

**NOMINATIONS OF ALEX AZAR II, TIMOTHY D.
ADAMS, SUZANNE C. DeFRANCIS, CHARLES E.
JOHNSON, AND SHARA L. ARANOFF**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

ALEX AZAR II, TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; TIMOTHY D. ADAMS, TO BE UNDER SECRETARY FOR INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE TREASURY; SUZANNE C. DeFRANCIS, TO BE ASSISTANT SECRETARY FOR PUBLIC AFFAIRS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; CHARLES E. JOHNSON, TO BE ASSISTANT SECRETARY FOR BUDGET, TECHNOLOGY AND FINANCE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND SHARA L. ARANOFF, TO BE A MEMBER OF THE INTERNATIONAL TRADE COMMISSION

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MAY 24, 2005
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NOMINATIONS OF ALEX AZAR II, TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; TIMOTHY D. ADAMS, TO BE UNDER SECRETARY FOR INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE TREASURY; SUZANNE C. DeFRANCIS, TO BE ASSISTANT SECRETARY FOR PUBLIC AFFAIRS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; CHARLES E. JOHNSON, TO BE ASSISTANT SECRETARY FOR BUDGET, TECHNOLOGY AND FINANCE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND SHARA L. ARANOFF, TO BE A MEMBER OF THE INTERNATIONAL TRADE COMMISSION

TUESDAY, MAY 24, 2005

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

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD-628, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Thomas and Baucus.

The CHAIRMAN. I will call the hearing to order. Normally, I and Senator Baucus would give an opening statement, but because my colleagues have time constraints, I am going to call on Senator Hatch to make his comments introducing a friend and colleague.

So, why do you not proceed, Senator Hatch? Then we will do regular order after you have completed.

**OPENING STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH**

Senator HATCH. Well, thank you, Mr. Chairman. I am very appreciative that you would get me up and let me make my remarks about a very dear friend and a top-notch person who is willing to serve the government, in fact, two top-notch persons.

First, I would just like to say a few words about Alex Azar. Alex is the nominee for Deputy Secretary of HHS. He has a wife, Jennifer, and his children, Claire and Alex, ages 5 and 2. He has been

general counsel of HHS since 2001. He hails from Salisbury, Maryland.

He went to Dartmouth College for undergraduate, and Yale Law School for his law degree. He clerked on the Fourth Circuit and at the Supreme Court of the United States, and became a partner in one of the most prestigious firms in Washington, Riley, Rein & Fielding.

I know Alex very well. I just am so grateful that he is willing to serve like this in our government, because he is a wonderful attorney, a tremendous human being, totally honest and capable, and I believe that he will do a terrific job as deputy over there.

Of course, I have a tremendous interest in having good people serve at HHS, as do both of you, and especially since our former governor is now Secretary over there. So, I just wanted to say a few words about Alex, because I have such a high regard for him.

But, Mr. Chairman, it is my honor and privilege to introduce a fellow Utahn, Charles E. Johnson—we call him Charlie—to all members of the Senate Finance Committee. I am grateful for the three of you here today. I am also grateful that you reinstated this hearing, because these are good people who deserve to be up and out in the Senate.

I want to recognize Charlie's lovely wife, Susanna, and their fine family. I will have him introduce them as he testifies.

I have known Charlie for a long time. I have worked with him on many issues concerning Utah, especially those affecting health care policy.

However, let me make clear to the committee that Charlie has been a leader in the field of accounting. He has a long track record of distinguished service in both the public and private sectors. In addition, he is very familiar with health care policy and how health care impacts our national budget.

So I believe, and I know, that he is well-suited for this position. Today, Charlie serves as the Chief Financial Officer of the Environmental Protection Agency. Charlie was appointed by President Bush and confirmed by the U.S. Senate to this current position in the year 2004. When Secretary Mike Leavitt was first elected governor in the State of Utah, he chose Charlie to serve as his chief of staff, because Mike knew Charlie would get the job done, and he did.

As chief of staff, Charlie learned the importance of working collaboratively to seek solutions. I know he will continue to use these skills in this new job as Assistant Secretary for Budget, Technology and Finance.

So, I am grateful that he is willing to take his time out of the private sector and serve in the public sector and help our country, and to help our former governor over there at HHS, whom everybody on this committee, I think, has a decent, strong, and favorable opinion of.

Back home, Charlie served in many positions, notably as president of the Huntsman Cancer Foundation and vice president of Huntsman, LLC. In addition, he also served as a member of the Utah State Board of Regents, which oversees all public institutions of higher education in the State of Utah, and served as chair of the

Board of Regents. He has held numerous leadership positions and has been awarded many honors for his hard work and dedication.

Mr. Chairman, while Charlie spent 31 years in the practice of public accounting and has broad experience with public companies, he has quite a diverse background which will be useful in his new position. He is an exceptional individual, and I know that he will do a fine job at HHS. So with pride and admiration, I introduce this committee to Charlie Johnson.

I will just say, though—I do not want to take any more of our distinguished Majority Whip’s time—that I know this man personally. He is a terrific human being. He is extremely knowledgeable. He is totally honest. He is a person who will help our government to do better. He is bipartisan in nature.

He can work with anybody. That is saying something, for somebody who works with all of us here on Capitol Hill. I think you will all be very pleased with the service that he will give to our country.

So I appreciate you allowing me to do this so I can get back to the Intelligence Committee.

The CHAIRMAN. Senator Hatch, we thank you.

I am going to call on Senator McConnell before we give our opening comments so that Senator McConnell can go about his work as well.

So would you proceed, Senator McConnell?

**STATEMENT OF HON. MITCH McCONNELL,
A U.S. SENATOR FROM KENTUCKY**

Senator McCONNELL. Thank you, Mr. Chairman, Senator Baucus, Senator Thomas. It is my honor today to introduce Tim Adams, the President’s nominee to be the next Under Secretary for International Affairs at the Treasury Department.

With his confirmation, as I hope this committee will do shortly, the department will immediately benefit from his many years of experience in fiscal policy, both in the private and public sectors.

Mr. Adams currently serves as Senior Advisor to Treasury Secretary John Snow, and previously served as chief of staff to Secretary Snow and Treasury Secretary Paul O’Neill.

In these roles, he has coordinated policy development throughout the entire department and with other executive branch agencies. He advises the Secretary on policy issues and economic and market conditions.

After the vicious attacks of September 11, Mr. Adams was instrumental in the efforts to get the New York financial markets up and running again promptly. He moved quickly to help ensure that New York City got much-needed funds for its recovery, and he was part of the team that tracked down and stopped the money flow to groups that supported terror.

Tim Adams has worked tirelessly with international financial institutions to get more foreign assistance to those who most need it. He has urged international donors to emphasize grants over loans so that developing nations are not encumbered with unwieldy debt, and he is a strong supporter of a favorite cause of mine, the Millennium Challenge Account.

Focusing more of our international aid in the MCA helps ensure good governance, stronger democratic institutions, and greater support for human rights in the countries we assist.

Before and between his stints at Treasury, Tim worked as a policy director for both Bush-Cheney presidential campaigns. He led the Treasury transition team for the current administration, and he has worked at the Export-Import Bank, the White House Office of Policy Development, and the Office of Management and Budget under President George H.W. Bush.

Mr. Adams co-founded and served as managing director for the G-7 Group, an economic and political consulting firm that serves blue chip global financial institutions. He is a fellow Kentuckian and a fellow alumnus of the University of Kentucky, where he received his bachelor's and two graduate degrees.

In addition to a fine career, Mr. Chairman, Tim has a wonderful family. I am sure it is with great pride in their husband and dad that they are here today, his wife Jennifer, and his children, Tindall and William.

The President has chosen Tim Adams to serve in this administration because of his vast experience in financial affairs, as well as his good judgment and because he has consistently demonstrated over the years a willingness to serve his country.

I believe that those two attributes make Tim an exceptional candidate for this job. I appreciate the committee's quick handling of his nomination and look forward to his confirmation.

In closing, Mr. Chairman, let me just say, Tim Adams represents the best in public service. It is with great home State pride that I thank you for allowing me to testify on his behalf.

The CHAIRMAN. Of course, we are glad to have you testify and present your friend and colleague to the committee. Thank you very much.

Senator MCCONNELL. Thank you, Mr. Chairman.

The CHAIRMAN. You bet.

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

The CHAIRMAN. This hearing has already convened, and we are considering five presidential nominees to the Department of Health and Human Services, the Department of the Treasury, and the International Trade Commission.

I congratulate all the nominees and thank you very much for your willingness to serve the people of this country. Our first panel is going to be Alex Azar and Timothy Adams.

Alex, who already has a distinguished career in public service, has been nominated to be Deputy Secretary of HHS, a position in which he is presently serving as Acting.

Prior to his current role, Mr. Azar was the department's general counsel. He has a tremendous breadth of legal experience on a range of issues, including Food and Drug Administration law, which is of particular keen interest to me because of the oversight hearings that I have had involving new pharmaceutical products that have tended to have some questions about their safety.

I am confident that his experience will enable him to fulfill a broad range of responsibilities in the Deputy Secretary's office.

The next nominee is Timothy Adams. He has been nominated to be Under Secretary of Treasury for International Affairs. Mr. Adams brings a wealth of experience to this important position.

In addition to a distinguished career in business and finance, Mr. Adams also served as chief of staff to two Treasury secretaries, Paul O'Neill, and the current Secretary, John Snow.

In 2003, Mr. Adams was awarded the Treasury Department's highest award, the Alexander Hamilton Award. Mr. Adams' diverse professional experience and dedication to public service will benefit the Treasury Department.

Senator Baucus, to you for your opening statement.

**OPENING STATEMENT OF HON. MAX BAUCUS,
A U.S. SENATOR FROM MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman.

As you indicated, Mr. Chairman, we are here to consider the nominations of Alex Azar, to be Deputy Secretary of the Department of Health and Human Services; Tim Adams, to be Under Secretary for International Affairs at Treasury; Shara Aranoff, to be Commissioner on the International Trade Commission; Charles Johnson, to be Assistant Secretary for Budget Technology and Finance; and Suzanne DeFrancis, to be Assistant Secretary for Public Affairs at HHS.

Clearly, these candidates are all well-qualified for the respective positions for which they have been nominated. I look forward, as I know you do, Mr. Chairman, in serving with them all in the future.

While many of these candidates will likely be excellent public servants, I can assure you that one individual will undoubtedly shine.

The nominee to be Commissioner at the ITC is well-known to me and to others on this committee. She has served ably on my Finance Committee trade staff for the past 4½ years, longer than anyone else currently on that staff.

She is uniquely qualified to serve as an ITC Commissioner, having worked as an attorney at the ITC for 8 years. She is smart. She is very smart. She is capable. I am certain that she will be an exemplary Commissioner. Congratulations, Shara. I am very delighted for you.

The International Trade Commission plays a critical role in administering U.S. trade remedy policy. U.S. companies must have assurance that their government will protect their interests against unfair practices or destabilizing forces in the international market.

But just as United States companies look to the ITC for redress against injury, other nations look to the ITC as an impartial, transparent entity that can be trusted as a model of good trade remedy enforcement.

I have long believed that rigorous enforcement of our safeguard, antidumping, and countervailing duty trade laws is ever more important as the United States continues to pursue a liberalized trade agenda in free trade agreements and the WTO.

The individuals nominated to serve at the Department of Health and Human Services are also called upon to bring their expertise,

their judgment—independent judgment, especially—to the department.

Mr. Azar, welcome back to the committee. The last time the Finance Committee confirmed you for HHS general counsel, as I am sure you will recall, I expressed some concerns about your lack of expertise in health care. I am glad to hear that you have worked hard and brought fair-minded legal analysis to the department.

I will not spend much time today talking about my concerns surrounding implementation of the new Medicare prescription drug law, because I have made those concerns known at previous hearings, and especially in a letter to CMS Administrator Mark McClellan.

I also will not spend time talking about the Medicaid Commission, because I have made my views and concerns about a biased commission known to Secretary Leavitt already.

Rather, I would take just a minute to say that, in the coming weeks, I plan to introduce a bill with the Chairman, Senator Grassley, that will take important steps in Medicare to pay providers based on quality. It is a critically important issue on which we need to make progress this year.

I will also be working on a bill to build in transparency and accountability under the new Medicare Part D drug benefit. I want to make sure that the public, researchers, and congressional support agencies have access to the information they need to evaluate the new drug benefit.

Given how difficult it was to get HHS to share enrollment data on the drug discount card, I feel that we need to make sure that the law ensures adequate transparency.

Ms. DeFrancis, Mr. Johnson, I wish you luck and thank you for volunteering to serve.

Mr. Adams, welcome. You have an accomplished resume, and I thank you for your willingness to serve. If you are confirmed by the Senate, one issue that will fall under your supervision is U.S. trade policy at Treasury.

I want to highlight this portion of your portfolio because it requires closer oversight for this committee in light of a recent Treasury decision to restrict agriculture exports to Cuba, a promising new market worth \$400 million to United States farmers and ranchers last year.

Congress authorized United States agricultural exports to Cuba on a cash-in-advance basis in the Trade Sanctions Reform and Export Enhancement Act of 2000. The key words in that statute are “export enhancement.”

We in Congress intended to open up the Cuban market to agriculture sales for two key reasons. The first is, using food as a weapon never works. Fidel Castro has not missed a meal in 45 years.

But more to the point, members of Congress understood that farmers and ranchers back home in our States needed new markets. I work for the people of Montana, and, frankly, if you are confirmed to this post, Mr. Adams, you will too.

For my whole career, I have worked to open new markets for Montana farmers, ranchers and businesses, and one of those new markets is Cuba. I led a delegation of Montanans to Cuba in Sep-

tember of 2003 and came home with a commitment by Cuba to purchase \$10 million in Montana agricultural products.

Over the course of the next year or so, Cuba fulfilled that commitment, buying \$10.4 million in Montana wheat, peas, and beans. So I returned to Cuba last December and negotiated an even better deal for Montana. Cubans agreed to buy \$15 million worth of Montana agricultural products.

Several contracts for the sale of Montana products made possible by that deal, worth several million dollars to my constituents, are now in serious jeopardy. Why? Because of a Treasury rule change restricting the cash-in-advance payment rules that govern agricultural trade with Cuba.

The new rule reinterprets the cash-in-advance requirement on sales to Cuba to mean cash in advance of shipment instead of the customary cash in advance of delivery.

But if Cuba must pay for the goods before they leave the U.S. port, the goods become Cuban assets, vulnerable to seizure to satisfy unrelated property claims against Cuba. This is not idle speculation. Two years ago, the court awarded two stolen Cuban planes to a Florida woman just to satisfy her claim against the Castro government.

As a result of this rule change, wary Cuban buyers have already turned to importers of other countries for \$300 million worth of food imports. This rule change was clearly just a back-door attempt to overturn the will of Congress and to shut down agricultural sales to Cuba.

Listen to what the nonpartisan Congressional Research Service concluded about this proposed and actual change in the rules by OFAC over at Treasury:

It appears customary within the international trade and financial community to place emphasis on the transfer of legal control rather than on the date of shipment.

In other words, it appears that a seller can ship goods without relinquishing legal control of them, therefore payment can still be required in advance of the transfer of legal control.

OFAC's proposed interpretation appears to limit the available payment options to those that are considered risky, undesirable, and under-utilized. Acceptance of OFAC's proposed interpretation appears likely to result in a reduction of trade with Cuba, which appears to be contrary to the express intent of Congress.

Those are not my words. That is an objective analysis of the Congressional Research Service. Treasury had no authority to defy Congressional intent with respect to these sales. Congress passes laws, not Treasury.

I care so much about this rule change because it impacts Montanans directly. Contracts for \$3 million worth of Montana wheat and peas negotiated months ago will have to be renegotiated or abandoned. Why? Because the rule changes the terms of sale. That \$3 million is directly out of the pockets of Montanans, Mr. Adams, and I will not allow that to happen.

The bottom line is obvious. This new rule will add cost and risk to future sales, making American exporters less competitive in the Cuban market compared with foreign exporters.

There is a fellow named Mr. Steinhagen who owns the Yellowstone Bean Company in Bridger, Montana. He tells me that Cuba could be worth up to \$25 million a year to his company alone. As Jim points out, this is not peanuts. Jim is hoping to make Cuba his biggest customer, ahead even of Wal-Mart. But now, thanks to the bureaucrats at Treasury, he could lose Cuba as a customer altogether.

I have other letters from other constituents, and I will not bring them up right now. But I do want you to read them, because this is a big deal. I listen to my constituents, Mr. Adams. I cannot always get for them what they want, but this one is a no-brainer. And I am not alone. I am joined by Republicans and Democrats in this Congress who represent farmers, ranchers, shipping authorities, et cetera.

We, together, introduced the Agriculture Export Facilitation Act to overturn the Treasury rule, and I am pressing hard to make that pass. We have 30 co-sponsors and we will continue to push for this.

My first priority, though, is to reverse this unnecessary, wrong-headed, politically motivated rule change. Last year when word got out that Treasury was considering this change, I warned that I would take considerable time discussing significant Treasury nominees if that change were made.

Treasury made the rule change anyway, so I have no choice but to make good on my promise and closely examine significant Treasury nominees as they come up before the Senate until I feel confident that agricultural sales to Cuba can continue as they have for the past 4 years.

I hope to work with you, Mr. Adams, and with Treasury to turn this rule around so we can proceed as Congress intended, and it is also good policy.

Thank you.

The CHAIRMAN. Thank you, Senator Baucus.

Senator BAUCUS. I apologize to my colleagues, and thank them for their indulgence for that longer statement. Thank you.

The CHAIRMAN. Yes.

Now we will go to the nominees for their statements and the introduction of any family and friends that they have here supporting them at this particular time.

Would you proceed?

STATEMENT OF HON. ALEX AZAR II, NOMINATED TO BE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Mr. AZAR. Thank you, Mr. Chairman. My name is Alex Azar. Thank you, Senator Baucus and other members of the committee, for convening this hearing. I appreciate the opportunity to be before you today.

I would also like to thank Senator Hatch for his very kind words of introduction.

I also am appreciative of the President's confidence, and Secretary Leavitt, for this opportunity to continue to serve at the Department of Health and Human Services, if confirmed by the Senate. It is a great department. I have spent 4 years there.

I love the work of the department, its programs and its people. I also very much appreciate former Secretary Thompson's confidence, and for the opportunity to serve as general counsel there for the last 4 years.

My wife Jennifer, my son Alex, and my daughter Claire may join us at some point in the hearing. I want to thank them publicly for all the sacrifices they have made in the last several years for this public service.

As general counsel, I supervise approximately 450 lawyers and another 90 professional staff that cover the breadth of legal issues at the Department of Health and Human Services and its over 300 programs.

I am immensely grateful to the career attorneys and staff at the Office of General Counsel, for any successes that I have had in the last 4 years have been attributable to them and to their loyalty, support, and dedication to the mission of HHS.

Our goal is to provide advice and counsel to the department and litigation support across the broad range of programs that we have, the 300 programs that touch the lives of every single American.

I also personally serve as the Senior Legal Advisor, first to Secretary Thompson, and now to Secretary Leavitt, and serve as a member of the senior leadership team at the department.

These have been a very historic 4 years for HHS, as you know. We have faced the unprecedented public health challenges of the attacks of September 11th, the subsequent anthrax attacks, the preparedness for smallpox, monkey pox, SARS, influenza, and avian influenza.

We have also worked to enhance our food safety program, working with a bipartisan effort here in Congress to pass the historic food safety reforms of the Bioterrorism Preparedness Act that gave the Food and Drug Administration critical new authorities to protect our Nation's food supply.

We also have worked with this committee and with this bipartisan leadership here to enact the Medicare Modernization Act and the historic reforms there that are going to bring choice and opportunity to more seniors and more disabled people in our country.

We have worked to reform generic drug approval processes, to speed up the approval of drugs, getting rid of successive 30-month stays by innovator companies so that we could work, in the Medicare Modernization Act, with this Congress, to save \$35 billion for consumers over 10 years.

We also are just beginning the work on patient safety and quality of care initiatives, and the promise of health information technology has captured the public's imagination. We are looking forward to try to deliver on the promise of having an electronic health record for all Americans within the next 10 years.

I am excited about the prospect of staying at HHS because I think the next 4 years will offer the same type of historic opportunity for the department and its programs, and also the oppor-

tunity to work with this committee and the Congress to move forward there.

Obviously, as the Secretary has said, the major priority right now is the successful implementation of the Medicare Modernization Act. We have to get beneficiaries educated. We have to ensure that the program we have all worked so hard on is a success.

We also have to protect the Nation against bioterrorist attack and emerging infectious diseases, and we have to try to advance the agenda on patient safety and health information technology to bring those promises to fruition.

Finally, we need to expand the opportunities for all Americans to secure or purchase health insurance, if we possibly can.

If confirmed, I look forward to working with Secretary Leavitt on trying to fulfill the mission that the President has laid out for us, and I also look forward to the opportunity to work with you and other members of the committee and the Congress as we protect the Nation's public health and welfare.

Thank you very much for the opportunity to be here today.

The CHAIRMAN. Thank you, Mr. Azar.

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

The CHAIRMAN. Now, Mr. Adams? You can introduce family and friends as well.

STATEMENT OF TIMOTHY D. ADAMS, NOMINATED TO BE UNDER SECRETARY FOR INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. ADAMS. Thank you, Chairman Grassley, Ranking Member Baucus, and members of the committee. Thank you for the opportunity to appear before you here today. I am honored that President Bush nominated me to serve as Under Secretary for the Treasury for International Affairs and, if confirmed, to have the opportunity to work with Secretary John Snow, the Treasury staff, and my colleagues in the administration.

If confirmed, I also look forward to working closely with this committee, the U.S. Senate generally, and your colleagues in the House of Representatives. I want to do this to help advance the President's economic agenda and to further the well-being of all Americans.

I also want to thank Senator McConnell for introducing me. I have known the Senator for many, many years and am honored by his presence.

Finally, I want to thank my wife, Jennifer, and our children, William and Tindall, who are back here.

Senator BAUCUS. Could you stand, please? This is quite a big day. We would like to recognize the family. That is great.

Mr. ADAMS. I think one has gone missing. [Laughter.]

Senator BAUCUS. Right. Thank you.

Mr. ADAMS. But I want to thank them for their unwavering support of my great passion, which is public service. I could not do what I do without their help. While I am out enjoying the intellectual stimulation of the jobs that we have, my dear wife is at home taking care of sick children and sick dogs, and she makes it all work. I thank her so much for all that she does.

Indeed, if I am confirmed, this will be my third stint working in the Federal Government. I look forward to bringing my skills, knowledge, and experiences to help address the great challenges before us, and to seize the historic opportunities to advance the cause of freedom and improve living conditions everywhere.

Finally, I want to say that I bring to this challenging position important personal attributes, such as an inclusive and a practical, analytical problem-solving style in a diplomatic demeanor, which I think is going to be very important as we address some of the challenges which I hope we have a chance to talk about shortly.

If confirmed, I will immediately tackle several pressing issues, including growing global imbalances, China's stable integration into the global financial system, identifying and preventing financial crises, and ensuring that development assistance is more effective, especially in Africa.

I will also work to implement the President's vision for the Middle East, establish closer ties with Latin America, help open foreign markets for U.S. goods and services, including agricultural products, and support transition economies and fragile democracies.

Finally, I will continue to push the critical importance of economic growth, good governance, the rule of law, and capital formation so that all parts of the global economy would become more vibrant and prosperous in the future.

Mr. Chairman, Senator Baucus, I am grateful for this opportunity to appear before you today. I would be pleased to answer any questions you have, or any other members of this committee.

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

The CHAIRMAN. All right. The first three questions will be outside of our 5-minute time period. These are questions that we ask every nominee.

So I will ask each of you, then each of you separately respond.

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

Mr. AZAR. No, sir.

The CHAIRMAN. Mr. Adams?

Mr. ADAMS. No, Mr. Chairman.

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

Mr. AZAR. No, sir.

The CHAIRMAN. Mr. Adams?

Mr. ADAMS. No, Mr. Chairman.

The CHAIRMAN. Last question. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed? Mr. Azar?

Mr. AZAR. Yes, sir.

Mr. ADAMS. Yes, sir.

The CHAIRMAN. Thank you.

I just have one question that I am going to ask Mr. Azar, then I will turn to Senator Baucus.

In your role as general counsel, you saw first-hand the fraud and abuse that can occur in our health care programs, including Medicare and Medicaid. I know you share a commitment to ensuring that every step be taken to prevent fraud and abuse and to punish perpetrators.

It is sad to say, but Medicare beneficiaries are not the only ones waiting for a new drug benefit. We saw it with the drug cards. Scam artists started working right away to take advantage of beneficiaries, and in the end taking advantage of taxpayers.

We took several steps to make sure that the department had the tools and resources to prevent scams and to ensure proper oversight of companies offering the Part D benefit.

Can you tell us a little more about the department's strategy to ensure that beneficiaries get the benefits that they deserve, and that these companies comply with all of the rules and requirements to serve Medicare beneficiaries?

Mr. AZAR. Mr. Chairman, thank you very much. I would like to thank you for your leadership on protecting the program against fraud, waste and abuse. This committee has obviously been very vigilant, and your personal efforts have encouraged us as we move forward in these areas.

I agree with you that we have to be extremely vigilant with this new program getting up and running to ensure that we protect it against fraud, waste and abuse, particularly on the Part D benefit and the new providers that we are going to have in this environment. I also agree that we need to come down hard on any who abuse the program and the trust that they will have.

The Medicare Modernization Act, which this committee worked on, gives us extremely broad authority to gather information so that we can fulfill this type of oversight responsibility on those who would be Medicare Advantage prescription drug providers, as well as the Part D prescription drug plans. The language actually allows us to gather such information as the Secretary determines necessary to carry out the act.

This is important because several of the payment provisions where we will pay these intermediaries will depend on net cost—the prices that are being paid for drugs, net of any rebates or discounts that the prescription drug plans happen to receive—so we need to be able to have access to their records so that we can ensure that they are providing us complete and accurate information.

When we put out the Part D final regulations, we made clear their obligation to get these records, to keep them, to have complete access for our oversight purposes, and also put them on notice that we intend to be looking at these records as we examine to ensure that the Federal taxpayer, whether it is re-insurance or the catastrophic benefit, that we are getting exactly what the statute provides in terms of the net numbers.

We also are requiring that the sponsors of the plans have to certify the accuracy of the information that they provide to us. So, many tools would be available to us to enforce against them, including the False Claims Act, with relators being able to sue, in addition to the Federal Government being able to sue, to protect the taxpayer funds.

We also have the anti-kickback statute and all the other civil monetary penalty authorities that the Inspector General and the Justice Department would have to work on to protect against any type of misrepresentation.

We also worked to put out regulations to ensure that every Part D plan will have to have a compliance program, and we offered factors that those compliance programs will have to have.

So, Mr. Chairman, I want to reiterate to you that protecting this program against fraud, waste and abuse is a critical priority for us as we move forward into 2006. Thank you.

The CHAIRMAN. Yes. Thank you.

Now I call on Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. I am done with my questions, so take whatever time you need.

Senator BAUCUS. Take care of yourself.

Mr. Adams, I just have a couple of questions about the matter which I discussed in my statement. Also, to generally get your reaction to whether you agree that it makes sense for the United States to violate the sanctity of contracts.

I might say, in March of this year, I think, many agriculture groups petitioned Treasury to exempt preexisting contracts from the new Treasury rule. Treasury declined.

According to *Congress Daily*, there are about \$200 million worth of previously linked agreements with Cuba coming up in the next several months that would have to be renegotiated or abandoned because of the rule change, placing those earlier contracts at greater jeopardy.

I might say also that one person—actually, it was a fellow who was quoted in *Congress Daily*—who said that if he compared this Treasury rule to the 1980 grain embargo that President Carter imposed on the Soviet Union after its invasion of Afghanistan, “By issuing this regulation, Bush is the first president since Jimmy Carter to violate the sanctity of agriculture export contracts in such a broad fashion.”

Would you feel comfortable recommending that Treasury not exempt those pre-negotiated contracts? What would your recommendation be if that issue were to come before you which would result in a violation of contract sanctity?

Mr. ADAMS. Thank you for the question, Senator. I certainly believe in the enforcement of contracts. It is an important rule, an important item that we certainly press upon other countries, especially when we discuss the importance of development.

If I am fortunate enough to be confirmed, I will certainly make this a priority, although I will point out that OFAC is not directly under the control of my portfolio, it is a part of Under Secretary Levey’s office.

Senator BAUCUS. I know that. But you are still being nominated for an international position at Treasury, so you can certainly have not only the opportunity, but the responsibility, to weigh in.

Mr. ADAMS. Yes, Senator. I can assure you that I will enforce the law based on the best interpretation available within Treasury.

Senator BAUCUS. But would you feel comfortable recommending a policy decision that resulted in a violation of contract sanctity, given the factual situation I just gave to you?

Mr. ADAMS. Senator, I do not know the factual details.

Senator BAUCUS. Basically, contracts were made, Treasury changed the rules contrary to the will of Congress, and would not agree to a petition by those exporters for their preexisting contracts to be exempt. Treasury said no.

Mr. ADAMS. Senator, I can promise you, if I am fortunate enough to be confirmed, I will look into this matter. I will certainly share your concern with my colleagues within the Treasury Department.

Senator BAUCUS. But does it not sound like a straight violation of the sanctity of contracts? I do not care which contracts, but after the fact, if they change the rules.

Mr. ADAMS. Senator, I am reluctant to offer an opinion on a matter that I have not studied in great detail. Again, given the opportunity to be confirmed, I can promise you and the other members of this committee—

Senator BAUCUS. Oh, you are going to have plenty of time to look into this, I guarantee you that. You will have lots of time to think about this, because this is an outrage, that Treasury would overturn the express intent of Congress—the express intent of Congress—for short-term partisan, political reasons, which most farmers and ranchers in this country vehemently disagree with. Vehemently.

You also must know that this is especially hard for Montana and other State farmers and ranchers for a couple of reasons. We are losing our export markets overseas, generally, because of competition and because of subsidies from other countries. We are losing it. We are not getting as much as we had in the past.

Second, farmers and ranchers are getting squeezed a lot more. The Federal Budget Act is another reason as well. We have to open markets, not take them away. Cuba was ranked 227th in order of our markets in exports of countries back several years ago.

But then Congress passed that statute, the one I mentioned, in 2000. Now Cuba rose up to about, I guess 24th, or something like that. Major agricultural export sales to Cuba.

It is not going to solve all the problems for farmers and ranchers, clearly, but it is going to help. I am just, frankly, quite disturbed that the administration would, again, against the express intent of Congress, just willy-nilly make the rule change for partisan, short-term political reasons.

You have a lot of experience with this, actually, because I think Senator McConnell said that when you were chief of staff, he said that you handled such issues as terrorist financing. OFAC is terrorist financing. So, you handled these issues. So what happened?

Mr. ADAMS. Well, Senator, as chief of staff, I handled many issues, and usually it was at a very high level. With respect to the enforcement agencies and the regulatory institutions within Treasury, I tended to take a very hands-off approach because of the unique nature of the work that they do.

Let me do say, Senator, that I support agriculture exports. I grew up in rural Kentucky. I grew up with a backyard that was full of corn. I worked my way through college cutting tobacco. I

know the importance of agricultural products to this country and the importance of exports. In fact, I just was talking with Ambassador Portman last evening about CAFTA and the importance of CAFTA and other trade negotiations under way.

Senator BAUCUS. Well, that is fine, but we are not talking about CAFTA. I very much appreciate your background working on a farm. I appreciate that very much.

We are talking about current farmers and ranchers in this country who are denied export markets against the express intent and will of Congress. That is what we are talking about here, and that has got to change. OFAC has got to turn that rule around back to what it was previously to implement the intent of Congress.

Thank you.

The CHAIRMAN. I am not directing this toward you, Mr. Adams, but I want to say that I have the same feeling on this issue as what Senator Baucus had expressed. So, I am disappointed with the Treasury's interpretation of the terms of the Trade Sanctions Reform and Export Enhancement Act of 2000.

It seems to me the law clearly permits exports of U.S. agricultural products to Cuba, contingent upon the words "payment of cash in advance." Treasury issued a final rule that provides that the terms just given means payment of cash prior to shipment.

Consistent with international practice, however, U.S. exporters of agricultural products over the past 3 years have customarily received payment at other times in the shipping process, including after the point that goods have reached Cuba.

In these cases, exporters have retained title and control of relevant agricultural products until time of final payment. So, Congress intended for exporters to be able to retain title and control of the relevant agricultural products until time of final payment.

It is quite obvious, from the statistics that Senator Baucus has given, that Cuba has become an important export market for U.S. products, including Iowa farmers, in recent years. Treasury's ruling threatens Iowa agricultural exports, and I support efforts to reverse the Treasury rulings.

I say this in support of my own position, but Senator Baucus has enunciated it. Senator Baucus and I do not agree on everything in regard to Cuba, but we surely agree on this issue.

Further questions?

Senator BAUCUS. Mr. Chairman, just a couple of brief ones for Mr. Azar.

I would like to know more about the Secretary's plan to ensure the so-called Commission on Medicaid's independence, because frankly I am a bit concerned about its composition. The Secretary announced plans to create a commission, as you know.

I, for one, strongly urged upon him that that commission be unbiased, independent, very good people appointed so we can get some good results here. However, I am concerned, because that is apparently not what happened. I might say that, given the outline and what is on it, the commission, as I understand it, was three groups.

The voting members are those solely appointed by the Secretary, 15. Then there are non-voting advisors also appointed by the Secretary, which include State and local government officials. Then

the last group is advisory members of Congress who are non-voting. That would be eight.

So the Secretary will appoint 30, different members of Congress would appoint 8. Fifteen of the 30 appointed by the Secretary would be voting, 15 not voting, and 8 appointed by members of Congress would also be non-voting. That does not sound like an independent, objective commission to me. How can you reassure us that it will be?

Mr. AZAR. Mr. Chairman, we look forward to working with you and other members of the committee to try to ensure that we look at the Medicaid program in a way that puts it on a sound footing and that this commission be solid, respected, respectable, and bipartisan so that it can recommend key changes that are needed to the Medicaid program.

The Secretary is absolutely committed to ensuring that all points of view are represented, left, right, center on this. As you mentioned, the charter that we just put out, as well as a solicitation to ask for individuals and entities to suggest representatives to serve on this advisory committee, would include three classes of individuals: the voting members, non-voting representatives, and non-voting representatives of Congress.

The voting membership—under the Federal Advisory Committee Act—that the Secretary would appoint, will have broad representation across the full spectrum. There are going to be State Medicaid directors and governors.

We are also going to have representatives of three public policy organizations with expertise in the Medicaid program. The Secretary is committed to ensure that those representatives who are voting members will represent the spectrum of political interest in looking at Medicaid reforms.

The non-voting representatives will include consumer and other provider representatives, and we would have, of course, bipartisan members of Congress there participating also. Secretary Leavitt, I know, worked with you and other members of this committee on this.

Senator BAUCUS. I appreciate that, Mr. Azar. Clearly, that is what you have to say. But facts speak louder than words. The President had one or two Social Security commissions which nobody paid any attention to, because those were stacked decks. They were cooked deals in advance. They were a waste of time.

We had a Medicare commission which had members of Congress voting. They spent a lot of good, hard work. Several of our colleagues were on that commission, Senator Breaux, especially.

I am just telling you that you have got to work mightily—I do not think you will succeed—in overcoming the impression that this is a stacked deck. This is a cooked deal, again. This administration has lots of cooked commissions, and this is another, as it appears, as it seems.

I just hope that you would come up with something that works, because you are starting off with so many strikes against you because it is not independent, it is not objective, it is not bipartisan. It is solely appointed by the Secretary. Solely, except for a few members of Congress who cannot vote.

Mr. AZAR. I hear your concerns, and I will take them back to the Secretary. I know the proof will be in how the commission is set up and the membership that gets selected, which of course has not been done yet. The Secretary is committed to trying to make sure that this is a fair process.

Senator BAUCUS. He was overruled. He was told by somebody upstairs in the White House that set it up this way. I appreciate the Secretary's intent. He is a good guy. But, clearly, this was not his call. He was told to do it this way, and that is unfortunate.

Mr. Azar, on another matter, I understand that HHS recently changed its criteria for approving new health centers. The department is now requiring medically under-served areas to abide by the same service area as health professional shortage areas.

As a result of this, a potential health center in Havre, Montana was denied an application as an FQHC. As I understand it, this change will affect other States as well. For example, I understand Idaho may have a similar issue.

I have two questions. HPSA and the medically under-served area status are very different. HPSAs are based on provider-to-patient ratios, while medically under-served areas are based on poverty level, infant mortality, and percentage of elderly patients, as well as provider-to-patient ratios. Is it not unfair to require that medically under-served areas be identical to HPSAs?

Mr. AZAR. Senator, with regard to the Havre facility, we have been working, and I want to let you know that, as to that facility in Montana, I will personally work with HRSA to make sure they continue to get the kind of technical assistance they would need to try to get to an approvable status, both with the Montana State Primary Care Office, as well as with HRSA after that.

We have been providing assistance, trying to work through the Primary Care Office in Montana, but we will continue to provide intensive technical assistance to try to get them where they need to be so that they can meet the criteria and be approved.

Senator BAUCUS. I appreciate that. There has been a question about the rule. Was the change made through the proper notice and comment rulemaking process?

Mr. AZAR. Senator, I actually am not familiar with that change in the rule. I would be happy to look into that and get back to you, Senator.

Senator BAUCUS. Would you, please, and let me know? If you would also take a look at the health center in Kalispell which is having difficulty getting approval.

Mr. AZAR. Yes.

[The information appears in the appendix.]

Mr. AZAR. Senator, with that facility, there have been some issues with the co-applicant. Again, with that facility, I can assure you, I personally will work with HRSA to ensure that we deploy a technical assistance team to try to get the issues with the co-applicant settled so that we can try to get them where they need to be for approval.

Senator BAUCUS. Thank you very much.

One question, Mr. Adams. You said you were chief of staff for the Secretary, and you also discussed international financing issues. You are not telling me, are you, that the Secretary was not in-

volved in this OFAC rule change, are you? He did not know about it? You are not telling me the Secretary did not know about it, are you?

Mr. ADAMS. Senator, I was not at Treasury at the time this rule was promulgated. I am not privy to the conversations that occurred at the time.

The CHAIRMAN. Can I enlighten you a little bit? I cannot speak for Senator Baucus, but I did have a telephone conversation the day of the announcement from the Secretary.

Senator BAUCUS. Which indicates he knew about it, I would think.

Mr. ADAMS. Yes, sir. Given what the Chairman just said, that would indicate that the Secretary did know about it.

Senator BAUCUS. Thank you. Which means it was a policy decision, which means he can overrule it.

Thank you. I am finished. Thank you.

The CHAIRMAN. I wanted to follow-up, if you would permit me to, with Mr. Azar on the point of the commission. A couple of points, hopefully, not to relieve any fears that Senator Baucus might have, but instead to probably remind things that I hope are facts out there that we already have been working on this assumption.

This would have been with or without the commission. Of course, now we have the commission, so it is a fact of life that the commission exists. But it was not always assumed that we would have a commission to advise on saving money within Medicaid.

We were going back very early. It was always the assumption, because this is a Federal-State program and a lot of State budgets and governors were finding themselves in trouble, and a bipartisan group of governors was making these statements, that we were going to proceed in a bipartisan way with the governors because of the State's involvement.

I am not sure how far our presumption goes that you get a bipartisan agreement, but it is kind of presumed during the Senate's debate that if we did not get a bipartisan agreement, we would not be able to get a reconciliation anyway.

So as we proceed down this road, with or without a commission, we are going to work with the governors, work with a bipartisan group of people to make savings, not just savings as an end in themselves, but with a goal in mind that there were certain common sense things, like generic drugs, or for Medicaid Title 19, getting rid of the assets, and some other things, that we would be able to save the 1 percent that we are talking about saving out of a \$1.1 trillion program over the next 5 years, with bipartisan support, or we probably would not be able to get it done anyway, but doing it not just to save the Federal budget, but to help governors where Medicaid is a tremendous problem in their State budget.

Mr. AZAR. Mr. Chairman, I think you are absolutely right. That is how Secretary Leavitt has approached this from the time he took office, and working with you, and other members of the committee.

I cannot recall the exact number, but I think he has met with over 40 governors on this to try to build the type of bipartisan, and also federalist, consensus towards common-sense reforms to put the program on a sound footing for the States and for the Federal Government, the types of common-sense reforms that you mentioned,

changing the drug pricing mechanism, protecting the program against fraud, sheltering assets that really ought to be attributed to them. That is why I really do think the Secretary's commitment here on making sure the Medicaid commission represents all views and comes up with good, common-sense solutions that can have support is where—

The CHAIRMAN. And that obviously implies not just a partisan view, either.

Mr. AZAR. Right. Yes, Senator.

The CHAIRMAN. That he wants it to be bipartisan.

Mr. AZAR. Absolutely, sir.

The CHAIRMAN. I think Senator Baucus has asked all of the questions he was going to ask. Thank you all very much for your willingness to serve the American people.

Mr. AZAR. Thank you, Mr. Chairman.

The CHAIRMAN. One admonition. So many members are not here, and then even if members are here, kind of a rule of thumb I have is to make sure that answers in writing are given before your issue will come up on the floor. I think all members, Republican and Democrat, deserve that attention.

Thank you all very much.

Mr. AZAR. Thank you, Mr. Chairman.

Mr. ADAMS. Thank you.

The CHAIRMAN. I am going to move to our second panel. We have Suzanne C. DeFrancis, Hon. Charles Johnson, who has already been introduced by a colleague of ours, and Shara Aranoff.

Our first nominee, Suzanne DeFrancis, is for Assistant Secretary for Public Affairs, Department of HHS. Of course, this office is deeply involved in the campaign to educate beneficiaries and everybody else about the Part D drug benefit.

She has held several positions, both in the private and public sectors, in communications. This combination of work with different audiences will undoubtedly serve the implementation of the new drug benefit very well.

Charles Johnson is nominated to be Assistant Secretary for Budget, Technology and Finance at the Department of Health and Human Services. He also has a distinguished career in both the public and private sectors.

As Assistant Secretary, he will have responsibilities for the office of National Coordinator of Health Information Technology. We need to be able to harness the potential that health information technology holds to improve quality and efficiency. I think we view Mr. Johnson as up to that task.

Shara Aranoff has been nominated as Commissioner of the ITC. She has practiced international trade law for over 15 years in both the private sector and the government. She spent 7 years with the Office of General Counsel, so she is obviously quite familiar with the work of the commission, and for the past 4 years, obviously, working with those of us on the Senate Finance Committee. Senator Baucus has spoken very, very highly of you folks.

So, I think we will proceed now to Ms. DeFrancis, then Charles Johnson, then Ms. Aranoff.

You are invited to make an opening statement, as well as any introduction of family and friends.

STATEMENT OF SUZANNE C. DeFRANCIS, NOMINATED TO BE ASSISTANT SECRETARY FOR PUBLIC AFFAIRS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Ms. DEFRANCIS. Thank you, Chairman Grassley, and thank you, Senator Baucus and the other members of the committee. It is an honor to be here. I appreciate you taking the time, after what I know has been a long night, to consider my nomination as Assistant Secretary of Public Affairs at HHS.

One of my first jobs in communications was working next door in the Russell Senate Office building, where I worked as a Deputy Press Secretary for Robert P. Griffin of Michigan. Please do not ask me under oath how long ago that was, but through that experience I learned the important role the Senate plays.

I very much look forward to consulting with you and your staff as we work to the mutual goals we have of helping the health and well-being of the American people.

I would also like to mention that I met, and married, on Senator Griffin's staff a man named Jim DeFrancis. Jim loved the Senate. He often referred to it as the "upper body," to the chagrin of friends of ours on the House side. But he died at 55 of prostate cancer. I would like to mention Mr. Crapo's work in that regard, and am appreciative of that.

I know he would be proud to see me here today. He was certainly proud of his three sons, two of whom are with me today, James and Will. James is an honors graduate of the University of Chicago and going to Notre Dame to study for a master's in theology. Will is a rising junior at SMU, and he is taking a course this summer in Arabic so that some day he can assist in the war on terror.

Mark is my middle son. He is hopefully studying for exams at Northwestern University, where he intends to graduate this summer with a degree in theater, and a passion for acting and directing.

I would also like to mention my husband, Dr. Phil Wakeland. He had tried to be here. He had canceled a business trip, rescheduled it. I dropped him off at Union Station at 8 this morning and said go ahead and go. But he has been enormously supportive of me. He is the senior scientist for the National Cotton Council and has appeared before the Senate a number of times.

Finally, I want to acknowledge my parents. I have a 90-year-old father who wanted to be here today, but I think he looked outside this morning and decided he would sleep in, which is the prerogative a 90-year-old person can have. And my mother, who suffers from Alzheimer's, would be with me today if she could.

I want to thank President Bush for nominating me to this position. For the past 2 years, I had the privilege of serving him in the White House as Deputy Assistant to the President for Communications.

During that time, I worked on many of the issues that fall within HHS's purview, so I was very pleased to be asked by Secretary Leavitt to join his team.

As you know, Secretary Leavitt has laid out a vision and a very detailed plan for the department, which actually makes the job of a communicator pretty easy because we know where his priorities are and where he wants to take this department.

We will be focusing on modernizing Medicare and Medicaid, and particularly communicating with seniors and disabled persons about the new prescription drug benefit. I know he plans to spend a lot of time on that, and I certainly plan to spend a lot of time on that.

We have, of course, many other roles that you are aware of. I will not go into them all. I think the challenges are great, but I have great confidence in Secretary Leavitt and the whole team at HHS. I am eager to be confirmed soon so I can be a full partner with them in the work ahead.

I have been fortunate in my career to work in a variety of different jobs and to learn from each of them. I worked in government, both the legislative and the executive branches. I have worked in politics and political campaigns. I worked at a private sector PR firm with health care credentials.

Most importantly, I spent 15 years as a stay-at-home mom, which taught me a lot of lessons, including what is most important in life. I look forward to bringing the sum of these experiences to the task at hand at HHS and hope that I can make a difference in the lives of our fellow citizens.

If you and the members of the committee see fit to give me that opportunity, I pledge to you, with God's help, I will give it everything I have.

Thank you, Senator.

The CHAIRMAN. Thank you, Ms. DeFrancis.

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

The CHAIRMAN. Now, Mr. Johnson?

STATEMENT OF HON. CHARLES E. JOHNSON, NOMINATED TO BE ASSISTANT SECRETARY FOR BUDGET, TECHNOLOGY AND FINANCE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Mr. JOHNSON. Thank you, Mr. Chairman, and thank you, Senator Baucus. Again, I recognize that you have had a lot of pressing business, and for you to accommodate us today, I am grateful for that.

I would like to thank the President also, and my good friend, Secretary Leavitt, for this opportunity to be considered at least by the Senate Finance Committee, and then the full Senate.

I want to thank Senator Hatch. He is a good friend, and I appreciated his kind remarks and introduction of me today.

Let me introduce my wife, Susanna Johnson. Susanna, would you stand, please? Susanna is not only an enthusiastic supporter, she is also the one to keep me grounded. So, it is a dual role for her.

Senator BAUCUS. How does she do that?

Mr. JOHNSON. It is difficult, Senator. [Laughter.] But she manages. She manages me very well.

I would like to also thank the Senate Finance Committee staff. They were very accommodating with me and very kind, and I intend to reciprocate, if I am confirmed, and will work closely with your staff.

I have had a limited time at HHS, but I do appreciate Kerry Weems and the introduction I have had in briefings with HHS. So, I look at this morning as an opportunity to do three things: first, to offer thanks to those who brought me to this point in time; second, to just personalize a little bit some of the things from my past experiences; and third, to tell you a little bit as to the way I will operate based on my history.

First, let me go then to my past experiences. I believe that from my 31 years in the practice of public accounting, including a member of the Board of Directors of one of the Nation's—well, internationally—largest accounting firms, I have learned both leadership, and I believe I have learned financial matters from one end to the other.

From my service in State government, I have learned several things. First, I have learned that citizens want to trust government. If we will work each and every day to earn that trust, they will continue to trust government. But that requires fair policies and fair fiscal accountability, and we have to give them value for the dollars that they are going to extend to us in their taxes.

Likewise, I have learned that all budgets are an exercise in comparisons. I have literally looked at hundreds of budgets over my career and I seldom see a budget that does not have some good aspect to it. But our job is to make comparisons and select the best to be funded. That, I consider a responsibility.

I have learned that the business of government must be open and transparent, again, if we are going to have the trust of the American citizen. I believe I understand the interrelationships between the Federal Government, States and tribes, and local governments.

From my service as chair of the Board of Regents, I have learned the synergistic value of hearing different points of view and then making factually based decisions. From my service as chair of a cancer foundation, I have learned a lot about the devastating impact of disease. With that knowledge has come increased compassion.

Our challenge, I believe, at HHS is to continue to raise the level of health care and living standards while remaining economically competitive in a global economy. That is a delicate balance.

So what are the principles upon which I will operate? First, I want to pledge to you that I will be accountable to you and other decisionmakers to provide you with both timely and relevant data. I will always think in terms of results and taking into account the benefits to our citizens.

I will think in terms of people, always trying to raise them up and improving their lives. I will think in terms of matching our money with our policies. If there is a mismatch, then it will be one of my responsibilities to seek alignment. In an increasingly complex government, I will continually seek to simplify.

Now my most prized value: trust and integrity. It will be my goal not to tamper with that. A philosopher once said, "Man is the sum total of his experiences." This is where I have been, this is who I am. I have spent a lifetime hoping to be able to stand before a committee such as this and stand the scrutiny and the questioning,

and to be honored to be considered for confirmation as an Assistant Secretary.

You have many appointees. This is my second time to seek an appointment, and the thrill never goes away. I am very honored, and I thank you for allowing me to be here this morning. I will be pleased to answer any questions.

The CHAIRMAN. Thank you, Mr. Johnson.

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

The CHAIRMAN. Now, Ms. Aranoff?

STATEMENT OF SHARA L. ARANOFF, NOMINATED TO BE A MEMBER OF THE INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC

Ms. ARANOFF. Thank you very much, Mr. Chairman. I want to thank you and your staff for setting up this hearing so quickly. Having prepared hearing materials from many nominees myself, I know how much work is required.

I want to introduce the family who are here with me today. Immediately behind me are my children, Nathaniel and Leora Korn, and my mother, Harriet Starrett.

Senator BAUCUS. Would you all please stand? Thank you very, very much. We are almost as proud of Shara as you are.

Ms. ARANOFF. And my husband, David Korn, is really sorry that he could not be here today. He is at a long-planned speaking engagement in Europe, and was the only one who was pleased when I called last night to say the hearing was postponed. [Laughter.]

I am honored to be here today as the President's nominee for Commissioner of the U.S. International Trade Commission. I particularly want to thank the Democratic leader, Senator Reid, for his support of my nomination. Most importantly, I want to thank you, Senator Baucus, not just for your strong support of my nomination, but for giving me the opportunity to serve on the staff of this committee for the past 4½ years.

I have been privileged to work with you and with the members and staff of the Finance Committee on a number of important pieces of trade legislation, including the Trade Act of 2002 and the implementation acts for our free trade agreements with Singapore, Chile, Morocco, and Australia.

It has also been my privilege to serve the people of Montana. You know I did not grow up in Montana, but these past 4 years have given me the opportunity to visit the State, to meet Montanans, to become familiar with their lives and concerns.

I hope I have contributed in my own small way to trade policies that will help the workers, farmers, ranchers, and businesses of Montana and of the Nation to thrive in the global economy.

I have studied and worked on international trade issues for more than 20 years. My professional experience spans both the public and private sectors and all three branches of the government. I believe that this broad experience makes me well-prepared to serve as an ITC commissioner. I am excited at the prospect of continuing my commitment to public service in this new capacity.

Although many nominees for ITC commissioner are experienced trade practitioners, I do have a unique perspective. Before joining

the staff of the Finance Committee, I worked for more than 7 years as a staff attorney in the ITC's Office of General Counsel.

In that capacity, I came to know and respect the more than 300 people who make up the Commission and appreciate the work that they do every day for Congress, for the executive branch, the business community, and the general public. If confirmed, I will be proud to continue that tradition of service.

The principal responsibility of an ITC commissioner is the fair, impartial, and vigorous administration of our trade remedy laws. The Commission's antidumping, countervailing duty, safeguard, and Section 337 decisions are under scrutiny every day at home and abroad.

America's workers, farmers and businesses need to know that they have recourse when they face unfair or injurious practices. The Commission's work also needs to reflect the high standards of objectivity and due process to which we ask our trading partners to adhere.

If confirmed, I will administer these laws objectively with an open mind, and without substituting any policy bias in place of statutory language and Congressional intent.

While the Commission is not a policymaking agency, it plays a second important role as our government's source for expert trade advice. When Congress and the President consider new trade agreements or legislation, they rely heavily on the Commission's unbiased fact-finding studies and analysis.

If confirmed, I commit to work with you to make the agency's resources as broadly available as possible in support of the legislative process.

I contemplate, with some regret, the prospect of leaving the Senate and the colleagues I have come to respect and rely upon. At the same time, if I am confirmed as an ITC commissioner, I look forward to continuing to work with the members and staff of the Finance Committee on advancing important trade priorities.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Thank you all very much.

Now the usual three questions. Is there anything that you are aware of in your background that might present a conflict of interest with the duties of office to which you have been nominated? Ms. DeFrancis?

Ms. DEFRANCIS. No, Mr. Chairman.

The CHAIRMAN. Mr. Johnson?

Mr. JOHNSON. No, sir.

The CHAIRMAN. Ms. Aranoff?

Ms. ARANOFF. No, sir.

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

Ms. DEFRANCIS. No, Mr. Chairman.

Mr. JOHNSON. No, sir.

Ms. ARANOFF. No, Mr. Chairman.

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

Ms. DEFRANCIS. Yes, Mr. Chairman.

Mr. JOHNSON. Yes, I do, Mr. Chairman.

Ms. ARANOFF. Yes, Mr. Chairman.

The CHAIRMAN. All right. Thank you very much.

A couple of things before I leave, because I do not feel so well, and Senator Baucus is going to finish the meeting.

Number one, as I admonished the previous panel, if you get questions for answer in writing, at least from my committee, we would expect you to have those answered before your nomination would come up on the floor.

The second thing, is for me to thank you for your public service and to express my appreciation, as chairman of this committee, that we have people like you who want to serve.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman. Get well.

The CHAIRMAN. Thank you.

Senator BAUCUS. Ms. DeFrancis, I just have one question regarding the determination by GAO that HHS has violated statutes prohibiting dissemination of information which is, in a sense, publicity or propaganda, without divulging the source of the material.

As you well know, not too long ago HHS put out a video with actors who portrayed themselves as news people, as journalists, and so on and so forth, about the drug benefit.

Anybody watching this would think it is a news story, and it was not a news story at all. It was a pre-packaged public relations video put out by HHS which deceived the public. GAO found that, under the current statutes, that in fact it was a violation, that it violated a statute enacted in 1951 to prohibit such actions.

It occurred again in January of 2005, when GAO addressed the issue of so-called VNRs, that is, Video News Releases. They are not really news, they are just propaganda. They should be VPRs.

With respect to the Office of National Drug Policy, that VNR is very similar to the one on Medicare and is basically intended to portray them as news sources. It was not news at all, it was propaganda.

How do you draw the line, and what do you intend to do about this, if you are confirmed?

Ms. DEFRANCIS. Thank you, Senator. Certainly, the Department of Health and Human Services puts out a lot of information for the public, a lot of health information, on everything from flu, to small-pox, to obesity. We have done that for previous administrations and we have used a number of tools, of which VNRs are one example.

Certainly, I think we have a responsibility to communicate information to the public, but I also believe we have a responsibility to let the public know where that information comes from.

If I am confirmed, any prepackaged news stories will follow the law. They will contain clear notification within the text or audio of who is producing this. The bottom line is, the public will know where the information comes from.

I think that is our responsibility. I also would submit that it is the responsibility of news stations around the country to also disclose where that information comes from.

Senator BAUCUS. I liked your answer up until the very end. Unfortunately, news standards are deteriorating. That is, I think the press is not nearly as vigorous as it once was in identifying such matters, that is, in saying, for example, this is really not a press story, this is a publicity piece. I think it is not right for you to put the burden on them. You have to put the burden on yourself, on the agency. You have got to make sure you follow the law. You should not try to have someone else police you, a TV station, to ask whether you are following the law or not.

Ms. DEFRANCIS. Absolutely, Senator. I agree.

Senator BAUCUS. You should follow up.

Ms. DEFRANCIS. We definitely have the responsibility to do that.

Senator BAUCUS. Not only some, you have the exact responsibility. Not just some. You have total responsibility. You have total responsibility. If you are putting it out, you have responsibility. Is that not right?

Ms. DEFRANCIS. Yes, sir. It is right.

Senator BAUCUS. I just hope that we do not see any fudging. Just be straight with the American people, and they will be straight with you. Do not lead with the chin here, with fudging and getting yourself in more hot water than really is appropriate and necessary.

Ms. DEFRANCIS. I appreciate that concern, Senator.

Senator BAUCUS. So, we will be watching closely. I believe very strongly that we serve people to serve, not to deceive people. I just wish you very well in your job, and good luck.

Ms. DEFRANCIS. Thank you, Senator.

Senator BAUCUS. Good luck to you all.

Mr. JOHNSON, in listening to Mr. Hatch, I learned that you are friends with a lot of people I am friends with, too, and I appreciate that very much.

Mr. JOHNSON. Thank you.

Senator BAUCUS. I can tell you are a good man just by the way Senator Hatch introduced you.

Mr. JOHNSON. Thank you very much.

Senator BAUCUS. And also, just your countenance and how you portray yourself.

Mr. JOHNSON. Thank you very much.

Senator BAUCUS. And Shara, good luck. That is great. I customarily ask all new nominees to the ITC to come to Montana. You have been to Montana many times. You know the State. I just wish you very well in this advancement in your career.

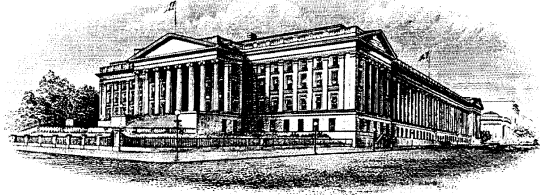
Ms. ARANOFF. Thank you very much, Senator.

Senator BAUCUS. The hearing is adjourned.

[Whereupon, at 11:23 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD



DEPARTMENT OF THE TREASURY OFFICE OF PUBLIC AFFAIRS

**Statement of Timothy D. Adams
Nominee for Under Secretary of the Treasury for International Affairs
to the Committee on Finance
United State Senate**

Chairman Grassley, Ranking Member Baucus, and members of the Committee on Finance, thank you for the opportunity to appear before you today. I am honored that President Bush nominated me to serve as Under Secretary of the Treasury for International Affairs and, if confirmed, to have the opportunity to work with Secretary John W. Snow, the Treasury staff and others in the administration.

If confirmed, I also look forward to working closely with this committee, the United States Senate and your colleagues in the House of Representatives to advance the President's economic agenda and to further the well-being of the American people.

I also want to thank Senator McConnell for introducing me. I have known the Senator for many years and am honored by his presence here today. Finally, I want to thank my wife Jennifer and our children for their unwavering support of my great passion, which is public service.

Indeed, if I am confirmed, this will be my third stint working in the Federal government, and I look forward to bringing my skills, knowledge and experiences to help address the great challenges before us and to seize the historic opportunities to advance the cause of freedom and improve living conditions everywhere.

For over 20 years, my academic and professional pursuits have helped prepare me for this position. My undergraduate and graduate work strongly focused on economic policy, especially international economic policy, and foreign affairs. Further, I co-founded and managed for seven years a highly respected consulting firm that advised leading financial institutions and corporations on global economic trends, conditions and policy.

I also served as Chief of Staff to two Treasury Secretaries (Paul O'Neill and John W. Snow), advising on key international economic issues, among other responsibilities. I participated in most of the important international events that Secretary O'Neill and Secretary Snow attended during the three year period 2001-2003, including meetings of the G7, APEC, G20, IMF, and the World Bank, as well as numerous bilateral meetings and foreign trips. I believe that I have a firm understanding of the critical international economic issues that confront the U.S. as well as the important participants and institutions.

In addition to policy issues, I also have substantial management experience in both the private and public sector. The Office of International Affairs at the Treasury Department is a large and critical organization with scores of talented people, and if confirmed, I will pay close attention to the management issues facing this office.

Finally, I believe that I bring to this challenging position important personal attributes, such as an inclusive, practical and analytical approach to problem solving and a diplomatic demeanor.

If confirmed, I will immediately tackle several pressing issues, including growing global imbalances, China's stable integration into the global financial system, preventing financial crisis and ensuring that development assistance is more effective -- especially in Africa. I will also work to implement the President's vision for the Middle East, establish closer ties with Latin America, open foreign markets for U.S. goods and services, and support transitioning economies and democracies. Finally, I will continue to push the critical importance of economic growth, good governance, the rule of law and capital formation so that all parts of the global economy will become more vibrant and prosperous in the future.

Mr. Chairman, Senator Baucus, I am grateful for this opportunity to appear before you today. I would be pleased to answer any questions you and the other members of the Committee may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Timothy Dees Adams
2. Position to which nominated:
Treasury Under Secretary for International Affairs
3. Date of nomination:
April 6, 2005
4. Address: (List current residence, office, and mailing addresses.)
Residence:
17 Rosecrest Ave
Alexandria, VA 22301
5. Date and place of birth:
October 31, 1961. Murray, Kentucky
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Jennifer Tindall Adams (formerly Jennifer Lee Tindall)
Date of marriage: 5/11/1996
7. Names and ages of children:
Tindall Elizabeth Adams, DOB 1/12/2000 – age 5 years
William Dees Adams, DOB 10/12/2003 – age 17 months
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
University of Kentucky, Masters of Public Administration, May 1988
University of Kentucky, Masters of Arts, December 1986
University of Kentucky, Bachelors of Business Administration, May 1984
Murray High School, High School Diploma, May 1979

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

The U.S. Treasury Department, Washington, D.C., April 2005 to present
The Lindsey Group, Consultant, Washington, D.C., Jan 2004 to April 2005
The Eskew Strategy Group, Consultant, Washington, D.C., Dec 2004
Bush-Cheney 2004, Policy Director, Washington, D.C., Dec 2003 to Dec 2004
Treasury Dept., Chief of Staff, Washington, D.C., Jan 2001 to Dec 2003
Bush for President 2000, Policy Advisor, Austin, Tx, May 2000 to Jan 2001
The G7 Group, Managing Director, Washington, D.C., Dec 1992 to May 2000
The White House, Policy Development, Washington, D.C., Sept 1991 to Dec 1992
Export-Import Bank, Presidential Management Intern, July 1988 to Sept 1991

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

None other than listed above.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

The Lindsey Group, Consultant, Jan 2004 to April 2005
The Eskew Strategy Group, Consultant, Dec 2004
The G7 Group, partner/managing director, Dec 1992 to May 2000

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

University of Kentucky Alumni Association
St Paul's Episcopal Church, Alexandria, Va

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Bush-Cheney 2004 – Policy Director
Bush for President 2000 -- Policy Advisor

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

\$1,000. to Bush for President 2000
\$500. to Alexander for President 1996

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Awarded the Alexander Hamilton Award in 2003. It is the highest award that the Treasury Department bestows.

Selected as a Presidential Management Intern in 1988.

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

None

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

None

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

I have over 20 years of academic and professional experience in analyzing and developing economic policy, with much of this time focused on international economic issues. More specifically, I have two master's degrees (MPA and MA) that were strongly focused on economic policy, especially international economic policy, and foreign affairs. Further, I co-founded and managed for seven years a highly respected consulting firm (The G7 Group) that advised leading financial institutions and corporations on global economic trends, conditions and policy. I served as Chief of Staff to two Treasury Secretaries (Paul O'Neill and John Snow), advising on key international economic issues, among other responsibilities. I also participated in most of the important international events that Secretary O'Neill and Secretary Snow attended during the three year period 2001-2003, including meetings of the G7, APEC, G20, IMF/World Bank and numerous bilateral meetings and foreign trips. I believe that I have a firm understanding of the critical international economic issues that the U.S. confronts as well as the important participants and institutions. In addition to policy issues, I also have substantial management experience in both the private and public sector. In fact, as Chief of Staff, I was deeply involved in most of the important management issues occurring at the Department. Finally, I strongly believe that I am well respected by a broad range of public and private sector individuals for my knowledge, experience, professionalism, analytical approach to problem solving, diplomatic demeanor and desire to improve the economic well-being of all Americans.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes

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

No

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

No

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

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Officer and Assistant General Counsel for General Law and Ethics.

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

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Officer and Assistant General Counsel for General Law and Ethics.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public

policy. Activities performed as an employee of the Federal government need not be listed.

None

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

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Officer and Assistant General Counsel for General Law and Ethics. Should any conflicts of interest arise in the future, I will consult with Treasury ethics officials.

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

To be Provided

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

N/A

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

I was charged with a DUI in Washington, D.C. in April 1989. I pled "no contest" and agreed to attend a seminar once a week for eight weeks. The charge was dropped in return. I was charged with Insufficient Funds in Lexington, Kentucky in

May of 1984. However, I was the victim of identity theft and the charge was dropped.

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

No

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

See #2 above

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

None

E. TESTIFYING BEFORE CONGRESS

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

Yes

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

Yes

Questions For the Record for
 Timothy Adams
 May 24, 2005

From Senator Baucus

1) At your confirmation hearing, Sen. McConnell noted in his introduction of you that one area in which you were involved as Chief of Staff to the Treasury Secretary was tracking terrorist financing. One key agency responsible for the tracking and shutting down terrorist funding networks is the Office of Foreign Assets Control (OFAC). During your tenure as Chief of Staff to the Secretary, a Treasury Department report provided to my office showed that in 2002-2003 OFAC opened 3,158 enforcement cases. Enforcement of the Cuban embargo accounted for 2,859, or 90% of those cases. Only 409 of those cases related to Iran, Iraq, Libya, North Korea, Sudan, narcotics, the Taliban, terrorism and Weapons of Mass Destruction combined. The report provided to my office in November of 2003 also disclosed the number of full-time employees (FTE) dedicated to tracking the resources of Osama Bin Laden and Saddam Hussein. Two FTE's were tasked with tracking Bin Laden's funding, and two were assigned to the investigation of Saddam Hussein's wealth. 21 FTE's were dedicated to the enforcement of the Cuban embargo.

a) Please explain what involvement you, the Secretary, and any other officials at the Treasury Department, including the Under Secretary for International Affairs, had in setting OFAC priorities and resource allocation.

A: During my tenure, we handled many issues, and usually it was at a very high level. With respect to the enforcement agencies and the regulatory institutions within Treasury, I tended to take a very hands-off approach because of the unique nature of the work that they do. That being said, setting broad OFAC priorities was a group effort that involved a variety of relevant Treasury officials, including the Secretary, the Under Secretary for Enforcement, the Deputy Assistant Secretary for Terrorist Financing, and the Director of OFAC. Statutory requirements, U.S. national security interests and the President's policy goals were the main factors driving the priorities and resource allocation.

b) Do you believe that dedicating five times more resources at OFAC to the Cuba program over the Bin Laden and Hussein investigations was appropriate?

A: OFAC administers nearly 30 economic sanctions programs that are an essential element of U.S. national security strategy – from attacking the financial infrastructure of terrorists and notorious drug cartels to applying sanctions against regimes like Iran, Cuba, and Burma. These 30 programs include sanctions for which emergencies have been terminated but in which there are ongoing enforcement matters or residual blocked assets. Active OFAC programs are fluid in their demands on OFAC resources, producing an intensive workload characterized by shifts in priorities and opportunities as well as by spikes in activity. Resources are allocated among these programs to effectively implement, administer and enforce U.S. sanctions. OFAC strikes a balance to ensure that the Department fulfills its sanctions responsibilities.

OFAC was only one of the components within the U.S. Treasury Department dedicated to combating terrorist financing. OFAC efforts also drew on the talents and resources of other offices and bureaus. OFAC also depended upon inter-agency partners across the U.S. government – including the Departments of State, Justice and Homeland Security, the Intelligence Community, the FBI and others.

Cuba remains on the State Department's State Sponsors of Terrorism list; and, given Cuba's distinctive relationship with the United States and its proximity, the U.S. sanctions against Cuba warrant strict attention to ensure the effective enforcement and implementation of the sanctions. OFAC made and continues to make every effort to implement the U.S. Cuba policy, while maintaining its concurrent efforts dedicated to tracking and disrupting terrorist financial networks.

c) During your tenure at the Treasury Department, did you, or any other official in the Treasury Department, raise any concerns over this allocation of resources?

A: During my tenure I did not raise any concerns over this allocation of resources. I am not aware of any other official in the Treasury Department raising such concerns.

d) Please provide the number of FTE's (or the equivalent resource allocation) dedicated to terrorist financing activities, as well as enforcement cases opened and fines collected, by each individual country program, as well as by terrorist group, within the Office of Foreign Assets Control during 2003 and 2004.

The following information was provided to me by the Treasury Department:

OFAC administers and enforces a diverse set of economic sanctions programs falling generally within four subject matter areas:

- Terrorist programs;
- Narcotics trafficking;
- Country programs (including rogue regimes); and
- Proliferation of weapons of mass destruction.

The breadth of OFAC's responsibilities (including designating persons for blocking and administering and enforcing sanctions), the programs' differing complexities, and the programs' discrete policy and operational demands mean that staffing levels required to effectively implement these programs are fluid. As a result, FTEs are rarely assigned to one program or function exclusively. Most staff are assigned to work on multiple sanctions programs simultaneously and are shifted as work load and/or priorities change.

OFAC FTEs can be divided into three skill types (see table; this information is current as of April 5, 2005):

Targeting and Intelligence (Identify, Target, and Designate Persons and Entities).

The FTEs devoted to targeting and intelligence are assigned to identify, target, and designate for blocking the individuals and entities that are made subject to sanctions by relevant Executive orders and statutes. OFAC coordinates with other relevant federal agencies to bring to bear all relevant U.S. government authorities against these targets, and works with UN and foreign counterparts to take similar measures.

As the chart below indicates, approximately 43 of OFAC FTEs are devoted to targeting and intelligence. Of these, 50% are assigned to terrorist programs. The next major dedication of targeting and intelligence resources is to the narcotics trafficking programs (28%), country programs (20%), and proliferation (2%). Targeting and intelligence staff may be assigned across sanctions programs to handle changes in programs and policy requirements.

Sanctions Administration. Staff assigned to sanctions administration handle a wide range of functions. At the outset of every sanctions program, and as policy changes, OFAC issues regulations and interpretive rulings. OFAC also helps U.S. persons understand their sanctions obligations through outreach and compliance efforts. Staff also review tens of thousands of license applications every year, and they issue licenses to the extent consistent with U.S. foreign policy. Other staff investigate sanctions violations, make decisions whether to revoke licenses, issue warnings and penalties, and provide support to law enforcement agencies. Additionally, OFAC staff coordinate with other federal agencies, their UN and foreign counterparts, and with the business and financial communities.

Approximately 50 OFAC FTEs are devoted to sanctions administration. Of these, 71%, are devoted to country programs, 16% to terrorist programs, 10% to narcotics targets, and 2% to proliferation. These allocations fluctuate with changes in U.S. policy and with changes in the underlying sanctions prohibitions, as defined by statute, Executive order or policy.

Support and Management. OFAC devotes 28 FTEs to support, which includes administrative functions supporting OFAC's operations—managing records, facilities, information technology, human resources, and budgeting. An additional 13 FTEs are devoted to management.

This information is summarized in the chart on the following page.

| Total FTEs in Division | Targeting/Intelligence (IPD and FTD Officers) | | | | Sanctions Administration (Compliance, Licensing, Enforcement, Civil Penalties, Blocked Assets, and Policy Planning Officers) | | | | Support | Mgmt | Total FTEs |
|---------------------------|--|--|--|----------------------|--|--|--|----------------------|---|------|------------|
| | Terrorist Programs | Country Programs | Narcotics Trafficking | Proliferation/Other | Terrorist Programs | Country Programs | Narcotics Trafficking | Proliferation/Other | | | |
| | 43 | | | | 50 | | | | 28 | 13 | 134 |
| % of FTEs within Division | 50.0% | 20% | 28% | 2% | 16% | 71% | 11% | 2% | | | |
| Subject areas | Specially Designated Terrorists (SDT); Specially Designated Global Terrorists (SDGT); Foreign Terrorist Orgs (FTO) | Cuba, Iran, Syria, Sudan, Libya, NK, Liberia, Zimbabwe, Iraq, Balkans, Burma | Specially Designated Narcotics Traffickers (SDNT); Kingpin Act | WMD; Diamond Trading | Specially Designated Terrorists (SDT); Specially Designated Global Terrorists (SDGT); Foreign Terrorist Orgs (FTO) | Cuba, Iran, Syria, Sudan, Libya, NK, Liberia, Zimbabwe, Iraq, Balkans, Burma | Specially Designated Narcotics Traffickers (SDNT); Kingpin Act | WMD; Diamond Trading | Records, Facilities, IT, HR, Budget, Strategic Planning, Outreach, FOIA, Divisional Support | | |

OFAC civil penalties collected based on cases resolved in 2003 and 2004 are as follows:

| CIVIL PENALTIES COLLECTED | | | |
|---------------------------|--------------------|--------------------|--------------------|
| Program | 2003 | 2004 | Total |
| Angola | \$0 | \$0 | \$0 |
| Burma | \$0 | \$450 | \$450 |
| Cuba | \$790,183 | \$1,706,808 | \$2,496,991 |
| FRY (Kosovo) | \$138,966 | \$442,502 | \$581,468 |
| Iran | \$288,864 | \$459,995 | \$748,859 |
| Iraq | \$172,718 | \$252,594 | \$425,312 |
| Libya | \$59,225 | \$196,002 | \$255,227 |
| Narcotics | \$0 | \$2,573 | \$2,573 |
| North Korea | \$13,750 | \$0 | \$13,750 |
| Sierra Leone | \$0 | \$0 | \$0 |
| Sudan | \$233,232 | \$174,484 | \$407,716 |
| Taliban | \$0 | \$12,352 | \$12,352 |
| Terrorism | \$2,925 | \$0 | \$2,925 |
| Vietnam | \$4,438 | \$0 | \$4,438 |
| WMD | \$0 | \$0 | \$0 |
| Yugoslavia | \$57,750 | \$0 | \$57,750 |
| TOTAL | \$1,762,051 | \$2,804,458 | \$4,566,509 |

e) Please also provide the total number of OFAC employees that are currently dedicated to the administration and enforcement of the Cuba travel ban:

A: The following information was provided to me by the Treasury Department:

The number of OFAC employees dedicated to the administration and enforcement of the Cuba travel ban at any given time varies due to the dynamic and fluid nature of OFAC's many sanctions programs which result in shifting priorities and the need to respond to exigent circumstances.

OFAC staff may be assigned across sanctions programs to: investigate targets for principal or derivative designations (including delisting reviews and litigation support); investigate sanctions violations; coordinate on operations and policy with other federal agencies (Justice Department and other law enforcement agencies, members of the Intelligence Community, State Department, NSC, bank regulators), and UN and foreign counterparts; and conduct extensive outreach to the banks and foreign and domestic business and financial communities. Thus, most staff members are assigned to work on multiple sanctions programs simultaneously and are shifted as workload and/or priorities change.

- i) indicate whether any additional employees have been added or will need to be added in order to implement the June 2004 regulations on Cuban American and academic travel.

A: The following information was provided to me by the Treasury Department:

No additional employees have been added.

- ii) provide an analysis, by quarter, of the total number of applications for Cuban American family visits OFAC has received, approved and denied since January 2002.

A: The following information was provided to me by the Treasury Department:

The number of applications for Cuban American family visits since January 2002 follow:

| | <u>Received During Period</u> | <u>Approved During Period</u> | <u>Denied During Period</u> |
|--------------------------|--|--|--|
| <u>2002</u> | | | |
| Jan. – Mar. ¹ | 5061 | 5012 | 0 |

¹ From 2002 through June 29, 2004, the Cuban Assets Control Regulations ("CACR") included a general license authorizing travel-related transactions incident to one trip to Cuba per 12-month period by U.S. persons visiting close relatives. Transactions related to additional trips during

| | | | |
|--------------|------|------|---|
| Apr. – Jun. | 6455 | 6620 | 0 |
| Jul. – Sept. | 4497 | 4872 | 0 |
| Oct. – Dec. | 7272 | 7416 | 0 |

| | <u>Received During Period</u> | <u>Approved During Period</u> | <u>Denied During Period</u> |
|---------------------------|-----------------------------------|-----------------------------------|---------------------------------|
| <u>2003</u> | | | |
| Jan. – Mar. | 5668 | 5645 | 0 |
| Apr. – Jun. | 7682 | 7771 | 0 |
| Jul. – Sept. | 6071 | 6071 | 0 |
| Oct. – Dec. | 9856 | 9856 | 0 |
| <u>2004</u> | | | |
| Jan. – Mar. | 7118 | 7118 | 0 |
| Apr. – Jun. | 7566 | 5241 | 0 |
| Jul. – Sept. ² | 9854 | 263 | 857 |
| Oct. – Dec. | 7199 | 7144 | 2585 |
| <u>2005</u> | | | |
| Jan. – Mar. | 9626 | 3767 | 643 |
| Apr. – May ³ | 6556 | 5326 | 909 |

g) Please provide what justification was used in the 2004 decision to restrict travel to Cuba by port authorities (for activities authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000) to just one trip per year?

A: The following information was provided to me by the Treasury Department:

such a 12-month period were subject to a specific licensing requirement, with applications for such licenses routinely approved.

² Effective June 30, 2004, the general license authorizing one trip per 12-month period was withdrawn and a specific license was required for all travel-related transactions incident to family visits to Cuba. Under present policy, such licenses can be issued, to visit a member of the traveler's immediate family in Cuba, for one trip within a three-year period. Many requests for such specific licenses made since the effective date have been denied as they fall outside the scope of this policy.

³ Data covers April – May 31, 2005.

OFAC implements a case-by-case licensing policy of authorizing travel-related transactions directly incident to marketing, sales negotiation, accompanied delivery, and servicing of Commerce Department-authorized exports to Cuba. OFAC learned that port authorities were traveling to engage in transactions that were not directly incident to marketing or sales negotiation of specific exports. OFAC consulted with the State Department and it was determined that such activities were not consistent with the effective enforcement of U.S. law toward Cuba. Recognizing that port authorities serve a valuable purpose in international trade, instead of denying such license requests, a once-per-year rule was agreed upon.

2) During your confirmation hearing, you indicated that you would investigate my concerns regarding the Treasury Department's recent rule change with respect to agricultural sales to Cuba. The Treasury Department indicated that it consulted with various administration agencies, members of Congress and with industry representatives prior to clarifying its interpretation of the term "cash payment in advance," with respect to agricultural exports to Cuba. The Treasury Department notes in its February 22, 2005 final rule that its interpretation of the cash-in-advance payment terms, which were set forth by Congress in the Trade Sanctions Reform and Export Enhancement Act (TSREEA), qualifies as the "common understanding" of the term cash-in-advance. But the Congressional Research Service concluded in a December 8, 2004 memorandum on the subject:

"In sum, it would appear difficult to find legal support for an interpretation of 'payment of cash in advance' that requires payment to be received prior to shipment. As a review of the four traditional methods of payment indicates, it appears customary within the international trade and finance community to place the emphasis on the transfer of legal control, rather than on the date of shipment. In other words, it appears that a seller can ship goods without relinquishing legal control of them, therefore, payment can still be required in advance of the transfer of legal control. Interpreting the statute to require a payment of cash in advance of legal control appears to enable contracting parties to take full advantage of the available payment options without violating TSREEA. Conversely, OFAC's proposed interpretation appears to limit the available payment options to those that are considered risky, undesirable, and underutilized. Acceptance of OFAC's proposed interpretation appears likely to result in a reduction of trade with Cuba, which appears to be contrary to the express intent of the Congress."

- a) Please elaborate on how the Treasury Department came to the conclusion that cash-in-advance of shipment is the 'common understanding' of the term cash-in-advance:

A: The following information was provided to me by the Treasury Department:

OFAC clarified that under the Cuban Assets Control Regulations (CACR) the terminology "payment of cash in advance" with regard to Commerce-licensed shipments to Cuba means payment of cash prior to shipment of goods. This payment policy conforms to the common understanding of the term in international trade finance. OFAC

reached this conclusion after consultation with other Federal agencies and research into the meaning of the term. A number of international trade resources easily available on the Internet, such as the websites of the Department of Agriculture, the Small Business Administration, and the Federal Maritime Administration all explain that "cash in advance" means cash before shipment. The Congressional Research memorandum that you have quoted even states that "Cash in advance or prepayment" . . . appears to be the most compatible with the terms of TSREEA [and] requires that, pursuant to an underlying contract for the sale of goods, the buyer transfers funds into an account accessible by the seller in advance of any manufacture, procurement, or shipment of the goods." In addition to being the commonly understood meaning of the term "cash in advance," OFAC's interpretation balances OFAC's responsibility to administer effective sanctions against Cuba while ensuring the island can continue to receive food shipments, medicine and medical supplies from U.S. exporters.

i) How many members of the House and Senate submitted written opinions to the Treasury Department asserting that the law intended to allow for cash payment in advance of delivery, and how many members submitted written opinions asserting that the law provided only for cash payment in advance of delivery?

A: The following information was provided to me by the Treasury Department:

Thirty-nine Members of the House and 25 Senators signed letters regarding the interpretation of cash-in-advance in TSEERA in favor of a position broader than the commonly understood meaning of the term.

ii) How many companies or affected industry groups wrote to insist that the law intended to allow for cash payment in advance of delivery, and how many companies or affected industry groups wrote to insist that the law provided only for cash payment in advance of delivery?

A: The following information was provided to me by the Treasury Department:

Seven companies and industry groups wrote to insist that the law intended to allow for cash payment in advance of delivery.

iii) What additional resources did the Treasury Department rely on in order to arrive at its interpretation of the 'common understanding' of the term cash-in-advance?

A: The following information was provided to me by the Treasury Department:

The Treasury Department relied on Internet research involving U.S. Government websites (including the Department of Agriculture, foreign government websites, state trade center websites, U.S. and foreign bank websites, and export insurance websites), as well as international banking textbooks and international banking operations specialists,

including those who have represented the United States before the International Chamber of Commerce.

ii) Which officials at the Treasury Department were involved in making this decision?

A: The following information was provided to me by the Treasury Department:

The Treasury officials who were involved on this issue included, but were not limited to, the OFAC Director and OFAC staff and lawyers, the General Counsel and staff, the Under Secretary for TFI, and the Secretary.

iii) Do you believe that the Under Secretary for International Affairs, who oversees U.S. trade policy at Treasury, should be involved in decisions at the Department which would impact U.S. exports?

A: Yes. The administering of sanctions, which is OFAC's primary responsibility nearly always has an impact on U.S. trade.

b) Treasury officials have indicated that several U.S. financial institutions first raised the question of whether the then-current cash-in-advance payment practice adhered to the letter of the law.

i) Please provide for this committee the names of the banks that first approached the Treasury Department in the summer of 2004 with doubts as to whether the wire transfers were legal under TSREEA?

A: The following information was provided to me by the Treasury Department:

They were Nordea Bank, New York; SunTrust Bank; and Union Bank of California.

ii) Does OFAC's compliance division include former bank employees?

A: The following information was provided to me by the Treasury Department:

OFAC has a number of former banking employees working in its office, including some who work on compliance matters.

iii) Why did OFAC's own compliance division not sound this alarm over the past few years?

A: The following information was provided to me by the Treasury Department:

The general license in §515.533 of the Cuban Assets Control Regulations made monitoring payments for agricultural shipments to Cuba difficult since, under a general license, the parties involved in the transaction had no obligation to file reports with

OFAC. It is now apparent that this allowed a discrepancy to develop between OFAC's expectation of how cash in advance payments would be processed and how many exporters actually implemented this financing option. The matter never rose to the attention of those needing to know before the interdiction phone calls in 2004.

iv) Did any Treasury Department official ever instruct or advise any U.S. financial institution to freeze any third-country payments by Cuba prior to issuing its February 22, 2005 final rule?

A: The following information was provided to me by the Treasury Department:

Unless licensed, payments involving Cuban parties are blocked by operation of law when they come into possession or control of a U.S. person, including U.S. financial institutions. In the case of the Cuban agricultural payments, in each instance OFAC issued a specific license to the banks holding such funds to enable them to credit the beneficiary.

c) Prior to the February 22, 2005 rule's adoption, Assistant Secretary Juan Zarate indicated that the impact on U.S. exporters would be weighed against U.S. sanctions policy in place.

i) Please provide for the committee how the Department calculated the potential impact of its ruling on exports to Cuba, which reached nearly \$400 million in 2004, making Cuba the United States' 25th largest export market.

A: The following information was provided to me by the Treasury Department:

No "potential impact" calculations were necessary since other financing options remain, such as the use of a letter of credit issued by a non-target bank in a third country. That is as true today as it was when the TSREEA amendments were introduced. Letters of credit are a recognized method of payment in international trade, including agriculture. When a bank issues a letter of credit, it is creating its own obligation to pay a seller, as long as the seller submits documents in accordance with the terms of the letter of credit. Such financing provides a "buffer" between the buyer and the seller with a bank substituting its name and credit for that of the buyer. In the case of OFAC's regulations, the payment to the U.S. exporter may even be guaranteed and expedited by a U.S. bank based on a credit facility with a legitimate non-target foreign bank. In terms of accommodating sales contracts, goods are often shipped before documents can be presented in letter of credit transactions; payment from a third country bank may well be received after shipment.

ii) Would you support efforts to reimburse exporters who can demonstrate lost revenue due to this new rule?

A: The Treasury Department would carefully review any proposals of this nature. Any information you could provide on such a proposal would assist in a review.

- iii) If you are confirmed as Under Secretary for International Affairs will you work to restore exports to Cuba pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000?

A: If confirmed, I will faithfully execute the law and carry out the President's policy mission towards Cuba.

d) In March, agricultural industry groups petitioned Treasury to exempt pre-existing contracts from its new rule, but Treasury declined to give the exemption. According to Congress Daily, more than \$200 million worth of previously inked deals that would have shipped in the coming months now must be re-negotiated or abandoned because of the new rule.

- i) Please provide the historical precedent, if any exist, for such a wide-scale government mandated re-negotiation of contracts.

A: The following information was provided to me by the Treasury Department:

When OFAC clarified the meaning of "payment of cash in advance," it also provided a 30-day window for exporters to engage in transactions whose financing terms did not involve receipt of payment before shipment. This transition period was meant to provide time for exporters to wind up exports that were already in motion and to renegotiate their contracts as needed to comport with the rule limiting financing terms to cash before shipment or financing by a third-country financial institution. The termination of pre-existing contract terms is consistent with OFAC's past practice in a number of sanctions programs that prohibited exports, such as sanctions programs on Iraq, Iran, Libya, and the Taliban. In some of those programs, limited transition periods were provided; in others, no transition periods were provided.

- ii) Do you agree or disagree with the Treasury Department's decision not to exempt open contracts from this rule?

A: I was not at the Department when this decision was made, and was not a party to it. That being said, I have to assume that the Department made the best decision possible given the law, the means available to effectively enforce the law, U.S. policy, and any other factors which had to be weighed.

- e) In consultation with the appropriate agencies or departments, please provide a comparison of agricultural sales to Cuba for the first two quarters of 2004 and 2005.

A: The following information was provided to me by the Treasury Department:

According to Census Bureau figures, exports to Cuba for the first quarter of 2005 were \$24.6 million lower than during the first quarter of 2004. Statistics for the second quarter

of 2005 are not yet available. It is unclear how reliable these figures are, however. Alimport, the buying agent of the Government of Cuba, has publicly stated that through late April of this year, it has imported \$179.4 million dollars worth of goods from the United States. This figure is on par with the figure for the previous year and far exceeds the Census Bureau's \$95.4 million estimate for the first quarter.

**U.S. EXPORTS OF SELECTED AGRICULTURAL, FISH & FOREST PRODUCTS TO CUBA
JANUARY-MARCH 2005 & 2004
(US\$000)**

| <u>Product</u> | <u>2005</u> | <u>2004</u> | <u>Percent Change</u> |
|----------------------------|-------------|-------------|-----------------------|
| Poultry Meat | 22,747 | 27,487 | - 17 |
| Wheat | 14,234 | 4,247 | +235 |
| Corn | 13,829 | 14,578 | - 5 |
| Rice | 8,265 | 27,963 | - 70 |
| Soybean Meal | 8,187 | 0 | -- |
| Soybeans | 8,036 | 11,515 | - 30 |
| Nonfat Dry Milk | 4,431 | 1,265 | +250 |
| Pork, fresh/chilled/frozen | 2,243 | 0 | -- |
| Protein Flours/Isolates | 381 | 14,888 | - 97 |
| Soybean Oil | 0 | 7,558 | -100 |
| Dried Beans | 0 | 2,815 | -100 |
| All Other | 10,959 | 4,632 | +137 |
| Total | 93,312 | 116,948 | - 20 |

f) Please explain the review process of final rules issued by the Treasury Department, including what steps the department may take to review and rescind the February 22, 2005 final rule with respect to agricultural sales to Cuba.

A: The following information was provided to me by the Treasury Department:

A Treasury Department final rule amending the Cuban Assets Control Regulations is drafted by OFAC and the Office of Chief Counsel (Foreign Assets Control). The rule is circulated within OFAC and then provided to the State Department for its review and concurrence. Once the State Department's concurrence is received, the rule is circulated within the Treasury Department for final review and then sent to the Federal Register for publication. No steps are contemplated to rescind the February 22, 2005 rule.

STATEMENT OF SHARA L. ARANOFF
NOMINATED TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE
COMMISSION

May 24, 2005

Thank you very much, Mr. Chairman. I want to thank you and your staff for setting up this hearing so quickly. Having prepared hearing materials for a number of nominees myself, I know how much work is required.

I am honored to be here today as the President's nominee for Commissioner of the United States International Trade Commission. I particularly wish to thank the Democratic Leader, Senator Reid, for his support of my nomination.

Most importantly, I want to thank Senator Baucus, not just for your strong support of my nomination, but for giving me the opportunity to serve on the staff of this Committee for the past four and a half years.

I have been privileged to work with you, and with the Members and staff of the Finance Committee, on a number of important pieces of trade legislation, including the Trade Act of 2002, and the Implementation Acts for our Free Trade Agreements with Singapore, Chile, Australia, and Morocco.

It has also been my privilege to serve the people of Montana. I did not grow up in Montana. But these past four years have given me the opportunity to visit the state, meet Montanans, and become familiar with their lives and their concerns. I hope I have contributed in my own small way to trade policies that will help the workers, farmers, ranchers, and businesses of Montana, and the nation, to thrive in the global economy.

I have studied and worked on international trade issues for more than 20 years. My professional experience spans both the public and private sectors and all three branches of government. I believe this broad experience makes me well prepared to serve as an ITC Commissioner. I am excited at the prospect of continuing my commitment to public service in this new capacity.

Although many nominees for ITC Commissioner are experienced trade practitioners, I have a unique perspective. Before joining the staff of the Finance Committee, I worked for more than seven years as a staff attorney in the ITC's Office of General Counsel. In that capacity, I came to know and respect the more than 300 people who make up the Commission and to appreciate the work they do every day for Congress, the Executive Branch, the business community, and the general public. If confirmed, I will be proud to help continue that tradition of service.

The principal responsibility of an ITC Commissioner is the fair, impartial, and vigorous administration of our trade remedy laws. The Commission's antidumping,

countervailing duty, safeguard, and section 337 decisions are under scrutiny every day, both at home and abroad. America's workers, farmers, and businesses need to know that they have recourse when they face unfair or injurious trade practices. The Commission's work also needs to reflect the high standards of objectivity and due process to which we ask our trading partners to adhere.

If confirmed, I will administer these laws objectively, with an open mind, and without substituting any policy bias in place of statutory language and Congressional intent.

While the Commission is not a policy-making agency, it plays a second important role as our Government's source for expert trade advice. When Congress and the President consider new trade agreements or legislation, they rely heavily on the Commission's unbiased fact-finding studies and analysis. If confirmed, I commit to work with you to make the agency's resources as broadly available as possible in support of the legislative process.

I contemplate with some regret the prospect of leaving the Senate and the colleagues I have come to respect and rely upon. At the same time, if I am confirmed as an ITC Commissioner, I look forward to continuing to work with the Members and staff of the Finance Committee on advancing important trade priorities.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Shara Louise Aranoff
2. Position to which nominated:
Commissioner, United States International Trade Commission
3. Date of nomination:
April 27, 2005
4. Address: (List current residence, office, and mailing addresses.)
Residence: 8418 Westmont Terrace, Bethesda, MD 20817
Office: 219 Dirksen Senate Office Building, Washington, DC 20510
5. Date and place of birth:
May 20, 1963. Albany, NY.
6. Marital status: (Include maiden name of wife or husband's name.)
Married to David E. Korn.
7. Names and ages of children:
Nathaniel Korn (10). Leora Korn (6).

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
- 9/77-6/81: Framingham North High School, Framingham, MA. Diploma, 6/81.
8/81-6/84: Princeton University. A.B. 6/84.
10/84-6/85: University of Geneva, Switzerland. Fulbright Scholar. No degree sought or received.
9/85-6/88: Harvard Law School. J.D. 6/88.
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
- International Trade Counsel, U.S. Senate, Committee on Finance, Democratic Staff, Washington, D.C., 1/01-present (on detail from U.S. International Trade Commission 1/01-11/02).
- Attorney-Advisor, Office of the General Counsel, U.S. International Trade Commission, Washington, D.C., 6/93-11/02 (on detail to Senate Finance Committee 1/01-11/02).
- Associate (attorney), Steptoe & Johnson, Washington, D.C., 10/89-5/93.
- Law Clerk, Honorable Herbert P. Wilkins, Associate Justice, Massachusetts Supreme Judicial Court, Boston, MA, 9/88-8/89.
- Summer Associate, White & Case, New York, NY & Washington, D.C., 5/87-8/87.
- Law Clerk, Gelb, Heidlage & Reece, P.C., Boston, MA, 2/87-5/87.
- Research/Teaching Assistant, Harvard Law School, Graduate Program, Cambridge, MA, 10/86-12/86.
- Summer Associate, Steptoe & Johnson, Washington, D.C., 6/86-8/86.
10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)
- None.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

None.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

District of Columbia Bar (since 1989), New York Bar (since 1988), Massachusetts Bar (since 1988).

Trade Policy Forum, member 2002-present; executive board member 2003-present.

American Bar Association, member 1990 (approximate)-2004.

American Society of International Law, member 1990-2000 (approximate).

Washington International Trade Association, member 2001-present.

Burning Tree Elementary School Parent-Teacher Association, member 2000-present.

Congregation Beth El of Montgomery County, member 1994-present.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

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

Kerry for President - \$50 (2004).

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

National Merit Scholar (1981).

Fulbright Scholar (1984-85).

Wasserstein Public Interest Fellow, Harvard Law School (2002).

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

"First Fidelity Bank, N.A. v. Government of Antigua & Barbuda -- Permanent Mission," 84 Am. J. Int'l L. 560 (April 1990).

"Competex, S.A. v. LaBow," 80 Am. J. Int'l L. 958 (October 1986).

"Arbitral Awards Under the UNCITRAL Rules -- Experience of the Iran-U.S. Claims Tribunal" (with Stewart A. Baker), published as chapters 11-15 of Baker & Davis, The UNCITRAL Rules in Practice: Experience of the Iran-U.S. Claims Tribunal (Kluwer 1992).

Rapporteur, "Regional Trade Organizations: Strengthening or Weakening Global Trade," Proceedings of the 88th Annual Meeting of the American Society of International Law (1994).

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with **two** copies of each formal speech.)

In the course of my official duties during my employment by the Senate Finance Committee, I have spoken informally to a number of professional groups. No formal speech text was used at these events and I am not aware that any public record was made of my remarks. All remarks were made either "off the record" or "on background". The events of which I have a record are as follows:

Global Business Dialogue, remarks on Trade Capacity Building, Sept. 9, 2004.

Heinrich Boll Foundation, Organization of American States, and Tufts University Globalization and the Environment Institute, program on Globalization and the Environment: Implications for CAFTA and Beyond, July 15, 2004.

Women in International Trade, Prospects for Congressional Passage of CAFTA, February 4, 2004.

Electronic Industries Association annual meeting, panel discussion on Competitiveness and Trade Adjustment, August 12, 2003.

Institute for International Economics, Roundtable discussion on Trade Adjustment Assistance, Sept. 4, 2003.

Committee on Pipe and Tube Imports annual meeting, panel discussion on dispute settlement in the WTO, April 30, 2003.

Women in International Trade, panel discussion on Asian free trade agreements, April 15, 2003.

Annual Meeting of Trade Adjustment Assistance Centers, panelist on discussion of Trade Adjustment Assistance for Firms, October 7, 2002.

In the course of my employment at the International Trade Commission, I recall giving remarks at a meeting of the ITC Trial Lawyers' Association concerning enforcement actions under section 337 (imports that infringe intellectual property rights).

Over the past 4 years, I have also spoken on multiple occasions to student groups, including high school, undergraduate, and graduate students, about the role of the Congress in making trade policy and the operations of the Finance Committee. All these remarks were off the record and were not based on a formal text.

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

I have studied and practiced in the area of international trade law for more than twenty years. During that time, I have developed a broad expertise in the antidumping, countervailing duty, and other trade remedy laws that the U.S. International Trade Commission administers. My experience includes working at the Commission in a staff capacity, for a law firm that practices before the Commission, and for the Commission's oversight Committee in the Senate. Viewing the agency from these diverse perspectives has given me an appreciation for the importance of the work the Commission performs for its customers, including the Congress, the Executive, and the business community. In addition, having spent most of my professional career as a public servant, including service in all three branches of the government, I am committed to using my knowledge and experience to serve the American public and, if confirmed, would be honored to continue to do so in this new capacity.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

I will sever all connections with my present employer. I will not sever my connections with professional organizations of which I am a member (listed in section A, item 12). I understand that sitting Commissioners retain their memberships in these and similar professional organizations.

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

No.

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

No.

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

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

The Designated Agency Ethics Official at the U.S. International Trade Commission has identified the following assets held by me, my husband, or my minor children as creating the potential for conflicts of interest in particular cases that might come before the Commission:

Common stock: Coca Cola Company; Home Depot, Inc.; Walt Disney Co.; Amgen, Inc.; Wachovia Corp.
Bonds: State of Israel bonds.

In addition, my husband is employed as Assistant General Counsel for the Pharmaceutical Research and Manufacturers of America (PhRMA), an entity

which occasionally participates in matters before the U.S. International Trade Commission.

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

None.

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

None.

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

In order to avoid potential conflicts of interest, I will not participate personally and substantially in any investigation or other particular matter before the U.S. International Trade Commission that would have a direct and predictable effect on the financial interest of any of the entities identified in item C.1 (above) or any other organization in which I have or acquire an ownership interest, unless I first obtain a written waiver or qualify for a regulatory exemption, or dispose of my interests in those organizations.

In addition, I will not participate in any particular matter involving specific parties in which PhRMA is or represents a party, unless I am authorized to participate.

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

To be provided directly by USITC Designated Agency Ethics Official.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or

a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

Not applicable.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

To my knowledge, I have never been the subject of a complaint or been investigated, disciplined, or cited for a breach of ethics or unprofessional conduct.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

I have never been arrested or charged with any Federal, State, or other law violation and to my knowledge have never been investigated for any such violation.

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

To the best of my recollection, I have been a member of a certified class in two class action lawsuits. The first such suit was an antitrust claim against various airlines. As a member of the class who did not opt out, I received airfare vouchers as part of a settlement reached in the case. The second suit involves claims against The Travelers Insurance Company for overcharging certain policy holders. To my knowledge, this case is still pending. Aside from not choosing to opt out of the class, I have not taken any active role in either case. In addition, I appealed a parking ticket in the early 1990s and the ticket was dismissed.

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

No.

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

None.

E. TESTIFYING BEFORE CONGRESS

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

Yes.

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

Yes.

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STATEMENT OF
ALEX M. AZAR II

NOMINEE FOR
DEPUTY SECRETARY
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

MAY 24, 2005

Mr. Chairman, Senator Baucus, and members of the Committee: thank you for inviting me to discuss my nomination to become Deputy Secretary of Health and Human Services.

I am humbled by the nomination, and grateful to President Bush and Secretary Leavitt for providing me with this opportunity to continue to serve. I am also thankful to former Secretary Thompson for his leadership while I served as General Counsel of the U.S. Department of Health and Human Services for the past four years.

As General Counsel, I supervise approximately 450 attorneys and 90 other professionals in 18 offices around the country. I will forever be grateful for the dedication, loyalty, and superb work of the lawyers and staff of the Office of the General Counsel. We provide advice, counsel, and litigation support to the entire Department, including its more than 300 programs, which touch the lives of every American. As General Counsel, I have also served as a member of the senior leadership of the Department and as the chief legal advisor to both former Secretary Thompson and now Secretary Leavitt.

Our mission in the Office of the General Counsel is to assist the President and the Secretary in fulfilling their priorities for HHS and to support the work of the entire Department. We have worked to integrate the office's operations into "One OGC" to assist the Secretaries in their efforts to create "One HHS." We have created a detailed leadership development program, so that we can effectively manage human capital at a time of ever increasing baby-boomer retirements among our career leadership ranks. We

put considerable effort into providing our more junior attorneys with the training, supervision, and development opportunities they need to become the next generation of leaders. We are also working to enhance our knowledge management efforts to ensure that we operate in the most efficient way possible, avoiding duplication of effort and allowing our attorneys to better, faster, and more efficiently deliver service to our clients. I am very proud of the esprit de corps, professionalism, and highest quality legal service delivery of the Office of the General Counsel.

The past four years have been a historic time for HHS, and the Department is better prepared than ever to respond to terrorist attacks or any other public health emergency. We have faced the unprecedented public health challenges of September 11, the anthrax attacks, smallpox preparedness, monkeypox, SARS, and avian influenza. We have endeavored to enhance food safety and worked with Congress to pass the historic Bioterrorism Preparedness Act, which granted FDA critical new authorities to protect our Nation's food supply. Thanks to the bipartisan efforts of this Committee and the President, Congress passed the most historic changes to the Medicare program in 40 years, providing critical new benefits and options to seniors and people with disabilities. The Department and Congress worked together to reform key elements of the generic drug approval process to speed approval of cheaper generic drugs, saving consumers \$35 billion over ten years. The Nation has appropriately become focused on patient safety and quality of care, and we have begun efforts to improve both. The promise of health information technology has captured the public's imagination, and we have started down the path toward every American having the option of an electronic health record in ten

years. Drug use among schoolchildren is at record lows. The nation is spending more on medical research than at any time in history. More community health centers are providing more and better care to more needy Americans than ever before. A record number of children are receiving health care. The United States is the unquestioned leader in fighting AIDS around the world.

The next four years promise to be similarly historic for HHS, as we implement Medicare Modernization, protect our Nation against possible bioterrorist attacks and emerging infectious diseases, advance patient safety and health information technology, help all Americans have the opportunity to purchase or secure health insurance, and fulfill the President's management agenda so that HHS serves the American public more effectively and efficiently. If confirmed as Deputy Secretary, I would look forward to the challenge and opportunity to serve with Secretary Leavitt in carrying out the work that President Bush has laid out for us. I also would appreciate the chance to work with this Committee as we strive together to advance the public health and welfare.

Thank you very much for having me here today, and I would be pleased to answer any questions you may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

1. Name: (Include any former names used.)
Alex Michael Azar II
2. Position to which nominated:
Deputy Secretary, Department of Health and Human Services
3. Date of nomination:
April 19, 2005
4. Address: (List current residence, office, and mailing addresses.)
Residence:
7505 Bybrook Lane
Chevy Chase, MD 20815
Office:
Suite 713-F
200 Independence Avenue, S.W.
Washington, D.C. 20201
5. Date and place of birth:
June 17, 1967, Johnstown, Pennsylvania
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Jennifer Reist Azar, maiden name: Jennifer Hope Reist
7. Names and ages of children:
Claire Elizabeth Azar, 5 years old
Alexander Michael Azar III, 1 year old
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
Parkside High School, September 1981-June 1984, High School Diploma, June 1985
(diploma received after completing required English course in first year of college because senior year of high school was skipped to attend college)
Dartmouth College, September 1984-June 1988, A.B., June 1988

Middlebury College Summer School of Arabic, June 1985-August 1985, no degree granted (course credit granted by Dartmouth College)
 Yale Law School, September 1988-June 1991, J.D., June 1991

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

General Counsel, August 2001-Present, U.S. Department of Health and Human Services
 Senior Advisor to the Secretary, June 2001-August 2001, U.S. Department of Health and Human Services
 Associate, then Partner since January 1999, Wiley, Rein & Fielding, Washington, DC, October 1996-June 2001
 Associate Independent Counsel, Office of the Independent Counsel, Washington, DC, October 1994-September 1996
 Associate, Kirkland & Ellis, Washington, DC, October 1993-October 1994
 Law Clerk to Associate Justice Antonin Scalia, Supreme Court of the United States, Washington, DC, July 1992-July 1993
 Law Clerk to Circuit Judge J. Michael Luttig, U.S. Court of Appeals for the Fourth Circuit, McLean, VA, October 1991-June 1992
 Law Clerk to Circuit Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit, Pasadena, CA, July 1991-August 1991
 Summer Associate, Steptoe & Johnson, Washington, DC, June 1991-June 1991
 Summer Associate, Sullivan & Cromwell, New York, NY, July 1990-August 1990
 Summer Associate, Steptoe & Johnson, Washington, DC, June 1990-July 1990
 Volunteer Extern to Circuit Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit, Pasadena, CA, June 1989-August 1989

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

Acting Deputy Secretary of the U.S. Department of Health and Human Services, April 20, 2005-present
 Ex Officio Member of the United States Architectural and Transportation Barriers Compliance Board, August 2001-present (General Counsel sits as federal member for the U.S. Department of Health and Human Services)
 Volunteer Intern, Health & Income Maintenance Division, Office of Management and Budget, Washington, DC, March 1986-June 1986

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

None

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

Bar of the Supreme Court of the United States
 Bar of the Court of Appeals of Maryland
 Bar of the District of Columbia Court of Appeals
 Bar of the U.S. Court of Appeals for the District of Columbia Circuit
 Bar of the U.S. Court of Appeals for the Fourth Circuit
 Bar of the U.S. District Court for the District of Maryland
 Bar of the U.S. District Court for the District of Columbia
 Maryland State Bar Association
 American Bar Association
 Mory's Association (Yale University affiliated dining club)
 Summer member, Rock Creek Pool, Inc.
 Rollingwood Neighborhood Association
 Saints Peter and Paul Antiochian Orthodox Church
 The Federalist Society for Law and Public Policy
 American Health Lawyers Association

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member, Lawyers for Bush-Cheney 2004
 Member, Arab-Americans for Bush-Cheney 2004
 Get-out-the-vote phone bank calls for the Republican National Committee Victory
 2004 72-hour pre-election effort
 Deputy to National Co-Chairman Richard E. Wiley, Lawyers for Bush-Cheney
 2000
 Vice Chairman of Maryland Lawyers for Bush-Cheney 2000
 Volunteer counsel to the Credentials Committee of the Republican National
 Convention 2000
 Member of the Convention Advisory Team-Flow Management Team for the
 Republican National Convention 2000
 Attorney, Bush-Cheney Recount Committee
 Member, Republican National Lawyers Association
 Member, Hi-Tech Advisory Group for Ellen Sauerbrey for Governor 1998
 Fundraising for Bush for President 2000
 Fundraising for RNC Victory 2000
 Fundraising for George Allen for Senate 2000

Fundraising for Spencer Abraham for Senate 2000
 Fundraising for Ellen Sauerbrey for Governor 1998

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

| | | |
|----------|---|------------|
| 10/28/98 | Ellen Sauerbrey for Governor Campaign Committee | \$250.00 |
| 4/1/99 | George Allen Exploratory Committee | \$100.00 |
| 6/2/99 | Gov. George W. Bush Exploratory Committee | \$1000.00 |
| 10/5/00 | Spencer Abraham for Senate 2000 | \$500.00 |
| 3/28/01 | George Radanovich for Congress (contribution through Wiley, Rein & Fielding partnership attributed to me) | \$50.00 |
| 7/16/02 | Bob Ehrlich for Maryland | \$250.00 |
| 6/16/03 | Bush-Cheney '04, Inc. | \$2,000.00 |
| 2/11/04 | Chuck Floyd for Congress | \$100.00 |

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Phi Beta Kappa Society, Dartmouth College
 Nelson A. Rockefeller Memorial Fellowship for "Honors thesis of such scholarly merit that it shows promise of publication," Dartmouth College
 Colby Government Prize for "excellence in the Government major," Dartmouth College
 Rockefeller Prize in Comparative Politics for "outstanding thesis in the field of comparative politics," Dartmouth College
 Rockefeller Public Service Internship Grant, Dartmouth College
 High Honors Rufus Choate Scholar, Dartmouth College
 Saint Peter's Church Van der Bogart Scholar, Salisbury, MD
 Special Achievement Award, Office of the Independent Counsel

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

Note, FIRREA: Controlling Savings and Loan Association Credit Risk Through Capital Standards and Asset Restrictions, 100 Yale L.J. 149 (1990)
 The Appellate Corner, Criminal Law and Procedure News of The Federalist Society Criminal Law and Procedure Practice Group (Fall 1996, Spring 1997, Fall 1997, Winter 1998, Spring 1999) (a regular column discussing appellate court developments in the field of criminal law and procedure)
 Recommended Reading: Antonin Scalia's A Matter of Interpretation: Federal Courts and the Law, the Federalist Paper (May 1997) (book review)
 Letter to the Editor, The Cipro Dilemma, American Lawyer, Jan. 31, 2002

What a Food and Drug Lawyer Should Know About the Medicare Modernization Act, 59 Food Drug L.J. 217 (2004)
 Administrative Law Meets Health Law: Inextricable Pairing or Marriage of Convenience, 49 St. Louis U. L.J. (forthcoming 2005)
 The Role of Intellectual Property Protection in the United States to Yield Both Public Health and National Wealth: Customary Coordination Between the Private Sector and the U.S. Department of Health and Human Services Realizing the Common Good, The Mentor Group (forthcoming 2005)

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

Keynote Address, "HIPAA Privacy, the Response to September 11, and the War on Bioterrorism," American Health Lawyers Association, Health and the Information Age: Privacy, Security, Biotechnology and the Internet, Seattle, Washington, December 6, 2001.

"Nursing Home Quality Enforcement: The CMS Role," U.S. Department of Health and Human Services Office of the Inspector General Conference on Nursing Home Quality of Care: Improving Government Enforcement Efforts, Washington, D.C., February 1, 2002.

"Healthcare System and Regulatory Reform Priorities at HHS," American Health Lawyers Association, 2002 Public Interest Speaker Series, Washington, D.C., February 6, 2002.

"Healthcare System and Regulatory Reform Priorities at HHS," Catholic University of America Columbus School of Law, Health Law Institute and Health Law Society, Washington, D.C., March 20, 2002.

Luncheon Speaker, "The War Against Bioterrorism," Federalist Society for Law and Public Policy Studies, Washington, D.C. Lawyers Chapter, Washington, D.C., March 22, 2002.

Luncheon Speaker, "A General Counsel's Perspective on the Regulation of Healthcare: Goals of the Office of the General Counsel," Food and Drug Law Institute, 45th Annual Educational Conference, Washington, D.C., April 17, 2002.

"The Administration's Proposed Reforms of the HIPAA Privacy Regulations," Fourth National HIPAA Summit, Washington, D.C., April 25, 2002.

Keynote Address, "The Bush Administration's Perspective on Healthcare System Reform," Healthcare Financial Management Association, HFMA Region X Conference, Denver, Colorado, May 15, 2002.

- Welcoming Remarks, "Proposal to Create the Department of Homeland Security," CDC Public Health Law Program, The Public's Health and the Law in the 21st Century: A Partnership Conference on Public Health Law, Atlanta, Georgia, June 19, 2002.
- "The Relationship Between FDA and HHS," Hudson Institute, Food and Drug Policy Forum, Washington, D.C., September 23, 2002.
- "The Bush Administration Approach to Health Care Reform," MedChi: The Maryland State Medical Society, 2002 MedChi Convention, Ocean City, Maryland, September 28, 2002.
- "The Bush Administration's Perspective on Medical Liability Reform," Academy of Medicine of Toledo and Lucas County and Toledo Bar Association, Symposium, "Medical Malpractice and Tort Reform: Is There a Crisis?," Toledo, Ohio, October 29, 2002.
- "Medical Liability Crisis: The Bush Administration Perspective," Coalition for Affordable and Reliable Healthcare, Washington, D.C., November 18, 2002.
- Keynote Address, "A Federal Regulator's Perspective on Privacy," Health Care Compliance Association/American Hospital Association, HIPAA Forum, San Diego, California, December 10, 2002.
- Luncheon Speaker, "Goals of the Office of the General Counsel and Medical Liability Reform," Federalist Society for Law and Public Policy Studies Lawyers, Atlanta Chapter, Atlanta, Georgia, February 12, 2003.
- Keynote Address, "The Bush Administration's Perspective on Medical Liability Reform," Common Good and AEI-Brookings Joint Center for Regulatory Studies, Conference on Liability and Patient Health, Washington, D.C., March 4, 2003.
- Keynote Address, "Reform and Improvement of America's Healthcare Delivery System," Catholic Health Association, 2003 Legislative Advocacy Conference, Washington, D.C., March 11, 2003.
- "The Role of Science and the Law in Risk Management," Food and Drug Law Institute, 46th Annual Educational Conference, Washington, D.C., April 1, 2003.
- "Reform and Improvement of America's Health Care Delivery System," Blue Cross and Blue Shield Association Legal Department Cooperative, National Teleconference, May 20, 2003 (used same speech text as for Catholic Health Association on March 11, 2003, so no separate speech document to provide).

- Keynote Address, "The Bush Administration's Perspective on Medical Liability Reform," American Conference Institute, Conference on Reducing the Risk of Managed Care Liability, Philadelphia, Pennsylvania, September 29, 2003.
- Luncheon Speaker, "Medicare Reform and Medical Liability Reform," Federalist Society for Law and Public Policy Studies, Emory Law School Chapter, Atlanta, Georgia, October 15, 2003.
- Keynote Address, "The Bush Administration's Perspective on Health Care Reform," American Health Lawyers Association, Tax Law Institute, Washington, D.C., October 23, 2003.
- Luncheon Speaker, "Health Security: A U.S. Perspective," German-American Fulbright Commission Conference on Health as Foreign Policy: A U.S.-German Dialogue on Governance and Global Health, Berlin, Germany, November 21, 2003.
- Keynote Address, "HHS Healthcare Priorities and Initiatives," Generic Pharmaceutical Association, Annual Meeting, Boca Raton, Florida, March 1, 2004.
- Keynote Address, "Administrative Law Meets Health Law," St. Louis University School of Law, 16th Annual Health Law Symposium, St. Louis, Missouri, March 26, 2004.
- "Medicare Reform and Patient Safety," Federalist Society for Law and Public Policy Studies, University of Iowa Law School Chapter, Iowa City, Iowa, April 1, 2004.
- Keynote Address, "What a Food and Drug Lawyer Should Know About the Medicare Modernization Act," Food and Drug Law Institute, 47th Annual Conference, Washington, DC, April 15, 2004.
- Keynote Address, "HHS's Health Care System Reform Agenda for 2004," America's Health Insurance Plans and American Health Lawyers Association, 2004 Law Conference for Health Plans, Providers, and Insurers, Amelia Island, Florida, May 11, 2004.
- Panelist, "The Long Arm of the Federal Government—How Far Should It Reach: The Medical Liability Crisis," Federation of Defense and Corporate Counsel, 2004 Annual Meeting, Cambridge, Maryland, July 30, 2004.
- "The Role of Intellectual Property Protection in the United States to Yield Both Public Health and National Wealth: Customary Coordination Between the Private Sector and the U.S. Department of Health and Human Services Realizing the Common Good," The Forum for EU-US Legal-Economic Affairs, The Mentor Group, Amsterdam Forum, Amsterdam, The Netherlands, September 17, 2004.

Luncheon Speaker, "HHS's Health Care System Reform Agenda," Loyola University School of Law, Institute for Health Law, CEO Forum, Chicago, Illinois, September, 2004.

Luncheon Speaker, "The Administration's Health Care System Reform Agenda," American Bar Association Health Law Section, Second Annual Washington Healthcare Summit, Arlington, Virginia, December 6, 2004.

Keynote Address, "Modernizing America's Health Care System," American Conference Institute, 9th Annual Conference for In-House Counsel & Trial Attorneys, Drug & Medical Device Litigation, New York, New York, December 13, 2004.

Keynote Address, "HHS Healthcare System Reform Priorities for 2005," Food and Drug Law Institute, 48th Annual Conference, Washington, DC, April 7, 2005.

Numerous informal presentations on health related matters.

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

I have served for almost four years as the General Counsel of the Department of Health and Human Services under both Secretary Thompson and Secretary Leavitt. I have supervised an office of approximately 450 attorneys and 90 staff in 18 offices around the country. I have been involved in and provided advice and counsel in most of the major programmatic areas of the Department and have served as a member of the senior management team at the Department. I believe the depth and breadth of my experiences at the Department qualify me to serve as Deputy Secretary.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

I will resign as General Counsel of the U.S. Department of Health and Human Services upon my confirmation and appointment as Deputy Secretary.

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

No

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

No

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

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

My father is an ophthalmologist and my mother is a registered nurse working with a separate ophthalmic practice. I will follow the advice of the Department's Designated Agency Ethics Officer in dealing with any potential conflicts that might exist because of these relationships. I will also continue to follow the advice of the Department's ethics officer in dealing with any potential conflicts that might arise, including any disqualifications or recusals arising from matters in which I represented a client while in private practice.

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

Other than as described above in response to question 1, I do not believe there are any such potential conflicts of interest, but I will follow the advice of the Department's Designated Agency Ethics Officer should such potential conflicts arise.

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

I have not acted as a lobbyist in any matter. I have, however, represented clients in connection with criminal and civil investigations, proceedings, and litigation involving the government and in connection with congressional investigations.

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

I will follow the advice of the Department's Designated Agency Ethics Officer regarding any potential conflicts of interest.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

Not applicable

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No
2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No
3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

In November 2004, an employee of the FDA purported to sue pro se the Secretary and several other senior and junior officials of HHS for issues arising out of his employment with the New York District Office of the FDA. He alleges a violation of Title VII of the Civil Rights Act, a constitutional Bivens violation of his first amendment rights, and a violation of the Federal Labor Management Relations Act. He purported to sue six officials (including the FDA Commissioner) and me in both our official and individual capacities. His claim against me is that my office allegedly gave advice to agency managers that could "revoke, restrict or chill" his first amendment rights. I have not yet been properly served with this action; the complaint does not allege that I had any knowledge or personal involvement in the matters at issue and I did not; the Department of Justice has agreed to defend me in both my official and individual capacities, and has

recently filed a motion dismiss the case against me in both capacities. Case: Gregson Joseph v. Thompson, Azar, Crawford, Kolaitis, Woyshner, Vitillo, Foster, and Seijka, No. 04CV09318-VM (S.D.N.Y.).

On February 13, 2005, my wife and I filed an administrative appeal of the tax assessment on our residence by the State of Maryland for property tax purposes, to assert that the January 2005 assessment of the value of our house is too high. The appeal is with the Maryland Department of Assessments and Taxation, Montgomery County, Real Property Appeals, and is identified by Notice Number 266512, Control Number 7250, Account Number 0700601307. We have submitted a written appeal and are awaiting a decision from the Assessment Office.

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

No

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

None

E. TESTIFYING BEFORE CONGRESS

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

Yes

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

Yes

**Questions for the Record for
Alex Azar**

From Chairman Grassley

Question 1: Over the past several months, I've become increasingly concerned about drug safety. Last year, I held a hearing on the withdrawal of Vioxx from the market. I also conducted an investigation into the suppression of an FDA scientist regarding the possible link between anti-depressants, children, and suicide. My work into the FDA and safety continues to this day and I am presently awaiting a GAO report on the relationship between the Office of Drug Safety and the Office of New Drugs. Last month, Senator Dodd and I introduced legislation to establish a Center for Post-Market Drug Evaluation and Research within the Food and Drug Administration (FDA). I'm concerned that the FDA, among other things, may have cozy relationships with drug makers that cloud its ability to assess a drug's risks once it's on the market. The fact that it took two years for the Vioxx label to be negotiated is evidence of that concern.

I think that it's imperative that we address this situation, and I would like to know whether or not you view drug safety, particularly on the post marketing side, as a priority for the Deputy Secretary's office.

Answer:

I agree that drug safety is a critical priority. We must ensure the safety of prescription drugs, while also not stifling innovation or preventing access to potentially life-saving drugs. No drug is one hundred percent safe under all circumstances and uses. The key is to weigh the risks and benefits, to ensure that physicians and patients have sound information, and to make FDA's drug safety processes as transparent as possible.

In February, I was at FDA when Secretary Leavitt announced the important efforts that we are undertaking with FDA to improve its ability to monitor and respond to emerging drug safety information. FDA has created a Drug Safety Oversight Board with balanced representation of the Office for Drug Safety and the Office of New Drugs, as well as members from outside the Center for Drug Evaluation and Research, and even from outside FDA. FDA also intends to launch a Drug Watch Webpage to proactively share drug safety information with physicians and patients. This information will include healthcare professional information sheets, patient information sheets, and information on emerging or potential safety problems with drugs even before FDA has reached conclusions that would prompt regulatory action.

These steps will ensure both a better internal process of deliberation on drug safety issues that will include appropriate and independent consideration of all issues, as well as a stronger ability to gather data about drug safety issues once a drug has been approved.

FDA has also commissioned a major Institute of Medicine study of the drug safety system to make suggestions for further improvements. FDA has engaged in a nationwide search for a Director of the Office for Drug Safety. In addition, FDA has held a number of workshops and meetings on drug safety and risk management, and has published three guidance documents on risk management.

Secretary Leavitt has also committed personally to making drug safety a key priority by incorporating it into his 500-day plan with his goal to realize the near-term benefits of health information technology in the focused area of adverse drug incident reporting. I share that personal commitment to improving our drug safety process.

We appreciate your support, and Secretary Leavitt and I look forward to working with you, with Congress, with outside stakeholders, and with the FDA to ensure that our system is working as effectively as possible.

Question 2: A constitutional issue recently arose in the context of litigation in the state of Tennessee. In a brief submitted by the Centers for Medicare and Medicaid Services, CMS suggested that optional groups covered under Medicaid, as well as groups eligible solely due to a waiver, might not be guaranteed the same due process rights as other Medicaid beneficiaries. This would represent a major change; it could mean, for example, that a child with income just over the poverty level who is covered under Medicaid might not have a right to a full notice or an administrative hearing if his or her coverage was being terminated or a medical service was being denied. Could you let us know your position with respect to this issue?

Answer:

It is my understanding that the brief the Justice Department submitted in the TennCare litigation was focused solely on the question whether the Tennessee procedures complied with CMS' regulations regarding appeal rights. In a footnote, the Justice Department noted that the Court was consequently not required to decide whether due process would mandate a Goldberg v. Kelly-compliant appeals process for non-mandatory beneficiaries. Since in TennCare, it is my understanding that the State of Tennessee chose to apply the Medicaid appeals process to the optional and expansion demonstration populations, the Court was not required to address the constitutional issues. It is my further understanding that CMS, in its approval letter to the state, expressly acknowledged that the State of Tennessee was providing the Medicaid appeal rights to the optional and expansion populations. Therefore, the Justice Department's brief was merely raising a purely hypothetical issue.

From Senator Baucus

Question 1: Dual Eligibles Transition to Medicare – I continue to be concerned that CMS regulations and guidance lacks sufficient protections or plan requirements to assure continuity of care for beneficiaries who are eligible for both Medicaid and Medicare. I expressed these concerns in a letter to Dr. Mark McClellan dated April 28, 2005. While I have not received a response to my letter, I have also not seen any further details or information related to the transition issue. I am interested in receiving an up-to-date explanation and description of the plans that CMS and HHS has made for the transition of dual eligibles to Medicare.

Answer:

I recognize the unique situation of dual eligibles as they transition from Medicaid drug coverage to Medicare and believe that CMS is working diligently to ensure the process for beneficiaries is as simple and efficient as possible.

CMS has a very well thought-out plan to address the issue of automatically enrolling dual-eligibles into part D plans. Dual-eligibles who are in fee-for-service Medicare and fee-for-service Medicaid will be auto-enrolled into a PDP. These individuals will be provided advance notice identifying the PDP into which they will be enrolled on January 1, 2006. If a beneficiary is unhappy with the PDP selected by CMS, the beneficiary is free to choose another plan prior to January 1 or can switch to a different plan at any time after that date. Similarly, dual eligibles currently enrolled in a MA plan or certain Medicaid HMOs will be provided advance notice that they will be enrolled on January 1, 2006 into a MA-PD plan offered by the same organization offering their current MA plan or Medicaid HMO. These individuals are free to choose another MA-PD plan or a PDP if they wish to disenroll from Medicare Advantage and enroll in fee-for-service Medicare.

Protections are in place to help ensure that no full-benefit dual eligible beneficiary will go without coverage when the new Medicare prescription drug benefit starts on January 1, 2006. This is critically important, especially for beneficiaries who live in long term care settings, and beneficiaries who take a number of prescriptions to manage one or more chronic conditions.

CMS has developed a set of checks and oversight activities to ensure that prescription drug plans offer a comprehensive benefit that reflects best practices in the pharmacy industry as well as current treatment standards. CMS will review plan formularies and benefit structures to: verify that plans offer multiple drugs in each class; verify that a plan's formulary was developed and reviewed by a pharmaceutical and therapeutic (P&T) committee consistent with widely used industry best practices; review the formulary classification systems as well as the actual list of drugs included in the formulary; and ensure that benefit management tools are being applied in a clinically appropriate fashion.

As plans develop their formularies, they will need to recognize the special needs of particular types of beneficiaries, such as mental health patients, those with HIV/AIDS, those living in nursing homes, people with disabilities and other beneficiaries who are stabilized on certain drug regimens. To address these needs, the prescription drug plans will be required to establish an appropriate transition process for new enrollees who are transitioning to Part D from other prescription drug coverage, and whose current drug therapies may not be included in their Part D plan's formulary. This transition process will need to address the plan sponsor's method of educating both beneficiaries and providers to ensure a safe accommodation of an individual's medical needs with the plan's formulary. We believe some period of adjustment may be necessary to introduce the new formulary requirements, and set forth our expectations of what constitutes a reasonable transition timeframe.

CMS has also developed appeals procedures that ensure that enrollees quickly receive decisions regarding medically necessary medications. For example, if an enrollee requests a coverage determination or exception, the plan must make its decision as expeditiously as the enrollee's health condition requires after it receives the request, but no later than 24 hours for an expedited coverage determination or 72 hours for a standard coverage determination.

Additionally, CMS has established specific protections for beneficiaries who live in long-term care facilities and get their prescriptions from long-term care pharmacies. As a condition of providing the new benefit, every plan must provide coverage to all its enrollees who live in any nursing home in its region. To help facilitate the transition, the Medicare prescription drug plans will be notified as to which of their enrollees live in a long-term care setting. This will help the plans and the facilities prepare for any potential changes to a beneficiary's drug regimen. Because a large number of long-term care residents are full-benefit dual eligibles, it is important for the transition process that plans employ to account for issues associated with filling the first prescription of a non-formulary drug in this setting. Medicare prescription drug plans will need to ensure that long-term care pharmacies in their network work with long-term care facilities before enrollment begins to ensure a smooth transition.

Question 2: Plan Review – Also in the letter to Dr. McClellan, I urged CMS to exercise vigorous review of plan applications for the new Medicare Part D and Medicare Advantage program – and approve only those plans that meet the highest standards. In that letter I also urged the agency to use stringent criteria to review Part D plan formularies and cost management tools and to review network adequacy exceptions submitted by regional Medicare Advantage plans. Neither the final regulation nor subsequent guidance specified the exact criteria CMS will use to judge these aspects of plan applications. What specific criteria is the agency using to address these issues?

Answer:

The Department and CMS are committed to a thorough plan review to make sure that all the plans offering drug and medical coverage to Medicare beneficiaries meet very high standards. CMS has hired a staff of experienced pharmacists to conduct and oversee the formulary and utilization management review, and the agency has over 100 contract pharmacists on call to assist with those reviews. The review criteria are comprehensive, encompassing 13 different checks to ensure that a robust array of drugs is offered for beneficiaries. The criteria require that plans include not just two drugs in each category and class, but also one drug in each of the “key drug types” adopted by the U.S. Pharmacopoeia, and all drugs in certain key categories (relating to AIDS, cancer, mental health and immunosuppressive agents). Moreover, the review criteria require plans to include a sufficient variety of dosage forms and other special preparations that beneficiaries in nursing homes require. CMS is confident that these 13 checks and the additional review of utilization management protocols will result in a formulary system that will meet the needs of the Medicare population while reflecting industry best practices and giving plans the necessary tools to manage costs effectively.

CMS has significant experience in evaluating the adequacy of networks for its Medicare Advantage plans over many years. CMS will build upon that experience to evaluate the networks for plans applying to participate in the Medicare Advantage program in 2006. The criteria will be somewhat dependent on the type of area in which the plan is located and what providers are available in the commercial network and in general. The MMA included a \$25 million fund to help plans include essential hospitals in their networks.

Question 3: State Determinations of the Low Income Subsidy – Some states are confused by their responsibility to make determinations of eligibility for the low income subsidy if asked by beneficiaries to do so. I understand that some states did not realize that beneficiaries applying for the subsidy could request a state determination rather than a determination through the Social Security Administration. What is CMS doing to help states understand and comply with this provision of the law?

Answer:

To ensure a successful launch of the new Medicare drug benefit, CMS is working closely with states and other partners throughout the healthcare system. I believe that States are an important partner in the process of providing this new benefit to many of the most vulnerable populations served by Medicare.

CMS went to great lengths in its final part D regulation to address State concerns in this area. Many States commented on the option in the MMA that low-income subsidy determinations are made by state Medicaid agencies or the Social Security Administration. In response to those comments, CMS noted that States could, if they choose, offer the Social Security application to individuals who seek to apply in a Medicaid office. In addition, States can offer the Social Security Administration process to applicants who seek to apply in a Medicaid office. Therefore, CMS contemplates that States can refer low-income subsidy applicants to the Social Security process. If, however, an applicant insists on having the State process his or her application, the State is required to do so under the statute.

In addition, CMS is using a variety of means to ensure that States understand and effectively implement the various provisions of MMA. CMS has engaged the States in a series of meetings, conference calls, and workshops to discuss the implementation of MMA. These interactions not only provide state partners with information about the policies and operations at CMS, but they also give States the opportunity to ask questions of the CMS experts. Additionally, CMS holds regular meetings with its State Issues Workgroup and State Pharmacy Assistance (SPAP) Workgroup, both of which consist of representatives from the States.

CMS has also distributed a checklist targeted to state legislators, which describes the state responsibilities related to the MMA and specifies action items for the State to undertake in order to successfully implement the MMA. This checklist was also shared with CMS regional offices, CMS partners (NGA, NCSL, CSG, etc.), and through CMS state list-serves and the CMS website. Further guidance targeted to state legislators is currently being planned for distribution.

Most recently, CMS released detailed guidance to States on Low Income Subsidy (LIS) determinations on May 25, 2005. The guidance includes detailed information about the low-income subsidy (LIS), including the application process, coordinating LIS and Medicare Savings Program applications, determining subsidy eligibility, frequently asked

questions, and calculation tables. In addition, the Department recently rolled out a major initiative to alert low-income subsidy eligible individuals about the benefit. Last week, along with the Social Security Administration, Secretary Leavitt and Dr. McClellan announced a call-to-action and released the draft application for the subsidy. As the call-to-action said, "We are committed to making sure that everyone who qualifies for that extra help gets it."

The above-referenced documents and other information are available at CMS' State MMA Information website at the following address:
<http://www.cms.hhs.gov/medicarereform/states/default.asp>

Question 4: SHIP Funding – At the end of April, CMS released new 2005 funding levels to state SHIPs for their education and outreach activities related to the new Part D benefit. Earlier statements from CMS suggested that regular SHIP funding in 2005 will double as a result of the new funds related to Part D. But our understanding is that Montana SHIP funding increased by \$40,000, about 25 percent over previous funding levels. I also understand that the criteria used to distribute new funds were the number of beneficiaries and low income beneficiaries in each state and did not account for the number of beneficiaries in rural areas. Could you please explain the criteria used to calculate the distribution of new funds for SHIPs? I am also interested in understanding how the funding level was derived for Montana and would like to see the calculation.

Answer:

The criteria for calculating the distribution of 2005 SHIP funding is based on a two-part funding formula. As required by regulation (42 C.F.R. § 403.504), the first part of the formula distributed funds using the longstanding SHIP basic grant formula that is in accordance with the SHIP regulation. In that calculation, a fixed award of \$75,000 (\$25,000 to Guam and the Virgin Islands) is appropriated to each of the applicants along with a variable award that takes into consideration the proportion of the State's Medicare beneficiaries to the total state population, and the proportion of the State's Medicare beneficiary population that resides in rural areas. In 2005, a total of \$10 million in SHIP funding is available under this formula.

In addition to the \$10 million, CMS has made slightly less than an additional \$20 million available in additional grants to State SHIPs to take into account the enactment of the MMA and the need for additional beneficiary counseling. This approximately \$20 million will be awarded to states based on a formula that takes into account two factors: first, the number of Medicare beneficiaries residing in the state; and second, the number of low-income (defined as income less than 200% of the federal poverty level) Medicare beneficiaries residing in the state.

Question 5: Medicaid 1115 Waivers – I have raised repeated concerns over the last four years about the importance of transparency in the waiver process in how HHS considers and approves waivers to the Medicaid program. I am very concerned that the Department may be falling short of its own standards in this regard. Recently, my staff checked CMS' waiver website and found it had not been updated since September of last year. If confirmed as Deputy Secretary, what steps will you take to ensure that HHS lives up to its obligations to keep the public informed on waivers that have been proposed or approved?

Answer:

I agree with you on the need for transparency and broad consultation on waiver proposals and the Department provides opportunity for public input at both the state and federal level. As you know, we strongly believe in the ability of the 1115 waivers to provide states much-needed flexibility to address the needs of individual states. When a state submits a section 1115 waiver application, it must show that it has adhered to the requirements for public input that are described in the Federal Register, Vol. 59, No. 186, dated September 1994, and, if applicable to the waiver, consulted with American Indian/Alaska Native Tribes.

Under Public Law 104-231, the Electronic Freedom of Information Act of 1996, I understand that, on or about September 16, 2004, CMS performed a file search of all documents and posted the pertinent documents to the CMS website on that date. As a result, many website pages reflect that date at the bottom of the page. If an approval, disapproval or some other waiver action has taken place in a state, then the update may be reflected in the link rather than on the opening page. For instance, the website for the Montana waiver program (www.cms.hhs.gov/medicaid/waivers/mtwaiver.asp) is designated as being last modified on September 16, 2004. However, if one follows the link to Montana waivers operating under 1115 authority (www.cms.hhs.gov/medicaid/1115/mtfp.asp), then that page is designated as last modified on April 14, 2005.

Of the websites for the 50 states, 34 are listed as last modified in September 2004 and of those, 6 have links to recently updated information. The remaining sixteen websites have modification dates within the last 6 months. More current information would not be available on the website if states have not submitted changes to their existing program.

At HHS, we take our public information responsibilities very seriously and we appreciate your concerns regarding the waiver process. We will continue to work together to improve the transparency and timeliness of information on Medicaid waivers and other subjects of public interest.

Question 6: Health Care Information Technology – I have been working with many of my Senate colleagues on issues of health care quality and health information technology. In rural areas particularly, health IT is essential for good communication and coordination of care.

In February, I asked Inspector General Daniel Levinson about the progress his office was making to develop language creating a specific exception to Stark and anti-kickback laws for e-prescribing technologies, as promised by the MMA and e-prescribing regulations.

His written response states that “The OIG expects to submit a draft notice of proposed rulemaking (NPRM) to the Secretary by the end of March 2005.” The response also states that the notice would solicit public comment on extending safe harbor protection for technologies other than electronic prescribing.

The draft notice would require approval by the Secretary and clearance at OMB. But it is now three months after Mr. Levinson’s response to my question, and we have still not seen a proposed rule on these issues.

Given that adoption of health information technology, and e-prescribing technology in particular, is a stated priority of this administration, can you explain this delay? When can we expect to see the proposed rule addressing these issues?

Answer:

I can assure you that Secretary Leavitt and I both have a strong interest in the promotion of health information technology and we see these proposed regulations as an important first step in transitioning to a health care system where health IT is widespread and used by all parties in the system. HHS is committed to supporting and advancing e-prescribing well in advance of the statutory deadlines laid out in MMA. In February, HHS issued for public comment draft foundational standards implementing the MMA e-prescribing provision, and we intend to issue final standards prior to the effective date of the new drug benefit. With regard to the NPRMs to promulgate a specific exception to the physician self-referral provision (Stark) and a safe harbor under the anti-kickback statute for e-prescribing technologies, CMS and the OIG have worked to prepare NPRMs that are consistent with each other. The NPRMs have been sent to OMB for review. These regulations have great importance not only to the health IT community, but also to the enforcement community. As a result, the level of critical review is imperative to ensure that they meet the goal of increasing health IT adoption while ensuring integrity within the health care payment system. I appreciate your support of this critical issue and will notify you and your staff once the NPRMs are released for public comment.

Question 7: Montana Health Centers – Health centers are critically important in Montana, where nearly one in five residents is uninsured. There are currently 11 federally qualified health centers (FQHCs) in Montana, and groups of individuals in Havre and Kalispell are attempting to establish health centers in their respective areas.

To qualify for FQHC status, a health center must prove that it will serve a Medically Underserved Area (MUA). MUAs are determined by a combined score of infant mortality rates, poverty levels, percentage of elderly population and physician-to-population ratio. But I understand that HHS is now requiring that service areas for MUAs be consistent with those of Health Professional Shortage Areas. HPSAs, which are primarily used to determine an area's eligibility for National Health Service Corps providers, measure provider to population ratios, and do not account for poverty levels and infant mortality rates, as the MUA designation does. Requiring that MUA service areas be identical to those of HPSAs may unfairly disqualify health centers from achieving FQHC status.

I appreciate your efforts so far in examining this issue as it relates to the Havre, MT facility application for FQHC status, and I hope that you will help facilitate their application.

Another potential Montana health center, located in Kalispell, has had difficulty with their approval process for other reasons. The Flathead City-County Board of Health, in partnership with a not-for-profit community board has applied for Section 330 funding to establish the Flathead Community Health Center. Approximately 26,000 people in Flathead County would be eligible to receive primary care through the clinic. This number constitutes the amount of Flathead County residents living at or below 200% of poverty level -- the largest population center in Montana without an FQHC.

Kalispell submitted applications in December 2003, June 2004 and December 2004. In each case, Kalispell was either disapproved or scored too low to receive funding. As I understand it, in each case HRSA's Objective Review Committee (ORC) denied Kalispell's application partly or mostly because of the center's proposed governance structure. I respectfully request that you re-examine the circumstances under which Kalispell was denied, and do your utmost to ensure access to a health center in this under-served area.

Answer:

I know of your sincere interest in the Health Centers program and look forward to working with you to improve access to care in Montana and across the country. In 2005, as part of the President's Health Centers Initiative, more than 770 new or expanded health centers will have been funded, and the number of patients served will have increased to an estimated 14 million individuals.

I appreciate your desire to ensure that Kalispell and Havre are able to increase access to needed health care services in their communities through the Health Centers program. HHS staff has been working closely with both communities, as well as the Montana State Primary Care Office (MPCO) and the Montana Primary Care Association (MPCA), to assist these communities in improving their grant applications. With regard to the Harve clinic, HHS staff is assisting the MPCO in assembling the data necessary for designation as a medically underserved area. I have been informed that the medically underserved area definition and policy have not changed and are different from the Health Professional Shortage Area (HPSA) designation.

I also understand that the organization from Kalispell has applied for health center funding several times, and while the governance structure may have been an issue during the first application cycle, the organization received higher scores in 2004 and 2005, but unfortunately the scores were not high enough to receive grant funding in this very competitive process. HHS staff and the MPCA have provided technical assistance to Kalispell. Future technical assistance is scheduled for September 2005, and the MPCA also provides one-on-one training as needed within communities in Montana. HHS and our State partners – MPCO and MPCA – will continue to assist Montana's underserved communities. I am hopeful that through this extensive technical assistance, both communities will succeed in their endeavors, and I look forward to working with you towards that goal.

[SUBMITTED BY SENATOR BAUCUS]

**Organization Support
for
The 2005 Agricultural Export Facilitation Act (S.328)**

| | |
|--|---|
| Ag BioTech, Inc | National Turkey Federation |
| Alabama State Port Authority | Northwest Farm Credit Services |
| American Farm Bureau Federation | Port of Corpus Christi, Texas |
| American Soybean Association | Port of Lake Charles, Louisiana |
| Biehl & Company | RJ Trading Group (Lufkin, TX) |
| CoBank | Texas Grain Sorghum Association |
| Crowley Maritime Corporation | Texas State Department of Agriculture |
| Gulf Compress | TriDimension Strategies |
| International Assoc. of Refrigerated Warehouses | United Americas Shipping Services |
| Loggins Meat Company (Tyler, TX) | United Egg Producers |
| Louis Dreyfus Corporation | USA Dry Pea and Lentil Council |
| Louisiana Port Authority - Lake Charles Harbor | USA Engage |
| Maybank Shipping | USA Poultry and Egg Export Council |
| Mississippi Port Authority - Gulf Port | U.S. Dairy Export Council |
| National Association of Wheat Growers | U.S. Dry Bean Council |
| National Barley Growers Association | U.S. Rice Council |
| National Chicken Council | U.S. Rice Federation |
| National Corn Growers Association | U.S. Rice Producers |
| National Foreign Trade Council | U.S. Wheat Associates |
| National Milk Producers Federation | WestStar Food Company (Corpus Christi, TX) |
| National Pork Producers Council | Wheat Export Trade Education Committee |
| National Potato Council | Yellowstone Bean Company (Bridger, MT) |



AMERICAN FARM BUREAU FEDERATION®

600 Maryland Avenue S.W. • Suite 800 • Washington, DC • 20024 • (202)406-3600 • fax (202)406-3604 • www.fb.org

VIA FACSIMILE

202-224-4700

January 27, 2005

The Honorable Max Baucus
United States Senate
Washington, DC

Dear Senator Baucus:

The American Farm Bureau Federation supports the introduction of the Agricultural Export Facilitation Act of 2005. This legislation will assure continued U.S. agricultural sales to Cuba and will facilitate an increase in future sales.

Since the passage of the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000, U.S. agriculture has sold approximately \$800 million in U.S. products to Cuba. The products currently sold include wheat, rice, corn, soybeans, chicken, pork, eggs, dairy products, apples and live animals among others products.

Enactment of this new legislation would result in increased trade with Cuba through the simplification of the license process used by agricultural producers when selling goods to Cuba and would reduce the transaction costs for those sales. It would also increase trade by allowing Cuban agricultural inspectors into the United States to inspect U.S. facilities selling to Cuba. The ability to inspect U.S. facilities is given to all countries that purchase agricultural products from the United States. Lastly, the legislation would help maintain the United States as a reliable supplier to Cuba.

The Agricultural Export Facilitation Act of 2005 is a positive next step in increasing U.S. agricultural product sales to Cuba. We support your efforts and look forward to working with you and your staff on the passage of this legislation.

Sincerely,

Bob Stallman
President



4301 North Fairfax Drive * Suite 425 * Arlington, VA 22203-1616 (703) 236-2300 * FAX (703) 236-2301

February 8, 2005

The Honorable Max Baucus
 United States Senate
 511 Hart Senate Office Building
 Washington, D.C. 20510

Dear Senator Baucus:

The rice producers and miller members of the USA Rice Federation support the Agriculture Export Facilitation Act of 2005 and thank you for cosponsoring this bill. Cuba is now the 5th largest export destination for U.S. rice, and it is critical that this market remain open and permitted to expand.

Since the passage of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000, U.S. exporters have sold 320,000 tons of U.S. rice to Cuba with a value of \$81 million. These sales represent about 10 percent of total U.S. agricultural exports to Cuba since TSREEA was enacted. Cuba was once the largest export destination for U.S. rice, and industry experts estimate the potential size of the Cuban market at 600,000 tons, or about one-fifth of current U.S. rice exports.

Enactment of this legislation will result in increased trade with Cuba by simplifying the licensing process which agricultural exporters use to facilitate sales, by authorizing direct payment to U.S. banks, and by clarifying Congressional intent to authorize the sale of U.S. agricultural goods to Cuba. Additionally, the Export Facilitation Act would permit the travel of Cuban agricultural inspectors to the United States to inspect U.S. facilities selling to Cuba. Such inspections are an essential part of normal commercial relations between foreign buyers and U.S. sellers of agricultural goods and should not be precluded in the case of trade with Cuba. Lastly, the legislation would help maintain the United States as a reliable supplier to Cuba.

We look forward to working with you and your staff to obtain passage of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Adams".

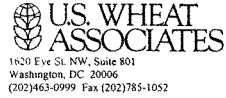
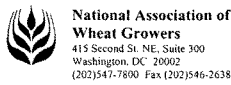
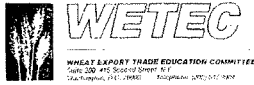
Lee Adams
 Chairman

A handwritten signature in black ink, appearing to read "Stuart E. Proctor, Jr.".

Stuart E. Proctor, Jr.
 President and CEO

Rice. A World of Great Ideas.

CHARTER MEMBERS: USA Rice Producers' Group * USA Rice Millers' Association * USA Rice Council



February 8, 2005

The Honorable Max Baucus
United States Senate
Washington, D.C. 20510

Dear Senator Baucus:

U.S. Wheat Associates, the National Association of Wheat Growers and the Wheat Export Trade Education Committee commend you and the growing number of cosponsors for introducing the Agricultural Export Facilitation Act of 2005. In spite of its size, Cuba has become an important U.S. wheat export market, and this legislation will help secure current wheat export sales and provide a platform for future market growth.

The passage of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000 has brought a major increase in U.S. agricultural exports to Cuba. Since the passage of TSREEA, Cuba's total agricultural purchases from the United States has recently passed the \$1 billion level, and the rate of growth has been exponential. For wheat, Cuba has become the second largest market in the region with sales of over 500,000 tons in the last year, giving it a worldwide ranking of twelve on the scale of countries importing U.S. wheat.

The proposed legislation will take several important steps to facilitate U.S. agricultural exports to Cuba by authorizing direct payment to U.S. banks on sales rather than having to go through a third country bank; simplifying the approval of licenses so that exporters can more easily travel to Cuba to respond to sales opportunities; and eliminate any uncertainty as to the meaning of the term "payment of cash in advance" under TSREEA. The legislation also includes Sense of Congress language that recognizes that travel to the United States by prospective Cuban buyers would be very useful to gather information needed to facilitate buying decisions. Accordingly, the Secretary of State is requested to issue temporary visas to Cuban nationals for this purpose. The opportunity to gather information is generally accorded to all prospective buyers, and it is seen as a normal business practice.

The Agricultural Export Facilitation Act of 2005 is a very positive step in facilitating U.S. agricultural export sales to Cuba. We applaud your initiative, and we look forward to working with you on passage of this legislation.

Sincerely,

Alan T. Tracy
President

Barbara Spangler
Executive Director

Daren Coppock
Chief Executive Officer



NORTHWEST

FARM CREDIT SERVICES

1700 South Assembly Street
P.O. Box 2515
Spokane, Washington 99220
(509) 340-5300 / Fax (509) 340-5400
1-800-827-6505

March 9, 2005

The Honorable Max Baucus
511 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Baucus:

Northwest Farm Credit Services is a farmer/rancher-owned agricultural lending cooperative and part of the national Farm Credit System. We are headquartered in Spokane, Washington but serve nearly 12,000 customers, most engaged in production agriculture, throughout the states of Montana, Washington, Idaho and Oregon.

Bob Gilbert forwarded me a recent press release containing your statement in opposition to the U.S. Treasury Department Office of Foreign Asset Control's new rules further tightening trade on agricultural sales to Cuba. In the briefest of terms, our board members share your concern that OFAC's rule that agricultural goods must be paid for before leaving American ports will make an already difficult but promising trade situation with Cuba virtually impossible. As you know, those actively engaged in production agriculture are working hard to expand export opportunities. These rules frustrate those efforts and further restrict foreign trade opportunities which agriculture needs to remain viable. Our board very much appreciates and supports your efforts opposing these new rules and would be pleased to offer whatever assistance we can.

Sincerely,

Thomas M. Tracy
Executive Vice President & General Counsel

cc: Sara Andrews
Bob Gilbert
Bob Smith, CoBank

o:\legislative\baucus_mar 2005



YELLOWSTONE BEAN CO.

RT. 2, Box 1198 • East Bridger, MT 59014 • 406-662-3622

March 31, 2005

The Honorable Max Baucus
United State Senate
511 Hart Senate Office Building
Washington, DC 20510

Dear Senator Baucus,

In reviewing S.328, The Agriculture Export Facilitation Act of 2005, I support this bill as presented.

In reference to the direct payments to US Banks for TSREAA transactions, this will be of great help and will lower the cost of doing business with Cuba.

As we have discussed in the past, you know how important trade with Cuba is to Montana Farmers and our companies. At the present time, we have a firm sale with Cuba on 10,000 Metric Ton of peas and a commitment from Cuba to take an additional 40,000 Metric ton of peas and lentils through the course of 2005. Cuba has just tendered for an additional 5,000 Metric Ton of dry beans. We are presently negotiating with Alimport on this.

We have spent a lot of time and money developing the pea and lentil business in Montana. We really need this market. We anticipate doing \$15 Million in business with Cuba in 2005 and \$25 Million by 2008.

We appreciate your support over the past two years on the Cuban Trade issues.

If we can be of any further assistance on these issues, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "James L. Stinehagen".

James L. Stinehagen
President and CEO
Yellowstone Bean Company
WestStar Food Company

April 8, 2005

The Honorable Max Baucus
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Via Fax: 202-228-0567

Subject: Port Authority Support of US Exports to Cuba

Dear Senator Baucus:

We are writing this letter in support of the Agricultural Export and Facilitation Act (S-328) and to emphasize two important points: First, the opportunity to export food and agricultural products from the US to Cuba is real and rich. Since the Trade Sanctions Reform Act of 2000, over 4 million metric tons of US products have been exported to Cuba. In 2004 alone, almost \$400 million of US products were exported, making Cuba the 25th largest export destination of the United States – just behind France and Australia. The Cubans tell us that they wish these exports would exceed one billion dollars per year.

Secondly, we wish to emphasize the roll that US ports can play in these export developments.

Since ports handle multiple cargos and communicate routinely with product origins as well as destinations throughout the world, ports can play a larger roll than just the efficient handling of cargo. Ports help put the deals together and, in order to grow, we must maintain a larger vision. To prevent problems, US ports make a deliberate effort both to understand the law and to ensure compliance with it. We can be trusted to do this. For example, several of the ports listed below have had direct, face-to-face meetings with the leaders of ALIMPORT in Cuba concerning food export opportunities, then worked with the large agricultural shippers throughout the United States to help construct a flow of exports that took place well within the rules of the Trade Sanctions Reform Act of 2000. We see this as our job.

One US port can easily serve a dozen states in their food product exports. Several ports, such as those signing this letter, cover the bulk of all US exports to Cuba. Ports can make the exports cheaper and more competitive, thereby allowing the Cubans to buy more US food product instead of spending scarce money on freight. That means more US exports, more US influence, and more US food for a hungry people.

Senator Max Baucus
Port Authority Support of US Exports to Cuba
April 8, 2005
-Page 2-

Under current OFAC interpretations, ports have now been uniquely blocked from visiting Cuba (one trip every 365 days) which, in effect, not only stymies the export opportunities of TSRA, but also reduces our ability to ensure its compliance.

So the main reason we are writing to you is to support your US food export initiative (S-328) and especially to highlight its provision to allow the ports reasonable access under a general license to get back and forth to Cuba in order to help develop the cargo and influence the compliance of the law. If allowed, ports can, and certainly wish to, make a strong positive influence on both.

But we need our hands to be untied. S-328 can do this.

Additionally, every delay in allowing the provisions of TSRA 2000 to be implemented invites US competitors to steal away our export opportunities and also cripples the influence the US businessman can have in Cuba. From a singular opportunity for the US to export to Cuba, we are now seeing a loss of US momentum, and a gain by our competitors, especially the communist nations. This means the US loses both in business and in ideology.

Please help us win back this prize. We are very grateful for your legislation.

Sincerely,

John P. LaRue
Port of Corpus Christi

James K. Lyons
Alabama State Port Authority

Donald R. Allee
Port of Gulfport

R.A. McBride
Port of Lake Charles



Billings Gazette

SATURDAY, APRIL 16, 2005

Crackdown on Cuba trade hurts Montana

Guest opinion

By DAVE KELSEY

The first-ever agricultural trade agreement between Montana and Cuba was truly a historic event. In 2003, we as Montana farmers and ranchers broke into a brand-new market for our products, in total selling more than \$10.4 million worth of goods to the island nation. But now, just as we were getting started, the future of ag trade with Cuba looks bleak.

In an effort to further restrict the rights of Americans to do business with Cuba, the Bush administration has halted food sales to the country. And even though legislation in 2000 specifically made selling agriculture products to Cuba legal, these new restrictions jeopardize a new \$15 million Montana agriculture deal inked in 2004. Specifically, sales of \$3 million worth of wheat and peas now have to be renegotiated or scrapped because of this rule.

We should continue to expand trade with Cuba, not stifle it by making it harder for folks to travel there and asking the Cubans to meet unattainable requirements.

Beef sales blocked

Dealing with Cuba was a first for agricultural producers in Montana. Under the steady leadership of Sen. Max Baucus, who personally traveled to Cuba in 2003 and again in 2004, we were able to sell products such as dry pinto beans, spring wheat and peas to the Cubans. Before this most-recent crackdown, we were hoping to start sending Cuba our cattle and beef products.

Trade agreements can sometimes be sticky for agriculture, and not all of them are good for us in Montana. But dealing with Cuba is a win-win because there are no negative impacts to local producers. The Cubans are importing our products, which they truly need, but they're not flooding our markets with products that we already produce.

In the few short years since agricultural trade was re-established with Cuba, that country has become an increasingly important trading partner with the United States. Starting virtually in last place (226th in 2000), Cuba rose to become America's 25th largest agricultural trading partner in 2004. It is only natural that they want to trade with us because we are located so close to them, just 90 miles off the coast of Florida.

Baucus support

Baucus has worked extremely hard to advance these trade agreements, which have been a real shot in the arm to Montana producers. And now he's working in Washington to overturn the new ag trade restrictions. Montana producers should call Baucus and tell him to keep up the good work, and that we need more trade agreements like this one, not fewer.

I hope that we don't continue to overregulate trade with Cuba. They have proven to be a very important agricultural trading partner for us. These decades-old restrictions haven't done much to hurt Fidel Castro — they have only hurt the Cuban people and American businesses who want to sell products.

Though we must keep a watchful eye on Cuba, the truth is that Castro is no longer the threat to the United States that he once was. The people of Cuba want and need to trade with us. And the more they do so, the more likely the Cuban people will realize the benefits of democracy.

This exposure to our markets will do much more to change things for them than 40-plus years of failed sanctions.

Dave Kelsey, a Molt-area rancher, traveled with Max Baucus to Havana in 2003.

United States Senate

WASHINGTON, DC 20510

March 21, 2005

Dear Colleague,

Last year, the United States had an agriculture trade surplus of \$9.5 billion. The latest projections predict a surplus of only \$2.5 billion this year – a dangerous 75% one-year drop. As Agriculture Secretary Johanns recently stated, "We should not shrink from opportunities to compete on world markets to sell our products."

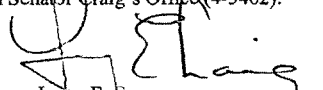

Yet a regulatory rule promulgated by the Treasury Department last month threatens to disrupt one-way, cash-only trade to Cuba, a growing and potentially very lucrative new market only 90 miles away from our shores. In the three years American producers have been allowed to sell their products to Cuba, Cuba has spent close to \$1 billion on agriculture products and related services from the United States. Last year alone, Cuba purchased nearly \$400 million in American agricultural products, a sizable increase from the \$4 million it purchased in 2001, the year after Congress approved food sales to Cuba. And, according to a 2001 Texas A&M study by Parr Rosson and Flynn Adcock, "Economic Impacts of U.S. Agricultural Exports to Cuba," the Cuban market could be worth \$1.24 billion to American agriculture producers annually.


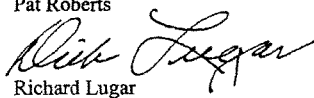
Congress expressly authorized food and medicine exports to Cuba when it passed the Trade Sanctions Reform and Export Enhancement Act of 2000. By restricting the payment terms of these sales, the new Treasury ruling directly contradicts the will of Congress.

The Agricultural Export Facilitation Act (S.328) of 2005, a bipartisan bill cosponsored by 30 Senators, would protect this lucrative market for U.S. exporters. S. 328 reverses the new Treasury rule by returning to the status quo payment terms that have worked since 2001, while cutting some of the red tape that makes U.S. producers less competitive in the Cuban market.

The new Treasury rule takes effect March 24, 2005. Every day that Congress does not act is a day a profitable market looks to a more reliable seller. Shutting down agricultural sales to Cuba does nothing to bring down the Castro regime, but it does limit the ability of our farmers to fully profit from the demand for their products. And, in the process, it sends the wrong message to American farmers and ranchers who are being told that their future lies in the expansion of world markets.

To cosponsor the Agricultural Export Facilitation Act (S.328), please contact Gordon Matlock in Senator Craig's Office (4-3462).


Larry E. Craig

Max Baucus


Pat Roberts

Richard Lugar

Sam E. [unclear] Le. Benjamin Johnson

Michael G. Eij Patrick Leahy

[unclear] Byron G. Dwyer

Art Bond Jim Jeffords

Mike Cryer Ken K...

Chris Hase Chris Dodd

P. L. Chafe Maria Cantwell

John Johnson Tom Harkin

**Statement of Senator Mike Crapo
Senate Finance Committee
May 24, 2005**

Thank you, Chairman Grassley and Senator Baucus, for holding this hearing. I'd also like to extend my appreciation to all of the nominees – Alex Azar, Timothy Adams, Shara Aranoff, Suzanne DeFrancis, and Charles Johnson – for being here with us today and for your willingness to serve. I appreciate the opportunity to make a few brief comments.

I share the concerns of Senator Baucus with respect to food and medicine exports to Cuba. Specifically, I'm concerned with the Office of Foreign Assets Control (OFAC) of the Department of the Treasury's reinterpretation of the term "payment of cash in advance" for shipments of food and medicine to Cuba. This reinterpretation would make it more difficult for U.S. agriculture producers to market U.S. products for the Cuban market at a time when we should be working to broaden market access.

The nearly \$400 million value of U.S. agriculture exports to Cuba benefits U.S. farm families. Congress has made its intentions clear through the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSREEA) that sought to expand access for agricultural producers to the Cuban market. It is a step in the wrong direction to make it harder to export agricultural products to Cuba. I have joined my colleagues in Congress who are working to correct this issue, and we need a swift resolution.

Additionally, the Office of International Affairs at the Treasury Department has several pressing issues that need to be addressed now. For example, concerns with China's exchange rate and Argentina's ongoing debt repayment negotiation are time sensitive issues that need action. We need to make sure the Administration has the personnel and tools necessary to remedy these issues in a timely fashion. Delaying the confirmation of nominees in charge of these issues will only delay solutions.

Again, I want to commend you all for your willingness to serve. I support your nominations, and I hope we can move quickly to confirm you.

Thank you, Mr. Chairman.

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STATEMENT OF
SUZANNE C. DEFRANCIS

NOMINEE FOR
ASSISTANT SECRETARY FOR PUBLIC AFFAIRS
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

MAY 24, 2005

Chairman Grassley, Senator Baucus, distinguished members of the committee, it is an honor to appear before you today, and I sincerely appreciate your consideration of my nomination as Assistant Secretary of Public Affairs at the Department of Health and Human Services.

One of my first jobs in communications was working next door in the Russell Building as a Deputy Press Secretary to US Senator Robert P. Griffin of Michigan. Please don't ask me to testify under oath about how long ago that was! Through that experience, I learned to appreciate the institution of the U.S. Senate and the important role it plays in our government. If confirmed, I look forward to consulting with this committee and your staff and working together in a bipartisan manner to achieve our mutual goal of advancing the health and well-being of the American people.

My fondest memory of working in the Senate was meeting and marrying a fellow staffer, Jim DeFrancis. Jim was an able and gifted public servant who loved the Senate and its traditions. He enjoyed referring to it as the Upper Body to the chagrin of staffers on the House side. Jim died at the age of 55 from prostate cancer, but I know he would be proud to see me here today and proud of his three sons – two of whom are with me today.

Our oldest son James is an honors graduate of the University of Chicago and heading to Notre Dame to get a masters degree in Theology. His brother Will is a rising junior at Southern Methodist University and interested in taking classes in Arabic to someday help in the fight against terrorism. Our son Mark, who is studying for final exams at

Northwestern University (at least I hope he is), is graduating this June with a degree in theater and a passion for acting and directing.

I have been blessed in recent years to meet and marry Dr. Phillip Wakelyn. Phil himself is no stranger to the U.S. Senate having testified before its committees several times as the Senior Scientist for the National Cotton Council. Phil has made a lot of sacrifices for me to hold the type of demanding jobs that come with public service, and I am grateful for his support.

Finally, I want to acknowledge my parents. My Dad will soon be 90 years old and he made a big effort to be with me today. My Mom suffers from Alzheimer's or she would be with me today. And my brothers and sister-in-laws are wonderful supporters in our close, loving family.

I want to thank President Bush for nominating me to this position. For the past two years, I had the privilege of serving him in the White House as Deputy Assistant to the President for Communications. During that time, I worked on many of the important issues that fall within the purview of HHS, so I was especially pleased when Secretary Leavitt asked me to join his team.

Secretary Leavitt has laid out a vision and a detailed plan for the Department. Under his leadership, we will work to transform our health care system with the goal of making health care more affordable and accessible to more Americans. We will modernize

Medicare and Medicaid, focusing especially on helping seniors and disabled persons learn about and enroll in a new prescription drug benefit. We will advance medical research, while making sure drugs are safe. Together with our state and local partners, we will work to secure our homeland in the event of biological attack or flu pandemic. And finally, we will strive to protect life, family, human dignity and improve the human condition around the world – especially for those suffering from HIV/AIDS.

The challenges are great, but I have great confidence in Secretary Mike Leavitt and all the dedicated public servants at HHS. I am eager to be confirmed soon, so I can be a full partner with them in the work ahead.

I have been fortunate in my career to work in a variety of different jobs and to learn from each of them. I have worked in government at the national level – both the executive and legislative branches. I have worked in politics and political campaigns. I have worked in the private sector at a leading public relations firm with health care credentials. And most importantly, I spent 15 years as a stay-at-home Mom, which taught me a lot of lessons, including what's most important in life.

I look forward to bringing the sum of these experiences to the tasks at hand at HHS. I cannot think of a more rewarding opportunity than to work with you and others to make a difference in the lives of our fellow citizens.

Mr. Chairman, if you and the members of this Committee see fit to give me that opportunity, I pledge to you that, with God's help, I will give it everything I have. Thank you very much.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Suzanne Cox DeFrancis
Suzanne Chase Cox (maiden name)
2. Position to which nominated:
Assistant Secretary for Public Affairs
Department of Health and Human Services
3. Date of nomination:
April 4, 2005
4. Address: (List current residence, office, and mailing addresses.)
Home: 5615 Kirkside Drive, Chevy Chase MD 20815

**Office: Department of Health and Human Services, 200 Independence Ave.,
SW, Room 609F, Wash DC 20201**
5. Date and place of birth:
November 24, 1948
Washington, DC
6. Marital status: (Include maiden name of wife or husband's name.)
Married
Husband's name: Dr. Phillip J. Wakelyn
7. Names and ages of children:
James Upton DeFrancis, Jr., Age 26
Marcus Whitman DeFrancis, Age 23
William Robert DeFrancis, Age 20
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted)
National Cathedral School 1962-1966 (High School diploma June 1966)
Montesano Institute, Gstaad, Switzerland, 1966-1967 (High School post-graduate degree June 1967)
University of Colorado, 1967-1971, B.A. in Political Science June 1971
9. Employment record: (List all jobs held since college, including the title or

description of job, name of employer, location of work, and dates of employment.)

Consultant, Department of Health and Human Services, April 2005-Present.
HHS, 200 Independence Ave., SW, Wash DC

Deputy Assistant to the President for Communications, October 2002-January 2005. The White House, 1600 Pennsylvania Ave, Wash DC

Sr. Vice President and Director of Public Affairs, Porter Novelli, 1999-2002,
1909 K St., Wash DC.

Vice President, Porter Novelli, 1998-1999

Account Supervisor Porter Novelli, 1997-1998

Deputy Director of Communications and Congressional Affairs, Republican National Committee, 1995-1997, 310 First Street, SE, Wash DC

Senior Research Counsel to the Chairman, RNC, 1995

Managing Editor, *Rising Tide Magazine*, RNC, 1994-1995

Newsletter Writer/Editor (part-time), *CG News*, 1989-1994, Corman Construction, Co., Jessup Maryland

Stay-at-Home Mom, 1977-1994

Deaver & Hannaford Public Relations, 1976-1977, Wash DC

Special Assistant, U.S. Small Business Administration, 1975-1976, Wash DC

Press Assistant, U.S. Senator Robert P. Griffin, 1974-1975, Wash DC

Speechwriter, U.S. Department of the Interior, 1973-1974, Wash DC

Speechwriter, Office of the Vice President of the United States, 1972-1973, Wash DC

Correspondence Writer, Office of the Vice President of the United States, 1971-1972, Wash DC

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

Review Board for White House Fellows Applicants, 2001

11. Business relationships: (List all positions held as an officer, director, trustee,

partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

Secretary, C.G. Enterprises (closely held family construction company). Resigned that position in October 2002.

Officer/Director, Wasco Corporation, S Corporation set up for subsidiary of family construction company, 1989-2002 (Wasco terminated 5/28/02).

Partner, B.O.S. Partnership (partnership with my two brothers on Whole Life Policy with Chubb insurance on our parents' lives)

Trustee of 2 Qualified Residency Trusts in my parents' names on a vacation home in Vail, Colorado

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)
Katherine Pollard Maddux Foundation, Board Member 1983-1994
Chevy Chase Club, Member 1983-Present, Board Member Dec. 2001-Oct. 2002
Metropolitan Club, Member 2002-Present
13. Political affiliations and activities:
- a. List all public offices for which you have been a candidate. **None**
 - b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
Member, Republican Party (National and State of Maryland)
Deputy Director of Communications and Congressional Affairs,
Republican National Committee and other staff positions (1994-1997)
 - c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.
Bush-Cheney 2004, \$2,000
Bush for President, Inc. (2000), \$1,000
Haley Barbour for Governor (2003), \$50 & \$950
Robert Ehrlich for Maryland Committee (2002) \$1,000
Friends of Connie Morella (2002) \$100
Lazio 2002 \$100
Republican National Committee \$100 (1998)
Republican National Committee \$200 (2000)
Republican National Committee \$200 ((2001)
Maryland GOP \$25 (1996)
Maryland GOP \$50 (1996)

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.) **None**
15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)
Three-part series on the Contract with America, RNC's *Rising Tide Magazine*, 1995
"If Bob Dole Were President Today," RNC's *Rising Tide Magazine*, 1996
"A Conservative Voice at Harvard," *Conservative Digest*, Nov. 1979
Interviews with Chuck Colson and Clare Booth Luce, *Conservative Digest*, 1997
Assorted feature articles for local Michigan paper, *The Birmingham Patriot*, 1977 (Christmas shopping Detroit Renaissance Center, Tour of downtown Birmingham, Profile of Lieutenant Gov. James Damman)
Book Reviews, *The Alternative*, *An American Spectator*, 1974
16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with **two** copies of each formal speech.)
None
17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)
I believe I am qualified to serve in the position of Assistant Secretary for Public Affairs at HHS because of my experience in government, communications, and health care issues. I have served in both the executive and legislative branches of government (White House, U.S. Senate, various U.S. Departments and Agencies), and I understand the importance of working with both branches of government and reaching across the aisle to get things done. I have helped to communicate health care policy on issues such as Medicare, Medicaid, and drug safety during my years in the White House and in the private sector. Finally, I have worked my entire career in communications jobs in both the public and private sector, and I look forward to using the skills I have developed to help the Secretary of HHS and the Department communicate with the American people the policy and programs of this Administration. In doing so, I believe I can play a role in helping all Americans live longer, healthier lives, especially seniors and the most vulnerable.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide

details.

Yes. I have severed all connections with all former employers.

I intend to continue to hold stock in my family's closely-held construction company and continue to be a partner in a life insurance policy on my parents' lives, as well as remain a trustee of trust for my family's vacation home.

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

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
I have agreed to divest myself of investments which my husband and I own, which could present the potential of conflict of interest or appearance thereof. These investments are listed in a letter to the Office of Government Ethics, which constitutes an ethics agreement. They are as follows: 3M Company, Alkermes, American Science and Engineering, Anheuser Busch Company, Anika Therapeutics, Artesian Resources Corp., Arthrocare, Avon Products, Boston Scientific, Cryolife, Inc., Curon Medical, Digene, Disney, Elan Corp., General Electric Company, Intermagnetics General Corp., Johnson and Johnson, Lance, Inc., MedImmune, Merck Corp., Omnicom Corp., Pozen, Inc., Rita Medical Systems, Inc., Span American Medical Systems, Starbucks, Stericycle, Strategic Diagnostics, Sunrise Senior Living, Time Warner, Walmart, XM Satellite Radio
2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
Between April 1997 and October 2002, I worked for Porter Novelli, a public

relations firm, where I represented the clients listed below. Since October 2002, I have severed all ties with Porter Novelli and these clients: The Business Roundtable, the Robert Wood Johnson Foundation, the Health Benefits Coalition, the Arthritis Foundation, the Coordinated Care Coalition, the National Health Care Purchasing Institute, the Coalition for Affordable Quality Health Care, the Pharmaceutical Care Management Association, Eli Lilly & Co., Vision Council of America, Aventis Pharmaceuticals, Project to Promote Competition and Innovation in the Digital Age, the Rx Benefits Coalition, Ripon Society

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.
I represented the Health Benefits Coalition in their efforts to achieve a Patients Bill of Rights that would not raise health care costs or result in more uninsured.
I represented the Coordinated Care Coalition in their efforts to preserve adequate payments to managed care plans in the 1997 budget so these plans would be available to Medicare beneficiaries in districts throughout the country.
I represented the Arthritis Foundation in efforts to extend Medicare coverage to self-injected biologics.
4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with **two** copies of any trust or other agreements.)
In 2002, I severed all business ties with Porter Novelli and the clients I represented during my tenure there.
I have signed a letter to the Office of Government Ethics, which constitutes an agreement that my husband and I will divest ourselves of any investments that pose a potential conflict of interest or appearance thereof.
5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or

a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. **No**
2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details. **No**
3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details. **No**
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details. **No**
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
As a former U.S. Senate staffer, I have great respect for the rules, prerogatives and precedents of the U.S. Senate and will consult and work with the institution and its committees on issues related to HHS and health care policy.

E. TESTIFYING BEFORE CONGRESS

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

**Questions for the Record for
Suzanne DeFrancis**

From Chairman Grassley

Question 1: In just a few short months, Medicare beneficiaries will have the opportunity to enroll in the new Part D prescription drug benefit and Medicare Advantage program. Beneficiaries will need good information to make informed decisions about their choices. Your office will be deeply involved in getting the word out about the new programs.

At the risk of understatement, educating 42 million beneficiaries, their caregivers, families, and providers is a pretty enormous job. Tell me how your previous experiences have prepared you for such a large and important task.

Answer:

Mr. Chairman, you are correct. This is a big challenge, but one I am sure you agree is well worth the effort. Helping seniors pay for the cost of their prescription drugs and providing them with other important preventive benefits is one of the most significant moments in our Nation's history of providing human services.

I have worked on public education and outreach campaigns in both the government and during my years with the communications firm of Porter Novelli. However, this campaign is one of such magnitude that it will require the help of everyone including the President and his Cabinet, the Congress, state and local governments, employers and unions, health plans, health professionals, seniors' organizations, community and faith-based and care-giver groups. Most importantly, it will require the help of family, neighbors, and friends to provide the important one-to-one contact that will help people with Medicare understand and enroll in the benefit.

Secretary Mike Leavitt has described the prescription drug roll-out this year as "The Main Event" at HHS. He is committing the resources of the entire Department to this effort, and CMS Administrator Mark McClellan has teams already at work in regions across the country. At the end of May, for example, mailings went out to beneficiaries with limited incomes to determine whether they are eligible for extra help—a sector of the population that is typically the hardest to reach.

Our goal will be to ensure all people with Medicare have the information, help, and access they need to enroll in the prescription drug coverage. Our strategy will be continuous targeted outreach and education to ensure maximum enrollment.

There will be a variety of communications tools employed, including printed materials; paid print, radio and TV advertising; earned media; direct mail; 1-800-MEDICARE Helpline; the Internet; public events; and person-to-person grassroots contact.

We will also track and measure our success down to the county level.

We look forward to working with you and others in the Congress to plan Town Hall meetings, and we will give you the information and support you need for Member newsletters and training for your case workers and district office staff.

Mr. Chairman, it is, as you say, a big job. But with everyone's help, we will succeed in getting seniors the benefits they deserve.

Question 2: Your office has a tremendous responsibility to ensure that information about the new benefits is presented in a balanced manner. Recently, there was some flap about the new “Medicare & You” handbook – that it appeared to favor one program over another and that it omitted crucial information. I understand that it was a draft and the Centers for Medicare and Medicaid Services (CMS) is making revisions.

Can you give me your commitment that you will work to ensure that information is presented in a balanced manner and that you will work with interested parties as appropriate, when developing such materials?

Answer:

Mr. Chairman, you absolutely have my commitment to presenting the new benefits in a fact-based, balanced manner and working with interested parties as appropriate. I can also assure you that many dedicated professionals at CMS and HHS, who have experience and skill in communicating with seniors, have been working hard on these materials for a long time and soliciting advice and ideas from others.

Clearly, we are committed to providing fact-based and balanced information in the “Medicare & You” handbook. That is the reason we circulated a draft version of the book. We wanted to get input that could improve it. My years in the field of communications have taught me that every communications product can be improved by testing it first.

We are working to correct any mistakes or omissions in the draft document, and to clarify any confusing portions. Members of Congress will get another look at the handbook before it goes to print.

Our goal is to produce the best product for seniors and other beneficiaries, and we are working diligently to achieve that goal.

From Senator Baucus

Question 1: Transparency of the public process is a key element in instilling public trust in our nation's executive branch agencies. Those providing public affairs information have a critical role to play in fulfilling this mission. I have been disappointed in past efforts by CMS to keep members of Congress and the public fully informed of its activities in reviewing and approving Medicaid waiver. For example, the agency has not updated its waiver website since September of last year. If confirmed, what steps would you take to improve the agencies communications with the public to ensure greater transparency of the process?

Answer:

Senator, I agree that transparency is an important part of the public process, and I will work with CMS to continue to improve the transparency and timeliness of information on Medicaid waivers and other subjects of public and Congressional interest.

Under Public Law 104-231, the Electronic Freedom of Information Act of 1996, I understand that, on or about September 16, 2004, CMS performed a file search of all documents and posted the pertinent documents to the CMS website on that date. As a result, many website pages reflect that date at the bottom of the page. If an approval, disapproval or some other waiver action has taken place in a state, then the update may be reflected in the link rather than on the opening page. For instance, the website for the Montana waiver program (www.cms.hhs.gov/medicaid/waivers/mtwaiver.asp) is designated as being last modified on September 16, 2004. However, following the link to Montana waivers operating under 1115 authority (www.cms.hhs.gov/medicaid/1115/mtfp.asp), the page is designated as last modified on April 14, 2005. Of the websites for the 50 states, 34 are listed as last modified in September 2004 and of those, 6 have links to recently updated information. The remaining sixteen websites have modification dates within the last 6 months. More current information would not be available on the website if states have not submitted changes to their existing program.

As to the role of public affairs, the CMS press office has staff dedicated specifically to the Medicaid program. That staff, together with the director of the press office, work in close concert with the Director of the Center for Medicaid and State Operations (CMSO) to assure that the public is informed about actions related to the Medicaid program. The agency's press officers also work closely with reporters from national outlets, many of which have writers who cover health care policy issues exclusively. The office is diligent in keeping these reporters up-to-date on Medicaid waiver approvals that represent cutting-edge developments such as the historic multi-state pooling arrangements to help states gain greater discounts on prescription drugs for their Medicaid programs. The press office also works closely with all ten CMS regional press officers and local reporters to generate interest in Medicaid issues at the state and local level. The agency takes seriously its responsibility to encourage public awareness and debate about the difficult issues facing the financially challenged program.

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STATEMENT OF
CHARLES E. JOHNSON

NOMINEE FOR
ASSISTANT SECRETARY FOR BUDGET, TECHNOLOGY AND FINANCE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

MAY 24, 2005

Chairman Grassley, Senator Baucus, and Members of the Committee, it is a great privilege to appear before you today as the nominee of President George W. Bush to serve as the Assistant Secretary for Budget, Technology, and Finance (ASBTF) and Chief Financial Officer (CFO) of the Department of Health and Human Services (HHS). It is also a privilege to seek concurrence from this Committee that I am qualified, both by skills and by personal character, to hold this trusted position. This Department spends nearly one of every four federal tax dollars collected from the American people and you have the right to require the ultimate in fidelity from the person selected to assume this responsibility. If recommended to and confirmed by the United States Senate, it will be my privilege to again associate with Michael O. Leavitt, Secretary of HHS, for whom I have the highest personal regard.

As I begin, let me thank you and your staff for every courtesy extended to me in the preparation for this hearing. At all times I was treated respectfully and professionally and, if confirmed, it will be my intention to reciprocate in working with you and your staffs.

The Assistant Secretary for Budget, Technology, and Finance is the principal advisor to the Secretary on financial matters. The Offices of Budget, Technology, Finance and Grants which are under the ASBTF comprise a vast portfolio.

The overall mission of ASBTF reflects a comprehensive responsibility for developing, managing, and supporting a system of Department-wide goals and policies. It is a results-oriented culture. ASBTF oversees budget formulation, preparation, and execution and is accountable for resources management. ASBTF's financial management functions include

formulation of the Department's Performance and Accountability Report, including information indicating the extent to which taxpayer dollars are being spent effectively. The Office of the Chief Information Officer is responsible for achieving the Department-wide information technology goals, including the development of policies for the effective use of information throughout the Department. Recently the Office of Grants has also been included under the ASBTF. This office is responsible to oversee compliance with Grants policies, processes, systems and outcomes.

With my current position as Chief Financial Officer of the Environmental Protection Agency, I have provided leadership for many of these functions. I also acknowledge the larger scope and size of this expanded position at HHS.

With 31 years in the practice of public accounting, including service as a member of the Board of Directors of one of the nation's largest firms, I believe I have demonstrated the financial competence as well as managerial leadership abilities to assume such a post. In addition to my present position at EPA, I served as Utah's Director of the Office of Planning and Budget, and as then Governor Leavitt's Chief of Staff, where I have demonstrated these same qualities in the public sector. I take public accountability very seriously.

With my time in State Government, I had an opportunity to see the direct impact on our citizens of sound health and human services policies. Understanding the interrelationships between the Federal Government, States and Tribes, and local governments should serve me well, if I am confirmed to this position.

As President of a Cancer Institute I have observed more closely the devastating impact of disease. With better understanding comes greater compassion.

The past has been excellent preparation for the job to which I have been nominated.

That being said, I know the broad array of managerial and financial issues confronting HHS are more than just complicated financial questions. They are, fundamentally, the questions that address HHS stewardship over every aspect of health and human services. From drug safety to food safety. From disease control and research to protecting our citizens from bioterrorism. From healthcare to financial support for needy families and self-sufficiency. Our challenge will be to continue to raise the level of healthcare and living standards while remaining economically competitive in a global economy. Being true to the fiduciary responsibilities I mentioned earlier is the best way I know for me to help HHS fulfill this stewardship role.

I have enjoyed my time in Federal Government. I have found a dedicated group of men and women who truly care about their tasks and mission. They work hard each day to make a difference. I am proud to serve with each and every one of them, and look forward to this opportunity at HHS.

Mr. Chairman, I have spent a lifetime in building trust, confidence, and respect for moments such as this and I want you to know that if I am fortunate enough to be confirmed, I look forward to serving the people of the United States of America to the best of my ability. I again thank you and the Members and staff of this Committee for every courtesy extended to me and am ready to address any question you and the Members of this Committee may have.

Thank you, Mr. Chairman.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

Answer

Charles Edwin Johnson
Charlie Johnson

2. Position to which nominated:

Answer

Assistant Secretary for Budget, Technology, and Finance at Health and
Human Services Department

3. Date of nomination:

Answer

April 25, 2005

4. Address: (List current residence, office, and mailing addresses.)

Answer

Residence (Mailing Address) 400 8th Street NW Apt. 1301
Washington, DC 20004

Office 1200 Pennsylvania Avenue
Room 4406
Washington DC 20460

5. Date and place of birth:

Answer

June 15, 1936
Grantsville, Utah 84029

6. Marital status: (Include maiden name of wife or husband's name.)

Answer
 Married
 Susanna Louise Brown

7. Names and ages of children:

Answer
 Douglas Charles Johnson 47
 Wendy Susan J. Sumner 46
 Brent Michael Johnson 44
 Michael Alan Johnson 42
 Kristin Johnson Homer 38
 Lisa Ann J. Knight 36

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

Answer

| <u>Institution</u> | <u>Dates Attended</u> | <u>Degree</u> | <u>Date</u> |
|--------------------------|-----------------------|---------------|-------------|
| Brigham Young University | 09/1954 – 06/1956 | | |
| Brigham Young University | 01/1960 – 06/1960 | BA | 1960 |
| University of Utah | 01/1959 – 12/1959 | | |
| LDS Business College | 04/1958 – 12/1958 | Certificate | 1958 |
| Grantsville High School | 09/1951 – 06/1954 | Diploma | 1954 |

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

Answer

| <u>Position</u> | <u>Employer</u> | <u>Location</u> | <u>Date</u> |
|----------------------------|---|--------------------|----------------|
| Chief Financial Officer | Environmental Protection Agency | Washington DC | 2004 – Present |
| President | Huntsman Cancer Foundation | Salt Lake City, UT | 2001–2004 |
| Vice President | Huntsman, LLC | Salt Lake City, UT | 2001–2004 |
| Vice Chairman of the Board | Garff Warner (a subsidiary of Ken Garff Automotive) | Salt Lake City, UT | 1997 –2001 |

| | | | |
|---|--------------------------------|---|-------------|
| Chief of Staff to the Governor | State of Utah | Salt Lake City, UT | 1993 – 1997 |
| Director of the Office of Planning & Budget | State of Utah | Salt Lake City, UT | 1991 – 1993 |
| Partner | KPMG and Predecessors | Salt Lake City, UT New York City, NY | 1963 – 1991 |
| Senior Accountant | Ernst & Young and Predecessors | Los Angeles, CA | 1960 – 1963 |

10. **Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**

Answer

Chairman of the Board and Member, Utah State Board of Regents 1997-2002
Member, Utah Committee on Economy and Efficiency

11. **Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**

Answer

| | |
|------------------------------|--|
| KPMG | Partner and member of Board of Directors |
| Garff-Warner | Vice Chairman of the Board |
| Huntsman Cancer Found. | President and Member of the Board |
| Huntsman, LLC | Vice President |
| Board of Regents—Utah | Chairman of Board and Board Member |
| Vehix, Inc. | Member of Board of Directors |
| World Financial Capital Bank | Chairman of Audit Committee and Board Member |
| E-Charge Bank | Chairman of Audit Committee and Board Member |
| GenData Research Corp. | Member of Board of Directors |
| MDT Corporation | Member of Board of Directors |

12. **Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**

Answer

| | |
|--|--|
| Economic Development Corp. Of Utah | Executive Committee and Board Member |
| Utah Sports Commission | Executive Committee and Board Member |
| Utah Supreme Court/ Appellate Court | Member of Judiciary Nomination Commission |
| Alliance for Unity | Board Member of Alliance |
| Utah AARP | Member of Executive Committee |
| American Institute of CPA's Accounting Practices Grading Committee | Chairman of Committee Chairman of Committee |
| Utah Assn. Of CPA'S | Vice President |
| Utah Opera Company | Executive Committee and Board Member |

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.

Answer
None

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Answer
Campaign Director, Governor Michael O. Leavitt Re-Election Committee
2000
Member, Governor Michael O. Leavitt Political Finance Committee

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

Answer

| | | |
|--|------|--------|
| Bush—Cheney Re-Election Committee | 2004 | \$1000 |
| Huntsman-Herbert Election | 2004 | \$ 500 |
| Governor Walker Special Account | 2004 | \$ 200 |
| Senator Robert Bennett Re-Election | 2003 | \$1000 |
| Dave Buhler Salt Lake City Council | 2003 | \$ 200 |
| Marty Stephens Speaker of House Special Account | 2003 | \$ 175 |
| | 2002 | \$ 175 |
| | 2001 | \$ 175 |
| Young Republicans | 2002 | \$ 100 |

| | | |
|--------------------------------|------|--------|
| Mitt Romney for Governor | 2002 | \$ 300 |
| Winston Wilkinson for Congress | 2001 | \$ 50 |
| Keith Homer for Legislature | 2000 | \$ 500 |

Other amounts would have been disbursed over the years in conjunction with special events, such as Governor Mike Leavitt's Governors Gala, Senator Orrin Hatch's Golf tournament, which may have been paid by credit card and not readily available. Amounts paid would have been \$300 or less for each event. Also other small amounts \$50-\$100 may have been disbursed to candidates for office, but those amounts would total less than \$1000 in the aggregate.

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Answer

| <u>Awards</u> | <u>From</u> | <u>Date Received</u> |
|---------------------------|--|----------------------|
| Administrator of the Year | Romney Institute of Management | 2004 |
| Outstanding CPA Award | Utah Assn of CPA'S | 1995 |
| Outstanding Alumnus | Brigham Young Univ. School of Accounting | 1985 |

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

Over my accounting career and with my service on the Board of Regents, I have written a small number of accounting-related or education related articles, none of which would be controversial and none of which appeared in a major publication.

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

Answer

I have no formal speeches that would be relevant to the position for which I have been nominated.

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

Answer

Over my lifetime, I have demonstrated characteristics of trust and integrity with a willingness to assume leadership in any role I have undertaken. This demonstration has covered a wide range of areas including education, professional service in the private sector, professional service in the public sector, church service, and service with family and friends.

With 31 years in the practice of public accounting, including service as a member of the Board of Directors of one of the nation's largest firms, I have demonstrated financial competence as well as leadership abilities. With service as Utah's director of the Office of Planning and Budget and as Chief of Staff to the Governor, I have demonstrated abilities in government service. As chair of the Board of Regents of the State of Utah, I have demonstrated that my skills and leadership can be transferred to other important service. My continuous record of assuming more and more responsibility provides acknowledgement that others recognize that I demonstrate performance.

I believe that I have strong people skills and negotiating skills that are essential to this position. I also believe that openness and a demonstration of integrity are important characteristics that I possess. People lead by setting a tone and creating a vision for an organization. My abilities reflect that.

Inasmuch as I have worked closely with the current Secretary of Health and Human Services, I feel that relationship will enable me to provide effective leadership to the financial goals of the Department. It would be a privilege for me to serve the people of the United States in this very important role.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Answer

Yes.

2. Do you have any plans, commitments, or agreements to pursue outside

employment, with or without compensation, during your service with the government? If so, provide details.

Answer
No.

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

Answer
No.

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

Answer
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer
As part of my ethics agreement, I have committed to sell specified investments that may be considered as a potential conflict of interest. (See ethics agreement attached).

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

Answer
See ethics agreement attached.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of

the Federal government need not be listed.

Answer

I worked as part of a team at Huntsman to obtain federal funding for projects to assist the Huntsman Cancer Institute at the University of Utah. My ethics agreement covers my agreement regarding Huntsman entities (See ethics agreement attached.)

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

Answer

See ethics agreement attached. In addition I will consult with Health and Human Services' ethics official and general counsel's office to take all necessary resolution action, as may be appropriate in the circumstance.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer

As a partner in a major public accounting firm, I was named as a defendant

in litigation. There is no instance where I was personally disciplined or otherwise cited for a breach of ethics for unprofessional conduct.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

Answer

No.

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

Answer

As a partner in a major public accounting firm, I was named as a defendant in civil litigation. There is no instance where I was personally held liable. As Chief of Staff to the Governor in the State of Utah, I was named as a defendant in an unlawful termination action. I was subsequently dismissed as a defendant.

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

Answer

No.

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

Answer

No additional information is deemed necessary.

E. TESTIFYING BEFORE CONGRESS

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

Answer

Yes.

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

Answer

Yes.

**Questions for the Record for
Charles Johnson**

From Chairman Grassley

Question 1: Expanding the adoption of cutting edge health information technologies is receiving substantial attention and rightly so.

As Assistant Secretary, you would have responsibility for the Office of the National Coordinator for Health Information Technology. I know that the office has made great progress in laying out a vision for fostering the adoption of health information technology and that the 2006 budget requests \$125 million. I have two questions:

First, can you give me more information on how the office would spend that money?

Answer:

I appreciate your interest in fostering the adoption of health information technology. As you know, this is a strong priority for the Secretary, and I look forward to working with him and the Office of the National Coordinator for Health Information Technology (ONCHIT) to advance the role of health IT in fostering quality, consumer-driven health care. The 2006 Budget request of \$125 million for the Department of Health and Human Services will go toward coordinating Federal efforts across many initiatives and activities, including:

- Advancing the adoption of health information technology by physicians, hospitals, and other providers;
- Implementing electronic prescriptions as mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003;
- Developing models for the exchange of Electronic Health Records (EHRs) and other health data nationally and with proper medical privacy protection; and
- Identifying standards and the mechanisms for broad adoption of EHRs.

Of the \$125 million, \$75 million falls under the Office of the Secretary and is requested to foster collaboration and develop the conceptual framework and infrastructure for a nationally interoperable HIT network that would interconnect clinicians, personalize care, and improve public health surveillance. The remaining \$50 million will be used by the Agency for Healthcare Research and Quality (AHRQ) to continue projects that were initiated in FY 2004 to accelerate the development, adoption, and diffusion of interoperable information technology in a range of health care settings.

If confirmed, I hope to work with you towards our shared goal of expanding the role of health information technology and improving health care quality.

Question 2: Second, we don't want to be in a situation in which H-I-T simply helps us do the wrong thing, but only faster. If we want to harness its potential to improve quality, we need to dovetail these activities with others to ensure providers change the way they practice and to better align financial incentives to deliver high quality, efficient care.

Can you tell me how the Office will coordinate its efforts with those of other HHS agencies, such as the N-I-H and A-H-Q-R, which do a lot of work on best practices and quality improvement?

Answer:

I agree that technology for technology's sake cannot be our goal. It is important that we maintain our central goal of using health information technology to improve the quality of health care for all Americans.

ONCHIT's *Framework for Strategic Action* and the Federal Health Architecture (FHA) are irrevocably linked in the effort to address critical health care needs. The FHA is under the leadership of the Office of the National Coordinator for Health IT and will provide the structure or "architecture" for collaboration and interoperability among federal health efforts that the *Framework for Strategic Action* urges.

Nearly all Federal agencies involved in the health care industry participate in the FHA. The general partner group has 15 Federal Departments/Agencies participating in the FHA Partner Council. There are also 350 people participating in FHA's e-community. ONCHIT currently operates the program office and executive sponsorship for the FHA.

Specifically, the FHA will accomplish the following goals:

- First, it will improve coordination and collaboration on national health IT solutions.
- Second, it will improve efficiency, standardization, reliability, and availability of comprehensive health information solutions.

ONCHIT is actively working with the leaders of federal agencies who are aligning health IT across the government - in particular, Department of Veterans Affairs, Department of Defense, CMS, Agency for Healthcare Research and Quality (AHRQ), NIH, the National Cancer Institute, and many others.

