

And all of a sudden, we have this huge budget deficit that my Republican friends rail against we are adding to.

When President Obama took office, the budget deficit was at \$1 trillion for that fiscal year. It went from zero to \$1 trillion. Madam President, \$1 trillion is a thousand billion; a billion is a thousand million. If you spent \$1,000 every second of every minute of every hour of every day, it would take you 33 years to spend \$1 trillion. The pages sitting in front of me average in age about half that; am I correct? Sixteen years or so? They have lived about half a billion seconds. For them to spend \$1 trillion, they would have had to spend \$2,000 every second of every minute of every hour of every day in their young lives to get to \$1 trillion. You, Madam President, would have to spend a little less, being very young but a bit older than they are.

Let me talk for a moment about what is happening with the States.

Every State in this country—unless they are energy States, unless they make money in their State treasuries from oil production, coal production, natural gas production—is faced with a huge budget deficit. My State of Ohio, for instance, as so many States, is forced to cut services. Cutting services means cutting jobs, it means laying off people, and it means hurting communities. It means all of that.

We cannot dismiss this situation. We must confront it. We must do something about it. It means as people lose their jobs, as a plant in Jackson, OH, the Meridian plant, closes or a plant somewhere else in Gallipolis or Mansfield or Toledo, OH, closes—when a plant shuts down, it is not just those workers who lose, as tragic as it is; it also puts more demands on the mental health system, more demands on the food pantry, more demands on communities that simply cannot afford it. As their tax base shrivels, they cannot afford it.

Economic recovery will not happen at the national level unless it happens at the State level. With dramatically reduced revenues, States are left with no options. They are cutting basic jobs, and they are cutting basic services. They are cutting social workers, teachers, mental health counselors, and public safety personnel. We cannot function that way. If what we do in the recovery bill adds jobs but the States take them away, we will be left treading water.

The House-passed economic recovery bill includes dollars the States can use to weather this economic storm. And if they don't weather it, none of us will.

So I hope Senators and Representatives negotiating the final bill will agree upon the House-passed State stabilization fund. It just makes sense.

This bill, as I said earlier, is endorsed by the National Chamber of Commerce, the National Association of Manufacturers, the Realtors, and businesses all over the Presiding Officer's State of North Carolina and my State of Ohio.

It is endorsed by small businesses, by manufacturing businesses—all those companies that create so much wealth and jobs in our society.

In my State, from Toledo to Columbus, our universities are engaging in groundbreaking research. From Cleveland to Cincinnati, regional partnerships are being formed to advance solar and wind technology. My State is well on the way to becoming the Silicon Valley of alternative energy. We are about to put wind turbines in Lake Erie—the only place in the world where wind turbines will actually be located in freshwater. We are building hydro-power on the Ohio River. We have the largest solar manufacturer of any State in the country in northwest Ohio. The University of Toledo is doing all kinds of wind turbine research, fuel cells in Stark State and Canton and Rolls Royce and Mount Vernon. Fuel cell development and research is far ahead of most places in the country, with biomass, Battelle in Columbus, all kinds of coal research. We are doing things that, with this bill, we can do better.

There is \$33 billion in green energy tax incentives in this bill to grow jobs by encouraging green energy production. What value is it if we wean ourselves from foreign oil by using solar but we are not producing solar in our country?

Oberlin College, which is 15 minutes from my house, has the largest single building on any college campus in America powered fully by solar energy built 3, 4 years ago. We got those solar panels from Germany and Japan. Why do we do that? We do it because in the early part of this decade President Bush pushed through this Senate and the House—I was a Member of the House—an energy bill that dumped all of its tax incentives, subsidies and incentives, to oil and gas, not to solar, not to wind, not to fuel cells, not to biomass, not to where we should have been looking. It was the same old game, same old politics, same old “help your friends in the oil and gas industry, cash your campaign checks, and do the country wrong.” That is why this bill is so important to do something else.

Lastly, I wish to talk about another provision of the bill which probably is the strongest provision of the bill; that is, the “Buy American” provision Senator DORGAN and I worked on in the last couple of years.

In a recent survey of Americans, 84 percent support the “Buy American” provision—perhaps the strongest statement of the public on any provision in the stimulus bill. The fact is, we are asking people in North Carolina, Ohio, and around this country to reach into their pockets and come up with hundreds of billions of dollars to spend on the stimulus package. They ask three things: first, that we be accountable in doing this right; second, they ask that the jobs be in the United States; third, they ask that the materials used for

this infrastructure also be made in the United States. That is the compact we have come to, and I believe that is so very important.

I have had discussions with people at the highest levels of the Obama administration about the importance of “Buy American” and about enforcement. We have had some of these “Buy American” laws on the books since the Roosevelt years. It is part of the reason he was successful. The Bush administration simply turned its back on this law. They simply did not enforce it. They granted waivers, waivers that were not even public. For instance, the 800-mile fence along the Mexico-United States border was made with Chinese steel, probably illegally. But the Bush administration just said: OK, buy the steel wherever you want, instead of putting Americans to work.

I close with, as all of us in this body—most of us—understand, we need to get this economy back on track, we need to set the stage for a prosperous future. Partisanship at this stage is a slap in the face of unemployed Americans, families facing foreclosures, communities sinking into poverty, and, frankly, to middle-class America, who just wants an even break and wants us to get our economy back on track. Action is our only option. Let's move.

I yield the floor. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CARDIN). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF WILLIAM J. LYNN, III, TO BE DEPUTY SECRETARY OF DEFENSE

Mr. LEVIN. Mr. President, I ask unanimous consent now that the Senate proceed to executive session to consider Calendar No. 14, the nomination of William Lynn to be Deputy Secretary of Defense; that there be 3 hours of debate with respect to the nomination, with 1 hour each under the control of Senator GRASSLEY and Senator McCAIN or his designee, 1 hour under my control or my designee's, and that upon the use or yielding back of time, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be laid upon the table, no further motions be in order, that the President then be immediately notified of the Senate's action and the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the nomination.

The bill clerk read the nomination of William J. Lynn, III, of Virginia, to be Deputy Secretary of Defense.

THE PRESIDING OFFICER. Who yields time?

The Senator from Michigan is recognized.

MR. LEVIN. Mr. President, I yield myself as much time as I utilize.

Mr. President, I urge my colleagues to join me in supporting the nomination of Bill Lynn to be Deputy Secretary of Defense. This nomination was reported to the Senate by the Armed Services Committee by voice vote on February 5, without objection or dissenting vote.

Since the time that he received his law degree from Cornell Law School and his master's degree in public affairs from the Woodrow Wilson School more than 25 years ago, Mr. Lynn has devoted his life to public service and the national defense. For 6 years, Mr. Lynn worked as the military legislative assistant and legislative counsel to Senator TED KENNEDY. In 1993, he moved to the Department of Defense, where he served first as director of program analysis and evaluation, and then as comptroller until 2001. Over the years, he has also served as a senior fellow at the National Defense University, on the professional staff at the Institute for Defense Analyses, and as an executive director of the Defense Organization Project at the Center for Strategic and International Studies.

At the end of the Clinton administration, Mr. Lynn went to the private sector for the first time, working first for DFI international and then for Raytheon Corporation, where he has served as senior vice president of government operations and strategy, overseeing the company's strategic planning and government relations. As a result of the senior positions he has held with Raytheon, Mr. Lynn has vested and unvested stock in the company, as well as salary, bonus, and retirement payments that are due now and in the future.

Mr. Lynn's situation is of course not unique. Numerous nominees to senior positions in prior administrations—including nominees to serve as Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Acquisition, Technology and Logistics, Secretaries of the Military Departments, and Service Acquisition Executives—have served in similar industry positions and held similar financial interests at the time of their nominations.

Over the years, the Senate Armed Services Committee has developed a strict set of ethics guidelines to address potential conflicts of interest, and the appearance of conflicts of interest, arising out of such nominations. These guidelines are tougher and more comprehensive than the rules historically imposed by the executive branch or by other congressional committees. When I say "These guidelines" are tougher and more comprehensive, I am referring here to the guidelines that the Senate Armed Services Committee has developed.

For example, under generally applicable executive branch ethics rules, a nominee could address actual or potential conflicts without divesting stock or other financial interests by recusing himself from matters involving his former employer—subject to a waiver by DOD ethics officials. However, the Armed Services Committee of the Senate takes a stricter approach. We require that nominees to Senate-confirmed positions divest themselves of stock, stock options, and other financial interests in companies that do business with the Department of Defense. In the case of stock options that have not yet vested, and will not vest within 90 days after confirmation, the committee insists that the nominee renounce the options—in other words, forfeiting the entire value of the stock options.

The committee's strict divestiture requirements are added to the requirements of statutory and regulatory ethics rules applicable to all executive branch officials. Our rules require senior executive branch officials to recuse themselves from decisions impacting their former employers for a period of 1 year, even if they have already divested all financial interest. When I said "our rules" I was referring here to the executive branch rules. As a result, nominees to senior DOD positions are subject to both divestiture and recusal requirements.

These ethics requirements have been effective. Over the 12 years that I have served as chairman or ranking member of the Armed Services Committee, I am not aware of a single instance in which a Senate-confirmed defense official who previously served in industry has even been alleged to have taken an action favoring his former employer. We may agree or disagree with some of the decisions that these senior officials have made, but conflict of interest does not appear to have been alleged in any of those disagreements.

Mr. Lynn has complied with all of the committee's requirements. In accordance with our ethics guidelines, Mr. Lynn has agreed to divest his financial interest in his former employer within 90 days of his confirmation. In order to accomplish this purpose, he has agreed to forfeit restricted stock. By the way, this stock has a value between \$250,000 and \$500,000. But that stock does not vest until late in 2009 or 2010. In short, Mr. Lynn has agreed to forfeit that restricted stock and thereby make a significant financial sacrifice in order to return to Government service.

In addition, Mr. Lynn will be subject to the statutory and regulatory recusal requirements that I have already discussed. These recusal requirements are subject to waiver by the senior ethics official in the Department of Defense. However, Mr. Lynn has taken an additional step by agreeing not to seek any waiver of the recusal requirements during his first year in office with regard to any matter on which he personally

lobbied either Congress or the executive branch. This commitment on Mr. Lynn's part goes beyond the steps taken by previous nominees to senior positions at the Department of Defense.

The bottom line is this. Mr. Lynn, if confirmed, will be subject to ethics restrictions that are stricter than those historically imposed by the executive branch, stricter than those applied by other congressional committees, and stricter even than those applied by the Armed Services Committee to previous nominees with similar backgrounds.

On January 21, 2009, President Obama issued an Executive order on ethics commitments by executive branch personnel. This Executive order includes a provision that would, for the first time, preclude registered lobbyists from seeking or accepting employment with an agency that they had lobbied within the previous 2 years. Because Mr. Lynn was a registered lobbyist for Raytheon, he could not have been appointed Deputy Secretary of Defense without a waiver of this prohibition.

On January 23, 2009, the Director of the Office of Management and Budget approved a waiver to two paragraphs of the executive order, clearing the way for Mr. Lynn to serve.

Mr. Lynn will still be subject to the tough new postemployment restrictions in the executive order. Those would preclude him from lobbying any DOD official for 2 years after leaving office, and from lobbying any political appointee in the Obama administration for the duration of the administration, should he leave his position before the end of the administration.

This waiver was appropriate: Mr. Lynn is a career public servant whose recent history in the private sector was more of an exile than a calling. He didn't leave the Department of Defense 8 years ago because he wanted to cash in on inside connections or information, but because the Clinton administration came to an end. When Mr. Lynn hopefully passes through the doors of the Pentagon as Deputy Secretary of Defense, he will return to his roots as a public servant, put his relationships in industry behind him, and recognize that his sole duty and obligation is to his country and the national defense.

Today, the Department of Defense faces huge management challenges. The Government Accountability Office reported last year that the cost overruns on the Department's 95 largest acquisition programs alone now total almost \$300 billion over the original program estimate, even though the Department has cut unit quantities and reduced performance expectations on many programs in an effort to hold down costs.

The Department's financial system remains incapable of producing timely, accurate information on which sound business decisions can be based. The Department's civilian workforce has been decimated by decades of freezes and cuts, leaving us dependent on contractors who perform many functions

that should be performed by Government personnel.

Mr. Lynn's background in senior management positions in the Department of Defense and in industry over the last two decades gives him the kind of knowledge and experience that will be useful to address these challenges. In the course of the committee's consideration of Mr. Lynn's nomination, I have spoken to him about the challenges facing the Department of Defense. I have been impressed by his grasp of the problems the Department faces and his ideas for addressing them.

Under these circumstances, and those are the circumstances I have outlined about cost overruns, we cannot afford a Deputy Secretary who is either disengaged or ineffectual. We need someone with the kind of experience and background Mr. Lynn will bring to the job. His nomination, again, was approved by the Senate Armed Services Committee without a single dissenting vote. I hope our colleagues will support this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I intend to vote in favor of the nomination of Mr. Lynn to be the Deputy Secretary of Defense. Mr. Lynn has an extensive record of public service. He has served as the Director of Program Analysis and Evaluation in the Pentagon during the Clinton administration, and following that he was the Under Secretary of Defense, Comptroller, from 1997 to 2001. He served as, obviously, the chief financial officer for the Department of Defense.

After his DOD service, Mr. Lynn, as we know, became a registered lobbyist and the Raytheon Company's senior vice president of government operations. In that position he led Raytheon's strategic planning and oversaw all of their Government relations activities.

Mr. Lynn has served as I mentioned, but nowhere, I might point out, does he have in his resume any extensive managerial experience. One of the major functions of the Deputy Secretary of Defense is to make the Pentagon run. Mr. Lynn does not have that executive managerial experience.

Having said that, elections have consequences, as we all know, and this is the selection that the President of the United States made, and the Secretary of Defense also supports his nomination.

I do not view the fact that Mr. Lynn became a lobbyist for Raytheon as, per se, disqualifying. Mr. Lynn has indicated his willingness to comply with the ethical requirements of the executive branch aimed at preventing conflicts of interest, and he has agreed to the additional stock divestment obligations that the Committee on Armed Services has consistently required of nominees.

I have been concerned, however, about the practical problems that

would arise from Mr. Lynn's past lobbying activities and the legitimate concerns the American people would have if Mr. Lynn made decisions related to the programs for which he lobbied.

I sent a letter to Mr. Lynn on January 26, with a follow-up letter on January 29, asking him to articulate in detail what specific matters would be affected. Mr. Lynn responded on January 30 indicating that he had worked on the DDG-100 surface combatant, the AMRAAM air-to-air missile, the F-15 airborne radar, the Patriot Pure Fleet Program, the Future Imagery Architecture, and the Multiple Kill Vehicle. He provided me with written assurances that he would refrain from participating in any decisions regarding those programs for 1 year if he is confirmed.

I believe these assurances and with ongoing reviews within DOD that encompass rigorous screening Mr. Lynn will endeavor to perform effectively as the Deputy Secretary of Defense.

I am aware, as I mentioned, that he has the support of Secretary Gates, and I obviously consider that to be an endorsement in Mr. Lynn's favor. President Obama, as we all know, signed an Executive order on January 21, 2009, that established a praiseworthy "revolving door ban" that would bar any lobbyist from working for an agency they lobbied within 2 years of an appointment. The Executive order included a provision for granting a public interest waiver, and Mr. Lynn was given a waiver.

It is disappointing that President Obama, who pledged continuously throughout the campaign to change the culture of Washington and the influence of lobbyists, then almost immediately chose to nominate several individuals, including Mr. Lynn, who required a waiver.

So after proudly trumpeting a new change and the new rules and regulations, several individuals—and a couple have had to withdraw their nominations—that Mr. Lynn required a waiver or exemption to that policy. Obviously, the American people were promised one thing but delivered another.

My colleague, Senator GRASSLEY, who will be speaking later, sent a letter on January 29 to OMB Director Peter Orszag asking for a justification for the granting of the waiver. I ask unanimous consent that Mr. Orszag's response on February 3 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, February 3, 2009.
Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: Thank you for giving the Administration the chance to address the questions you raise in your letter of January 29, 2009 regarding the granting of a waiver that exempts Mr. William J. Lynn from certain provisions in President Obama's

Executive Order on Ethics Commitments by Executive Branch Personnel (the "Order"). We appreciate your concerns and are glad to have the opportunity to fully explain the decision to grant this waiver, which we strongly believe to be the correct one.

I. BACKGROUND

The President signed the Executive Order on Ethics Commitments by Executive Branch Personnel on January 21, 2009. The Order includes some of the strictest ethics rules ever imposed on executive branch personnel. In addition to barring appointees from accepting gifts from registered lobbyists, the Order places sharp limitations on individuals traveling back and forth between government service and the private sector, using their government service for personal enrichment at the expense of the public interest.

The Order takes an especially strong stand against lobbyists moving into and out of the executive branch. The Order restricts registered lobbyists who are appointed to an executive agency from participating in any particular matter on which they lobbied within the past two years and from participating in the specific issue area in which that particular matter falls, subject to the waiver provision discussed below. Registered lobbyists are also restricted from seeking or accepting any employment within an executive agency that they lobbied within the past two years.

The Order has been roundly praised by commentators and leading good government advocates as the toughest ever of its kind. To cite just a few, Democracy 21 said that "the new Executive Order contains the toughest and most far reaching revolving door provisions ever adopted," and went on to say that the Order "goes further than any previous action taken by a President to restrict the ability of presidential appointees who serve in the Executive Branch from coming back to lobby the Administration, and also to limit the role of lobbyists coming in to serve in the Administration." The Washington Post reported that experts viewed the Order as "considerably broader than those other presidents imposed," and Meredith McGehee, policy director of the Campaign Legal Center, said in a statement that "[no] two ways about it, the revolving-door provisions in the new executive order issued by President Obama are very tough."

Even the toughest rules, however, need reasonable exceptions. That is why the Order provides that a waiver of these restrictions may be granted in limited circumstances. The waiver may be granted when it is determined "(i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver." Sec. 3(a). The Order goes on to explain that the "public interest" may include, but is not limited to, exigent circumstances relating to national security or to the economy. Sec. 3(b). The Order also instructs the Director of the Office of Management and Budget to consult with the White House Counsel when determining whether a waiver is necessary and appropriate.

Experts have praised the inclusion of a waiver provision in the Order. For example, Norman Ornstein, a Resident Scholar at the American Enterprise Institute stated that: "This tough and commendable new set of ethics provisions goes a long way toward breaking the worst effects of the revolving door. There are many qualified people for the vast majority of government posts. But a tough ethics provision cannot be so tough and rigid that it hurts the country unintentionally. Kudos to President Obama for adding a waiver provision, to be used sparingly

for special cases in the national interest. This is all about appropriate balance, and this new executive order strikes just the right balance."

Similarly, Thomas Mann, Senior Fellow of Governance Studies and the Brookings Institution notes: "The new Obama ethics code is strict and should advance the objective of reducing the purely financial incentives in public service. I applaud another provision of the EO, namely the waiver provision that allows the government to secure the essential services of individuals who might formally be constrained from doing so by the letter of the code. The safeguards built into the waiver provision strike the right balance."

II. RESPONSES TO YOUR QUESTIONS

In considering the waiver for Mr. Lynn so that he might serve as Deputy Secretary of Defense, we believe the right balance has been struck by granting a waiver at the request of the Secretary of Defense to a qualified candidate whose service to the country is critical to our national security. With that in mind, we want to address your specific questions.

First, you asked what criteria were used in determining that Mr. Lynn's waiver was necessary to further "the public interest." As noted above, the Order specifically states that the public interest includes "exigent circumstances relating to national security." These circumstances include the urgent need to have the best-qualified individuals serving at the highest levels of the President's national security team. As Secretary Gates stated with regard to asking the President to nominate Mr. Lynn to be the Deputy Secretary: "I interviewed Bill Lynn; I was very impressed with his credentials; he came with the highest recommendations of a number of people that I respect a lot. And I asked that an exception be made, because I felt that he could play the role of the deputy in a better manner than anybody else that I saw."

Mr. Lynn's qualifications for the Deputy position are well known. Mr. Lynn served as Under Secretary of Defense (Comptroller) under President Clinton, before which he had served as the Director for Program Analysis and Evaluation in the office of the Secretary of Defense. Prior to that, he served as an Assistant to the Secretary of Defense for Budget. High-level experience in managing Pentagon budgetary, finance and procurement functions is extremely rare, and it was particularly important to Mr. Lynn's selection here.

As you are aware, the Department of Defense faces enormous management challenges. During Mr. Lynn's previous tenure at DoD, there were significant efforts to improve financial reporting, including two major initiatives. First, in 1998, DoD adopted for the first time a Financial Management Improvement Plan, which was a strategic framework for improving critical financial systems and feeder systems in the future. Second, the DoD Senior Financial Management Council was reconstituted during 2000 and adopted a comprehensive program management plan in January 2001.

Mr. Lynn was generally credited with putting appropriate managerial emphasis on improving financial reporting. For example, on February 17, 2000, the Deputy Inspector General testified to Congress that "the DoD has seldom, if ever, been so committed to across the board management improvement . . . with continuous management emphasis, th[e] initiatives should dramatically improve the efficiency of DoD support operations over the next several years." DOD IG Report No. D-2000-077 at 4.

Similarly, on May 9, 2000, Jeffrey Steinhoff from the General Accounting Office (now the

Government Accountability Office) testified that "DOD has made genuine progress in many areas throughout the department. . . . We have seen a strong commitment by the DOD Controller and his counterparts in the military services to addressing long-standing, deeply rooted problems." GAO/T-AIMD/NSIAD-00-163 at 2.

This progress could be seen in several areas. For example, when Mr. Lynn took over as Comptroller, DoD could not even generate a list of its finance and accounting systems. GAO/AIMD-97-29 (Jan. 31, 1997). By the time he had left, DoD had identified 167 critical systems, had achieved compliance with federal financial management standards in 19 of those systems, and had a plan to achieve compliance for the balance of its systems by FY 2003. To take another example, under Mr. Lynn's watch, DoD continued its progress in significantly consolidating and streamlining its financial centers and financial systems. Between 1991 and 2000, DoD consolidated 330 accounting and finance locations into 26, and reduced the number of finance and accounting systems from 648 to 190. Accomplishments like these led John Hamre, who was Mr. Lynn's predecessor as Comptroller and who also served as Deputy Secretary, to state that "I don't know anybody who did the job better than Bill Lynn."

Mr. Lynn's experience is not limited to the Pentagon. From 1987 until 1993, Mr. Lynn served on the staff of Senator Edward Kennedy as the legislative counsel for defense and arms control matters and as the Senator's staff representative on the Senate Armed Services Committee. Prior to 1987, he was a senior fellow in the Strategic Concepts Development Center at National Defense University, where he specialized in strategic nuclear forces and arms control issues. He was also on the professional staff of the Institute of Defense Analyses. From 1982 to 1985, he served as the executive director of the Defense Organization Project at the Center for Strategic and International Studies.

In short, Mr. Lynn's executive branch experience, combined with his legislative, think-tank and private sector experience, gives him the precise set of skills that are not only necessary to the job, but are rare in their breadth and depth. That is why former Secretary of Defense William Cohen, who served as Mr. Lynn's supervisor during the Clinton Administration, commented that he has "precisely the kinds of skills required" to serve as the Deputy Secretary. We share both the current and former Secretaries' views that Mr. Lynn's experience and skill set would make him an exceptional Deputy Secretary of Defense.

Second, you asked about the potential for conflicts of interest given Mr. Lynn's past position at Raytheon Company ("Raytheon"). These issues were carefully reviewed as part of the consideration of Mr. Lynn, and we believe that strong safeguards have been erected that address these concerns and allow Mr. Lynn to serve. We note that these arrangements were structured in conformance with the Armed Services Committee's longstanding requirements and practices. These arrangements have also been approved by the Defense Department's ethics official as eliminating potential conflicts and providing for appropriate protective measures.

Specifically, Mr. Lynn will divest his Raytheon stock within 90 days of his appointment, including his shares in the Raytheon Savings and Investment Plan. He also will forfeit all of his restricted stock units that he holds under the 2007-2009 Raytheon Long-Term Performance Plan (LTPP) and the 2008-2010 LTPP, and will divest those shares he holds under the 2006-2008 LTPP within 90 days of their vesting in Feb-

ruary. To ensure there are no conflicts regarding the stock, he will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Raytheon until he has divested the stock, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Further, for a period of one year after his resignation from Raytheon, he will not participate personally and substantially in any particular matter involving specific parties in which Raytheon is a party, unless first authorized to participate, pursuant to 5 C.F.R. §2635.502(d). As an additional precaution, Mr. Lynn has promised not to seek authorization to participate in decisions on any of the six specific programs where he personally lobbied: the DDG-1000 surface combatant, the AMRAAM air-to-air missile, the F-15 airborne radar, the Patriot Pure Fleet program, the Future Imagery Architecture, and the Multiple Kill Vehicle.

Finally, consistent with the customary practice for departing executives of Raytheon, Mr. Lynn will continue to participate in the Raytheon Defined Benefit Plan, which would pay him about \$4,300 monthly beginning on January 1, 2019. In accord with the letter signed by the Chairman and Ranking Member of the Senate Committee on Armed Services dated September 23, 2005, Mr. Lynn has agreed that prior to acting in any particular matter that is likely to have a direct, predictable, and substantial effect on the financial interest of Raytheon, he will consult with his Designated Agency Ethics Official, and will not act in the matter unless that official determines that the interest of the Government in his participation outweighs any appearance of impropriety, and issues a written determination authorizing his participation. Mr. Lynn understands that such an authorization does not constitute a waiver of 18 U.S.C. § 208 and does not affect the applicability of that section.

Under the circumstances, we believe this arrangement accomplishes the twin goals of enforcing tough ethical standards that protect the public interest, while also assuring that the nation is not deprived of a talented and badly-needed public servant to assist with the defense of our nation.

Third, you ask about the process for selecting Mr. Lynn. We can assure you that the selection of Mr. Lynn came at the end of an extensive process that resulted in a consensus opinion that Mr. Lynn was the best-qualified candidate for this job. Multiple candidates were considered and interviewed over the course of what was a long and rigorous review. Ultimately, though, this is a position for which there is a short list of truly qualified applicants who have the kind of experience we detailed earlier in response to your first question. Taking into account all of the factors, including the concerns raised in your letter, the President and Secretary Gates felt that Mr. Lynn was the best person for the job.

Fourth and finally, you have asked whether Mr. Lynn's ability to perform his job will be impaired by any necessary recusals. We do not believe the ethics compliance process described above will hinder Mr. Lynn from doing his job. The process strikes a reasonable balance under the circumstances. It waives the need for Mr. Lynn to recuse himself from issues that would otherwise be implicated by paragraphs 2 and 3 of the ethics pledge, but still requires him to follow the remainder of the Order, including the revolving door exit provisions and the gift ban, as well as the other restrictions detailed in this letter.

Again, thank you for this opportunity to address these issues. As the Ethics Executive

Order and the other Orders and Presidential Memoranda signed on the same day reflect, President Obama and all of us in the Executive Office of the President are committed to running a highly transparent and accountable administration. We look forward to working with you on these issues and on government reform issues more broadly.

Sincerely,

PETER R. ORSZAG,
Director, Office of
Management and
Budget.

GREGORY B. CRAIG,
Counsel to the Presi-
dent.

Mr. McCAIN. With respect to the waiver, Mr. Orszag stated:

The selection of Mr. Lynn came at the end of an extensive process that resulted in a consensus opinion that Mr. Lynn was the best qualified candidate for the job.

He went on to say:

Mr. Lynn's executive branch experience, combined with his legislative, think tank and private sector experience—

As you note, he did not mention a managerial role that he might have had in his career—

gives him the precise set of skills that are not only necessary to do the job, but are rare in their breadth and depth.

I hope Mr. Lynn will be a rare exception to the new rule—you know, one of the things I had hoped would happen because of the deep disapproval the American people have in the way we do business is this kind of cycle of lobbyists to executive branch, to legislative branch, to lobbyists. It goes on in this town with enormous frequency and has led to scandals, indictments, and convictions of former staff members, former Members of Congress, and former members of the executive branch. I had hoped that somewhere in America there would be someone who had the experience and knowledge and background in running what probably, I believe, is the largest organization in the world, the Department of Defense, rather than again having to go inside the beltway.

But as I mentioned, elections have consequences. The President has designated Mr. Lynn and others to positions which are in violation of the much heralded Executive order he made concerning not having lobbyists serve in Government.

So I will give him at least, in my opinion, my vote, the benefit of the doubt, and will vote in favor of Mr. Lynn's nomination.

He responded to, albeit belatedly, the questions I submitted to him. I wish him well. We face enormous challenges both in the way the Department of Defense operates, the acquisition programs—and many of them are completely out of control, with cost overruns that are staggering—to a lack of efficiency in a number of areas.

I not only wish Mr. Lynn well, but I look forward to working with him as we do whatever we can to defend this Nation's vital national security interests as well as manage the functions of a bureaucracy which, in all candor, has

defied sound management under both Republican and Democratic administrations.

I know Senator COBURN and Senator GRASSLEY will be over later on. I am confident that Mr. Lynn's nomination will be voted out overwhelmingly by the Senate. I hope Mr. Lynn will do well in his new position of responsibility. I pledge to work with him as much as possible, as I have done with Secretaries of Defense and Deputy Secretaries of Defense in Republican and Democratic administrations.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I wanted to thank Senator McCAIN for his support. It is exceedingly important, and his very thoughtful statement makes a real contribution to the debate.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I come to the floor to raise questions about whether Mr. Lynn ought to be Deputy Secretary of Defense. I do it with the normal courtesy, that a President ought to be able to name people to his team, and I do it based upon two questions: One, the use of the waiver for him to be in this position contrary to the Executive order of President Obama; and, secondly, to raise questions about his activity as chief financial officer in the second Clinton administration, and now coming to be Deputy Secretary of Defense. I will try to lay this out as best I can with documentation.

I will not be able nor do I need to document the first consideration on the waiver. I wanted to express views on it.

I thought I had seen the last of Mr. Lynn when President George W. Bush first took office. I was dead wrong. So I had to send my staff out to where the Senate buries old skeletons. It is the Records Center out in Maryland, the scenic countryside about 20 miles from the Capitol. There I had my staff dig up the remains of what came to be known, and what I came to know about Mr. Lynn's activities as chief financial officer about 10 years ago.

I would give a little bit of word of advice to my colleagues, archival of your materials. I found that political nominees, good and bad, come back like Australian boomerangs. Some take longer than others to return, but eventually you will see them again.

Mr. Lynn is currently employed as senior vice president, government operations, of a major defense contractor, Raytheon. Until June 2008, Mr. Lynn

was registered as Raytheon's principal lobbyist to the Department of Defense.

I have serious questions about the nomination. My first area of concern is that Mr. Lynn does not appear to meet President Obama's strict new ethical standards for executive branch appointees. Those standards were laid down in an Executive order of January 21, 2009.

It is important for me to say what ethics means to me. Everyone has a different idea as to what ethics represents. This is a complicated issue, and I don't want there to be any confusion about this word or principle. The Merriam Webster dictionary defines the word "ethics," one, as the discipline dealing with what is good and bad, with moral duty and obligation. This definition is very clear, but I want to go a step further to say that, to me, ethics are very uncomplicated principles of life. Simply put, when faced with tough choices or decisions, we must always do what is true and correct.

Throughout the Presidential campaign, candidate Barack Obama repeatedly promised to close the revolving door and change the political culture in Washington. This was one of his top priorities. Consistent with those promises, within 24 hours of being sworn in, he signed the Executive order that set new ethical standards in stone. Under the "revolving door ban" section of those rules, Mr. Lynn should have been barred from serving as Deputy Secretary of Defense until July 2011. I understand Mr. Lynn has been given a special order by the administration to further the public interest.

According to a letter I have received from OMB Director Peter Orszag of February 3, 2009—and I have it here if anybody is interested in reading it. Senator LEVIN has already had this letter printed in the RECORD.

According to this letter from OMB Director Peter Orszag of February 3, 2009, Mr. Lynn's waiver was based on "exigent circumstances relating to national security."

Director Orszag stated:

Mr. Lynn is uniquely qualified for this position and is urgently needed to serve on the President's national security team.

Mr. Orszag was responding to my letter of January 29, 2009, asking for the justification of the waiver.

I ask unanimous consent to have that letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, January 29, 2009.
Hon. PETER ORSZAG,
Director, Office of Management and Budget,
Washington, DC.

DEAR DIRECTOR ORSZAG: I write today to express my concerns with the recent decision to grant a waiver for Mr. William J. Lynn, exempting him from the strict new ethics rules outlined in President Obama's Executive Order titled "Ethics Commitments by Executive Branch Personnel," signed on January 21, 2009.

Mr. Lynn has been nominated by the President to serve as the Deputy Secretary of Defense. He is currently employed as a senior vice president at a major Department of Defense (DOD) contractor—Raytheon Company. Until very recently, he was also registered as Raytheon's principal lobbyist to the DOD.

Throughout the presidential campaign, President Obama repeatedly promised the American voters that he would "close the revolving door" in order to greatly limit the role of lobbyists in his administration. He warned lobbyists, they "won't find a job in my White House" and [lobbyists] "will not run my White House, and they will not drown out the voices of the American people." He also stated: "If you are a lobbyist entering my administration, you will not be able to work on matters you lobbied on or in the agencies you lobbied during the previous two years [emphasis added]." Further, President Obama explained why it was important to close the revolving door: "Lobbyists spend millions of dollars to get their way. The status quo sets in. . . . They use their money and influence to stop us from reforming [government policies]". He added, ". . . together, we will tell the Washington lobbyists that their days of setting the agenda are over."

President Obama's message was crystal clear: allowing lobbyists to pass freely through the revolving door was simply not in the public interest. He espoused that lobbyists in government "are a problem" because they block needed reforms—reforms that Mr. Obama promised to the American people.

President Obama's promises to "close the revolving door" seemed to be a top priority. He meant what he said. He kept his promise. In fact, within 24 hours of being sworn in, President Obama signed a new Executive Order titled, "Ethics Commitments by Executive Branch Personnel" to cement his campaign pledge into an official order. Paragraphs two and three of Section One—entitled "Revolving Door Ban"—appeared to solidify President Obama's pledge to "close the revolving door."

However, exactly two days after signing the Executive Order, you exercised authority delegated to you under Section 3 of the Executive Order and issued a waiver to Mr. Lynn, which effectively gutted the ethical heart of the President's "Revolving Door Ban." I find it difficult to reconcile Mr. Lynn's nomination to be the Deputy Secretary of Defense with the purpose and intent of the Executive Order.

Mr. Lynn was a registered Raytheon lobbyist for six years. His lobbying reports clearly indicate that he lobbied extensively on a very broad range of DOD programs and issues in both the House and Senate and at the Department of Defense. If confirmed, Mr. Lynn would become the top operations manager in the Pentagon. He would be the final approval authority on most—if not all—contract, program and budget decisions. Surely, a number of Raytheon issues would come across his desk. Mr. Lynn's conflict of interest has been characterized by some as an "impossible conflict." The Chairman of the Armed Services Committee, Senator LEVIN, has stated that Mr. Lynn will have to recuse himself from those decisions for one year. Since Raytheon is a big defense contractor, those recusal requirements could limit Mr. Lynn's effectiveness as Deputy Secretary of Defense.

Based upon President Obama's statements made during the presidential campaign and leading up to and following the signing of the Executive Order, I simply cannot comprehend how this particular lobbyist could be nominated to fill such a key position at DOD overseeing procurement matters, much less be granted a waiver from the ethical limitations listed in the Executive Order.

Additionally, I have serious questions about the message that this waiver sends to other lobbyists seeking employment in President Obama's administration. Despite strong language limiting the role of lobbyists in the Executive Order, it appears to me that Mr. Lynn's nomination and the waiver granted to him leaves "the barn door wide open" for other potential nominees with lobbying backgrounds to circumvent the Executive Order. This is a giant loophole that places the burden of granting waivers strictly with the Director of the Office of Management and Budget (OMB). As such, I believe a detailed explanation of the reason for granting the waiver is warranted in order to ensure that the granting of future waivers is done in a fully transparent manner and given the sunshine such an important decision deserves.

The waiver provision in the Executive Order provides that the OMB Director may grant a waiver for two reasons, (1) "that the literal application of the restriction is inconsistent with the purposes of the restriction" or (2) "that it is in the public interest to grant the waiver". These provisions are general and provide wide latitude in determining when a waiver is applicable. For instance, in Mr. Lynn's case, the waiver simply states: "After consultation with Counsel to the President, I hereby waive the requirements of Paragraphs 2 and 3 of the Ethics Pledge of Mr. William Lynn. I have determined that it is *in the public interest* [emphasis added] to grant the waiver given Mr. Lynn's qualifications for his position and the current national security situation. I understand that Mr. Lynn will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules."

While I am glad to see that the waiver does not appear to fully circumvent the Executive Order or other existing government ethics rules, the broad language used in determining that the waiver is in the "public interest" is a concern. Little detail is provided as to why the waiver is necessary. Only general criteria used in the analysis and justification for the waiver are given. Accordingly, I strongly urge OMB to publicly set forth a list of criteria utilized to examine whether a waiver would be in "the public interest." Further, OMB should also publicly set forth criteria examined to determine when "literal application of the restriction is inconsistent with the purposes of the restriction." By making these criteria public, it will go a long way toward making OMB decisions transparent and providing the American people with a full accounting of why waivers to the Executive Order are necessary. I strongly encourage OMB to do this as soon as possible to ensure those decisions do not merely become an arbitrary basis to circumvent the Executive Order.

Additionally, I respectfully request that OMB provide responses to the following questions:

(1) What criteria did OMB use to determine that Mr. Lynn's waiver was necessary to further "the public interest"?

(2) Does OMB believe there are no inherent conflicts of interest to have Mr. Lynn serve as the Deputy Secretary of Defense overseeing procurement from a company he formerly lobbied for? If not, why not?

(3) Given President Obama's position on lobbyists serving in government positions, did anyone in OMB ask the President or his Counsel to consider whether other candidates for the position would be better qualified before granting the Lynn waiver?

(4) Does OMB believe Mr. Lynn's requirement that he recuse himself in certain instances under provisions of the Executive Order not impacted by the waiver will hinder him from doing the job? Why or why not?

The idea behind President Obama's promise to close the revolving door and bar lobbyists from his administration had one purpose: to protect the public interest. The new rules are designed to protect the taxpayers against wasteful and unnecessary expenditures and policies that might be advocated by "special interests" inside the government. By granting Mr. Lynn's waiver, it appears that OMB has undermined the principal purpose of the new ethics rules—to protect the public interest. It seems like the OMB waiver embraces the lobbyist culture that President Obama promised to change. As Director of OMB, your decisions set the tone for the entire federal bureaucracy. By making the waiver process more public, OMB would send a clear and unambiguous message: transparency is first and foremost when it comes to dealing with ethics rules.

Please bring transparency and accountability to Mr. Lynn's waiver and all future waivers of the Executive Order by providing details about why waivers have been granted and the criteria used to determine them.

I would very much appreciate a prompt answer to my questions.

Sincerely,

CHARLES GRASSLEY,
Ranking Member.

Mr. GRASSLEY. I also understand that President Obama's picks for these key positions should be respected. I said that about President Bush. I have to say it about President Obama. They were elected. They have a certain respect of the people, and that respect should not be questioned by the Senate except under extraordinary circumstances. I think these are extraordinary circumstances, and I am bringing it up.

Mr. Lynn has informed me that he would be divesting his financial stakes in Raytheon in the next 90 days. He also said he would not engage in any Raytheon-related decisions for 1 year at DOD unless he receives a special waiver.

Regrettably, for Mr. Lynn and for American taxpayers, getting rid of conflicts of interest is not as easy as it might sound. The Raytheon Corporation has hundreds of potential contracts and programs with the Department of Defense. As such, the Office of Government Ethics will have to set up a full-time department just to handle Mr. Lynn's conflict-of-interest Raytheon waivers.

On the one hand, I believe the best leaders lead by example. So mean what you say. For that reason, I challenge Mr. Lynn to take control of this ethical debate and demonstrate true leadership on this issue by sticking to the principles set forth by President Obama's Executive order on ethics commitments by executive branch personnel. Special waivers and exemptions undermine the basic principle of good government.

Changing the rules as you go along tends to foster a basic sense of distrust of the Government of all Americans. We all know that is a problem. We have to be cautious to make sure we don't make the situation worse. Why make rules if you know you are going to break them? How can gutting the ethical heart of the new ethics rule be in

the public interest when those very same rules were created in the first place in the public interest?

Even the best qualified nominees with the highest recommendation should recognize when serving in his or her post would not be in the public interest. I believe the American people expect nominees to be true and honest. Given his chosen career path, Mr. Lynn should know he does not comply with the spirit or intent of the Executive order on ethics.

If he is seriously devoted to serving his country and this President, Mr. Lynn should consider withdrawing his nomination and ask to be reconsidered when he is within the ethics “revolving door” principles laid down by my President, Mr. Obama. Then he would come back in 2 years to seek such appointment. This country will always need good leaders who lead by example. By doing this, he would set the standard of excellence for all other nominees to follow. It would restore integrity and credibility to President Obama’s new ethics rules. As it stands now, unfortunately, the Lynn nomination is rolling down a very low road at high speed. By setting the new rules aside for the first top-level appointee to come down the pike, President Obama and his administration appear to embrace the very same culture President Obama promised to change.

None of us knows for sure whether Mr. Lynn’s nomination is truly in the public interest. We can only hope it is. In time, we will find out.

What is going to take me longest to explain is documentation of some activity of Mr. Lynn when he was Chief Financial Officer and how that fits into some questions I have about the position to which he was nominated.

My second area of concern pertains to Mr. Lynn’s financial management record at the Pentagon. Mr. Lynn served as Chief Financial Officer at the Department of Defense from November 1997 through 2000. I first came to know Mr. Lynn in 1998, after he was appointed to the position. Between June 1997 and July 1998—1 month, approximately—I conducted an in-depth investigation of internal financial controls at the Department of Defense. I was testing basically internal controls within the Department. I reviewed about 200 financial transactions from Pentagon offices where the fraud had occurred. We examined purchase orders, contracts, invoices, delivery verifications or receipts, and, finally, we examined final payments. We even checked to see if remit addresses were correct. In short, we looked at the whole ball of wax.

The results of this investigation were presented in a report in September 1998. This is a report my staff and other people put together. The report concluded, in September 1998, involving the Chief Financial Officer and/or things under his command or jurisdiction:

Internal controls at the Department of Defense were weak or nonexistent.

The Government Accountability Office, then called the General Accounting Office, concurred with my assessment.

Our investigations found that not one of the accounts payable files examined was 100 percent up to snuff. I was alarmed to find they all had either minor or major accounting deficiencies. If the Department of Defense had followed standard accounting practices, none of the bills should have been paid. Unfortunately, all went out the payment door.

The most glaring and persistent shortcoming observed was the near total absence of valid receiving reports in the accounts examined at the Defense Finance and Accounting Service Center in Denver, CO. A receiving report is one of the most important internal control devices. They provide written verification that the goods and services billed on an invoice were received and matched with what was ordered. In all the files examined, we found only 6 out of 200 genuine receiving reports, or what they call DD-250 forms. The rest of the files contained none. Of the six receiving reports found, all were either invalid or incorrect.

We also noticed gaping holes in another key control mechanism, remit addresses. A remit address is important because it is at the end of the money trail, where the money goes. The review found zero control over remit addresses. A total of 286 technicians in the Dallas center had authority to alter remit addresses. This was a violation of another basic internal control principle—separation of duties. A person responsible for paying bills should never be allowed to change a remit address.

On September 23, 1998, I met with Mr. Lynn to discuss the findings of my investigation. I provided him with a draft of the report. I asked him to review it and provide comment. In his response, dated 5 days later, September 28, 1998, Mr. Lynn did not challenge the findings in this report. So we have this report I have been referring to, and I asked Mr. Lynn for comment on that report. I have his letter here not challenging the findings.

I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNDER SECRETARY OF DEFENSE,
Washington, DC, September 28, 1998.
Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: At our meeting of September 23, 1998, you requested that I review and comment on the “Joint Review of Internal Controls at Department of Defense” draft report dated September 21, 1998.

I am very troubled by the problems cited in this report, as well as the related General Accounting Office (GAO) report. Effective internal controls are essential to the detection and prevention of fraudulent activity in our vendor payment operations. Without question, the Krenick and Miller fraud cases,

which are at the core of both reports, indicate that there are unacceptable weaknesses in our internal control programs. Although both individuals were caught and convicted, and funds were recovered, we must ensure that the appropriate actions are taken to prevent further abuses. Let me briefly describe for you the measures that the Defense Finance and Accounting Service (DFAS) is taking to improve internal management controls.

First, we are taking steps to ensure that the vendor pay process establishes positive control over payment-related information. An important step in this regard is to tighten controls over remittance addresses through use of a Central Contractor Registration database maintained by the acquisition community. Eliminating the ability of personnel in the paying offices to change the addresses to which payments are sent will correct a critical weakness that was exploited in the fraud cases cited.

Second, to reinforce the principle that there must be a strong separation of responsibilities for providing and verifying payment information, we are strengthening the processes that preclude a single individual from controlling multiple critical portions of the payment process. In particular, pursuant to a GAO recommendation, DFAS is reducing by at least half the number of employees who have the highest level of access to the Integrated Accounts Payment System.

Third, a critical internal control is the positive check of payment information with accounting data prior to disbursement. To ensure the effectiveness of this control, we will make systems changes to eliminate the ability of a single individual to have concurrent access to both the vendor payment system and the accounting system.

No internal control system will work if it is not rigorously adhered to throughout the organization. During August of this year, a top to bottom review of the various vendor pay operations was accomplished at each DFAS center and operating location. This review concentrated on identifying weaknesses in the application of these controls and business practices. At the same time, DFAS has conducted a stand down of all vendor pay operations to provide formal training in internal controls and fraud awareness. Finally, earlier this month, I met personally with all of the directors of the DFAS centers and operating locations to stress the need to strengthen our management controls.

To ensure a more permanent senior level oversight of internal controls, DFAS has established a separate organization which reports directly to the Director’s office. The mission of this organization will be internal review, fraud prevention, fraud detection, and audit follow-up. One of the primary functions of this office is to track and ensure that accepted recommendations from existing fraud cases, GAO audits, along with other internal and external reviews and reports are implemented. This unit will be operational within the next 30 days.

In closing, Senator, I want you to know that I place the highest priority on ensuring that we have the best possible protections against fraud and wrongful payments. We have more to do, but I believe that we have made a strong start in responding to the lessons of the Miller and Krenick cases. I have conveyed these thoughts to Senator Durbin as well.

Sincerely,

WILLIAM J. LYNN.

Mr. GRASSLEY. In this letter, Mr. Lynn appeared to agree with all of my findings and recommendations 100 percent. That is a conclusion I make. The letter will be in the RECORD, so Members can read it for themselves. He said

that he was "very troubled" by every one of the control weaknesses cited in the report.

Mr. Lynn further stated:

There are unacceptable weaknesses in our internal control programs.

He promised me he would be taking aggressive corrective action to improve and tighten controls. He concluded by saying:

I want you to know that I place the highest priority on ensuring that we have the best possible protections against fraud and wrongful payments.

I also shared my concerns with Secretary of Defense Bill Cohen in a letter dated October 5, 1998. In his response on November 16, 1998—and I have that response from Secretary Cohen here—he offered identical assurances.

I ask unanimous consent to have that letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 5, 1998.
Hon. WILLIAM S. COHEN,
Secretary of Defense, Pentagon,
Washington, DC.

DEAR BILL, I am writing to follow up on my recent Subcommittee hearing that examined the results of the Joint Review of Internal Controls at the Department of Defense.

First, I would like to extend my sincere appreciation to the Department of Defense (DOD) for excellent cooperation and support throughout the Joint Review of Internal Controls. The person who is most responsible for energizing this project is Mr. Bob Hale, Assistant Secretary of the Air Force for Financial Management and Comptroller. We first met on June 27, 1997 to lay the ground work for the project. At that meeting, Mr. Hale agreed—with the full backing of the Secretary of the Air Force—that this would be a joint review between his office and my Subcommittee on Administrative Oversight and the Courts. As part of this arrangement, Mr. A. Ernest Fitzgerald, Management Systems Deputy of the Air Force, was authorized to participate. Mr. Fitzgerald was a key asset, since internal controls are one of his primary areas of responsibility. The "jointness" of this project contributed greatly to its success. Despite some rough spots, this approach could serve as a model for future cooperative efforts. Due largely to Mr. Fitzgerald's active participation, the department directed some corrective action as problems were being discovered and documented.

Second, I have the distinct impression that no one in the department takes much exception to the findings and recommendations contained in either the Joint Staff Report or the accompanying reports issued by the General Accounting Office. The attached letter from the Under Secretary of Defense, Mr. Bill Lynn, is testimony to that fact. He admits that he is "very troubled" by the control weaknesses that were uncovered by the Joint Review and is taking aggressive corrective action. Those efforts appear to be focused in one critical area—tightening controls over the process for placing "remittance addresses" on checks and electronic fund transfers. I am encouraged by Mr. Lynn's positive attitude and his determination to address these problems in meaningful ways. However, my long experience with the department causes me to feel some skepticism. In the past, I have found wide dis-

connects between what is promised by senior DOD officials and what is really done. I hope you will personally make sure that Mr. Lynn and other responsible officials fix this terrible problem.

I intend to follow up until I feel that the taxpayers' money is adequately protected.

Third, as Mr. Lynn said, he was "very troubled" by the problems cited in the reports. The Joint Staff Report, for example, states that the control environment within the Defense Finance and Accounting Service (DFAS) is characterized by "fraud and deceit"—to use the exact words of a senior DFAS official. Between late 1995 and early 1997, there were repeated reports and allegations of fraudulent activity in DFAS—particularly at the OPLOC at Dayton, Ohio. In at least three instances, the Director of the Denver center, Mr. John Nabil, ordered the Director of Internal Review, LTC Boyle, to investigate. In each case, LTC Boyle confirmed the existence of fraudulent activity within DFAS. Mr. Nabil even signed a memorandum (attached) on September 30, 1996 that substantiates the existence of criminal activity within his organization. Yet every one of these "red warning flags" was ignored, and DFAS management failed to report suspected violations of 18 U.S.C. 1001 and other laws to the proper authorities—as required by law. The end result of this mismanagement was costly to the taxpayers. Embezzlers like SSGT Miller—and certainly others—were allowed to tap into the DOD money pipe—unrestricted—and steal huge sums of money—undetected. Eventually, an employee at Dayton blew the whistle and called the law directly. Maybe those persons who raised red flags at Dayton deserve awards?

In conclusion, I don't believe that the problems at the Dayton OPLOC are an isolated case. I think they are part of a general pattern of fraud and abuse within DFAS. The Joint Staff Report uncovered evidence of similar kinds of fraudulent activities at the Denver center in 1997 and 1998. I intend to refer this matter and other related matters to investigative and audit agencies for further investigation.

Bill, someone needs to be held accountable for what happened at the Dayton OPLOC and for what appears to be happening at the Denver center today. Who is responsible? Without some accountability, Mr. Lynn's promises will, in fact, come to nothing. Please let me know what you decide to do.

Sincerely,
CHARLES E. GRASSLEY, Chairman,
Subcommittee on Administrative
Oversight and the Courts.

Attachment.

THE SECRETARY OF DEFENSE,
Washington, DC, November 16, 1998.
Hon. CHARLES GRASSLEY,
Chairman, Subcommittee on Administrative
Oversight and the Courts, U.S. Senate,
Washington, DC.

DEAR CHUCK: This is in response to your recent letter following your Subcommittee hearing regarding internal controls at the Department of Defense (DoD). Be assured we take this matter very seriously. I know my Comptroller, Mr. Bill Lynn, has discussed with you measures the Defense Finance and Accounting Service (DFAS) is taking to improve internal management controls.

Your letter made specific mention of the DFAS Denver Center in Colorado, and the fraud case at its subsidiary office in Dayton, Ohio. Even though the perpetrator at Dayton was caught and convicted, the case indicates weaknesses in internal management controls that must be remedied. Toward that end, DFAS has implemented a number of very specific, system-oriented improvements to strengthen existing controls, establish new

controls, and ensure that published procedures are followed. In addition, we have instituted an extensive, in-depth internal review of the entire Denver Center network. DFAS also established a separate office to strengthen internal controls and ensure compliance at all levels.

DFAS, as an organization, is 7 years old and is composed of approximately 20,000 personnel located in 17 states. We should acknowledge the dedicated public servants who go out of their way every day to ensure that the taxpayers' money is protected. Bill Lynn and I will help them in every way we can to make sure that the suggestions for improvement, which have been presented in the various reports, hearings, and meetings, are evaluated and implemented where necessary.

Chuck, you and I share a common interest in protecting scarce financial resources, while supporting the great men and women of our armed forces. The hard work by you and your staff has assisted significantly in the progress we have made. We will continue to work to improve our financial management.

Sincerely,

BILL.

Mr. GRASSLEY. While Secretary Cohen and Chief Financial Officer Lynn, the nominee now under consideration, both assured me over and over that they were taking steps to tighten internal controls—I am shocked to say this—they were already quietly moving in the opposite direction. They were busy pushing other policies to weaken and undermine internal financial controls.

So I want to get into that. In 1998, when Mr. Lynn was chief financial officer, something we call pay-and-chase was the Pentagon lingo used to describe the Department of Defense vendor paying process. With pay-and-chase, the Pentagon paid bills under \$2,500 first, and then worried about chasing down receipts later. You get it—pay-and-chase: pay without worrying about what you are buying or the invoice and then, after you pay, go out and find some justification for the payment.

Ever wonder why there is waste in the Defense Department? Sometimes receipts were found under pay-and-chase, sometimes not. Nobody seems to care either way. This is how the Department of Defense ended up with not \$2,500 here and there but with billions of dollars in what they refer to as unmatched disbursements—another big control problem with which chief financial officer Bill Lynn was thoroughly familiar.

Pay-and-chase accurately characterized the core DFAS problem I witnessed during my review of internal controls from 1997 through 1998. I saw pay-and-chase up close and personal. Pay-and-chase was not an official policy; it was an unofficial policy. It was actively practiced but not authorized by any Government regulation or laws.

As I understand it, pay-and-chase was supposed to end in October 1997

when the Department of Defense general counsel determined it was illegal. But it did not stop. Secretary Cohen wanted to, instead, legalize pay-and-chase and make it the law of the land.

On February 2, 1998, when Mr. Lynn was chief financial officer, Secretary Cohen asked the Senate for legal authority to pay bills without receipt with no dollar limit. Now, that is pretty high up in the Department that you are deciding that we ought to have a policy to pay bills without receipts, and to do it not with a \$2,500 limit but with no dollar limit. This proposal was embodied in section 401 of the Defense Reform Initiative. It was touted—can you believe it—as a measure to “streamline” the DOD payment process.

Fortunately, the Congress rejected this absurd and misguided legislative proposal. But you know what the thinking was at the highest levels of the Defense Department. So I discussed Secretary Cohen’s pay-and-chase proposal in great detail in a speech on the floor of this body on May 5, 1998. You will find that on pages S4247 through S4250. I placed, at that time, Secretary Cohen’s request in the RECORD.

So what was Mr. Lynn’s position on section 401 of Secretary Cohen’s Defense Reform Initiative? I asked him this question on February 5, 2009. This is what he said: He could not “recall” taking a position on it but agreed it was wrong “to pay bills without a receipt.”

This seems like a real cop-out. I responded this way:

In February 1998, you had been [chief financial officer] for several months. This issue fell directly under your purview. How could you possibly avoid taking a position on an issue the Secretary of Defense was urging the Senate to adopt? As the Chief DOD Lobbyist for Raytheon, you say it was wrong. As the DOD [chief financial officer] back in 1998, why didn’t you know it was wrong and speak up about it [at that time]?

My records appear to indicate that pay-and-chase continued as the unofficial policy through 1998 and eventually evolved into another more troublesome policy known as “straight pay.” This policy was even more dangerous for the taxpayers. The straight pay policy had much higher dollar thresholds than the old pay-and-chase plan. Believe it or not, it was a whopping half million dollars.

Straight pay was Mr. Bill Lynn’s baby. This policy was personally approved by Mr. Lynn in a memorandum on December 17, 1998, and reauthorized in another memo on March 9, 1999, and possibly again later. This is that document:

Memorandum for Director, Defense Finance and Accounting Service
Subject: Prevalidation Threshold

In a memorandum dated December 17, 1998, I authorized a temporary \$500,000 threshold on new contracts paid by the Mechanization of Contract Administration Services (MOCAS) system. This temporary authorization is scheduled to expire on March 22, 1999. However, while the Defense Finance and Ac-

counting Service Columbus Center has made significant improvements in the backlog of payments, we are not at the point where we can lower the threshold to \$2,500. Therefore, the temporary threshold of \$500,000 is extended for another 90 days for Columbus MOCAS payments only.

I request you continue to provide me with a monthly report showing progress in resolving the current prevalidation process delays. The monthly report should include your plan to lower the threshold at the appropriate pace to reach the goal of total prevalidation by July 2000. As we improve our systems capabilities, we will continue to aggressively reduce the threshold until all payments are prevalidated.

WILLIAM J. LYNN.

On January 19, 1999, I addressed a letter to Mr. Lynn expressing grave concern about straight pay and requesting verification of certain facts surrounding this policy. The facts in question were provided to me anonymously by a DFAS employee. I wanted Mr. Lynn to check out all of this for me.

Prior to the implementation of straight pay, the DFAS center in Colombia, OH, had a prevalidation policy that required that all disbursements over \$2,500 be matched with obligations or contracts prior to payment, which is the way it ought to be—well, no; it ought to be for every dollar, but at least over \$2,500 it had to be matched. When an invoice was submitted to the center for payment, a DFAS technician searched the database for supporting obligations and receipts.

If supporting documentation could not be found, a red warning flag was supposedly run up the pole. Accounting due diligence was needed to confirm if this particular invoice was valid, a duplicate, or fraudulent payment. In theory, these red flags had to be resolved. As you would expect, in practice, that did not always happen.

Mr. Lynn’s straight pay policy raised the prevalidation threshold by \$497,500, up to finally a half million dollars. This allowed the DFAS technicians to make payments up to a half million dollars without a valid obligation. To cover these payments, technicians were ordered to create a bogus account known as negative unliquidated obligations. Now, that is a Harvard word, isn’t it. But they called it NULO for short, the acronym. So we have these negative unobligated obligations. Bills were then paid from these bogus NULO accounts which carried negative balances.

Mr. Lynn’s policy gave DFAS accountants up to 6 months to link the payments to valid supporting obligations in the accounting records. If valid supporting documentations could not be found in that timeframe, then the center was authorized to cover the payments with other available funds with no further investigation. This is how the unmatched disbursements of the Department of Defense were born and eventually built into the billions of dollars.

In my January 19, 1999, letter to Mr. Lynn, I drew some comparisons between straight pay and the case of Air

Force SSgt Robert L. Miller. Now, Robert L. Miller may not be a very famous name to most people around here, and he would not be to me if I had not run into him through this investigation. So I wanted to draw a comparison between the straight pay policy and the case of this Air Force staff sergeant.

I think Mr. Lynn and others in the Pentagon at the time remember the Miller case, and remember it all too well, or at least they did at that time. I examined that case and several others just like it in great detail at a hearing before my Judiciary Subcommittee on Oversight on September 28, 1998.

As chief of vendor pay at a DFAS center, then-Staff Sergeant Miller had pursued his own unlawful versions of straight pay. Miller had full access to the Integrated Accounts Payable System. As such, Miller was able to manipulate Department of Defense systems to create obligations and invoices where none existed and generate nearly \$1 million in allegedly fraudulent payments to his mother and his girlfriend. Miller was not apprehended because internal controls at DFAS were effective, the things that were under the control of Mr. Lynn; he was caught because a coworker blew the whistle on him. She was one of Miller’s subordinates who had allegedly been sexually harassed by him.

At that time, I told Mr. Lynn—the same Mr. Lynn whose confirmation we are considering now—that his straight pay policy appeared to authorize DFAS accountants to do essentially what Staff Sergeant Miller did: create false bookkeeping entries to cover large payments in the absence of valid obligations. DFAS and Miller obviously had different goals, but there was a common denominator, and that common denominator was manipulation of the accounting system.

DFAS payment policies practiced on Mr. Lynn’s watch left the barn door wide open to fraud and outright theft of the taxpayers’ dollars.

The Government Accountability Office, which provided excellent support all the way through my investigation, fully agreed with this assessment.

There was another disturbing facet of the Miller case that I took up with Mr. Lynn. On October 19, 1995, the date that Staff Sergeant Miller became chief of vendor pay at the Dayton center—a position considered far above his rank—he was already under investigation in connection with, one, the alleged disappearance of Government checks at Castle Air Force Base and, two, allegedly directing at least eight fraudulent checks valued at \$50,769 to his mother.

On October 26, 1995, just 1 week after Staff Sergeant Miller became chief of vendor pay at Dayton, an investigating officer at Castle Air Force Base made this recommendation about Miller:

Management should not place SSgt Miller in a position where he is entrusted with funds again . . .

After this report was issued, Miller should have been removed from his position at the Dayton center immediately. But it took 2 years, until June 1997, when Miller was arrested for allegedly stealing the million dollars.

The whole Miller story, of course, is unbelievable.

In view of his problems at Castle Air Force Base, why did the DFAS center place him in charge of vendor pay? Why did DFAS keep him there after an official report indicated he could not be trusted with the money? That makes as much sense as hiring a bank robber to be the bank teller.

On September 18, 1998, I wrote another letter that I have. This is letter No. 9, which I ask unanimous consent be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 18, 1998.
Hon. WILLIAM J. LYNN III,
Comptroller and Chief Financial Officer,
Pentagon, Washington, DC.

DEAR BILL: I am writing to thank you for providing the "Investigation of Major Loss of Funds" at Castle AFB involving Staff Sergeant (SSGT) Robert L. Miller, Jr. and to raise several additional questions.

I am very disturbed by what I found in the investigative report on the disappearance of U.S. Treasury checks at Castle AFB. The very obvious red warning flag raised by this report was totally ignored by management at the Defense Finance and Accounting Service (DFAS).

The report states that "SSGT Miller was negligent in the loss of the two treasury checks entrusted to him." It says: "He breached his duty," and it says "he failed to safeguard his funds." For a military pay agent, that would normally be a death sentence. And if those words didn't ruin SSGT Miller's career in money matters forever, the report's recommendation number one should have done it. The investigating officer recommended that: "Management should not place SSGT Miller in a position where he is entrusted with funds again. . . ." Those are strong words.

The recommendation that SSGT Miller not be trusted with money again was made on October 26, 1995. That recommendation came exactly one week after SSGT Miller was "forced" into a position at the DFAS/Dayton finance center that was far above his rank. A much more senior civilian—Mr. Chuck Tyler—who occupied that position, was summarily removed to make room for SSGT Miller. Although official organizational charts indicate that SSGT Miller was just Chief of the Data Entry Branch, officials familiar with SSGT Miller's operation contend that he was, in fact, Chief of the entire Vendor Pay Department. In that position, he had direct control over billions of dollars in payments. In addition, for unknown reasons, SSGT Miller was given unrestricted access to the check generating system known as the Integrated Accounts Payable System or IAPS. This was a clear violation of internal control procedures. His predecessor—Mr. Tyler—had much more limited access.

On October 19, 1995—the date on which SSGT Miller was "forced" into Mr. Tyler's position, SSGT Miller was under active investigation for the disappearance of a large sum of money at Castle AFB. Unfortunately, his suspicious and improper conduct at Castle was not limited to the two missing Treas-

ury checks. He had also generated at least 8 fraudulent checks worth \$50,769.00, which were addressed to his mother, Ruby J. Miller. Only these facts were apparently not known at the time. Furthermore, on October 19, 1995, he was just a few days away from generating his first fraudulent check at Dayton. This one was for \$12,934.67 and was also addressed to his mother.

All the new information that surfaced in connection with SSGT Miller's court-martial clearly shows that the investigating officer's concerns about SSGT Miller and money were based on sound judgement. SSGT Miller could not be trusted with money again. If the investigating officer's advice had been followed, SSGT Miller's criminal activities could have been brought to a screeching halt in October 1995 instead of June 1997. In November 1995, a trusted employee at the Dayton center, Mr. Otas Horn, even warned Colonel Berger about the dangers of placing SSGT Miller in Mr. Tyler's position with unrestricted access to IAPS. This early warning was followed by repeated reports of criminal conduct at Dayton throughout 1996, including an internal DFAS memo signed by Mr. Nabil, Director of the Denver Center, on September 30, 1996. Most involved fraudulent documents created in SSGT Miller's section. All involved criminal conduct—violations of 18 U.S.C. 1001—as noted in Mr. Nabil's memo. Why didn't DFAS management report this criminal activity to the law as required by every rule in the book?

Bill, I would like to return to the investigating officer's recommendations: "Management should not place SSGT Miller in a position where he is entrusted with funds again. . . ." When this report was issued, SSGT Miller should have been removed from his new position at Dayton—on the spot. Who in SSGT Miller's chain of command at Dayton was responsible for acting on the findings and recommendations in the investigative report? Was it Mr. Nabil? Was it the Commander at Dayton, Colonel Berger? Or was it Captain Brown, SSGT Miller's immediate supervisor? Who at Dayton had knowledge of this report? Who in DFAS management was responsible for totally ignoring this very dangerous red warning flag?

Bill, the responsible person or persons in your organization need to be held accountable for ignoring obvious and repeated warning signals about SSGT Miller's trustworthiness and giving him unrestricted access to your department's money vault.

I respectfully request a response to my questions by September 23, 1998.

Sincerely,
CHARLES E. GRASSLEY, Chairman,
Subcommittee on Administrative
Oversight and the Courts.

Mr. GRASSLEY. I wrote this letter to Mr. Lynn and asked him two questions: Who at Dayton—that means the financial center at Dayton—had knowledge of the Castle Air Force Base report on Miller? Who in the finance center management was responsible for totally ignoring this very dangerous red warning flag? I ended my letter to Mr. Lynn this way:

Bill, the responsible person or persons in your organization need to be held accountable for ignoring obvious and repeated warning signals about SSGT Miller's trustworthiness and giving him unrestricted access to your department's money vault.

I asked for answers to these two questions by September 23, 1998. That would have been 5 days after I wrote the letter. None ever arrived, as far as I know.

When I did not get a prompt response to my January 19 letter to Mr. Lynn on straight pay, I raised those same issues with Secretary Cohen. I did that at a hearing before the Budget Committee on March 2, 1999. This is what Secretary Cohen said at the time:

There is no authorized procedure called Straight Pay.

Now, get that. You have straight pay that people talk about, and you have a Secretary of Defense saying there is no authorized procedure called straight pay.

The process described is not correct and is not authorized.

These answers do not square with the evidence I have tried to lay out.

Then, on March 9, came further explanation from Chief Financial Officer Lynn. He said essentially the same thing but with a slightly different twist:

The Straight Pay policy you refer to in your letter is not used at our Columbus Center. . . .

There are some words left out. It goes on to say:

"Straight Pay," as reported to you, does not exist at the Columbus Center.

This letter No. 10 explains that in great detail, and I ask unanimous consent to have printed in the RECORD letter No. 10.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNDER SECRETARY OF DEFENSE,
Washington, DC, March 9, 1999.
Hon. CHARLES B. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: This is in reply to your recent letter on my decision to raise the prevalidation dollar threshold for payments of contracts paid using the Mechanization of Contract Administration System (MOCAS) at the Defense Finance and Accounting Service (DFAS) Columbus Center.

In the prevalidation plan that we submitted to Congress, we stated we would gradually lower the threshold until all payments were prevalidated by July 2000. We took an aggressive approach in our attempt to reach the goal of 100 percent prevalidation before July 2000. Contracts awarded before FY 1997 are now prevalidated at the current statutory level of \$1,000,000. Since March 1997, we have attempted to prevalidate all contracts above \$2,500 that were issued in FY 1997 and later.

Unfortunately, we could not sustain the new prevalidation level in MOCAS and meet our obligations under the Prompt Payment Act. The imposition of the \$2,500 prevalidation threshold, together with other factors, caused critical delays in our connector payments. In December 1998, after carefully considering the need to reduce our payment backlogs while complying with the Prompt Payment Act, I temporarily raised the prevalidation dollar threshold to \$500,000 for centrally administered contracts paid through MOCAS. I also recently extended this threshold increase until June 1999. However, we still plan to meet our July 2000 goal to prevalidate all payments. We will continue to lower the prevalidation threshold, but at a deliberate pace to achieve our goal

of prevalidating all payments by July 2000 and ensuring compliance with the Prompt Payment Act.

The "Straight Pay" policy you refer to in your letter is not used at our Columbus Center. Before a payment is made in Columbus using MOCAS, the system must have entries that validate a contract exists, an invoice has been presented, and goods or services have been received or accepted. Increasing the prevalidation threshold does not waive the requirement to have these items before a payment is made. In addition, MOCAS does not allow one person to enter all three data elements into the system. I have enclosed a description of the MOCAS payment process. I believe that after you review our contract payment process, you will agree that some critical elements of the process were not provided to you and that "Straight Pay," as reported to you, does not exist at the Columbus Center.

You also expressed concern that with the threshold raised to \$500,000, DFAS experience the same type of fraud in MOCAS that SSgt Miller perpetuated using the Integrated Accounts Payable System (IAPS) in Dayton. The MOCAS payment environment is significantly different from the IAPS environment. The MOCAS system architecture does not permit multiple levels of access. The internal controls built into MOCAS that force separations of functions all but eliminate the possibility of one person creating fraudulent payments.

I am still committed to reaching the goal of total prevalidation by July 2000. As we improve our systems capability, we will combine to aggressively reduce the threshold until all payments are prevalidated. I appreciate your interest and look forward to working with you to improve our operations.

Sincerely,

WILLIAM J. LYNN.

Mr. GRASSLEY. I felt as though then-Secretary Cohen on the one hand and Chief Financial Officer Lynn were trying to convince me that straight pay did not exist. Their statements appear to be, even today, misleading and inaccurate.

Just because I didn't explain the policy exactly right did not mean the policy did not exist. Everything that was coming over the transom at night to me was telling me that I was on the right track.

I responded to the denials this way—and they are in this letter, my letter No. 11. I wish to quote a couple of sentences:

If this statement is indeed accurate—and "Straight Pay" doesn't exist, then why do I have official DFAS documents establishing "Straight Pay Procedures?" Are these documents a fake?

Are these documents I am getting a fake if they come directly from the financial center?

I later discovered another DFAS document, dated March 8, 1999, which states:

Due to concerns over the use of the term "straight pay" and its connotation, we must delete all references to "straight pay" the from the policy....

Now, how does that square with what the Secretary of Defense Cohen told me? How does that square with the exchange I had with Bill Lynn, Chief Financial Officer at that time? Those things are in this document No. 12.

I ask unanimous consent to have document No. 12 printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE FINANCE
AND ACCOUNTING SERVICE,
March 8, 1999.

MEMORANDUM FOR SEE DISTRIBUTION

Subject: Policy for Processing Unmatched Disbursements

Effective November 1, 1999, you were authorized to post unmatched disbursements (UMDs) without posting a negative unliquidated obligation (NULO) offset for transactions meeting criteria described in the attached policy. Due to concerns over the use of the term "straight pay" and its connotation, we must delete all references to "straight pay" from the policy, and clarify that the policy does not create an environment for fraudulent payments. Terms such as unmatched disbursements or direct disbursements were substituted.

Operating location (OPLOC) recommendations to add other categories under paragraph F, "Unmatched Disbursements Which May Be Recorded Without Research, Approval, and NULO Offset," were incorporated. For example, Fund Type K transactions for Deposit/Suspense Accounts and disbursements posted under processing center "Y," etc., were added. The inclusion of these categories did not change the intent or scope of the policy. We also clarified that for disbursements made against obligations recorded as Miscellaneous Obligation Reimbursement Documents (MORD) where the difference exceeds \$3,000, Financial Service Office/Accounting Liaison office (FSO/ALO) approval is not required, but the FSO/ALO should be notified within 4 work days.

The revised policy is attached for your action. OPLOCs will continue to maintain a log on unmatched disbursements requiring FSO/ALO review. Copies of attached Missing Commitment/Obligation form (Atch 1) may be kept in lieu of a log.

We are requesting you to submit another report from the log statistics you gather for UMDs processed between February 1—May 31, 1999. The UMD Report, in Excel 5.0 format, is due to DFAS-DE/ASP on June 11, 1999. Please submit report via cc:mail to address indicated on attached report format. At that time we will decide whether another reporting cycle is necessary.

These procedures were coordinated with the Office of the Assistant Secretary of the Air Force for Financial Management-Air Force Accounting and Finance Office (AFAFO/PMF). If you have any questions, my project officer is Ms. Mirta Valdez, DFAS-DE/ASP, (303) 676-7708 or DSN 926-7708.

SALLY A. SMITH,
Director for Accounting.

Mr. GRASSLEY. I say to my colleagues, is the March 8, 1999, date on this document a coincidence or was this a bureaucratic tactic to suppress, to bury or to rename the policy to conform with the highest level of rhetoric that I heard in March of that year?

Not getting the straight story from the Pentagon, I brought the issue of straight pay to the attention of one of our colleagues now and a colleague back then, Senator INHOFE, who was chairman of the Readiness Subcommittee on Armed Services. My letter to Senator INHOFE is dated April 8, 1999, and I have that letter here as No. 13 document.

I ask unanimous consent to have document No. 13 printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, April 8, 1999.

Hon. JAMES M. INHOFE,
Chairman, Subcommittee on Readiness and
Management Support, Committee on Armed
Services, U.S. Senate, Washington, DC.

DEAR JIM: In view of your upcoming hearing on financial management at the Department of Defense (DOD) along with my continuing interest in these matters, I am submitting several questions bearing on internal control issues for your consideration.

Back on January 19, 1999, I wrote a letter to DOD's Chief Financial Officer (CFO), Mr. Bill Lynn, to verify certain facts pertaining to a policy known as "straight pay." The facts in question were provided anonymously by an employee at the Defense Finance and Accounting Service (DFAS). In a nutshell, this policy authorizes DFAS to make payments up to \$500,000.00 when no corresponding obligation or contract could be located in the database or otherwise identified. When bills are paid in the absence of contracts, how does DFAS know how much money, if any, is owed? As I understand it, this policy was personally approved by Mr. Lynn.

In my mind, this is a very dangerous policy. But it is not only dangerous. It is also misguided, and it may violate the law. It is certainly helping to erode one of the last visible traces of internal controls at DOD, and its continued use will undermine any hope of a "clean" audit opinion on the department's annual financial statements—as required by the Chief Financial Officers Act.

Last year, during my investigation of the breakdown of internal controls at DOD, I learned that Air Force Staff Sergeant (SSGT) Robert L. Miller, Jr. had pursued his own version of "straight pay" while Chief of Vendor Pay at DFAS' Dayton center during 1995–1997. With full access to the Integrated Accounts Payable System, SSGT Miller was able to create obligations, where none existed, and generate nearly a \$1,000,000.00 in fraudulent payments to his mother and girlfriend. Now, Mr. Lynn's "straight pay" policy authorizes DFAS technicians to do exactly what SSGT Miller did—create false bookkeeping entries to cover large payments in the absence of supporting contracts. This policy leaves the door wide open to fraud and mismanagement.

I am attaching a copy of my letter to Mr. Lynn on "straight pay" dated January 19, 1999. Since Mr. Lynn never answered this letter, I had to verify the facts on my own in consultation with the General Accounting Office. According to a March 8, 1999 DFAS memorandum, Mr. Lynn's "straight pay" policy is still in place today, though its name has been changed to avoid any negative connotations. DFAS is concerned that the term "straight pay" may suggest a permissive "environment for fraudulent payments."

I would very much appreciate it if you would place a copy of my letter in the hearing record and raise my enclosed questions on DOD's "straight pay" policy. My questions should be directed to Mr. Lynn.

Again, thank you very much for giving me the opportunity to submit questions for your upcoming hearing on DOD Financial Management problems.

In addition, in the very near future, I expect to be submitting "a legislative reform package" to you and other colleagues for consideration. The rationale for this draft legislation is outlined under the heading "The Need for DOD Financial Reforms" on pages 25 to 29 of the Budget Committee's report on the Concurrent Resolution on the

Budget for FY 2000 (Senate Report No. 106-27).

I look forward to having Mr. Lynn's responses to my questions on "straight pay" and working with you in the future on these matters.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

Mr. GRASSLEY. I told my friend from Oklahoma that I considered straight pay to be "a very dangerous and misguided policy that might violate the law." I also told him about the Miller case heretofore referenced. I urged Senator INHOFE to ask Secretary Cohen and Chief Financial Officer Lynn five questions on straight pay at an upcoming hearing.

Mr. Lynn attempted to clarify the Department of Defense position on straight pay in a letter dated June 18, 1999. That is document No. 14.

I ask unanimous consent to have document No. 14 printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNDER SECRETARY OF DEFENSE,
Washington, DC, June 18, 1999.

Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: This is in reply to your recent letter to the Honorable William S. Cohen, Secretary of Defense, concerning the Department of Defense responses to your questions submitted for the record following a March 2, 1999, hearing before the Senate Budget Committee. Enclosed is the Department's response to your questions.

Sincerely,

WILLIAM J. LYNN.

Enclosure.

RESPONSES TO THE QUESTIONS OF SENATOR
CHARLES E. GRASSLEY

Question. The General Accounting Office (GAO)—in report No. AIMD-99-19—states that Mr. Hamre's policy authorizes the Navy to delay recording obligations in excess of available budget authority for up to five years. The GAO further indicates that the purpose of the policy allowing such delays in recording obligations in the books of account is to avoid a potential over obligation and violation of the Antideficiency Act. Are these two statements accurate and correct?

Answer. The policy referenced in GAO report No. AIMD-99-19 is not intended to and, in fact, in no way does, shield any DoD Component from a violation of the Antideficiency Act. Similarly, in no instance is the policy intended to allow any DoD Component to willingly defer the recording of a known valid obligation in excess of available budget authority.

The Department's policies require that an obligation be established at the time a contract is entered into or a good or service is ordered, and to be recorded within 10 days of the date on which the obligation is incurred. Additionally, prior to making a disbursement, the applicable technician is required to verify that an appropriate contract or other ordering instrument exists, that a government official has verified that the goods or services have been received and that a proper invoice requesting payment has been received. Also, depending on the amount of the payment, the technician may be required to prevalidate an obligation. (Prevalidation is the process of checking to ensure that a matching obligation has been recorded in the accounting records prior to making a dis-

bursement.) Additionally, the technician also is required to identify the proper appropriation to be charged and the accounting office responsible for the related obligation. Further, the disbursement should be matched to the applicable obligation at the time the disbursement is made, if feasible, or as soon thereafter as is feasible.

The GAO report referred to above addresses in-transit disbursements. In-transit disbursements occur when the paying office (the office making the disbursement) is different than the accounting office (the office accounting for the obligation). In such instances, in addition to determining the existence of a contract or ordering document and verifying the receipt of the goods or services before making the payment, and deducting the amount of the payment from the cash balance of the appropriation involved, the paying office also must forward the disbursement information to the accounting office to enable the disbursement to be recorded against the related obligation. (Only the applicable accounting office, and not the paying office, can record a disbursement against its related obligation. Thus, this latter action is required irrespective of whether the disbursement was prevalidated prior to payment.)

Since the amount of in-transit disbursements is deducted from the cash balance of the applicable appropriation at the time of disbursement, the Department can determine if the cash balance of the appropriation involved is positive or negative. Since a negative cash balance is an indication of a potential Antideficiency Act violation, if an appropriation has a negative cash balance, the Defense Finance and Accounting Service is required to stop making any further payments chargeable to the appropriation. Additionally, the DoD Component involved is required to initiate an investigation of a potential Antideficiency Act violation. Except in very rare instances, in-transit disbursements do not result in a negative cash balance in the applicable appropriation. Since the appropriations charged have a positive cash balance that means that amounts disbursed from those appropriations are not in excess of available budget authority.

As stated above, when the paying office is different than the accounting office, the paying office must forward the disbursement information to the accounting office to enable the disbursement to be recorded against the related obligation. During the time that the information is being transmitted from the paying office to the accounting office the information is said to be in-transit, and the disbursement is said to be an in-transit disbursement. Once the information is received by the accounting office, the accounting office attempts to match the disbursement to an obligation, and the disbursement no longer is considered to be an in-transit disbursement. At that point, the disbursement becomes a matched disbursement, an unmatched disbursement or a negative unliquidated obligation.

Over 90 percent of in-transit disbursements are matched to an obligation within 60 days of arriving at the applicable accounting station. However, in some instances the information does not arrive at the applicable accounting office or the information that does arrive is not sufficient to allow the applicable accounting office to attempt to match the disbursement to an obligation. In such circumstances, the accounting office must take additional steps to research and obtain the information required to allow it to attempt to match the disbursement to an obligation.

Until the 1990s, the Department had no policy regarding such research efforts and did not require that obligations be recorded for

unresolved in-transit disbursements. The policy addressed in the referenced GAO report recognized that, consistent with DoD policy, in most instances, obligations are established at the time an applicable contract is entered into or goods or services are ordered. However, in those instances where an accounting office does not receive detailed information on an in-transit disbursement, this lack of detailed information often precludes the accounting office from being able to attempt to identify the disbursement to an obligation. Establishment of a new obligation for such disbursements, in many instances, could result in a duplicate obligation. In order to avoid such duplicate obligations, the Department allows the DoD Components time to conduct additional research. Often, this requires a considerable period of time and involves significant manual research. This is especially so for those in-transit disbursements made by one of the over 300 former paying offices that now have been closed.

Question. If a bill for \$499,999.99 is submitted to the Defense Finance and Accounting Service (DFAS) Columbus Center for payment and the responsible technician is unable to identify a matching obligation, and Mr. Lynn's waiver is used to authorize the payment, exactly how is the payment posted in the books of account? Without a valid, matching obligation, there are just three options: (a) post it to a bogus account; (b) post it to the wrong account; or (c) don't post it. How does DFAS do it?

Answer. In the example described above, the technician at the DFAS Columbus Center would not be required to validate that an obligation was recorded in the official accounting records prior to making the payment because the dollar amount would be below the prevalidation threshold amount in effect at the DFAS Columbus Center. (However, at any DFAS location other than the Columbus Center, this amount would be above the prevalidation threshold amount and the technician would be required to match the proposed disbursement to the applicable obligation prior to making the disbursement.) Although in the above example, the technician at the DFAS Columbus Center would not be required to match the payment to an obligation prior to payment, the technician would be required to determine that the payment otherwise is valid. This would require that the technician verify that an appropriate contract or other ordering instrument exists and that a government official verified that the goods or services were received. Also, the technician would be required to identify the proper appropriation to be charged and the accounting station where the related obligation is recorded. Generally, this information would reside, and could be found, in the payment system at the DFAS Columbus Center.

Irrespective of whether a disbursement is matched to an obligation prior to payment, once a payment is made by the DFAS Columbus Center, the amount of the disbursement would be deducted from the cash balance of the applicable appropriation charged and information concerning the disbursement would be forwarded to the applicable accounting station. When that information arrived at the applicable accounting station, the accounting station would: match the disbursement to the applicable obligation recorded in the accounting system; or if the amount of the disbursement exceeded the amount of the applicable obligation, match the disbursement to the applicable obligation but record a negative unliquidated obligation against the same account for the amount of the difference between the disbursement and the obligation; or if no corresponding obligation record can be found in

the accounting system, treat the disbursement as an unmatched disbursement.

Question. While the DFAS attempts to identify the matching obligation, is the payment placed in the “in-transit” status?

Answer. The Columbus Center, using the Department’s existing finance network, would forward information on the disbursement to the applicable accounting station. That information would be considered to be “in-transit” for the period of time necessary for the information to be forwarded from the Columbus Center to the applicable accounting station. Once the information arrived at the accounting station, the accounting station would match the disbursement to the applicable obligation and the transaction no longer would be considered to be in an in-transit disbursement.

Question. If a valid, matching obligation cannot be found, how is the problem resolved?

Answer. If a valid, matching obligation cannot be found, the disbursement is treated as an unmatched disbursement. In the case of an unmatched disbursement, the applicable accounting station and DoD Component involved are given 180 days to conduct research to identify the matching obligation. If, after the 180-day period, a valid matching obligation cannot be found, the DoD Component involved is required to establish a new obligation for the disbursement.

Mr. GRASSLEY. In his followup letter, Mr. Lynn backed away from his assertion that straight pay did not exist. So they said it didn’t exist, and now you see an assertion backing away from that. While he never used the term “straight pay,” he did not try to disassociate himself from the policy. His description of the policy was generally accurate, though somewhat incomplete.

I raised essentially the same question with Mr. Lynn in a recent letter, dated January 29, 2009, because of his appointment to this position of Deputy Secretary of Defense. Regrettably, he provided essentially the same answers in a letter dated February 3, 2009.

I ask unanimous consent to have printed in the RECORD those two letters, documents 15 and 16.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, January 29, 2009.

MR. WILLIAM J. LYNN,
Senior Vice President, Raytheon Company, Arlington, VA.

DEAR MR. LYNN: I am writing to follow-up on six questions I submitted for the record at your nomination hearing before the Senate Armed Services Committee earlier this month.

Two of my questions pertain to a potential conflict of interest flowing from your status as a registered lobbyist with the Raytheon Company. Four of the questions pertain to your efforts as the Department of Defense (DOD) Chief Financial Officer (CFO) to bring the department into compliance with the CFO Act. I am eagerly waiting for your answers to my six questions.

Since submitting those questions for the record, I have had an opportunity to retrieve and examine certain archived files on DOD financial management issues that I investigated in the late 1990’s while you were the DOD CFO and Comptroller. I came across two files of particular interest as follows: 1)

“Straight Pay;” and 2) “Pay and Chase.” These are DOD payment policies that were either attributed to you and/or adopted while you were the department’s Chief Financial Officer in charge of such matters. My follow-up questions pertain to these matters.

In 1998, when you were CFO, “Pay and Chase” was a term used to describe DOD vendor payment policy. With “Pay and Chase,” the Pentagon paid bills first and worried about tracking down the receipts later. Sometimes receipts were found; sometimes not; And sometimes no effort was made to look. This is how DOD ended up with billions of dollars in unmatched disbursements. As I understand it, this was SOP when you were CFO. It was unofficial policy. It was practiced but not authorized in government regulations or law.

Secretary of Defense Cohen attempted to legalize “Pay and Chase.” He wanted to make it the law of the land. He forwarded his proposal to the Senate on February 2, 1998 as part of a larger package of so-called defense reforms. At that point in time, you were CFO, and this matter fell directly under your area of responsibility. “Pay and Chase” was just one small piece of the Defense Reform Act of 1988—also known as the Defense Reform Initiative (DRI). “Pay and Chase” was embodied in Section 401 of that bill. It was touted as a measure to “streamline” DOD payment practices.

Section 401 would have authorized DOD to pay bills without receipts with no dollar limit. It would have required only random after-the-fact verification of some receipts. And it would have relieved disbursing officers of all responsibility for fraudulent payments that might have resulted from the policy.

There is nothing in my files to indicate Section 401 of Secretary Cohen’s DRI became law. I believe “Pay and Chase” continued as an unofficial policy and evolved into another troublesome one known as “Straight Pay.” This policy was initially approved by you in a signed memorandum on December 17, 1988.

On January 19, 1999, I wrote to you, expressing grave concern about “Straight Pay.”

Prior to the implementation of “Straight Pay,” the Defense Finance and Accounting Center (DFAS), Columbus, Ohio had a pre-validation policy that required all disbursements over \$2,500.00 be matched with obligations prior to payment. When a bill was submitted to the center for payment, a technician searched the database for the supporting obligation or contract. If one could not be found, a red warning flag was allegedly run up the pole. Was it a duplicate or fraudulent payment? Your “Straight Pay” policy raised the pre-validation threshold to \$500,000.00. “Straight Pay” allowed the technician to ignore the warning signals and make payments up to \$500,000.00 without checking documentation. Then the accountants at the center were directed to create bogus accounts for negative unliquidated obligations or “NULO” to cover the payment. The bill was then paid from the bogus account with a negative balance. The center had six months to locate valid supporting obligation. If a valid, matching obligation could not be found within that time frame, then the center would cover the payment with other available funds with no further investigation.

In my letter to you, I drew some comparisons between “Straight Pay” and the scenario in the case of Air Force Staff Sergeant (SSGT) Robert L. Miller, Jr. You may remember the Miller case. I examined that case—and others like it—in great detail at a hearing before my Judiciary Oversight Subcommittee on September 28, 1998. As Chief of Vendor Pay at another DFAS Center, SSGT

Miller had pursued his own version of “Straight Pay.” With full access to the Integrated Accounts Payable System, SSGT Miller was able to create obligations, where none existed, and to generate nearly a \$1,000,000.00 in allegedly fraudulent payments to his mother and girlfriend. He was not caught until a co-worker blew the whistle.

Mr. Lynn, on the surface at least, your “Straight Pay” policy appeared to authorize DFAS technicians to do essentially what SSGT Miller allegedly did—create false bookkeeping entries to cover large payments in the absence of supporting documentation. Your policy left the barn door wide open to fraud and mismanagement. At the time, the General Accounting Office agreed with that assessment.

Also, at the time, I told you and other senior officials—and spoke extensively about this problem on the floor—that “Straight Pay” was a dangerous, misguided, irresponsible, and unbusinesslike policy. Furthermore, it was totally inconsistent with various provisions of Title 31 of the U.S. Code, Money and Finance.

American taxpayers deserved to know that their hard earned money was being protected and properly accounted for under your leadership at DOD. So please help me understand your position on “Straight Pay.” It seemed to be completely inconsistent with your responsibilities under the CFO Act. As CFO, how could you endorse such a policy?

Your prompt response to my questions would be appreciated,

Sincerely,

CHARLES E. GRASSLEY,
Ranking Member.

— FEBRUARY 3, 2009.

Hon. CHARLES E. GRASSLEY,
Ranking Member, Committee on Finance, U.S. Senate, Washington, DC.

DEAR SENATOR GRASSLEY: Thank you for your letter of January 29, 2009 concerning my tenure as Under Secretary of Defense (Comptroller) and Chief Financial Officer from November 1997 to January 2001. You asked specifically about two payment practices: “Pay and Chase” and “Straight Pay.”

The Denver Center of the Defense Finance and Accounting Service (DFAS) initiated the “Pay and Chase” pilot in early 1997 in order to achieve more timely payments. It was a limited test that allowed certain payments under \$2,500 to be made based on matching a proper invoice to the corresponding contract. Receipt and acceptance was followed up after the payment was made. The pilot was discontinued by October 1997 when the DoD General Counsel and DFAS General Counsel found that matching a proper invoice and contract alone was not legally sufficient to make a payment. The Department proposed legislation to Congress in 1998 called Verification After Payment that would have authorized making payments from the invoice/contract match, but that request was later dropped without Congressional action.

“Straight Pay” is an informal term used to describe the practice of making payment based on a three way match of a proper invoice, receiving report and contract when an obligation has not yet been recorded in the accounting records. “Straight Pay” recognizes the government’s legal obligation to make payment and was used to ensure contractors were paid on time and to reduce payment backlogs and associated interest penalties due to late payments. Under “Straight Pay” policies, payments could not be made on an invoice alone. But if DFAS had a proper invoice together with a valid contract for the goods/services and a valid receiving report that the goods/services had been delivered, payment could be made without a matching obligation. DFAS then contacted the Military Services to update the

accounting records, ensuring that the expenditure was recorded and valid.

The Defense Department has two important obligations: to ensure that those who provide goods and services to the Department are paid on time pursuant to the Prompt Payment Act and to make certain there are proper controls that ensure the Department has received the goods and services pursuant to a valid contract. At a time when the Department faced a backlog of unpaid invoices and mounting interest costs due to late payments, "Straight Pay" was an attempt to draw the right balance between those objectives by reducing late payments while still ensuring that the Department had received what it paid for and that the accounting records were accurate.

Best practices require that all proper invoices be matched with a receiving report and contract, and that the obligation be pre-validated in the accounting records prior to payment. The Department made progress toward this pre-validation objective while I was Under Secretary. And I understand that further progress has been made since I left. If confirmed, I will work with the Chief Financial Officer and the Military Departments to achieve this important goal.

Finally, you raised the case of Air Force Staff Sergeant Robert L. Miller, who defrauded the Department in a series of activities between October 1994 and June 1997. The Miller case did not actually involve "Straight Pay". It did, however, expose significant internal control weaknesses within both DFAS and the Air Force. As a consequence of the Miller case, I directed DFAS to take a series of corrective actions, including revising internal control guidance to ensure better segregation of duties, reviewing and adjusting vendor payment access to the minimum number of personnel needed to properly conduct business, ensuring proper documentation existed to pay invoices, and correcting deficiencies in computer system security. In addition, DFAS in November 1999 established an Internal Review office to examine its systems and operations for weaknesses and potential cases of fraud.

As you requested, I have also included answers to the six questions you submitted for the record after my nomination hearing on January 15, 2009. Looking ahead, if confirmed as Deputy Secretary of Defense, I will do my utmost to strengthen the Department's financial management and internal controls designed to prevent fraud. I will also work to accelerate the modernization and integration of the Department's management information systems. From my earlier DoD tenure, I know the obstacles to achieving this, but I also know its vital importance. In this era of increasing fiscal strain, financial stewardship at the Department of Defense is essential, and I look forward to making that happen.

Sincerely,

WILLIAM J. LYNN, III.

SENATE ARMED SERVICES COMMITTEE

QUESTIONS FOR THE RECORD

(To consider the following nominations: William J. Lynn III to be Deputy Secretary of Defense; Robert F. Hale to be Under Secretary of Defense (Comptroller) and Chief Financial Officer; Michèle Flournoy to be Under Secretary of Defense for Policy; and Jeh Charles Johnson to be General Counsel, Department of Defense. Witnesses: Lynn, Hale, Flournoy, Johnson)

Senator Chuck Grassley

FINANCIAL MANAGEMENT

93. Mr. Lynn, as the Under Secretary of Defense (Comptroller), you were the Department's Chief Financial Officer (CFO). That position was established by the CFO Act of

1990. Section 902 of the CFO Act states: "The CFO shall develop and maintain an integrated agency accounting and financial management system, including financial reporting and internal controls." This requirement existed for at least 5 years before you became the DOD CFO. While you were CFO, did DOD operate a fully integrated accounting and financial management system that produced accurate and complete information? If not, why?

Answer: The DoD financial and business management systems were designed and created before the CFO Act of 1990 to meet the prior requirements to track obligation and expenditure of congressional appropriations accurately. The CFO Act required the Department to shift from its long-time focus on an obligation-based system designed to support budgetary actions to a broader, more commercial style, accrual-based system. To accomplish this transformation, several things needed to be done. First, the Department created the Defense Finance and Accounting Service (DFAS) to consolidate financial operations, which was accomplished in 1991 before my tenure as Under Secretary. Second, the Department had too numerous and incompatible finance and accounting systems. From a peak of over 600 finance and accounting systems, I led an effort to reduce that number by over two thirds. This consolidation effort also strove to eliminate outdated financial management systems and replace them with systems that provided more accurate, more timely and more meaningful data to decision makers. The third and most difficult step in developing an integrated accounting and financial management system has been to integrate data from outside the financial systems. More than 80 percent of the data on the Defense Department's financial statement comes from outside the financial systems themselves. It comes from the logistics systems, the personnel systems, the acquisition systems, the medical systems and so on. On this effort, we made progress while I was Under Secretary but much more needs to be done. If confirmed, I will take this task on as a high priority.

94. Mr. Lynn, under section 3515 of the CFO Act, all agencies, including DOD, are supposed to prepare and submit financial statements that are then subjected to audit by the Inspectors General. While you were the CFO, did DOD ever prepare a financial statement in which all DOD components earned a "clean" audit opinion from the DOD IG? If not, why?

Answer: In the 1997, the Department of Defense had twenty-three reporting entities, only one of which, the Military Retirement Fund, had achieved a clean audit. Over the next four years, the Department under my leadership as Under Secretary earned a "clean" opinion on three other entities: most importantly, the Defense Finance and Accounting Service in 2000, followed by the Defense Commissary Agency and the Defense Contract Audit Agency in 2001. We were unable to obtain clean opinions on the other reporting entities. The primary reason for not earning clean opinions on the remaining entities was the difficulty of capturing data from non-financial systems and integrating that data into the financial systems in an auditable manner. It is my understanding that the Department still faces the challenge of integrating financial and non-financial systems to support the auditability of the DOD financial statements.

95. Mr. Lynn, as CFO, what specific steps did you take to correct this problem?

Answer: Under my leadership, the DOD instituted several important efforts to achieve a "clean" audit opinion. The primary effort was described in the Biennial Financial Man-

agement Improvement Plan (FMIP) which was submitted to Congress in 1998. That plan merged previous initiatives with new ones into a single comprehensive effort to achieve both financial management improvement and auditability. To directly address auditability, the FMIP included an effort in collaboration with the Office of Management and Budget, the General Accounting Office, and the Office of the Inspector General to address ten major issues identified by the audit community: 1) internal controls and accounting systems related to general property plant and equipment; 2) inventory; 3) environmental liabilities; 4) military retirement health benefits liability; 5) material lines within the Statement of Budgetary Resources; 6) unsupported adjustments to financial data; 7) financial management systems not integrated; 8) systems not maintaining adequate audit trails; 9) systems not valuing and depreciating property, plant and equipment; and 10) systems not using the Standard General Ledger at the transaction level. Due to this effort, substantial progress was made on most of these issues and several were resolved, including valuation of the military retirement health benefits liability, the reduction of unsupported adjustments to financial data, and the identification of environmental liabilities.

96. Mr. Lynn, 18 years after the CFO Act was signed into law, DOD is still unable to produce a comprehensive financial statement that has been certified as a "clean" audit. It may be years before that goal is met. If DOD's books cannot be audited, then the defense finance and accounting system is disjointed and broken. Financial transactions are not recorded in the books of account in a timely manner and sometimes not at all. Without accurate and complete financial information, which is fed into a central management system, DOD managers do not know how the money is being spent or what anything costs. That also leaves DOD financial resources vulnerable to fraud, waste and abuse, and even outright theft. The last time I looked at this problem billions—and maybe hundreds of billions—of tax dollars could not be properly linked to supporting documentation. As Deputy Secretary of Defense, what will you do to address this problem? Please give me a realistic timeline for fixing this problem.

Answer: The Department needs stronger management information systems. I can assure you that, if confirmed, I will be committed to improving financial information and business intelligence needed for sound decision making. I have not yet completed my review of all the information needed to provide a specific timeline; however, I will continue to examine this issue, including consideration of this and other Committees' views as well as the resources needed for the audit, before forming my assessment of how close DoD is to a clean audit.

POTENTIAL CONFLICT OF INTEREST

97. Mr. Lynn, as a Senior Vice President of Government Operations at the Raytheon Company, you were a registered lobbyist until July 2008. Correct? How long were you a registered lobbyist?

Answer: I was a registered lobbyist for Raytheon from July 2002 to March 2008.

98. Mr. Lynn, in his "Blueprint for Change," President-elect Obama promises to "Shine Light on Washington Lobbying." He promises to "Enforce Executive Branch Ethics" and "Close the Revolving Door." He promises: "no political appointees in an Obama-Biden administration will be permitted to work on regulation or contracts directly and substantially related to their prior employer for 2 years." Raytheon is one of the big defense contractors. As Deputy Secretary, Raytheon issues will surely come

across your desk. If you have to recuse yourself from important decisions, you would limit your effectiveness as Deputy Secretary of Defense. How will you avoid this problem for 2 years?

Answer: I have received a waiver of the "Entering Government" restrictions under the procedures of the Executive Order implementing the ethics pledge requirements. The waiver, however, does not affect my obligations under current ethics laws and regulations. Until I have divested my Raytheon stock, which will be within 90 days of appointment, I will take no action on any particular matter that has a direct and predictable effect on the financial interests of Raytheon. Thereafter, for a period of one year after my resignation from Raytheon, I also will not participate personally and substantially in any particular matter involving Raytheon, unless I am first authorized to do so under 5 C.F.R. § 1A2635.502(d). In addition, for the one year period covered by Section 502, I have agreed not to seek a written authorization for the handful of issues on which I personally lobbied over the past two years. If confirmed, I pledge to abide by the foregoing provisions. I would add that I have not been exempted from the other Executive Order pledge requirements, including the ones that restrict appointees leaving government from communicating with their former executive agency for two years and bar them from lobbying covered executive branch officials for the remainder of the Administration.

Mr. GRASSLEY. Mr. Lynn continues to defend straight pay, a policy that Secretary Cohen said didn't exist back then. He said it was necessary "to ensure that contractors were paid on time."

Well, can't you pay contractors on time by having invoices and all the proper documentation to write even a \$1 check? That is the streamlining effect that former Secretary Cohen argued for in his failed June 2, 1998 DRI legislative initiative.

I exchanged followup Q and A on these matters with Mr. Lynn on February 5 and 6 this year, and I will include those letters in the record as well. As Chief Financial Officer at one of our biggest departments, Mr. Lynn signed the memo authorizing straight pay policy. It was his policy.

I ask unanimous consent that the followup documents be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

COMMITTEE ON FINANCE,

Washington, DC February 5, 2009.

Mr. WILLIAM J. LYNN,
Senior Vice President, Raytheon Company, Arlington, VA

DEAR MR. LYNN: I am writing to follow-up on our recent exchange of correspondence regarding your record as the Chief Financial Officer (CFO) at the Department of Defense (DOD).

I respectfully request that you respond to the following questions in writing:

(1) On February 2, 1998, when you were CFO, Secretary of Defense Cohen asked the Senate for legal authority to pay bills without receipts with no dollar limit. This proposal was embodied in Section 401 of the Defense Reform Initiative (DRI). What was your position on this legislative proposal?

(2) In a letter to you dated January 19, 1999, I expressed grave concern about a DOD

payment policy known as "Straight Pay." This policy was authorized by you in documents that bear your signature. The purpose of my letter was to verify the facts pertaining to this policy that was brought to my attention by a Defense Finance and Accounting Service (DFAS) employee. Your response to this letter is dated March 9, 1999. In your letter, you report that "Straight Pay" does not exist. This is what you said: "Straight Pay" is not used at our Columbus Center . . . 'Straight Pay,' as it was reported to you, does not exist at the Columbus Center." Secretary Cohen made essentially the same statement in response to questions I raised at a Budget Committee hearing on March 2, 1999. He stated: "there is no authorized procedure called straight pay." In your February 3, 2009 letter, by comparison, you provided a description of the "Straight Pay" policy. Did "Straight Pay" exist at the Columbus Center in 1998-99?

(3) How do you explain a DFAS Memo dated March 8, 1999 that contains the following instructions: "Due to concerns over the use of the term 'Straight Pay' and its connotation, we must delete all references to 'straight pay' from the policy and clarify that policy does not create an environment for fraudulent payments. Terms such as unmatched disbursements or direct disbursements were substituted." Did you instruct DFAS to get rid of the term "Straight Pay."

(4) Do you believe unmatched disbursements were a satisfactory outcome?

(5) One day after DFAS gave "Straight Pay" policy a new name, you issued orders to keep the policy alive. Your memo of March 9, 1999 actually re-authorized the policy for another 90 days beyond the March 22, 1999 expiration date. Is that true?

(6) When you were CFO, were you knowledgeable or aware of the arbitrary allocation scheme used by DFAS at the Columbus Center for making progress payments? That policy also had an informal name. It was called "bucket billing." Both the GAO and IG had conducted numerous audits and reviews of these procedures and declared them to be illegal. If you knew about these bill paying practices, what specific steps did you take to correct the problem?

(7) I note that the waiver granted to you in connection with President Obama's new ethics rules was co-signed by OMB Director Orszag and Mr. Gregory B. Craig, Counsel to the President. I understand that you have past associations with Mr. Craig. Please characterize your relationship with Mr. Craig?

(8) According to the Project on Government Oversight (POGO), Raytheon is "ranked #4 in a top 50 corrupt list" of government contractors. POGO reports numerous instances of double billing on aircraft maintenance contracts, contractor kickbacks, defective pricing, False Claims Act violations, substitution/nonconforming products, violations of SEC rules, etc. involving Raytheon. As the top Raytheon lobbyist, to what extent did you know about or become involved with any of these issues? Did you ever discuss any of these issues with DOD officials or Members of Congress or congressional staff?

(9) In view of the fact that your nomination appears to be inconsistent with President Obama's rules pertaining to the "Revolving Door Ban," do you believe you have compromised any of your personal and/or professional values by accepting it?

Your continuing cooperation in this matter would be greatly appreciated.

Sincerely,

CHARLES E. GRASSLEY,
Ranking Member.

FEBRUARY 5, 2009.
Hon. CHARLES E. GRASSLEY,
Ranking Member, Committee on Finance, U.S.
Senate, Washington, DC.

DEAR SENATOR GRASSLEY: I am writing to respond to your letter of February 5, 2009. Following my February 3, 2009 letter, you asked nine additional questions.

(1) Although I took office as Under Secretary just before the Defense Reform Initiative was submitted to Congress, I did not participate in the development of Section 401. I do not recall having taken a position on it. At this time, I would not support a proposal that with no dollar limit would allow the Defense Department to pay bills without a receipt.

(2) In your letter of January 19, 1999, you equated an obligation to a contract, implying that "Straight Pay" allowed payment without a valid contract. As I explained in both my recent February 3, 2009 letter and the earlier March 9, 1999 letter, "Straight Pay" required that the Department be in possession of a valid contract as well as a valid invoice and a valid receiving report prior to payment being authorized. If this three way match existed, the policy allowed payment without a matching obligation in the accounting records, with the proviso that the Military Services update the accounting records to ensure that a valid payment had been made. In short, "Straight Pay" did exist at the Columbus Center in 1998-99, but the process was different than the one you described in your January 19, 1999 letter.

(3) I am not aware of the March 8, 1999 DFAS memo that you referenced. To my knowledge, I did not sign or authorize it.

(4) Unmatched disbursements are not a satisfactory outcome. They reflect the age and inadequacy of some of our finance and accounting systems. This is one of the primary reasons that I supported the modernization of our finance and accounting infrastructure when I was Under Secretary in the late 1990s and why I will continue to support that modernization should I be confirmed as Deputy Secretary.

(5) As I stated in my February 3, 2009 letter, "Straight Pay" was an attempt to strike the right balance between meeting our obligations to pay on time and ensuring the Department only paid vendors for what was actually received under a valid contract. The 90-day extension of that policy on March 9, 1999 was done because the backlog of unpaid invoices remained at an unacceptable level.

(6) With regard to progress payments, I took steps to ensure that payment procedures were tightened. In 1998, I directed that on all new contracts, other than firm fixed price contracts, the practice of prorating payments proportionately to all accounting classification reference numbers be discontinued. Effective August 31, 1998, the Department began distributing progress payments on the basis of the best available estimates of the specific work being performed under the contract. Both the Office of the Inspector General and the Office of the General Counsel of the Department of Defense reviewed and approved the new policy.

(7) I served on the staff of Senator Edward Kennedy in the late 1980s with Gregory B. Craig, who is now Counsel to the President.

(8) While at Raytheon, I did not participate in any of the of the issues that you cite. Nor did I lobby on those issues with either Defense Department officials or any Members or staff in Congress.

(9) I am honored that President Obama nominated me to serve as Deputy Secretary of Defense. If confirmed, I will serve the Department and the nation to the best of my

ability. It is fully consistent with my personal and professional values to return to public service at this time.

Sincerely,

WILLIAM J. LYNN III

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, February 6, 2009.

Mr. WILLIAM J. LYNN,
Senior Vice President,
Raytheon Company, Arlington, VA

DEAR MR. LYNN: I have reviewed your letter of February 5, 2009, in which you attempt to address the questions I raised in a letter to you also dated February 5th.

I am baffled by some of your answers. You have answered questions I did not ask; you have not answered questions I did ask; and some of your answers appear to be incomplete as follows:

First, in question #1, I asked you about your position on Section 401 of Secretary Cohen's Defense Reform Initiative presented to the Senate in February 1998. You responded as follows: "I did not participate in the development of Section 401. I do not recall having taken a position on it. At this time, I would not support a proposal that with no dollar limit would allow the DOD to pay bills without a receipt." In February 1998, you had been CFO for several months. This issue fell directly under your purview. How could you possibly avoid taking a position on an issue the Secretary of Defense was urging the Senate to adopt? As the Chief DOD lobbyist for Raytheon today, you say it was wrong. My question is: As the DOD CFO back in 1998, why didn't you know it was wrong and speak up?

Second, in question #2, I asked: "Did 'Straight Pay' exist at the Columbus Center in 1998-99?" You responded this way: "Straight Pay" did exist at the Columbus Center in 1998-99, but the process was different than the one you described." Your response today is a bit different from the one you provided me in 1999. In early March 1999, both you and Secretary Cohen reported to me that "Straight Pay" did not exist. Period. This is what Secretary Cohen said in response to my questions at a Budget Committee hearing on March 2, 1999: "there is no authorized procedure called straight pay." And he attributed that statement to you. You are saying it existed but not exactly as I described it. I find these explanations somewhat confusing. Even if I did not describe it exactly right, it still existed. And this is why I raised question #3.

Third, The Defense Finance and Accounting Service (DFAS) employees were providing me with documents that clearly indicated that the "Straight Pay" did, in fact, exist.

DFAS employees even provided me with an elaborate set of rules on how this policy was to be implemented. Then I received a high-level DFAS memo that appeared to constitute a direct order to suppress the policy, bury it, if necessary, or re-name it. This memo, dated March 8, 1999, contained the following instructions: "Due to concerns over the use of the term 'Straight Pay' and its connotation, we must delete all references to 'straight pay' from the policy and clarify that policy does not create an environment for fraudulent payments. Terms such as unmatched disbursements or direct disbursements were substituted." As you know, unmatched disbursements—like "Straight Pay"—leave the door wide open to fraud and theft. But that is a separate issue. In question #3, I asked: "Did you instruct DFAS to get rid of the term 'Straight Pay'?" You did not answer this question. You responded by saying you are not aware of that memo and did not sign it or authorize it. I will re-

phrase the question, because some high official was probably creating pressure for this change. While CFO, did you ever issue any instructions to DFAS or anyone else regarding use of the term or words "Straight Pay"?

Fourth, in question #5, I asked you if you approved and signed documents authorizing "Straight Pay." In your response, you tell me why the policy was necessary but do not accept direct responsibility for approving the policy. While CFO, did you ever approve and sign documents authorizing "Straight Pay"?

Fifth, in question #6, I asked you about your knowledge of the arbitrary allocation scheme—also known as "Bucket Billing"—used at the Columbus Center for making progress payments on contracts. At the time, both the GAO and DOD IG had declared that this policy was illegal. As you may remember, I addressed this matter in great detail with your predecessor, Mr. John Hamre. You now report that a new policy was put in place on August 31, 1998. You also reported that the IG reviewed and approved that policy. Having a new policy is an important first step, but my question is this: Is the new policy working as advertised? In 1999, did you follow-up and check to see if payments were being posted to the correct appropriation accounts?

Sixth, in question #7, I asked you about your association with Mr. Gregory B. Craig, who was directly involved in the review and approval of the waiver you were granted in connection with President Obama's new ethics rules. I asked this question: "Please characterize your relationship with Mr. Craig?" You answered: "I served with him on the staff of Senator Kennedy in the late 1980s." Again, please characterize your relationship with Mr. Craig? What discussions took place between you and Mr. Craig regarding this matter?

Seventh, I will re-phrase question #9 as follows: Do you believe that your nomination is fully consistent with the spirit and intent of the "Revolving Door Ban" in paragraphs 2 & 3 of Section 1 of the new rules?

I very much appreciate your patience and cooperation with this matter.

Sincerely

CHARLES GRASSLEY,
Ranking Member.

—
FEBRUARY 9, 2009.

Hon. CHARLES E. GRASSLEY,
Ranking Member, Committee on Finance, U.S.
Senate, Washington, DC.

DEAR SENATOR GRASSLEY: I am writing in response to your letter of February 6, 2009. You asked some additional follow up questions to your letters of February 3, 2009 and February 5, 2009.

(1) You asked about my position on Section 401 of the Defense Reform Initiative in 1998. As I indicated, the development of Section 401 took place before I took office as Under Secretary in late 1997, so I was not engaged in the process that led to the inclusion of Section 401 in the Defense Reform Initiative. Further, Section 401 was dropped before I ever had an opportunity to review or take a position on the provision.

(2) You asked for further clarification on the issue of "Straight Pay" at the Defense Finance and Accounting Service (DFAS) Columbus Center. To my knowledge, "Straight Pay" was an informal term used to describe a payment process in the Air Force network. Your March 1999 letter and your Budget Committee hearing question to Secretary Cohen used the term "Straight Pay" differently, that is to describe the pre-validation process used by the Mechanization of Contract Administration System (MOCAS) at the Columbus Center. The purpose of my response to your letter and Secretary

Cohen's response to your hearing question in 1999 was not to argue over the term "Straight Pay", but rather to explain the pre-validation process used at Columbus accurately and fully. Specifically, we both described how the three-way match procedures worked. They required that no payments could be made without a valid invoice, a valid contract, and a valid receiving report. If this three-way match existed, the policy allowed payment without a matching obligation in the accounting records, with the proviso that the Military Services update the accounting records to ensure that a valid payment had been made.

(3) As I wrote previously, I was not aware of the March 8, 1999 DFAS memo that DFAS employees provided to you. Nor do I recall ever issuing instructions to DFAS or anyone else regarding the use of the term "Straight Pay".

(4) You asked about documents that I signed authorizing "Straight Pay". I am not aware of any official documents that I signed that included the term "Straight Pay". I did, however, approve and sign documents that authorized the three-way match process described in my answer in paragraph 2 above. These included the March 9, 1999 memo, to which you referred in your February 5, 2009 letter. This memo re-authorized a temporary increase in the threshold on new contracts paid by the MOCAS system due to the backlog of payments. The original authority for the temporary increase in the threshold was a December 1998 memo, which I also approved and signed.

(5) With regard to the new policy that I directed on progress payments in 1998, I did follow up and found DFAS was following the payment distribution instructions required by that policy. It is my understanding that the policy remains in practice today with some enhancements to further ensure payment distribution is made in accordance with the contract.

(6) As I stated in my previous letter, Mr. Gregory Craig and I were co-workers on Senator Kennedy's staff in the late 1980s. Over the ensuing decades, we have had only very few contacts. Additionally, my contacts with the review and approval of my waiver were not with Mr. Craig, but with his colleagues in the White House Counsel's office, who conducted the extensive analysis supporting the waiver. Ultimately, this analysis was then reported and approved by Mr. Craig.

(7) I believe that my nomination is consistent with the spirit and intent of President Obama's Executive Order. I, like every nominee, am bound by the Order's provisions. However, because of my previous work experience, I was granted a waiver to a portion of Section 1, which is allowed under Section 3 of the Order. The reasons for receiving the waiver were described in a February 3, 2009 letter to you from Mr. Peter Orszag, Director of OMB and Mr. Craig, White House Counsel. Notwithstanding, I remain bound by the Order's revolving door exit provisions as well as all other provisions contained in the Order.

Thank you for the opportunity to respond to your questions.

Sincerely,

WILLIAM J. LYNN III.

Mr. GRASSLEY. I believe this policy developed under Mr. Lynn's leadership was dangerous, misguided, and irresponsible. It demonstrated a lack of sound business judgment. It may have been inconsistent with various provisions of law. Because don't the tax-payers expect you write a check, you have a reason for writing it, you have an invoice or something that says you

owe X number of dollars? Straight pay left the taxpayers' hard-earned money vulnerable to fraud and theft, and we have had that.

I was not alone in this assessment. At my subcommittee hearing on September 28, 1998, the Government Accountability Office witness said essentially the same thing. DFAS payment policies in Mr. Lynn's watch left the door wide open to fraud.

For all these reasons, I have to say Mr. Lynn, as Chief Financial Officer, did not do everything humanly possible to protect the taxpayers' interests. When he pushed the straight pay policy and went silent on pay-and-chase, he did not act in the public interest.

As Chief Financial Officer, Mr. Lynn was also supposed to do his part to develop and integrate a finance and accounting system that would allow the Department of Defense to produce a financial statement that could earn a clean audit opinion. I know this is a massive and complex undertaking, but Mr. Lynn could have gotten the ball rolling in the right direction, even if he didn't get it under control.

I can guarantee one thing: The principle of straight pay was not conducive to the creation of an integrated accounting system. One of the first steps in that process is to link obligations to disbursements. Straight pay truncated that link and undermined integration.

Although he claimed to have launched several important reform initiatives, there appears to be little or no measurable progress toward the goal of integration on his watch. In fact, his payment policies probably took us in the wrong and opposite direction and had an opposite effect. The Department's books of account were a mess when Mr. Lynn became Chief Financial Officer, they were a mess when he left, and I have a feeling they remain a mess today, with no fix in sight.

Congress passed the Chief Financial Officers Act in 1990 in an attempt to fix the problems in accounting of Government finances in every department. Eighteen years after this legislation, the Department of Finance, as a whole, has yet to earn a clean audit.

Mr. Lynn should not be the only person held accountable for poor accounting at the Department of Defense. He was one of many individuals in a long line of Chief Financial Officers and Comptrollers who, for whatever reason, were unsuccessful in solving the financial misstep at the Defense Department. Mr. Hamre, his predecessor, used to say: "Fixing this problem is like changing a tire on a car going at 100 miles per hour."

I have shared some of my sentiments on Mr. Lynn's performance as Chief Financial Officer. I hope these insights are helpful to my colleagues before they vote yes or no on this nomination. If confirmed, we hope he will do everything possible to protect our national security. We hope he will protect the taxpayers' hard-earned money, and we hope he will make sure the taxpayers'

money is wisely spent and, most importantly, spent according to law. We hope he will usher in a new era of financial accountability at the Department of Defense. At this point, we simply don't know what Mr. Lynn will do. I don't own that crystal ball that would be necessary to make that determination. It is all about the future, and that is relatively unknown. But we do know something about what he did in the past as the Department of Defense Chief Financial Officer.

As Chief Financial Officer, he advocated very questionable accounting practices that obviously were not in the public interest. Writing a check in any department without knowing what that check is paying for is not in the public's interest. It is not a wise expenditure of public money. We need accounting systems that account for every dollar going out, having a purpose of a service or a product that it bought. I urge my colleagues then to weigh those considerations in reaching a decision on how to vote on the Lynn nomination.

Lastly, I wish to take a moment to thank the Senate Armed Services Committee leadership, both Republican and Democratic, and their staff for their patience on this issue. I appreciate the time Chairman LEVIN has given me to discuss this nomination. I lay everything I have said before the Senate for consideration.

I have already sought permission to have some of these documents printed in the RECORD, so I don't think I have to do that.

I yield the floor.

Mr. LEVIN. Mr. President, I yield myself 10 minutes.

Let me, first, thank Senator GRASSLEY for his dedication to trying to change the climate around here. He has been on the forefront. I happen to disagree with him on the conclusion he has reached—or apparently reached—relative to Mr. Lynn for reasons I will go into. Nonetheless, he has been an advocate of reform and he continues to do that. I will explain why I think, in this instance, his concerns do not fit the situation.

In the first instance, when he suggested the President is changing the rules as we go along by providing a waiver to Mr. Lynn as part of the new Executive order, that is part of the Executive order.

Let's not change the rules during the game. That is part of the rule President Obama has adopted in the new Executive order. It has some very stringent requirements. Part of them are waived by the President's Office of Management and Budget—in this case, for reasons they gave. Part of the new rule is not waived, the critical postemployment prohibition that applies to Mr. Lynn. I think that for the reasons given by President Obama's Budget Director, the waiver is a legitimate one, central in this case for the reasons given.

By the way, when we talk about waivers, this is not at all unique. Mr.

Lynn's situation is not in the least bit unique. Waivers have been given and provided in previous cases because senior officers have had experience in the private sector. Secretary Gates was subject to the same rule, subject to the same waiver requirement. Secretary Rumsfeld was subject to the same waiver and the same waiver requirement, as were Deputy Secretary England and Secretary Wolfowitz. This has been a common practice. I don't think anybody in those cases, or in any other case we know about, where either a waiver has been required or the waiver provision has been applicable—we know of no situation where there was a conflict of interest.

What President Obama has done is tighten the requirement. He also provided for the possibility of a waiver for part or all of the new requirement. Part of the new requirement has been waived by the new President, but to suggest that he simply has waived his new requirement is not accurate because part of it was not waived. The critical part not waived is that the new officeholder, if confirmed—Deputy Secretary Lynn—will be subject to the prohibition that he may not lobby anybody in the Government if he leaves before the administration finishes, nor may he lobby anybody in the Department of Defense for a year after he leaves. These are very strict, new requirements that are not waived in the case of Secretary Lynn. What has been waived by the administration is the other part of the Executive order. That is No. 1.

Senator GRASSLEY has gone into a lot of technical arguments relative to Mr. Lynn when he previously served. I want to deal with that the best we can.

These events took place 7 to 10 years ago, but they don't involve ethics issues at all. They involve what Mr. Lynn said in letters relative to certain accounting practices at the Department of Defense at that time. I have reviewed these answers, and the questions were very appropriate questions asked by Senator GRASSLEY. I commend him for asking the questions.

There were 4 separate letters to Mr. Lynn, with 30 detailed questions about practices for validating vendor payments in certain parts of the Department of Defense more than 10 years ago. Mr. Lynn has responded to every one of the letters Senator GRASSLEY very appropriately wrote, and to each of his questions. It is my view, after reading all of the questions and the answers, that while the vendor payments that were described by Senator GRASSLEY are real, No. 1, it is not fair to attribute those problems to Mr. Lynn. Secondly, the problems as described by Mr. Lynn and the responses he gave were accurate.

First, the description was of the pay-and-chase—the way of paying vendors. That system was illegal. You cannot pay a vendor without checking that invoice against the contract or against the receipt of the goods. That was the

problem with the pay-and-chase system. There was a failure to check the invoice that came in, the document that the goods were received and that they were proper under the contract. That system ended. It had to end; it was illegal. A new system was put into place where the vendor's bill was checked against the receipt of the goods and against the contract. That is a very different deal. It is a legal system. Unlike so-called pay-and-chase, which preceded it, which was illegal, what Senator GRASSLEY and others have described as a straight pay system was legal. The problem is that it was a confusing name because it implied that the previous system of not checking an invoice against the receipt of the goods or the contract continued, when it did not continue. It was dramatically changed from something that was illegal to something that was legal.

For instance, Senator GRASSLEY, when he wrote Mr. Lynn back on January 29, 2009, said:

Straight pay allowed the technician to ignore the warning signals and make payments up to half a million dollars without checking documentation.

That is not accurate. They had to check documentation. There were some things they could not check because the systems are deficient at the Department of Defense, including what is the original source of the money in the Defense Department's budget. Does it come from R&D or does it come from acquisition? That part, they still cannot check. Those systems have been deficient, and continue to be, but with the help of this body and hopefully real energy in the DOD, that can be corrected. We all need that.

Senator GRASSLEY has been in the forefront of trying to get these kinds of controls in place. I commend him for that. But it is not accurate to say that straight pay, so-called, which was the followup system, allowed these payments without checking documentation. That is what Mr. Lynn disagrees with. When you look at his answers, that is the disagreement between Mr. Lynn's answers and what Senator GRASSLEY describes as being accurate.

Part of the problem here, by the way, that Senator GRASSLEY had is not with Mr. Lynn, it is with Secretary Cohen. Repeatedly and accurately, Senator GRASSLEY points to the action of then-Secretary of Defense Cohen, saying he didn't do this, and Mr. Lynn didn't change it, or Secretary Cohen didn't do something, and Mr. Lynn did not disagree. The problem was with the Secretary of Defense, which is outlined by Senator GRASSLEY, to the extent that it exists.

It is hard for me to believe Secretary Cohen would not be eligible to be Secretary of Defense again or would not be confirmed unanimously by this body. Yet the mistakes attributed to Mr. Lynn are also attributed to then-Secretary Cohen, for whom Mr. Lynn worked. But does anyone seriously sug-

gest that if Secretary Cohen were re-appointed as Secretary of Defense, we would not confirm Bill Cohen by a vote of 100 to 0?

So, Mr. President, without getting into a lot more detail—and these are incredibly complicated and detailed issues—let me summarize by saying that the difference here has been described—there is a difference over the description of a system of payment and the way in which Mr. Lynn describes it. When you look at his complete answers, it seems to me, there is a fair description of what the problem was.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I rise to express my support for William Lynn to be confirmed as Deputy Secretary of Defense. Bill has a combination of experience and sound judgment. He worked here on Capitol Hill as a significant policy aide to Senator KENNEDY on the Armed Services Committee. He has been the comptroller of the Department of Defense. He has detailed and specific knowledge of the vast programs that will be handed over to the DOD. He has also worked in industry. Frankly, the job of Deputy Secretary of Defense is a place in which all these roads come together—the relationship with Capitol Hill, the relationship with industry, and a detailed understanding and knowledge of the way the Pentagon really works from the inside, not from the outside.

He is uniquely situated to take on these daunting challenges that face us, at a time when we are engaged in two conflicts—Afghanistan and Iraq—and a continuing war against extremists across the globe and at a time when our budget is going to be challenged because of a declining economy in the United States and across the globe. The difficult judgments that have to be made require the expertise and experience Bill Lynn can bring and few can match.

One other thing that I think is particularly compelling about this nomination is the enthusiastic support of it by the Secretary of Defense, Bob Gates. There is no one in Government whom I admire more for their patriotism, their sacrifice to the Nation, and their service. The Secretary of Defense has made it very clear that he believes Bill Lynn is someone whom he not only can work with, but he will aid him immensely in his extraordinary challenges to face the threats I have already illustrated. For me, Bob Gates's testimony and endorsement is compelling evidence that this Senate should confirm Bill Lynn immediately this afternoon.

As I mentioned before, Bill worked in the Department of Defense. He has knowledge of the whole range of programs. That is absolutely critical because he will have to make judgments about these programs to advise the Secretary of Defense.

For his work at the Department of Defense—which has been talked about

this afternoon, but this wasn't mentioned—he received the Joint Distinguished Civilian Service Award from the Chairman of the Joint Chiefs of Staff. Again, the military understands not only the important duty he is performing but also, in their own conduct and affairs, understands the values of integrity, character, and commitment to the national interest. He has won awards from the Army, Navy, and Air Force. He also received the 2000 Distinguished Federal Leadership Award from the Association of Government Accountants for his efforts to improve defense accounting practices.

He also gained valuable experience within private industry. Again, Bill is not unique in having an industry background. In fact, the current Deputy Secretary of Defense, Gordon England, came from an industry background. My observation of Secretary England is that his performance has been outstanding, aided by the insight he has had into the multibillion-dollar contracts that industry has with the Department of Defense, insight he has into the decisionmaking in corporate America, insight he has into the way business is done in the defense community. That has aided him, not disabled him, in doing an excellent job. Once again, Bill Lynn comes from a similar background. As Chairman LEVIN pointed out, the Secretary of the Navy, who I also believe has done an outstanding job, also came from a background in the defense industry.

This goes also to the other issue raised about the waiver. Essentially, Bill Lynn stands in the same shoes, I think, as Gordon England and others—ladies and gentlemen who worked in private industry but recognized when they took the oath to serve the people in this country, they had only one boss—the people of the United States. They are committed to that duty.

Also, I think, frankly, the rules have been followed scrupulously by his predecessors and will be followed by Bill Lynn regarding conflicts with his previous employer. I believe he is going to err on the side of caution when it comes to programs that may be under the purview of his previous employer, or anyone else, because having gotten to know Bill, I understand he is not only a man of intelligence but a man of character.

We have someone uniquely situated to begin to aid the Secretary of Defense in the important challenges before us: How do we create a strategy of redeploying forces successfully out of Iraq? How do we increase our presence in Afghanistan and help military and civilian agencies to deal with that troubling situation? How do we deal with issues of defense modernization? How do we prepare for longer term threats? How do we continue to be active across the globe to, we hope, preempt terrorist activities, whether it be in the Near East, Far East, or anyplace on this globe?

Again, Bill Lynn is superbly qualified to do this. He is a graduate of Dartmouth with a law degree from Cornell Law School, and a master's in Public Affairs from the Woodrow Wilson School at Princeton—again, superb academic preparation and superb life preparation. He is someone who has, again, the character and the insights to render remarkable service to the Department of Defense.

I hope my colleagues will join with me in supporting this nomination, rounding out a team of excellent patriots and professionals in the Department of Defense. I must commend President Obama. He made a very sound, I won't say unusual, but unexpected announcement early on by offering the position of Secretary of Defense to Bob Gates. Bob served with distinction under President Bush. President Obama recognized, first, the quality of this Secretary, Secretary Gates, and also the need for continuity in the operations of the Department of Defense. That was a strong not only signal of continuity but endorsement of the work and effort of thousands and thousands of uniformed military personnel and civilian employees in the Department of Defense. That choice was amplified in his selection of Bill Lynn. Again, the endorsement of Secretary Gates speaks volumes about the team President Obama has put together.

I hope at the conclusion of this debate, we could send a very strong vote of confirmation and confidence in the team that President Obama has assembled—Secretary Gates, hopefully Deputy Secretary Lynn, and the other members—because the tasks before them are, indeed, daunting and because their success will be our success.

Mr. GRASSLEY. Mr. President, I apologize to Chairman LEVIN. I had to leave the floor to attend a conference meeting on the stimulus bill before he finished his remarks.

I would like to rebut his remarks regarding Mr. Bill Lynn.

In regards to the Executive order on ethics, I agree President Obama is attempting to set high standards for executive branch appointees; however, giving special waivers to nominees such as Mr. Lynn water down the spirit and authority of his own Executive order. I would ask President Obama: How many more waivers will you grant in the next 4 years?

I say to Chairman LEVIN, you seemed to blame former Defense Secretary Cohen for the financial troubles at DOD, not Mr. Lynn. I could not disagree with you more on this issue. Chief Financial Officer Lynn was chiefly responsible for the policies and regulations governing accounting practices. His straight-pay policy went against all commonsense accounting practices. DFAS technicians should not have paid bills like they did without first confirming that the proper obligations were in the books of account.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized for 10 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. I thank the Chair.

(The remarks of Mr. INHOFE pertaining to the introduction of S. 412 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENSIGN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENSIGN. Mr. President, I ask to speak as if in morning business and have the time counted against our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. ENSIGN are printed to today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I thank my friend from Nevada. I wish to spend just a few minutes. I am not going to talk for a long period of time, and I will yield back my time.

I am extremely concerned with the nomination of Mr. Lynn. It has nothing to do with Mr. Lynn. Some can be critical of his time as Comptroller. Some can be critical of some of the lack of forthrightness in some of the answers about the accounting and controlling and auditing systems in the Pentagon, and I think that is rightly so. We had several hearings on IT improvements and waste in the contracting of IT through the Pentagon. We had several hearings in the last two Congresses about the waste in contracting. Mr. Lynn dealt with a large amount of that.

Let that be as it may. The reason I stand to speak against his nomination is this is a nomination that is going to be the person who runs the day-to-day operation of the Pentagon. If you look at management experience, what there has been in running an organization that has 2.9 million employees—it is the largest component, even including mandatory programs, that we have.

It also is the area where we have some of the greatest amount of waste. We had it during his tenure as Comptroller. We had it during the Bush administration years. Why would we put someone into that position who has not

performed in a stellar fashion when given the authority to fix a lot of those problems before? Why would we put someone in charge who is going to be handicapped? There is no question, given the waiver he has received, he will be absolutely handicapped in all the contracting that goes before the Pentagon.

Let me explain. His former company is one of the five largest defense contractors in the country. It is not just the areas he has lobbied in the past few years, such as the Aegis Ballistic Missile, the DDG-1000 destroyer, the Excalibur precision-guided munitions, the Joint Land Attack Cruise Missile Defense Netted Sensor System and the Multiple Kill Vehicle System, which comes to \$41 billion, 10 percent of the Pentagon's budget, but every other contract that has Raytheon as a subcontractor from which he is going to have to recuse himself.

What he is going to be limited to is personnel matters and accounting matters. He will not be able to make those decisions without first getting a waiver to make them and then, if you are granting a waiver to make the exception and make a decision, here is what is going to happen.

Let me give the history of the tanker program in the United States. We, first, had a contract let to Boeing, which was complicated by some very bad acting on the part of Boeing and some Defense Department officials, and it got thrown out.

We last had a contract for the tanker program that was awarded to EADS. There was a protest filed on it. It got thrown out.

Everything he is not involved with, Raytheon can file a protest that they were excluded because the management chain was not the same. We have created the basis for a new protest on everything Raytheon will not win in the future. If Raytheon does win a contract, we have created a protest for everyone who wasn't Raytheon to protest because there is a conflict of interest.

Ask yourself, in this dire economic time we are in, with the largest agency we have, why we would put somebody in that position who is going to be—for at least 1 year and probably for 2, if we wanted to ethically look at it—totally out of the realm of the most important, outside our military men and women, most important aspect of the Pentagon, which is purchasing, contracting defense weapons systems.

We are setting a man in a position. It is no reflection on him. He is very knowledgeable. He has been a good public servant. We are putting him in a position to fail. We have guaranteed that contracting will not go smoothly at the Pentagon because we have created two new bases for protests over contracts. We can go through all the contracting, and it is going to be raised—and rightly so. There is going to be a legitimate protest on both sides of these issues that is going to delay the ability of the American people to

contract for things we should be contracting for. More importantly, it is going to significantly raise the cost.

The third point I would make is, because he is going to have to exclude himself from the vast majority of decisions in contracting and purchasing, the very position he is meant to fill, to run the day-to-day operations, means Secretary Gates is going to have to run the operations. If he has to run the operations himself, why does he need a Deputy Secretary of Defense?

President Obama, I think rightly, has asked Secretary Gates to stay on. I think the continuity with that was great. I am sorry he didn't ask others to stay on until we got past this period of time. In spite of the good will of Mr. Lynn, a man of character, a man of integrity, we have set him up to fail.

I have no doubt he is going to be placed in that position today when we vote. But we ought to think. The biggest problem we have with our body, in terms of what we do, is we do not think long run. We think short term. What we have done is totally handicapped him, but we are also going to handicap our military.

This is not a time we should be doing that. We should be creating a streamlined procurement process that rebuilds the procurement offices, which need to be rebuilt—that has no question about the authority of the Deputy Secretary of Defense to make solid, fair, clear, and decisive actions and decisions. What we are going to do is ensure that does not happen.

I thought it was interesting that Senator McCAIN's main point was he did not have the managerial experience to do this. Senator McCAIN is going to vote for him because he has such high regard for Secretary Gates. But think about that statement. He does not have the managerial experience to run a 2.9 million individual organization, and he is handicapped. We are going to handicap him so he meets the ethical outlines President Obama so rightly has put in place.

I think it is a bad decision. I think it is a wrong decision. Once again, the consequences for that will be inefficiency, ineffectiveness, and a greater cost for this country. Anytime we have a greater cost on anything now, it goes directly to our kids and our grandkids.

I hope my associates in the Senate will give a rethought to whether we ought to handicap this man this way. Surely somebody can fill the bill and let Mr. Lynn wait a year and then come in and do what he wants to do and what President Obama wants him to do.

Again, we will make a serious mistake if we approve him, not only for us, not only for our kids but for him as he attempts to run the largest organization in the world.

Mr. HATCH. Mr. President, today I rise in support of the confirmation of William J. Lynn to be the next Deputy Secretary of Defense.

I recently had the opportunity to meet with Mr. Lynn and discuss many

of the important defense challenges that face our Nation. I came away from that meeting duly impressed by his dedication to seek new and innovative solutions to many of these issues.

Throughout his career, he has demonstrated a singular devotion to our national defense. In the early 1980s he was the executive director of the Defense Organization Project at the Center for Strategic and International Studies. This organization was a major catalyst for the Goldwater-Nichols Act of 1986 which transformed and modernized the Department of Defense. Those reforms are still the foundation from which the Department operates today.

As a senior fellow at the National Defense University, Mr. Lynn continued his work collecting ideas and crafting solutions to solve a myriad of national defense issues. Then, prior to entering the Department of Defense, he worked for 6 years as the military legislative assistant to my good friend and colleague, Senator KENNEDY, a senior member of the Senate Armed Services Committee.

In 1993, Mr. Lynn joined the Defense Department and served 4 years as the director of program analysis and evaluation in the Office of the Secretary of Defense. There he oversaw the Department's ever-evolving strategic planning progress. He was then appointed as the Under Secretary of Defense Comptroller where he served 4 years providing candid advice to the Secretary of Defense on all budgetary and fiscal matters.

His most recent endeavor was as senior vice president at Raytheon Company where he focused his energy and expertise on strategic planning. In this role, he ensured that a major American corporation developed and produced technologies that met the conflicts of today and the dangers of tomorrow.

During these challenging times, it is essential we have leaders in our Defense Department with strength of purpose and a vision for innovation. William Lynn is such a leader. I am proud to pledge my support and look forward to working with him to create smart and effective solutions that support the brave men and women who defend our Nation.

Mr. FEINGOLD. Mr. President, consistent with my practice of deferring to Presidents on executive branch nominations, I will vote to confirm William Lynn to be Deputy Secretary of Defense. I do have some concerns, however, about Mr. Lynn's longtime service as a lobbyist for a major defense contractor. I hope that, if confirmed, Mr. Lynn will take seriously the need for serious reforms to address the Department's troubling record of financial mismanagement.

Mr. LEVIN. Mr. President, I ask unanimous consent that the vote on the confirmation of the nomination of William J. Lynn occur at 5 p.m. today, with the other provisions of the previous order remaining in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I am pleased today to support the confirmation of Mr. William J. Lynn, III, for the important position of Deputy Secretary of Defense. He will be the chief deputy to the Secretary of Defense, the largest Department of Government, with great responsibilities for weapons systems and to our men and women who serve in harm's way.

If confirmed, Mr. Lynn would be the thirtieth deputy secretary. I firmly believe that he is uniquely qualified for the position and would serve well in that post. He served as Under Secretary of Defense-Comptroller during President Clinton's administration from 1997 to 2001. He was widely commended for providing strong managerial emphasis on improving the Department's financial management.

In addition to his service as comptroller, he has served as Director for Program Analysis and Evaluation and as Assistant Secretary of Defense for the Budget. He has broad experience with many of the core issues within the Department of Defense.

My meeting with him was positive and I have heard people comment on his strong character. Many of the issues that come before the Department of Defense are contentious. Rather than basing decisions on merit, people often try to infect those decisions with politics. I believe he will stand firm to ensure that our men and women in uniform get the best equipment and training for the best value. This type of judgement is a critical attribute for a deputy. If the deputy is weak; if he compromises or tries to play politics with a defense contractor, or allows a Member of Congress or the executive branch to have undue influence, he can damage the reputation of the Department of Defense. More importantly, such influence can prevent our servicemembers from getting the best equipment at the best value in a timely manner.

He also has 6 years of experience working in the defense industry. He well understands the challenges facing both the defense industry and the Department of Defense.

I am convinced his experience in DOD, coupled with his experience in the defense industry, makes him a nominee we can support for this very important position.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from Alabama for his statement. It is a very important and

