a matter of resource allocation in my view at the SEC and allocating resources to put in place a clear and constructive framework for the ecosystem to exist here, to have the resources necessary to do what you described to Senator Durbin, I think would be very big help.

Mr. GENSLER. I appreciate what you are saying but I am—with all respect, I am going to differ with you, they did not avoid U.S. jurisdiction. I mean, Sam Bankman-Fried is in jail right now. So they didn't avoid U.S.—they might have been trying to, and—

Senator HAGERTY. But they harmed the U.S.—

Mr. GENSLER [continuing]. Did in other crypto exchanges, I believe, are putting at risk Americans. But it is not about just jurisdiction, it is—

Senator HAGERTY. But had they been subject to a set of laws, and enforcement provisions right here, I think we have been on top of it much sooner.

Mr. GENSLER. They are currently subject to Congress' laws written over 90 years, called the Securities Laws, Commodity Exchange Act Laws. I am not going to leave you out, Ross. They are subject to those laws. As it relates to crypto security tokens which again, without prejudging anyone, I think the vast majority of these are,

they are subject to the laws right now and they are not giving the proper disclosure to your constituents and the crypto intermediaries are improperly comingling, and we are in court right now pursuing those, and I believe Americans would be better protected.

So it is not about—there is nothing about crypto that is inconsistent with the security laws.

Senator HAGERTY. It is the exchanges, and exchanges can't get through the process here, because it has become so difficult. It has been made so difficult for crypto exchanges to flourish here, to register here, and to operate and I am encouraging—

Mr. GENSLER. That is because—and with all respect, that is because they are choosing to try to not comply with U.S. law that so well protects our capital markets. And I would go a little further, we have taken up and written some rules in this area where we think it was appropriate and talked about the application whether it is in custody, whether it is what is called dealers, and when are you a dealer and so forth.

And so we have, in certain circumstances, done that but in the main, whether it is stored on an accounting Ledger called blockchain technology, or stored on a notepad, it doesn't matter, it is the economics that matter, it is the investing public investing anticipating profits based on the efforts of other—

Senator HAGERTY. What actually does matter is having clarity here in this marketplace, and that does not exist. I can tell you from talking to many market participants we don't have adequate clarity, and they can't get answers out of the SEC. So again I am going to finish this line of questioning and move to something else, but this is something I want to encourage you to focus on. This industry needs to have a proper ecosystem here in America so that we are not shoving it offshore.

Mr. GENSLER. If I can say, breaking the law and not liking the law are different than lack of clarity. And with all respect, I think that is what we have a lot in this field,

Senator HAGERTY. And we also have a lot of uncertainty, and a lot of—a lot of lack of clarity coming out of the SEC, in terms of how these applications are being evaluated. There is a lot of mystery around it. It need not be that way.

To come back to another point that Senator Kennedy raised regarding the Fifth Circuit ruling, it raises a question in my mind, is how you balance the risk at the SEC of losing, in court, versus the allocation of resources that it takes to undertake these rulemakings, that I think you probably know are going to be subject to the type of scrutiny and the type of resistance, because of the controversy they raise?

Mr. GENSLER. It is on my mind on a very real basis, sir, and has been for my whole 3 years in the job. But I really do think it is such a privilege to serve and the important thing we do is we look out for 330 million Americans, and in this field, this ever growing field \$30 trillion of assets under management, more than the whole U.S. banking system, what we believe and I still believe that to have greater transparency so that once a quarter investors know their fees, performance, and your arrangements with others, that

will help promote greater competition, and efficiency, lower the cost—

Senator HAGERTY. We are talking about very sophisticated investors, with respect to private funds rule, there are sophisticated players in the marketplace, and plenty competition, as noted by how many thousands of funds exist there. Last question I would like to ask you, and this gets to a concern I think we have for many of the agencies here in Washington. And that is the effort to get people to come back to their office.

And in April of last year the OMB issued a directive to get 50 percent of the staff back into their offices. And I think the OMB in the White House expects this to occur, and I am interested in how the Commission is thinking about compliance with this rule. Where are you, and to let you just wrap it up. Are there real estate implications for this that we need to be considering?

Mr. GENSLER. All very good questions. When I was honored to take over the Commission, we were in mandatory remote, and we then—Chair Clayton had done that because of COVID. We then entered into negotiations with the bargaining unit, the Union, and went to impasse, there is a Federal Impasse Panel, and as a result of that we have an arrangement through 2026 so it was entered into in 2023, that staff have to come in 2 days a pay period, you can think of it on average 1 day a week. That was a result of the impasse and that runs through the end of 2026.

In terms of real estate, we have been shedding real estate. We shed one of the buildings here in D.C. we had three buildings, saves about \$14 million a year. We have shed a space in New York, I think we are going through something in Chicago right now, and we also just announced last week that we would be closing the real estate in our Salt Lake City Office as well.

Senator HAGERTY. Gentlemen, thank you. Thanks Mr. Chair.

Senator VAN HOLLEN. Thank you. Thank you Senator Hagerty, Senator Kennedy.

Senator KENNEDY. That is not me, go ahead.

Senator VAN HOLLEN. No. Go ahead, I am going to wrap it up.

Senator KENNEDY. Huh?

Senator VAN HOLLEN. I am going to wrap it up at the end.

Senator KENNEDY. Are you sure?

Senator VAN HOLLEN. Yes. Thanks.

Senator KENNEDY [continuing]. To the National Association of Private Funds managers meet the SEC the Fifth Circuit opinion. And again and I realize it could change in an en banc hearing, and I realize the Supreme Court could make changes. But I was reading, and sir, really this weekend, and then I was reading a bunch of the analyses on the Internet. The court gave a very narrow interpretation of sections of the Investment Advisers Act, and I am thinking about sections 2 of 64 and 211(h), I know that is kind of inside baseball, but I know you know those.

The narrow interpretation of those sections your proposed Predictive Data Analytics Rule, what effect, if any, do you think the Fifth Circuit opinion will have on that rule.

Mr. GENSLER. Again I think you would appreciate if I would say that our staff is still reviewing the Fifth Circuit and we will give advice to the five-member Commission under General Counsel

Barbero's leadership. I also want to note for you, you may not be aware, we have got a robust comment file on the Predictive Data Analytics Rule. A lot of people for, a lot of people against, and it is raising different issues about the scope of that rule.

And I had already asked staff to consider whether we should either reopen or re-propose that rule given the breadth, and we even did, and I say this Chair Behnam might not be aware, we did that on a Safeguarding Rule as well and we had been talking a lot. I have asked staff should we reopen or re-propose that Safeguarding Rule as well.

So while we are considering that on the predictive data analytics we will also get the best advice from our General Counsel around the Fifth Circuit opinion.

Senator KENNEDY. Do you ever issue a rule where everyone says this is just splendid, and we are all happy?

Mr. GENSLER. You know, we—

Senator KENNEDY. Do you generally get a comment about that?

Mr. GENSLER. I would say to get my vote. I am only one of five.

Senator KENNEDY. I understand.

Mr. GENSLER. I really strongly believe in our constitutional system do it by the law, and how the courts interpret the law, and we present ourselves to the American public and that is important to the trust in the system, but if the courts see it otherwise, we adjust.

Senator KENNEDY. Sure. What about the impact of the Fifth Circuit ruling on your outsourcing rules?

Mr. GENSLER. Again, I am going to defer to getting the best advice from our office of General Counsel, our Division of Investment Management, sorting through that, and in any, not just this Fifth Circuit, any ruling by a court sometimes not even related to the SEC we take a look at it, does it have an effect on something that we have already put out there, and do we adjust.

Senator KENNEDY. Yes.

Mr. GENSLER. And I just think that is part of our great democracy.

Senator KENNEDY. So you just can't say yet; would that be fair?

Mr. GENSLER. That would be correct, on the Outsourcing Rule.

Senator KENNEDY. Okay. Well, the language that Fifth Circuit use, is also present in the Exchange Act of '34; isn't it?

Mr. GENSLER. If you are referencing Section 913 of Dodd-Frank—

Senator KENNEDY. For the language interpreted, yes, and—

Mr. GENSLER [continuing]. Put the similar language in the Exchange Act, both in what is called 211(h) of the Investment Advisers Act, and a compendium similar language in the Exchange Act.

Senator KENNEDY. Yes, I misspoke. I should have said the language that the court interpreted also appears in the Exchange Act.

Mr. GENSLER. One of the provisions, the 211(h).

Senator KENNEDY. Well, that language that the court interpreted in the Fifth Circuit also appears in Sections 9(j), 14(e), and 15(c) 2(d) of the Exchange Act of '34. So it could implicate your rule-making authority under those provisions too, couldn't it?

Mr. GENSLER. Again, I am going to look to General Counsel Barbero and her team and, of course, the Divisions of Trading and

Markets and Investment Management for good advice, and all five of us will.

Senator KENNEDY. Okay. Does the Commission know yet what it is going to do? Are you going to ask for an en banc hearing, or appeal, or have you decided yet?

Mr. GENSLER. The commission has not yet.

Senator KENNEDY. Would you tell me if they had?

Mr. GENSLER. Yes.

Senator KENNEDY. Of course. Of course.

Senator KENNEDY. Thank you, Mr. Chairman. I enjoyed talking to you.

Thank you, Mr. Chairman.

You are doing such an extraordinary job. I didn't have any questions. Van Hollen told me to say that.

Mr. GENSLER. That is good. You know, when I was here 12 years ago, Mary Shapiro got all the questions, too.

Senator VAN HOLLEN. Thank you, Senator Kennedy.

So Chairman Behnam, a couple of times it has been referenced that the funding mechanism for the SEC is different than for the CFTC. The SEC collects some fees from those that it oversees and regulates, CFTC does not. I think the President's budget includes a provision that would include at least a component of the funding from fees. Do you have a view on that as the Chair of the CFTC?

Mr. BEHNAM. Well, I think certainly it would provide consistency more so than what the agency has dealt with over the past 15 years. I think, given our constituency of market users, we would have to be—Congress would need to be careful about how they craft the language with the user fee to ensure that we are not impeding or creating essentially barriers for commercial end users to be using our markets.

As I mentioned earlier and as you noted, these markets are critical for risk management, which has a direct impact on our economy, economic growth from agriculture, energy, financial services, and whatnot.

So I think as Congress continues to contemplate this because this is an issue that has been going on for, I think, four decades across both Republican and Democratic administrations, whatever is considered would need to be carefully crafted to ensure it is not having a negative or unintended consequences.

Senator VAN HOLLEN. Thank you. I appreciate that. It is something, obviously, we are talking about but would obviously also talk to the authorizing committees and with you before we pursued anything like that.

Chair Gensler, just a couple more topics. One has to do with insider trading rules. And thank you for your leadership at the SEC with respect to the 2022 rules amending the 10b5-1 provisions of insider trading, Safe Harbor provisions, I have worked with Senator, on a bipartisan basis here, on trying to make sure we tighten those. You have obviously heard about Senator Kennedy's and my bill with respect to applying the same rules to entities conducting business overseas.

I did see that in April, the SEC secured a jury verdict in your first shadow trading action, shadow trading being when a corporate insider trading shares on economically linked—on an economically

linked company while in possession of material non-public information about the insider's own company. Are there other additional areas that we should be looking at together with respect to insider trading abuse of the Safe Harbor Rules, other provisions that you think that we should be taking a look at?

Mr. GENSLER. It is a very good question and because it goes to the core of like how do you have trust in markets if there is material information, material nonpublic information that somebody is trading on and others who aren't. As I mentioned earlier in the exchange with Senator Kennedy, I have already asked staff to consider a 24-year-old decision that was made by the Commission on Regulation Fair Disclosure that, you know, at that time that it didn't apply to foreign private issuers, and we would have to go through Notice and Comment Rulemaking to change that. But I think that that is one area that I think is ripe to be looked at.

I think also, if I might say, artificial intelligence, just if I can say, which it is interesting, a whole hearing and it hasn't come up, I think yet, Chair Behnam raised it about how it is affecting the markets. But I think in the context of the real transformative power of Predictive Data Analytics, it is also going to raise new challenges about how people are using information, and where is that line as to what is material nonpublic information, if you are using data and assessing things.

Of course, this hearing itself is probably being analyzed by predictive data analytics, and your smile right there might be analyzed as to what law you will support, but I am talking about if it is inside information.

Senator VAN HOLLEN. Yes.

Mr. GENSLER. And I think there will be new challenges in that field, and of course fraud is fraud regardless of whether it is a human doing it, or it is a computer doing it.

Senator VAN HOLLEN. No, I appreciate that. In fact, hearings in another Committee I serve on, the Banking and Housing Committee, have raised those issues, AI issues in connection with market manipulation. I think it is a really important point you are raising that.

Chair Behnam, do you have any comment on that, specifically? And then I have one last question for Chair Gensler.

Mr. BEHNAM. Yes, we have—as I mentioned in my opening statement, and Chair Gensler alluded to, we put out a request for comment on artificial intelligence. It is not new to financial markets. These are some of the most sophisticated companies in the world, and they are using data and predictive analytics to get an edge. The question is now, with our existing suite of laws and regulations, is it appropriate as AI continues to evolve and become more present in everyday life, especially in markets. And it is going to be—it is going to bridge gaps between retail investors and institutional investors, and it is going to create, I think, blurry lines about how we are able to oversee markets.

And we, as a regulator, in addition to seeking feedback from the market about what we need to do from a policy perspective with the existing authorities we have, we have actually been quite successful using data analytics, predictive analytics, and AI generally in our enforcement and surveillance program. Some very basic

things, but first steps and I think foundations for what will really catapult the agency to, as best we can, keep parity with a really fast-moving market.

Senator VAN HOLLEN. Well, no, I am pleased to hear that, and clearly the CFTC, SEC, can make good use of AI tools to better do your jobs as well.

So Chairman Gensler, this has not come up either other than Senator Hagerty referenced it in passing, but I was pleased to see you and the SEC move forward with the climate risk rules. Could you just very briefly describe why it would be important to an investor to have these kinds of disclosures with respect to climate risks?

Mr. GENSLER. It is important to investors because investors think it is important to them. We are a merit-neutral regulator. We are not a climate regulator, not an environmental regulator. But what is interesting is, in our capital markets today, of the top thousand companies by size, by market value, 90 percent of them right now already make some form of disclosure around climate risks. 60 percent disclose their greenhouse gas emissions, a smaller percent disclose what is known as Scope 3, but it is 60 percent for Scope 1 and 2, investors find it is material—investors are finding that they are using that information to think about their purchases and sales of securities.

So that is where we have a role to play as a non-environmental regulator, non-climate regulator. But that is our role in what we put out as a final rule earlier this year. It, too, is being challenged in court on authority. I look at it, and I think it is fully within the law and how courts have interpreted the law, because it is consistent with nine decades of disclosure regime around material information, what a reasonable investor is finding significant in their investment decisions.

Senator VAN HOLLEN. That is pretty straightforward, that is the intent, and I applaud you and your fellow Commissioners on the process you went through in crafting this provision.

So let me thank both of you for being here today. Thank you for your service. Thank you for your testimony.

#### ADDITIONAL COMMITTEE QUESTIONS

[The following questions were not asked at the hearing, but were submitted to the agencies for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO HONORABLE GARY GENSLER, CHAIR, U.S. SECURITIES AND EXCHANGE COMMISSION

#### QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN, III

*Question 1.* Mr. Chairman, as you know, I have raised serious concerns about the SEC's Climate Disclosure Rule since it was first proposed. I was glad to see that the final Rule avoided the inclusion of Scope 3 requirements, which could have required small and even private companies far down the supply chain to face burdensome compliance costs. Still, the rule deliberately targets the fossil fuel sector. American energy production is keeping gas prices down and helping our European allies weaken their dependence on Vladimir Putin, something we should be championing. Instead, this rule threatens American economic and energy security and goes far beyond the SEC's traditional mandates. How is the SEC ensuring that the fossil fuel industry is not deliberately targeted by this Rule?

*Answer.* The climate-related risk disclosure rules would provide investors with more consistent, comparable, and reliable information about registrants' material climate-related risks to better inform investors as they make investment and voting decisions. As discussed in final rule adoption, it applies to certain publicly reporting companies and does not target any particular industry. Disclosure regarding risks that a registrant has determined will likely materially impact its business, results of operations, or financial condition—whether climate-related or otherwise—falls within the authority conferred by Congress in the Securities Act and the Exchange Act.

On April 4, 2024, the Commission issued an order staying the climate-related risk disclosure rules. This delayed the effective date of those rules pending the completion of judicial review of consolidated Eighth Circuit petitions for review. See Order Issuing Stay, Release No. 34–11280 (Apr. 4, 2024) [89 FR 25804 (Apr. 12, 2024)].

*Question 2.* Chair Gensler, I continue to remain concerned about ESG rules from the European Union that could harm American businesses. The Corporate Sustainability Reporting Directive (CSRD), which was adopted in 2022 and entered into force in 2023, requires more in-depth carbon emission reporting from companies operating in the EU.

When reporting, companies will be subject to the “double materiality” standard, meaning they must disclose the material ESG risks facing their business as well as the material ESG risks posed to society and the environment as a result of their actions. Further, companies that are beholden to CSRD will be required to disclose plans to ensure they are helping limit global warming to 1.5 degrees Celsius. Beginning this year, multi-national enterprises—including those headquartered in the United States—are beholden to those rules, and in 2025, they will be required to publish reports detailing their compliance.

*a. Will you commit to working with the Biden Administration, as well as your EU counterparts, to ensure that publicly-listed U.S. companies are not subject to overly burdensome and duplicative reporting standards?*

*b. Does the SEC expect that its new Climate Disclosure Rule will satisfy some of the CSRD requirements for U.S. businesses?*

*Answer.* Given the globalization of markets, engagement with foreign counterparts is important to the SEC's ability to carry out our three-part mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. We regularly engage with foreign counterparts across the globe, including European counterparts, both in multilateral and bilateral forums, on a wide range of capital markets issues, including reporting standards. Our goals for international engagement with foreign counterparts on policy matters include advancing the SEC's mission through promoting the adoption of high-quality regulatory standards worldwide, identifying regulatory risks and other issues of common concern, understanding how foreign legal and policy developments may impact the U.S. securities markets and market participants, and identifying potential legal conflicts between the Federal securities laws and foreign regimes.

In the adopting release for the climate-related risk disclosures rules, the Commission stated that, among other factors, modeling the climate-related disclosure requirements on the Taskforce on Climate-Related Financial Disclosures framework could help to mitigate the compliance burden of the final rules, particularly for registrants that are already providing climate-related disclosures based on such framework or soon will be doing so pursuant to other laws and regulations. With respect to the EU's Corporate Sustainability Reporting Directive, the Commission explained that, because reporting requirements for non-EU companies operating in the EU are still being developed, the Commission cannot assess the extent to which disclosures under those requirements would overlap with the SEC's rules.

Please note that on April 4, 2024, the Commission issued an order staying the climate-related risk disclosure rules. This delayed the effective date of those rules pending the completion of judicial review of consolidated Eighth Circuit petitions for review. See Order Issuing Stay, Release No. 34–11280 (Apr. 4, 2024) [89 FR 25804 (Apr. 12, 2024)].

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QUESTIONS SUBMITTED BY SENATOR JOHN BOOZMAN

*Question 1.* I am particularly concerned about the implications of the proposed Reg ATS. Specifically, the incredibly expansive definition of ‘exchange’ would capture ordinary course investment management functions that bear no resemblance to the exchange-like activity contemplated by the Exchange Act that you claim author-

izes this rulemaking. The activities that the proposed rule would effectively prohibit through exorbitant and ill-suited compliance requirements and would ultimately cast the burden of increased compliance on clients of investment advisors, every day American citizens, and result in little to no benefits to such investors.

*a. Are the Commission and staff working to address these concerns raised by industry?*

*b. Would your staff and division staff be willing to come in and brief my teams on the proposal?*

*Answer.* Engagement with interested parties is a critical component of our rule-making process, and we take the feedback we receive on our proposed rules seriously. Staff and I have had robust engagement with a broad range of stakeholders representing diverse viewpoints on the Commission's proposed rulemakings. I believe these conversations improve staff recommendations as well as the decisions and reasoning of the Commission.

The Commission has received comments from and engaged with industry participants who have expressed some of the concerns you highlight. Staff will carefully consider all comments received as it evaluates potential recommendations for the Commission's consideration. Our subject matter experts would be happy to provide a briefing for you and your staff and answer your questions.

*Question 2.* Chair Gensler, when we had you here last, we called attention to concerns related to your rapid-paced regulatory agenda and the harm done to industry and the American public in having 60+ proposals with short comment periods. With the stay of the climate rule, and last week's decision by the Fifth circuit on the private fund adviser rule, actions for both tied directly to the SEC's exceeding its statutory authority, how are you re-thinking your remaining regulatory agenda?

*Answer.* Technology, markets, and business models constantly change. Thus, the nature of the SEC's work must evolve as the markets we oversee evolve. The agenda of SEC rulemakings reflects a long tradition of updating our rules to meet new challenges. Further, the agenda includes rulemaking items that we have been directed by Congress to implement. Our ability to fulfill our mission depends on having an up-to-date rulebook—consistent with our mandate from Congress, guided by economic analysis, and shaped by public input. We act within the law and how the courts interpret our laws. As the courts address issues, we take that into consideration as well." The most recently published agenda of SEC rulemakings is available at <https://tinyurl.com/Spring-2024-Agenda>.

*Question 3.* I know you've heard a lot of concerns about the potential impact of applying the SEC's Rule 15c2-11 to fixed income markets. We appreciate the no-action letter you issued in November of 2022, because it struck a good balance between providing investors additional protections, without imposing impractical requirements that could damage the market for certain types of bonds. As you know, though, that relief expires in January. Will you consider extending or even making that no-action relief permanent—as you did for 144A bonds—to facilitate the healthy functioning of the credit markets?

*Answer.* The Commission continually monitors the operations of securities markets, including fixed-income markets. The fair, orderly, and efficient functioning of the U.S. credit markets are part of our three-part mission.

*Question 4.* The Basel 3 endgame proposal will increase capital for banks offering clearing services by over 80%. At the same time, the number of banks offering these services has decreased by half in the last 20 years, creating constraints on capacity for clearing in the market. But I note that the industry is also preparing for the SEC's clearing mandate for Treasuries beginning in 2025. It would seem that the Basel proposal's treatment of clearing will be at cross purposes with the goals of both your agencies to move more of the markets into central clearing. Can you comment on this?

*Answer.* Given the magnitude, leverage, and importance of the Treasury markets, as policymakers, we cannot ignore the repeated tremors in these markets. There have been significant changes in the technology and business models of these markets. Thus, the SEC has been coordinating on reforms with our partners at the U.S. Treasury, Federal Reserve, Federal Reserve Bank of New York, and Commodity Futures Trading Commission. The goal of these reforms is to promote the efficiency and the resiliency of these markets. The rules promote efficiency through access, transparency, competition, and facilitating all-to-all trading. Doing so lowers costs on behalf of U.S. taxpayers. The reforms promote resiliency by bringing more trans-

actions into central clearing. We continue to believe that central clearing brings benefits to the market, as discussed, for example, in the Commission's recent Treasury clearing rule.

*Question 5.* Data protection issues have been a concern for many years. I commend the CFTC for setting up the Division of Data to prioritize these issues. However, I am concerned with the MOU between the CFTC and SEC as it relates to Form PF. I'm hearing a lot of uncertainty here. Uncertainty about a safe means for transferring this sensitive data. Uncertainty about the costs and benefits. It seems pretty certain to me that we need to slow down here.

*a. How can we trust that you all have the best means to transfer sensitive proprietary data between agencies?*

*b. But no means has been proven yet, correct? I think you need to pause until you're able to do that—will you?*

*c. Are you at all concerned that the two Commissions are creating material enterprise risk for market participants without having demonstrated an actual need for the collection of all of this new data?*

*d. Isn't it likely that the costs will significantly outweigh the benefits?*

*Answer.* The SEC shares data with other member agencies of the Financial Stability Oversight Council, including the CFTC, where appropriate and only after obtaining assurances that any data provided will be sufficiently protected. Under the SEC-CFTC Memorandum of Understanding (MOU) re the use of Form PF Data, the CFTC must establish policies and procedures to limit access to Form PF data and ensure such data is stored, accessed, and handled securely. In addition, any CFTC system used to store, process, or transmit Form PF data must have a FIPS 199 Security Categorization of either Moderate or High and a valid authorization to operate in accordance with the Federal Information Security Modernization Act of 2014. The CFTC also must notify the SEC if the CFTC's systems lapse in accreditation or if there is unauthorized access, use, and/or disclosure related to Form PF data as required by the MOU.

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#### QUESTIONS SUBMITTED BY SENATOR BILL HAGERTY

*Question 1.* When Congress appropriates funding to the SEC, it also authorizes the agency to collect an equal and offsetting amount of fees. Since 2012, Congress has appropriated \$20.3 billion to your agency. During this period, the SEC has only managed to collect \$19.7 billion in transaction fees, resulting in a significant \$553 million deficit.

*a. In the SEC's FY25 budget justification to Congress, the SEC claims to be a deficit-neutral agency. Given that the SEC is operating at a deficit, is it accurate to state that the SEC is contributing to the growing Federal deficit? Why or why not?*

*b. Is there any reason why the SEC should not be held accountable for the \$553 million deficit it created? What would be the agency's plan if Congress were to require the SEC to pay the deficit?*

*c. Are there any current unobligated balances at the SEC that Congress could rescind to offset this growing deficit?*

*Answer.* Setting a new fee rate each year based on full-year Congressional appropriations involves projecting future dollar volume of securities transactions, which is an intrinsically complicated and uncertain exercise. As required by the law, we also consult with the Congressional Budget Office (CBO) and Office of Management and Budget (OMB) on the methodology used to determine the adjusted fee rates. This challenge is further exacerbated by the historical timing of the annual appropriation, since the law does not permit the SEC to set a new fee rate until we receive a full-year appropriation. Furthermore, the statute gives the SEC minimal opportunities to adjust the rate during the year.

We are happy to discuss possible statutory changes that would allow us to reset the rate at a different schedule, or with a bit more frequency to better reflect market changes that may affect overall collections.

*Question 2.* During the hearing, you and I discussed the creation of the Consolidated Audit Trail (CAT) data base to collect data on billions of daily equity and options trades and investors' personally identifiable information (PII). As I mentioned, I'm of the belief that the SEC should protect investors, not compile and put at risk their personal information. Unfortunately, the government has a track record of

mishandling Americans' sensitive information. Take, for example, the IRS. By law, the IRS is required to protect the confidentiality of tax return information and can charge individuals with a crime. This did not stop the ProPublica leaker, who stole and disclosed thousands of tax returns. I'm concerned that the CAT database may be a cyber security catastrophe waiting to happen, and it undoubtedly has the potential for widespread abuse.

*a. How many SEC employees have access to CAT? What requirements or criteria are required before an SEC employee is granted access to the information collected in the CAT?*

*b. Given the recent mishandling of sensitive information, what action is taking place at the SEC to ensure similar leaks don't happen at your agency?*

*c. If Congress were to impose stricter punishments to deter unauthorized disclosures by Federal employees and contractors, what recommendations might you provide?*

*d. Please provide, in detail, the current protections that have been put in place by your agency to protect investors' information in the CAT.*

*Answer.* Access to CAT data for regulators is limited by the CAT National Market System (NMS) Plan. The Plan requires a comprehensive information security program that is regularly evaluated to ensure it remains "consistent with the highest industry standards for the protection of data." See 81 Fed. Reg. 84722, 84753. The Self-Regulatory Organizations and the Commission may access CAT data "solely for the purpose of performing their respective regulatory and oversight responsibilities." Id. at 84724, 84758. While broker-dealers submit personal information to CAT, such information is limited to the name, address, and birth year of investors. See 85 Fed. Reg. 16152, 16156 (2020). This limited set of personal information is stored separately from all other CAT data, and access to it is restricted to a limited set of authorized individuals on a need-to-know basis. See 81 Fed. Reg. 84724-25, 84767-68.

The SEC maintains a variety of technological controls to block unauthorized users from gaining access to CAT data within the secure analytics environment where it is kept. In addition, access is only provided to an employee after management approval is received and training is completed. Staff who are approved for access to CAT data have a mandatory requirement to annually complete training in the safeguarding of PII and information technology security practices in general. CAT also maintains a full record of PII access that is subject to daily inspection. CAT NMS Plan, App. D-14. SEC policy stipulates that unauthorized disclosure of Non-Public Information by employees or contractor personnel may result in administrative, civil, or criminal action as appropriate, including termination of employment. Finally, the SEC has been developing "zero trust" controls over CAT data in line with government-wide requirements.

*Question 3.* The SEC is currently considering multiple key market structure proposals, including rules concerning tick sizes, volume-based pricing, and daily options. While the matters governed by these proposals are closely interconnected, the SEC has neither researched nor tested how the effects of these proposals may interact or overlap when the proposals are implemented at the same time. Pilot programs would help assess the effects of complex, overlapping market structure reform. Why has the Commission not implemented pilot programs to test the impact of market structure proposals in a real-world, albeit controlled, environment to determine whether a particular market structure reform will bring about its intended effect?

*Answer.* Engagement with interested parties is a critical component of our rule-making process, and we take the feedback we receive on our proposed rules seriously. Staff and I have had robust engagement with a broad range of stakeholders representing diverse viewpoints on the Commission's proposed rulemakings. I believe these conversations improve staff recommendations as well as the decisions and reasoning of the Commission.

As we implement the Federal securities laws, we continue to welcome feedback and comments from the public. This helps to ensure that we fulfill our obligations under the Administrative Procedure Act and other applicable requirements. Further, it helps to ensure that our final rules reflect appropriate consideration of public input.

## QUESTIONS SUBMITTED BY SENATOR MARCO RUBIO

*Question 1.* Chairman Gensler, in February I wrote to you requesting to Securities and Exchange Commission (SEC) to carefully investigate the initial public offering (IPO) filing of SHEIN by requiring stringent disclosures about its operations and risks in the People's Republic of China (PRC). In that letter I expressed serious concern about the potential risks U.S. investors would be unwittingly exposed to if the company successfully filed for an IPO on a U.S. stock exchange. I cited evidence of the Chinese Communist Party's control over SHEIN's financial data and operations, as well as several credible accounts of serious labor violations by SHEIN and connections to forced labor in the Xinjiang Uyghur Autonomous Region (XUAR). I also described how SHEIN's business model has built its success on circumvention of U.S. customs enforcement and duties collection through exploitation of the "de minimis" loophole, and that there is bipartisan momentum behind fixing this loophole. It appears the SEC carefully weighed my concerns. Your agency has not approved a SHEIN IPO on U.S. stock exchanges, and SHEIN has apparently given up on launching one. The company recently announced that it would change strategy and seek an IPO on the London Stock Exchange. The U.S. and United Kingdom have long shared a special relationship, and I fear that UK investors will face the same risks that threatened American investors when SHEIN sought to list on our stock exchanges. Earlier this week, I wrote to HM Treasury Chancellor Jeremy Hunt out of a duty of friendship to repeat the same warnings I shared with you earlier this year, and urge caution before the United Kingdom allows SHEIN to list in London.

*a. Mr. Gensler, did you share my concerns over the fundamental risks SHEIN posed to American investors when it sought to list on U.S. exchanges?*

*b. Though the SEC has not formally approved SHEIN's IPO in the United States, your agency also has not publicly rejected the IPO. Are you able to confirm that the SEC will not approve SHEIN's IPO in the US unless the company complies with extraordinary disclosure requirements regarding its structure, interactions with the CCP, and the risks of doing business in the PRC?*

*c. Do you believe that UK investors would face the same fundamental risks as American investors if SHEIN succeeds in listing on the London Stock Exchange?*

*d. If you were advising Chancellor Hunt as he weighs whether to allow SHEIN to list in London, what information would you share?*

*e. The United Kingdom has made tremendous progress in recent years in advancing legislation that counters the existential threat posed by autocratic regimes that seek to undermine the West's democratic values and fair system of trade. The UK's Financial Conduct Authority retains the ability to block listings on UK securities exchanges that pose a significant threat to the UK's national security. The SEC currently lacks this authority. Are you concerned that the SEC lacks necessary tools to protect American investors from unwittingly financing adversarial entities that pose a major risk to the safety and security of our people; for example, a company devoted to expanding communist China's military technology?*

*Answer.* I share your concerns that U.S. investors should have access to full, fair, and truthful disclosure about investment risks, including the risks related to investments in China-based issuers. I have spoken publicly about those risks and the SEC's Division of Corporation Finance staff has issued statements concerning the disclosure obligations of China-based companies. We regularly engage with our UK counterparts, as well as other foreign counterparts, on a wide range of capital markets issues and share information and concerns as appropriate.

*Question 2.* Chairman Gensler, as you know, the Fifth Circuit Court of Appeals vacated the SEC's rule "Share Repurchase Disclosure Modernization," which the SEC adopted in May of 2023. The SEC rule expanded the disclosures that publicly-traded companies must provide when they repurchase their own stock, including by requiring daily disclosures of share repurchases as well as the objective and rationale for this activity. As you know, share repurchases have risen significantly in recent years, eclipsing total capital raised by public companies and coinciding with a period of relative decline in corporate investment in tangible assets. This rise has arguable reversed longstanding roles in the interactions between companies and securities markets, with greater focus on increasing valuations than stimulating capital investment. I was pleased the SEC sought to increase transparency the role that rising share repurchases have played in reducing capital investment. The Fifth Circuit's ruling to vacate the SEC rule concluded that the SEC failed to conduct an adequate quantitative analysis of the rule's economic impact. This was a simple clerical error. Considering that the fundamental trends in corporate investment have

not shifted since the SEC first proposed to improve share repurchasing disclosures, does the SEC plan to re-propose this rule, along with a more thorough and complete economic impact analysis?

*Answer.* As you note, the U.S. Court of Appeals for the Fifth Circuit vacated the Share Repurchase Disclosure Modernization Rule (“Repurchase Rule”) on December 19, 2023. While there are issuer share repurchase disclosure requirements that pre-date the Repurchase Rule and continue to apply, I appreciate your point about the additional transparency that the Repurchase Rule would have provided. We will take this, as well as views others have provided, into consideration as we contemplate the agenda of SEC rulemakings.

*Question 3.* Chairman Gensler, investments in assets and companies under the thump of the Chinese Communist Party (CCP) carry significant risks for U.S. investors due to communist China’s unpredictable and capricious regulatory environment, rampant government intervention, intellectual property theft, and restrictions on the sharing of basic financial data. Geopolitical tensions further exacerbate the hazards associated with doing business in the People’s Republic of China (PRC). Ever since Congress took actions to create some level of regulatory parity with respect to investments in publicly traded PRC-based issuers, the CCP has moved to restrict Western access to financial data. The China Securities Regulatory Commission has since barred companies from making prospectus statements that “misrepresent or disparage laws and policies, [the] business environment and judicial situation” in the PRC. Now, CCP authorities are shutting off live trading data and directing institutional investors to not sell stocks to stabilize the country’s embattled stock market. While you have previously directed SEC staff to conduct ‘targeted’ reviews of issuers associated with PRC-based operations to, ostensibly, increase transparency, these efforts have done little to hold the PRC and its companies accountable for flagrantly violating U.S. laws and deliberately misleading American investors.

*a. Can you provide any updates regarding the SEC’s efforts to increase disclosures with respect to variable interest entities (VIEs)?*

*b. Is the SEC doing anything to require PRC-based issuers and PRC-based VIEs from disclosing if future activities by the PRC government could significantly impact the company’s financial performance and enforce contractual agreements?*

*c. Will the Commission consider additional disclosures for PRC-based issuers requiring them to disclose their dealings with PRC regulators or the CCP?*

*d. Considering that U.S. companies operating in the PRC face an opaque and hostile regulatory environment designed to force the transfer of intellectual property or erode their ability to compete with PRC companies, do you think that investors in U.S. companies ought to be made aware of any agreement with a PRC government official or regulatory body?*

*Answer.* I share your concerns that U.S. investors should have access to full, fair, and truthful disclosure about investment risks, including the risks related to investments in China-based issuers. I have spoken publicly about those risks and the SEC’s Division of Corporation Finance staff has issued statements concerning the disclosure obligations of China-based companies, including obligations that may trigger additional disclosures about VIE structures and material impacts that intervention or control by the PRC in the operations of China-based issuers has had or may have on their business or the value of their securities. As part of its filing review process, staff has issued comments to China-based issuers, including when their disclosure does not adequately address China-specific risks, such as risks related to intervention or control by the PRC government. SEC staff will continue to monitor disclosure by China-based companies for compliance with the Federal securities laws. In addition, issuers have obligations under existing rules to disclose material agreements and material effects of governmental approvals and regulation. Staff have and will continue to comment on disclosures to ensure these disclosure obligations are met.

*Question 4.* Following the Russian Federation’s invasion of Ukraine, the SEC sent a sample letter to companies regarding their Russia-related disclosures and related supply chain issues. The letter recommended that affected companies provide detailed disclosures regarding to their direct or indirect exposure to Russia, Belarus, or Ukraine and the impact of both the sanctions and the war on their assets and operations.

*a. As geopolitical tensions between the U.S. and the PRC rise over General Secretary Xi Jinping’s support for Russia, export controls, sanctions, restrictions on out-*

*bound investment, and the possibility of an invasion of Taiwan, will the SEC preemptively require any issuer with a presence in the PRC to meet similar reporting requirements?*

*b. Will the SEC produce and make publicly available a report on the potential economic impact of a sudden loss of market access and the various types of geopolitical, regulatory, and informational risks assumed by investors who hold assets either within the PRC or in PRC-based issuers and VIEs?*

*Answer.* Under the Federal securities laws, companies may have disclosure obligations related to the direct or indirect impact that events in their geographic areas of operations have had or may have on their business. Many of the items discussed in the sample letter to companies regarding disclosures pertaining to Russia's invasion of Ukraine may be applicable to other geopolitical situations.

#### CONCLUSION OF HEARINGS

Senator VAN HOLLEN. The hearing record will remain open until Thursday, June 20, to allow senators to submit additional questions for the record.

And the hearing is now adjourned.

[Whereupon, at 11:31 a.m., Thursday, June 13, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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