S. HRG. 112–734

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2013

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

H.R. 6020/S. 3301

AN ACT MAKING APPROPRIATIONS FOR FINANCIAL SERVICES AND GENERAL GOVERNMENT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2013, AND FOR OTHER PURPOSES

Commodity Futures Trading Commission
Department of the Treasury
Federal Communications Commission
General Services Administration

Printed for the use of the Committee on Appropriations

Available via the World Wide Web: http://www.gpo.gov/fdsys/browse/committee.action?chamber=senate&committee=appropriations

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U.S. GOVERNMENT PRINTING OFFICE

72–314 PDF WASHINGTON : 2013

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2013

WEDNESDAY, MARCH 21, 2012

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

The subcommittee met at 2:54 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin, Lautenberg, and Moran.

COMMODITY FUTURES TRADING COMMISSION

STATEMENT OF HON. GARY GENSLER, CHAIRMAN

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Good afternoon. I am pleased to convene this kick-off hearing of the Senate Appropriations Subcommittee on Financial Services and General Government.

Let me extend my apology to my colleagues first, the chairman, and those in attendance. This is an historic day in the United States Senate. Senator Barbara A. Mikulski surpasses the length of service in the Senate of any woman before her.

And tributes are being given on the floor, and I joined in those. It took a little longer than I thought it might, and I hope you understand, this doesn't happen often. But we are honored to serve with her and joined on the floor on a bipartisan basis to say so. So that's the reason I'm late.

Today, we're going to be focusing on the resource needs of Commodity Futures Trading Commission (CFTC). I welcome Senator Jerry Moran, my distinguished Ranking Member, Senator Lautenberg, and those others who may join us.

Honorable Gary Gensler, Chairman of the CFTC, is joining us today. I've asked him to share how his agency is investing the $205 million in resources this fiscal year, and the challenges he faces in years to come.

PREPARED STATEMENT

I'm going to ask consent that my opening statement be made part of the record, and I'm going to turn at this point to Senator Moran, and see if he has an opening statement.

[The statement follows:]

PREPARED STATEMENT OF SENATOR RICHARD J. DURBIN

Good afternoon. I am pleased to convene this kick-off hearing as we evaluate the fiscal year 2013 funding requests of the agencies within the jurisdiction of the appropriations Subcommittee on Financial Services and General Government. Today, we will be focusing on the resource needs of the Commodity Futures Trading Commission (CFTC).

I welcome my distinguished ranking member, Senator Jerry Moran, and other colleagues who have joined me on the dais today, and others who may arrive during the course of these proceedings.

Joining us today is the Honorable Gary Gensler, Chairman of the CFTC. I have invited him to share how the agency is investing the $205 million in resources provided in fiscal year 2012 and the challenges CFTC faces in handling its tremendously expanded responsibilities under tight budgetary circumstances. Chairman Gensler will also explain the details and rationale for CFTC's $308 million funding request for fiscal year 2013.

CFTC occupies a pivotal position at the forefront of stimulating and sustaining economic growth and prosperity in our country—while protecting the marketplace from fraud and manipulation.

CFTC carries out market surveillance, compliance, and enforcement programs in the futures arena. CFTC detects, deters, and punishes abusive trading activity and manipulation of commodity prices, which could have negative impacts on consumers and the economy.

Futures market users (farmers, ranchers, and producers), financial investors, and the U.S. economy rely on vigilant oversight by CFTC in today's rapid-paced, evolving, and often volatile global marketplace.

Adding to the challenge of CFTC's mission is a significantly transformed, globalized, round-the-clock, and highly diversified marketplace. Rapid, electronic, algorithmic trading platforms are replacing the traditional open-outcry trading floors.

And with the enactment of Dodd-Frank Act financial regulatory reform nearly 2 years ago, CFTC's mission was substantially expanded to embrace oversight of the swaps marketplace—the vast "once-in-the-shadows" world of over-the-counter (OTC) derivatives.

To grasp the vast scope of CFTC's oversight responsibilities, it is useful to consider that the long-regulated U.S. futures marketplace historically policed by CFTC has a notional value of approximately $37 trillion. That's enormous, by anyone's calculation.

But it pales in comparison to the more complex and unregulated OTC swaps marketplace now coming under CFTC's purview—with a notional value estimated at $300 trillion—eight times the notional amount of the regulated futures markets.

I am pleased that over the past several years, even with reduced allocations, this subcommittee has been able to substantially boost the funding approved for CFTC to help address pressing resource needs.

In terms of resources in recent years, funding for CFTC has increased from $97.981 million in 2007 to the $205.3 million enacted level for fiscal year 2012. That growth represents a 110 percent hike in funding over 5 years. Despite the funding boosts, I acknowledge that this year has been particularly challenging for the CFTC, given the demands and timetable of Dodd-Frank Act implementation.

Looking ahead, for fiscal year 2013, the President seeks funding of $308 million, an increase of nearly $103 million, or a 50 percent hike, more than the current year funding. This increase will support 1,015 full-time equivalents (FTE), an additional 305 FTE, or a 43 percent increase in staffing, compared to the 710 current FTE level.

I commend CFTC's initiative to organize and present its budgetary justification materials for fiscal year 2013 by mission activity. This helpful display provides a clearer window into how additional resources that may be made available will build upon foundational baselines of current spending by function. It also allows for a better assessment of how the performance of various activities conducted by CFTC—from exams to product and rules reviews, from economic analysis to registrations—may be enhanced with the infusion of additional budget authority.

Oversight of agencies and programs through the appropriations process, including public hearings like this, are an opportunity for an annual check-up and review of operations and spending.

I look forward to hearing more about what CFTC has accomplished since our hearing last May, what resource gaps remain to be filled so CFTC may be a more robust and responsive regulator, and how we can help CFTC better perform its mission amid growing deficits and spending cut sentiments.

And before turning to Senator Moran for his remarks, I would ask that the record reflect that, like other cyclical rites of spring—pitchers and catchers reporting, the March Madness basketball tournament, and the scent of cherry blossoms in the air—we are again experiencing escalating gasoline prices.

Yes, gas prices are rising. In Illinois, prices are more than $4.40 per gallon in some areas. It's the same story every year: right before the summer, gas prices skyrocket. However, this year, high gas prices may harm our economic recovery as families needing to spend more of their incomes on gas have less to spend on other necessities.

I support the President's energy policy to reduce our reliance on foreign sources of energy, including oil. But what can we do to ensure excessive speculation is not contributing to the high cost of gas in the short-term?

In October 2011, CFTC adopted a rule on position limits for 28 commodities including oil that will go into effect 60 days after CFTC and the Securities and Exchange Commission define the term "swap"—an action CFTC expects to take in April—and after 1 year of data collection which should be completed in August.

However, August is near the end of summer, so I will appreciate hearing about other actions CFTC can take in its oversight role of the oil futures market to ensure that excessive speculation is not harming families at the gas pump.

STATEMENT OF SENATOR JERRY MORAN

Senator MORAN. Mr. Chairman, I very much appreciate you conducting this hearing. I look forward to the Chairman's testimony, and I'll submit mine for purposes of speeding up the process, I'll submit my opening statement for the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR JERRY MORAN

Chairman Durbin, thank you for calling this hearing to consider the fiscal year 2013 budget request for the Commodity Futures Trading Commission (CFTC). Welcome Chairman Gensler.

As we review the budget submission for CFTC, I look forward to hearing the details of your request, your plan to carry out your core mission, and your efforts to implement the Dodd-Frank Act.

Chairman Gensler, as you have said, derivative markets and effective oversight of those markets matter to corporations, farmers, homeowners, and small businesses. We all benefit from effective oversight that promotes fair and orderly derivative markets.

However, to create the rules of the road necessary to the efficiency of such markets and to assist the businesses that are dependent upon them, we must also have an orderly and transparent process which outlines how they should work. While the financial crisis highlighted the need for better regulation of our financial markets, we must ensure that the significant cost and complexity of regulations you and other regulators are crafting, don't have the unintended effect of hampering the ability of market participants to hedge risk in a cost-effective manner and ultimately drive capital and jobs away from the United States to overseas markets.

We continue to hear concerns about the inadequacy of the cost-benefit analysis in proposed and final rulemakings. The cost-benefit and application of rules must be carefully considered. Speed should not be valued over deliberation.

Given the significant impact these rules will have across the financial industry and our economy, the rules must be justified and workable. Lack of sound cost-benefit analysis may also result in legal challenge which will lead to further uncertainty.

The need for transparency and accountability in our financial markets also extends to those who regulate them. There is still a need for more clarity in the sequencing of the rules. Without a clearly understood roadmap for implementation, rather than a random mosaic of rules, it will be more difficult for us to be on path to a fair and orderly marketplace and difficult to establish appropriation priorities.

This call for a roadmap is intended to foster transparency and broaden understanding. For any new regulatory framework to be effective, everyone involved must have a clear appreciation of their roles and responsibilities in the new system and how these changes will evolve in a logical sequence.

The credibility of any regulatory framework is also critical to ensuring its success. I continue to be concerned by the lack of answers from government regulators and from MF Global about how the shortfall in customer funds occurred and when Kan-

sas farmers and ranchers will be able to recover all of their money. There is a crisis of confidence now and I will continue to do what I can to ensure that the bankruptcy process moves as fairly and expeditiously as possible so that Kansans receive both answers and their money.

Chairman Gensler, I understand that CFTC is faced with significant challenges in carrying out its core mission and implementing the Dodd-Frank Act. Innovations in the financial services arena present regulators with increasingly complex markets to regulate. Technological solutions will continue to be necessary to drive cost savings and keep up with trading platforms and systems that operate at a record-breaking pace.

However, at a time when our national debt stands at more than $15 trillion, we cannot afford to ignore our country's fiscal reality by failing to make difficult decisions to address our debt and deficit problem. We cannot continue to address our problems by instituting new taxes, increasing spending, and increasing our already record debt.

As Members of Congress, and particularly as members of the Senate Appropriations Committee, we have a responsibility to work to get our fiscal house in order. This requires us to balance important needs and priorities across the Government—from investing in critical medical research that not only saves lives but also helps create thousands of jobs and drives economic growth—to protecting investors, who turn to markets to help secure their retirements, pay for homes, and send their children to college.

In accordance with the Budget Control Act signed into law last year, these priorities must be considered in the context of statutory caps on discretionary spending.

In this environment, all Federal agencies must redouble efforts to achieve cost savings, work more efficiently, and make careful and prudent decisions based on demonstrated need as to how to best allocate scarce resources.

Staffing must be managed to prevent growth to unsustainable levels. Agencies must make decisions on resource allocations based on CFTC's mission responsibilities, but also grounded in budget reality. Simply increasing funding does not ensure that an agency can successfully achieve its mission and frankly is not a realistic option given current fiscal constraints.

Mr. Chairman, thank you again for calling this hearing. I look forward to working with you as we consider the fiscal year 2013 budget request of CFTC and other agencies within this subcommittee's jurisdiction.

Senator DURBIN. Thank you, Senator Moran. Senator Lautenberg, I understand you would like to make a few remarks.

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Thank you, I will submit my statement for the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Mr. Chairman, each week brings another reminder that our country is slowly—but steadily—recovering from the worst economic downturn since the Great Depression.

Letting Wall Street regulate itself helped trigger this crisis, sending millions of Americans to the unemployment line and causing their retirement accounts to shrink.

Under President Obama's leadership, we're rebuilding the economy from the ground up—laying a foundation that will make our country stronger and better prepared for the future.

A cornerstone of this effort is the Wall Street reform law, which includes critical safeguards to protect the economy from another meltdown.

This new law reins in the recklessness of the big banks and creates a watchdog to look out for consumers and make sure financial institutions follow the rules.

In addition, these reforms ensure that ordinary investors get the information they need to make sound decisions. The law also brings the derivatives market out of the shadows and into the sunlight.

Unfortunately, big Wall Street banks have again persuaded some in the Congress that the financial industry can regulate itself.

And now they are trying to stop Wall Street reform by gutting funding for the new law.

Make no mistake: without these new reforms and the funding to carry them out, Wall Street will return to its reckless ways, which will threaten our economic recovery and undermine our ability to create jobs.

As a former CEO, I understand the need for a strong financial sector.

But our top priority must be making sure our economy is never again threatened by the risky bets of Wall Street gamblers.

So I look forward to hearing from Chairman Gensler about how we can make sure the reform law works the way it was designed and protects the American economy and the American people.

Senator DURBIN. Thank you, Senator Lautenberg. Chairman Gensler, please proceed with your testimony.

SUMMARY STATEMENT OF GARY GENSLER

Mr. GENSLER. Thank you, Chairman Durbin, Ranking Member Moran, and Senator Lautenberg.

I'm honored to be at this hearing today that my distinguished Senator—Barbara A. Mikulski—is the chairman of. She's my Senator from Maryland and she's a terrific Senator.

I thank you for letting me chat about CFTC's funding for 2013. CFTC is a good investment of taxpayer dollars because it supports the farmers, ranchers, producers, and commercial companies in each of your States that rely on the futures and swaps markets to lock in a price and lower their risk.

Senator Lautenberg asked as we were just about to convene, what is a derivative? It's basically that. It allows a commercial company to lock in a price so they can focus on something else. It used to be the locking in of the price of corn and wheat many, many years ago, but now it's much more complex, and it's locking in the interest rate.

And as these commercial end-users in the real economy, the nonfinancial side, provide 94 percent of the private sector jobs, it's all that more important that these markets work for them.

The futures and swaps markets are where commercial end-users meet financial firms and speculators. But the producers and merchants that rely on these products generally make up a small slice of the market.

In the oil markets, for instance, they only make up 15 to 20 percent of the market. In the corn and wheat markets, it's closer to 30 percent of the market. But the other part of the market, the 70 to 85 percent of the market, are financial actors and speculators in the market.

Same is true in the swaps market, except even more exaggerated. In the swaps market, worldwide statistics hold that about 10 percent of the market is with what we call end-users and the other 90 percent is financial actors and the like.

CFTC's role is to ensure that these markets are transparent and competitive and work for all market participants, but most importantly, it's about making sure it works for that 10, 15, or 30 percent which are the producers and merchants and the folks that are investing in our economy.

These markets are important to another group of your constituents, the Americans who rely on pension funds and mutual funds, and community banks, and insurance companies. Why is this? Because of all of those use swaps and futures to hedge a risk or en-

hance an investment return in that mutual fund or pension fund, and the like.

So it's crucial that CFTC is well-funded to ensure that Wall Street doesn't have an information advantage over the farmers, ranchers, and producers and other companies in your communities.

I think it's also crucial that we're well-funded to lower the risk that Wall Street's problems will travel to your States and become your constituents' problems as we unfortunately clearly saw in 2008.

I also think it's important that CFTC is well-funded though we're not a price-setting agency, and I find I'm saying that more often recently. Rising energy prices, once again, remind us of why it's crucial that there's an effective cop on the beat to protect against fraud, manipulation, and other abuses.

Let me just put our funding request in context. We currently oversee a $37 trillion futures market. And, yet, our staff is just about 10 percent larger than we were in the 1990s. The Congress has asked us to now also oversee a $300 trillion swaps marketplace, or eight times the size of our futures market.

And, if I can use an analogy of the National Football League (NFL), imagine if the NFL were expanded eight times. And there were not the number of games that we have today, but 100 games every weekend.

I could have used basketball, Senator Moran, but there are only three referees in basketball, so bear with me with a football analogy. If the seven referees all of a sudden didn't have to just referee one football game, but they had to cover eight football games, you can imagine what would happen on the field of play.

The referees on the field do more than just call penalties and watch out for violations, they really protect the players, promote fair competition, and ultimately ensure the integrity of the game.

That's very similar to what CFTC is about, in a sense. We're not requesting eight times the referees, but just to put some startling numbers in front of you. The clearinghouses, trading platforms, and data platforms that we currently oversee, total about 32. One of them, the Kansas City Board of Trade, we've talked about in the past.

That total, we estimate, will grow to about 100, or three-fold. We currently oversee about 130 to 140 futures commission merchants. And something called retail foreign exchange dealers, we envision that they'll be somewhat in that vicinity, swap dealers, that will come in.

So, we're doubling the number of intermediaries. We're probably tripling the number of trading platforms, and the like.

So our request of $308 million, a 50 percent increase, represents about 56 percent for technology increase, and 43 percent for staff. So we're trying to make the balancing right. And, I know this $103 million increase might seem bold, but I believe it's really not so bold in comparison to the 8 million jobs that were lost as a result of the financial crisis.

And, if I could use the football analogy one more time, if the football games were expanded eight-fold, leaving just one referee per game, and in some cases, no referees, and if it was basketball, then five of the games wouldn't have anybody, imagine the mayhem on

the field, the resulting injuries to the players, and the loss of confidence in the game itself.

PREPARED STATEMENT

So, in 2012, CFTC will finish implementing the Dodd-Frank Act rules. The fiscal year 2013 request not about implementing the rules or not, it's about trying to avert another financial crisis. It's about helping producers, merchants, farmers, and commercial companies in your States to use these futures and swaps so they can grow their businesses, hire people and invest in our country.

I thank you.

[The statement follows:]

PREPARED STATEMENT OF GARY GENSLER

Good afternoon Chairman Durbin, Ranking Member Moran, and members of the subcommittee. Thank you for inviting me to today's hearing on the Commodity Futures Trading Commission's (CFTC) fiscal year 2013 budget request.

It is critical that the derivatives markets—both futures and swaps—work for hedgers, farmers, ranchers, producers, and commercial companies in the real economy. Futures and swaps markets allow them to lock in a price and focus on what they do best—servicing customers, producing products, and investing in our country's future. As it's the hedgers in the real economy—the nonfinancial side—that provide 94 percent of private sector jobs, it's all the more important that these markets work for America's job providers.

The derivatives markets that CFTC oversees are where hedgers across the country meet financial firms, and others—generally called speculators. Over time, the makeup of these markets has shifted dramatically. Financial firms and speculators now make up the vast majority of these markets. For instance, producers, merchants, processors, and other end-users make up approximately 15 percent of the crude oil futures market. Swap dealers, managed money accounts, and other financial actors make up the remaining 85 percent. In Chicago Board of Trade wheat contracts, end-users make up 9 percent of the long and 29 percent of the short positions, meaning that more than 70 percent of this market consists of financial interests.

CFTC is not a price-setting agency. Our critical mission is to ensure that derivatives markets are transparent and free of fraud, manipulation, and other abuses. Our mission is particularly important considering hedgers—America's job creators—use these markets to lock in a price and make their investments. Given the dominance of financial actors and speculators in these markets, it's that much more crucial that CFTC is well funded so that we can ensure these markets work for hedgers. The need for adequate funding is highlighted by rising gas prices at the pump.

In 2008, the financial system and the financial regulatory system failed America. The unregulated swaps market helped concentrate risk in the financial system that spilled over to the real economy, leading to 8 million jobs lost, millions of families losing their homes, and thousands of small businesses closing their doors. In 2010, the Congress and the President came together to pass the historic Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Beyond swaps market reform, the Congress benefited commercial hedgers by closing gaps in the CFTC's oversight, including the so-called "Enron Loophole" and "London Loophole", as well as strengthening the agency's anti-manipulation authorities. But effectively overseeing these markets depends on adequate funding for the agency's expanded mission.

At its fiscal year 2012 staffing level of 710 full-time equivalents (FTEs), the agency is but 10 percent larger than our peak in the 1990s. But since then the futures market has grown to approximately $37 trillion notional, and the Congress added oversight of the $300 trillion swaps market, which is far more complex than the futures market. This growth is highlighted on pages 148–149 of CFTC's budget submission.

It is as if all of a sudden the National Football League (NFL) expanded eight times to play more than 100 games in a weekend. I think we'd all agree that the same number of referees could not monitor all those games. And referees on the field do more than call penalties and watch for violations of the rules. They also protect the players, promote fair competition, and ultimately ensure the integrity of the game.

Thus, just as in my NFL analogy, CFTC needs more referees. CFTC is requesting significantly more resources to oversee a much expanded field of play. The request is for an appropriation of $308 million and 1,015 FTEs. CFTC's budget request strikes a balance between important investments in technology and human capital, both of which are essential to carrying out the agency's mandate. This approximately 50 percent increase in funding includes a 56 percent increase in IT services, but only a 43 percent increase in staff.

Though these percentages might seem striking, let me use the football analogy—we're being asked to oversee the swaps markets, which is eight times the size of the futures markets. And we need more referees to protect the players, promote fair competition, and ultimately ensure the integrity of the markets.

CFTC is dedicated to using taxpayer dollars efficiently—nearly one-fourth of our overall budget request—$70 million—is for outside information technology (IT) services. When the CFTC's dedicated IT staff is included, we're requesting $96.2 million for IT, or nearly one-third of the overall budget.

But it still takes human beings to watch for market manipulation and abuses that affect hedgers, farmers, ranchers, producers and commercial companies, as well as the public buying gas at the pump.

In the context of a constrained budget environment and the agency's dramatically expanded mission, CFTC took three significant steps in the past year to prepare for implementation of financial reform. First, we developed a new strategic plan for fiscal years 2011–2015. This plan raises the bar on the agency's performance measures to more accurately evaluate our progress. But the agency's performance is affected by the challenges of limited resources. CFTC's first performance report said the agency was only able to meet 57 percent of its performance targets. For example, CFTC examined fewer derivatives clearing organizations (DCOs) than called for in the strategic plan. In addition, fewer staff members were available to review new contracts for susceptibility to market manipulation, resulting in a backlog in such reviews.

Second, CFTC put in place an organizational restructuring that went into effect in October 2011, which aligned the agency with our expanded mission. It created the Division of Swap Dealer and Intermediary Oversight and the Office of Data and Technology, as well as reorganized a number of other divisions. And third, the agency began presenting its budget request by the agency's mission activities, a change from our presentation approach in years past, which was by agency divisions. It offers the Congress and the public a much clearer picture of what CFTC does for the American people. In the chart attached to this testimony, you can see each of our missions and the associated funding request.

In my remaining testimony, I will review the five areas that make up more than 90 percent of our requested budgeted staff increase:

—registrations;
—examinations;
—surveillance and data;
—enforcement; and
—economics and legal analysis.

REGISTRATION AND PRODUCT REVIEWS

A significant task before us in fiscal year 2013 will be the registration of an unprecedented number of new market participants, as well as reviews of new products for both the clearing mandate and the trading mandate.

We want to consider registration applications in a thoughtful and timely manner, be efficient in reviewing submissions, and be responsive to market participant inquiries, but this will require sufficient funding. We are seeking $36.8 million and 142 FTEs for these two mission areas, an increase of $18.2 million and 70 FTEs.

The more than 200 entities that may seek CFTC registration within the next year is a dramatic increase over any registration effort the agency has overseen in the past. CFTC needs staff to facilitate the registration of the following market participants:

Clearinghouses.—Entities that lower risk to the public by guaranteeing the obligations of both parties in a transaction. We are working with four new entities seeking to register as DCOs and have inquiries from others. These entities will join the 16 we currently oversee.

Designated Contract Markets.—U.S. trading platforms that list futures and options and likely will start listing swaps. CFTC currently oversees 16 Designated Contract Markets (DCMs), and by 2013, staff expects another 5 to seek registration.

Foreign Board of Trade.—Regulated trading platforms in other countries that are generally equivalent to DCMs. Since the Foreign Board of Trade (FBOTs) rule became effective in February, two have filed formal applications to be registered with CFTC.

Another 20 FBOTs currently operate under staff no-action letters. By 2013, staff expects a total of 28 FBOTs to seek registration with CFTC.

Swap Data Repositories.—Recordkeeping facilities created by the Dodd-Frank Act to bring transparency to the swaps market. Four have already filed with CFTC, and by 2013, an additional two Swap Data Repositories (SDRs) are expected to seek registration.

Swap Dealers.—Under the Dodd-Frank Act, CFTC is working to comprehensively regulate swap dealers to lower their risk to the economy. A rule finalized in January requires them to register with the National Futures Association (NFA). For planning purposes, CFTC staff currently estimates somewhere between 100 and 150 swap dealers may request registration with the NFA, and we'll be overseeing their registration and related questions.

Swap Execution Facilities.—The new trading platform for swaps.

CFTC staff estimates that 20–30 entities may request to become SEFs.

While we will have a system for provisional registration in place, market participants will want the certainty of final registration. CFTC also is taking on a new resource-intensive responsibility of reviewing which swaps will be subject to the clearing mandate. Full funding for the agency means that we will be best prepared to review the dramatic increase in requested registrations and to review swaps for the clearing mandate. A partial increase in funding means market participants will see a backlog in registrations, responses to their inquiries, and product review because we won't have personnel sufficient to review their submissions in a timely and complete manner. Flat funding will mean market participants will wait even longer. There will be significant backlogs for participants seeking to register with CFTC, as well as for review of swaps for mandatory clearing.

Examinations

Another critical mission for fiscal year 2013 will be more regular and more in-depth examinations of the major market participants CFTC oversees. Examinations are CFTC's tool to check for compliance with laws that protect the public. The agency is seeking $35 million and 161 FTEs for examinations, an increase of $19 million and 72 FTEs. CFTC is asking for nearly double our resources for this mission because the number of entities we examine is expected to more than double.

This is an area where the agency fell short of our goals in the 2011 performance report.

CFTC directly reviews clearinghouses and trading platforms and will review SDRs. But while the agency reviews them directly, we don't have the resources to have full-time staff on site, unlike other regulatory agencies that do have on-the-ground staff at the significant firms they oversee. CFTC also doesn't do annual reviews. Clearinghouses, for instance, currently are examined on a 3-year cycle. For intermediaries such as futures commission merchants (FCMs) and swap dealers, the CFTC's funding situation requires us to rely on what are known as self-regulatory organizations (SROs) to be the primary examiners. Given our lack of resources, we're only able to double check the SRO's work on a limited number of FCMs each year, and the agency can spend little time onsite at the firms.

On top of the current lack of staff for examinations, our responsibilities in 2013 will expand to include reviews of many new market participants. For instance, there are currently 123 FCMs, and staff estimates a similar number of swap dealers will ultimately register. More frequent and in-depth examinations are necessary to assure the public that firms have adequate capital, as well as systems and procedures in place to protect customer money. The number of clearinghouses, trading platforms, and data platforms is expected to triple. Reviews of these entities are critical to ensuring the financial soundness of clearinghouses, and ensuring transparency and competition in the trading markets.

Fully funding the increase for examinations means CFTC can move toward annual reviews of all significant clearinghouses and trading platforms and adequate reviews of other market participants. A partial increase for examinations means cutting back our monitoring plans for new market participants and more in-depth risk reviews. Flat funding means we will continue lacking the ability to assure the public that CFTC's registrants are financially sound and in compliance with regulatory protections.

Surveillance and Data

Effective market surveillance is dependent on CFTC's ability to acquire and analyze extremely large volumes of data to identify trends and events that warrant further investigation.

CFTC is seeking $65.6 million and 205 FTEs for surveillance, data acquisition, and analytics, an increase of $22.2 million and 65 FTEs. Of the $65.6 million request, 55 percent would be directed toward information technology.

The Dodd-Frank swaps market transparency rules mean a major increase in the amount of incoming data for CFTC to aggregate and analyze. The agency is taking on the challenge of establishing connections with SDRs and aggregating the newly available swaps data with futures market data. This will require high-performance hardware and software and the development of analytical alerts. But it also requires the corresponding personnel to manage this technology effectively for surveillance and enforcement.

In fiscal year 2013, CFTC also anticipates receiving ownership and control information for trading accounts. This means CFTC will have data to better detect intraday position limit violations and analyze high-frequency trading. CFTC also will be monitoring for compliance with rules on aggregate position limits for both futures and swaps in energy and other physical commodities.

A full increase for surveillance means CFTC will have the ability to analyze futures and swaps data to protect market participants and the public. A partial increase would limit the agency's investments in analysis-based surveillance tools. And flat funding will limit our capacity to effectively utilize and aggregate the new data we are beginning to receive.

Enforcement

CFTC's enforcement arm protects market participants and other members of the public from fraud, manipulation, and other abusive practices in the futures and swaps markets.

Our efforts range from pursuing Ponzi schemers who defraud individuals across the country out of life savings; to abuses that threaten customer funds; to false reporting of prices; to schemes to manipulate prices, including of goods, such as oil, gas and agricultural products. CFTC has opened more than 900 investigations in the past 2 fiscal years, with a record number of new investigations in fiscal year 2011. CFTC is seeking $60.4 million and 225 FTEs for enforcement, an increase of $16.1 million and 50 FTEs.

In 2002, we had 154 people devoted to enforcement, and that number has grown just slightly to our current staff of 170. This staff has been called upon to enforce laws and rules that are new to our arsenal. The Dodd-Frank Act mandate closed a significant gap in the agency's enforcement authorities by extending the enforcement reach to swaps and prohibiting the reckless use of manipulative or deceptive schemes. In addition, CFTC will be overseeing a host of new market participants.

A full increase for enforcement means more investigations and cases that the agency can pursue to protect the public. A less than full increase means that CFTC will be faced with difficult choices. We could maintain the current volume and types of cases, but we would have to shift resources from futures cases to swaps cases or not cover all of the swaps market. Flat funding means not only that CFTC's enforcement volume likely would shrink, but parts of the markets would be left with little enforcement oversight.

Economics and Legal Analysis

For fiscal year 2013, CFTC is seeking $27.8 million and 88 FTEs to invest in robust economic analysis teams and Commission-wide legal analysis, an increase of $6.8 million and 24 FTEs. CFTC's economists support all of the Commission's divisions, including surveillance and complex enforcement cases. They are currently working with Dodd-Frank Act rule teams to carefully consider the costs and benefits of each rule. In 2013, CFTC's economists will be integral in developing tools to analyze automated surveillance data and determining whether new products are eligible for clearing. The economists also will be assessing the effect of position limits on futures and swaps markets. Flat funding or a partial increase means a strained ability to analyze the market and detect problems that could be negative for the economy.

CFTC's legal analysis requirements will increase in 2013 as a result of new market participant registrations, as well as new product reviews and the clearing mandate.

A less than whole funding increase means a more limited ability to give market participants timely responses to their questions and timely processing of their applications. Flat funding means CFTC's legal analysis team will be spread extremely

thin, aggravating the delays in responding to market participants and processing applications and straining the support of enforcement efforts.

CONCLUSION

Market participants depend on the credibility and transparency of well-regulated U.S. futures and swaps markets. Without sufficient funding for CFTC, their businesses—and the Nation—cannot be assured that the agency can adequately oversee these markets.

Funding this requested budget increase for CFTC is about ensuring hedgers in the real economy, the farmers, ranchers, producers, commercial companies, and other end-users that use derivatives markets, can lock in a price and lower their risk.

We've been asked to oversee the swaps market, which is eight times the size of the futures market. Just as if the current number of NFL referees were called upon to monitor more than 100 games in a weekend, we need the resources to protect the players, promote fair competition and ultimately ensure the integrity of the markets for the American people.

SUMMARY OF REQUESTED INCREASES OF $102.7 MILLION BY ACTIVITY

[Dollars in thousands]

	Fiscal year 2012 base		Fiscal year 2013 request		Fiscal year 2013 increase		Percentage of increase
	Amount	Full-time equivalents	Amount	Full-time equivalents	Amount	Full-time equivalents	
Registration and registration compliance	$11,073	34	$19,188	63	$8,115	29	8
Reviews of products and rules of operation	7,540	38	17,585	79	10,045	41	10
Data acquisition, analytics, and surveillance	43,399	140	65,614	205	22,215	65	22
Examinations	15,937	89	34,907	161	18,970	72	18
Enforcement	44,293	175	60,394	225	16,101	50	16
Commission-wide economic and legal analysis	20,947	64	27,787	88	6,840	24	7
Commission-wide international policy coordination	3,553	10	5,023	16	1,470	6	1
Commission-wide data infrastructure	31,214	41	48,449	52	17,235	11	17
Commission-wide management and administrative support	26,204	114	27,674	120	1,470	6	1
Inspector General	1,134	5	1,379	6	245	1	.....
Total, all CFTC activities	205,294	710	308,000	1,015	102,706	305	100

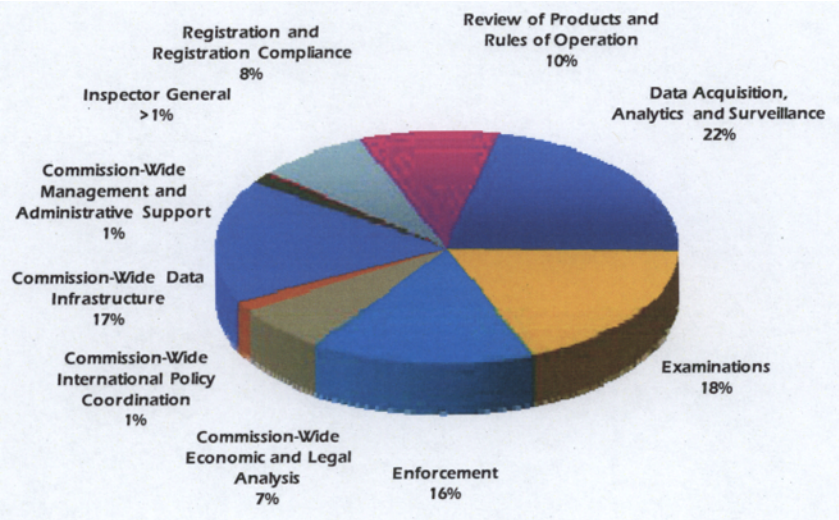

FIGURE 1. $102.7 million budget increase by activity.

Senator DURBIN. Thank you, Chairman Gensler.

Because they waited patiently for me, I'm going to yield the opening round of questions to my colleague, Senator Lautenberg. And, then, turn to Senator Moran.

BUSINESS CONDUCT RULES

Senator LAUTENBERG. Thanks, Mr. Chairman. Thank you, Mr. Gensler.

The growth in your responsibility commensurate with the growth in the industry, of course, is quite a change over the years. And a lack of regulation in derivatives helped cause the financial crisis that we underwent.

CFTC requesting a significant budget increase, which some oppose. Is it fair to say that if the Congress fails to provide this funding increase, derivatives will remain largely unregulated?

Mr. GENSLER. I think, Senator, we will be successful in implementing the rules that you all have asked us to do, but I do think, just as in my basketball or football analogy if I stretch it, there wouldn't be folks to oversee the markets.

So it would be regulation by rule—we wouldn't be able to really do what's necessary to answer people's questions, to have effective cops on the beat, and, very importantly, I think, protect the American public.

Senator LAUTENBERG. An op-ed piece written recently by a departing Goldman Sachs employee got a lot of attention, and it suggested that the firm may not always deal with its clients in good faith.

The Wall Street Reform Law introduced new business conduct standards for swap dealers like Goldman Sachs. What's CFTC doing to enforce these standards and ensure fair dealing?

Mr. GENSLER. Well, I'm pleased to say that we were able to finalize the rules in sales practices and business conduct just this past

January. I think that as you noted, the financial industry is often a counterparty, is often on the other side of the table, from the commercial companies in your States.

And so that's why it's so important, I think, not only to finalize the rule, but then also to have the funding so that we can respond to inquiries, whistleblowers, and actually ensure that those sales practices are met.

POSITION LIMITS

Senator LAUTENBERG. There is obviously a real good, big vote of thanks, in terms of the President's request for a budget for your department.

And when we see what is involved, position limits, help ensure that unscrupulous traders can't manipulate, or will not be able to manipulate, oil and gas prices.

CFTC completed its work on position limits for energy derivatives last year, but they're not yet in effect, correct?

Mr. GENSLER. That's correct.

Senator LAUTENBERG. Gas prices continue to rise. Why are these limits still not in place?

Mr. GENSLER. We were able to finalize our rule writing on position limits last October, but there were two additional pieces that needed to be done.

One was that although the Congress laid out a pretty detailed definition of "swap", the Congress mandated that we work with the Securities and Exchange Commission (SEC) to "further define the word 'swap'."

We wanted to, I think, and the Congress wanted to, make sure that we didn't inadvertently bring people in who were using the cash markets—transactions called "forwards". I've had a lot of conversations with Senator Moran about this.

I think we'll finalize that rule this spring. We need to finalize that, and then spot-month limits will go into effect. Second, we also needed some additional data. The way we finalized the rule in October was to provide that we needed to get at least one-more year's data to put in place the second part of the limits.

USER FEES

Senator LAUTENBERG. There's strong funding for the CFTC oversight is essential to preventing another financial meltdown. But the industry should have to pay its fair share.

CFTC is the only financial regulator that does not offset a portion of its costs through industry user fees. Would collecting user fees instead of depending exclusively on taxpayer funding be consistent with CFTC's ability to accomplish its mission?

Mr. GENSLER. Senator, I look forward to working with the Congress in any way you think is most appropriate to help ensure the public has a well-funded CFTC.

I know that President Obama has suggested, I think other Presidents in the past of both parties have suggested, possibly having fees. My view is whatever the Congress wants to do I would work with the authorizers and the appropriators to ensure full funding of the CFTC.

Senator LAUTENBERG. Thank you, Mr. Gensler. Senator Moran, your turn. And it's not just because you're the remaining member. It's that we recognize the quality of information.

CORE PRINCIPLES

Senator MORAN. You are so kind, Senator. Thank you.

Mr. Chairman, let's talk about a couple of issues that we seem to talk about regularly. I want to talk about position limits and core principles.

In regard to core principles, what I often hear from the futures industry is that they are overwhelmed by the volume, frequency, and speed at which CFTC is issuing new regulations. And, regardless, of your efforts to entertain meetings and round tables, there's a sense out there that while you're willing to sit down, you're not quite as welling to listen.

Most observers, I think, would reach the conclusion that during the difficulties our country experienced in 2008, regulated exchanges functioned well, in large part, due to the core-principle regime.

Instead of seizing on the strengths of the core-principle regime, CFTC under your leadership has systematically converted the core-principle regime to one of a prescriptive rule-based regime.

Why, Mr. Chairman, after the core principles served so well during the financial crisis are you still pursuing these rigid regulations that effectively dismantle core principles?

Mr. GENSLER. I, Senator, actually think that what we're doing is building upon what has worked well, as I think we both see in the futures world, and extending it to this swaps world.

Core principles are there for designated contract markets like the Kansas City Board of Trade. It's also there for the clearinghouses. In the clearinghouse context, we thought it's really critical that they do have robust risk management.

We finalized those rules last October, and we thought guidance, frankly, would not be enough because of the significant amount of risk being moved into, particularly, in the swaps area.

We have not yet finalized the ones on the exchanges, and we're still taking, even though officially our comment period closed a long time ago, we're still taking very much our time on this, taking more input on this.

And I would hope we could actually have additional meetings. If there are things in that area that you particularly want us to focus on, I'd like to know about that.

Because what we're trying to do there is really just make sure that it's extended to swaps, and that we're embodying in the final rules for designated contract markets, the best practices that the designated contract markets currently use in the futures market.

IMPLEMENTATION

Senator MORAN. We may have to have those conversations. And you've been kind to make that offer in the past, and I welcome that opportunity again.

It strikes me that we may be about to engage in the same back and forth that we had a year ago. But the implementation for dis-

cretionary rulemaking has grown since we talked a year ago. What I would call a haphazard nature of rulemaking.

Since your last appearance before the subcommittee, one of your rulemakings has been challenged in court. Published remarks by the judge in that court case indicated that it's highly likely that the rule implementing position limits will be struck down.

What will your response be should that rule be rejected by the courts? Are you and CFTC staff planning for that possibility?

Mr. GENSLER. In terms of implementation phasing, I think that we very much took your advice and guidance last year. Around spring, we actually put out for public response and comment 13 concepts around implementation phasing.

Senator MORAN. So I'm now responsible for the mosaic.

Mr. GENSLER. No. I think your advice was about seeking public input on implementation phasing.

Senator MORAN. Okay.

Mr. GENSLER. The word "mosaic" was something I've used. And I will try not to use it again.

We got a 60-day public comment period and 2 full days of round tables: they were very beneficial. We've not finalized our rules in the 1 year since the passage of the Dodd-Frank Act. Here we're almost 2 years out, and we've not finalized.

We're not trying to do this against a clock—I know when I first said that, people didn't believe me—but here we are almost 2 years, and we're maybe halfway through the final rules. We've got a lot still to do, and we're still not trying to do this against a clock. We're trying to do it in a balanced way.

And in terms of phasing, we've even put out some specific rules for comment in the fall, in September, about the phasing of the clearing mandate and the trading mandate and the like. And that has been very beneficial to get that public input. We then phase in each of our individual rules. Sometimes we give a year to get something in place, 6 months and the like.

POSITION LIMITS

On position limits more specifically, Senator, the first thing I would do is turn to our attorneys and probably personally read whatever opinion comes out of the judge to see what they've said.

It's part of our democratic process that anything that we do, somebody could move into a court. I believe that what we did in October, in finalizing the position limits rules, was consistent with the congressional mandate, the strong mandate that we move forward and implement position limits, not only for futures, but also for swaps.

But, of course, if a judge has a different view on that, then we'll take a very close look at what he says.

Senator MORAN. When do you expect that decision?

Mr. GENSLER. Well, right now, I think we're just awaiting, the litigants had a preliminary injunctive motion, and we're waiting to see what the judge says on that.

I'm told, I'm not a lawyer, but I'm told that's generally, a relatively short process. So near term what I'm told that we'd hear from is just on that preliminary injunctive motion.

Senator MORAN. Have you had discussions about what if the rule is struck down? What does CFTC do next? I mean, you indicated you are going to read the decision by the court, but are you planning at this point if there is an adverse decision, what CFTC should do?

Mr. GENSLER. I don't have a plan yet because it would depend on wholly on what does the judge says.

We think, and I will say this personally too, we've followed the clear congressional direction on these limits. And what the limits are really it's to ensure that there's not concentration. We're not a price-setting agency. Some folks have maybe suggested otherwise.

We're really an agency to ensure that the markets are transparent, open and competitive, and that these exchanges work well, that the clearinghouses are safe.

Through the position limits, it's about ensuring that no one speculator has a sort of large footprint in that marketplace. They've been in place in the agricultural markets since the 1940s. Actually, working with the exchanges, they were in place in the energy markets in the 1980s and 1990s.

And I think the Congress really suggested that we sort of bring them back, but also extend them to the swaps marketplace. The reason we said we needed a delay is to get more information. So even in a swaps marketplace, we need that 1 year of data to use a percentage of the market formula that had existed when limits applied only to futures.

I think we first used this percentage of the market formula about 1980 or so. But, of course, if a judge says that he thinks we should do something different, we'd have to look obviously at what they said, and whether to appeal that and so forth.

Senator MORAN. Thank you, Mr. Chairman.

MARKET IMPACT ON PRICES

Senator DURBIN. Thank you very much, Senator Moran.

Chairman Gensler, in your opening remarks you said, and I quote, "CFTC is not a price-setting agency, but rising fuel prices make it clear why we need to have cops on the beat."

I'm trying to reconcile, if I wrote that down properly. I'm trying to reconcile that statement. You seem to suggest at the outset that what you do has no impact on price, but then go on to say, but because prices are going up, we have to do a better job.

Mr. GENSLER. Well, I think, Mr. Chairman, I thank you for that question. Because what we do as an agency, whether prices are low or high, is ensure the American public that those prices are arrived at where buyers and sellers meet in a transparent marketplace, free of fraud and manipulation.

Position limits assure that no one has sort of a large footprint, no speculator, has too large a concentration. I think, in times when the public is asking this question, it reminds us why we have to, I believe, have a well-funded agency to ensure that these markets are free of fraud and manipulation and they're as transparent as possible.

And that buyers and sellers come into that marketplace on a fair field of play.

Senator DURBIN. So, let me try to get down to some basics here so I can understand from a layman's point of view how I would explain this to people.

Let's assume for a moment we're talking about a futures market relative to plywood, which I think at one point was on the Chicago Board of Trade. And let's assume there are ten people interested who understand that they are talking about the future price of plywood and may have to take delivery of what they are buying.

I would assume that market would be less active, all things being equal, than a market with 100 people interested in the same issue. Is that a fair conclusion?

Mr. GENSLER. I think so.

Senator DURBIN. Now, let's take it to the next step. Let's assume it's not 100 people interested in the future price of plywood, but a thousand. And of those 1,000, 900 have no interest in plywood. They'd just as soon be dealing with apples at the Pip's next door.

They don't want to ever take delivery. They're never really interested in reaching that point in the transaction. Does that change the trade, the volatility of trading, perhaps, the price of plywood?

Mr. GENSLER. There's been a lot of studies and surveys on the role of speculation in these markets. I'm taking that to be the 900 that aren't taking delivery, and we actually reviewed them in this position limit rule last October. There were about 50 studies that were commenters sent in.

I suspect you'd probably not be surprised, about one-half of them said that the role of speculators had an influence on some of the things you said, price, and volatility. About half said, no.

I mean, and so you have the St. Louis Federal Reserve, and you have some very esteemed economists on one side saying, yes. And you have some other surveys and studies on the other side, suggesting, no.

So, we've summarized all that, and all five of the commissioners, you know, have the benefit of a very good chief economist in the office that has helped us with this.

Senator DURBIN. So, if there is a split opinion as to whether or not the number of trades, the number of traders, the interest in taking possession has any impact on price, let me ask you what the empirical evidence is.

If you're dealing with a commodity that really, and there are some, doesn't engage people as much as some other commodity, what is the nature of that market compared to the more active market in the next, no longer Pip's probably, but in the next trading theater?

Mr. GENSLER. Well, I think that there are two features. If the less-active market doesn't have a lot of fundamental research around and a lot of transparency around it, that market actually sometimes can be more easily manipulated, if there aren't people coming in and out.

But, the second feature, I think to the core of your question, is if the market as many of our markets are now 80 to 85 percent financial actors and speculators, and, you know, a smaller percent are the producers and merchants, I think that's part of the reason why we want a well-funded CFTC because the nature of the market is so heavily toward the financial actors and so heavily toward

the speculators, that it's that much more critical that we're watching over these markets to prevent manipulation.

And, second, that we do use position limits that no one speculator has such a large position that they start to be sort of the trend setter. They start and others sort of follow that lead in a pack.

Senator DURBIN. I have some more questions, but I'm going to yield to my colleague.

LEGAL SEGREGATION WITH OPERATIONAL COMINGLING (LSOC)

Senator MORAN. Mr. Chairman, thank you.

Mr. Chairman, it's my understanding that CFTC recently held a roundtable meeting to discuss the possibility of subjecting futures to a LSOC model. This sort of regulation, I think, at least appears to me, is discretionary as the Dodd-Frank Act only requires that you apply the LSOC model to cleared swaps.

Given that the LSOC for swaps will not come on-line until November of this year, will you comment—I'm sorry—will you commit to this subcommittee that you will hold off on pursuing the LSOC model for the futures market until the cost-benefit analysis for the LSOC for swaps has been fully evaluated over the course of the next few years?

Mr. GENSLER. I want to say we're in complete agreement. It is discretionary. It is something that came up actually in January as we were completing the new segregation for cleared swaps that a number of my fellow commissioners said, this is different than what we're doing for the futures world and have for some time.

And so I committed to my fellow commissioners, let's have a round table, and let the public tell us. And I think it was very beneficial.

It was also at this round table that people commented on greater enhancements to customer protection and different models. Staff's evaluating the comments and to the extent that staff puts forward a proposal whether it's this legal segregation for futures or other recommendations, all five of the Commissioners are weighing in.

We have a pretty active and busy agenda this spring and summer on the Dodd-Frank Act initiatives. So it might be disappointing for some that want LSOC for futures early.

I think it's just inevitable, if nothing else, for capacity reasons, that it will wait. And I think you're right, Senator, that because we're doing legal segregation for the swaps markets by November 8, we'll learn a lot from that as well.

Senator MORAN. So I think what you're telling me is we would not expect the LSOC for swaps to occur, if it does at all, until after the LSOC for futures?

Mr. GENSLER. I think that's just absolutely correct because we have a very significant agenda that the Congress has mandated for us.

We have enhancements to customer protection that I think are getting some very good input from the futures industry and from the exchanges. If there is a true consensus, on LSOC for futures, there is not that consensus at this stage.

Senator MORAN. Thank you for clarifying my misstatement, and I appreciate that sentiment, because one of the conversations that

you and I've had on an ongoing basis is my belief that you ought to focus on the things required by the Dodd-Frank Act that are mandatory as compared to the discretionary opportunities that the Dodd-Frank Act has given CFTC and prioritize.

And I think your answer to my question suggests that in this case, that's what you're doing.

Mr. GENSLER. Yes. I think, generally, that's the case. There are some things that are discretionary that we're taking up, I hope, soon to put out a proposed rule on getting more data about who owns accounts.

This is because of all this high-frequency trading, and so forth. I mean, so there are probably, I'm going to say, three or four things, I don't have the right count in my head, that we do anticipate in 2012 to do to enhance our oversight of the markets given high-frequency trading. That's actually maybe three.

And then there may be some things that come out of really thoughtful presentations from the futures industry and others on how to better enhance customer protection around segregated funds. And I think that's a critical part of our 2012 agenda.

AGRICULTURAL SWAPS

Senator MORAN. Mr. Chairman, let me raise a recent decision by CFTC to prevent clearing houses from self-certifying agricultural swaps for clearing.

As I understand it, rule 35 requires CFTC to treat agricultural swaps as they would all other swaps for purposes of self-certification.

Can you explain why you've chosen, it appears to circumvent rule 35, and treat agricultural swaps differently than other forms of swaps?

Mr. GENSLER. The Congress gave us authority in the Dodd-Frank Act to treat agricultural swaps differently. Then, we went through a lot of public comment to say we would treat them the same. That's where we ended up sometime last year after I think three public notices.

I don't know that we're treating them any differently, but one challenge for the whole swaps marketplace, not just agricultural swaps, is that we haven't completed our rules. It may well be that what you're referring to is that we haven't finalized some of the general clearing rules.

Senator MORAN. So, this process dealing with agricultural swaps and nonagricultural swaps, did it slow down the process of finalizing the rule?

Mr. GENSLER. We implemented 29 Dodd-Frank Act rules. We have about 20 to go, roughly. So, you know, maybe we'll finish this sometime this summer or fall, but again, it's not against a clock.

In the terms of agricultural swaps, they're to be treated identical to all the other swaps. There's a little bit of a legacy issue in that before the Dodd-Frank Act, agricultural swaps could not be cleared unless we did something called a—I think it's called a 4D order, but I apologize if I have the wrong letters.

And so, it's a little bit of this legacy issue of, I think, somebody has filed a petition in the last month or two, and there's a question, do they use this 4D order or do they use this new self-certification.

And I was briefed on it in the last day or two in anticipation of this hearing, but I might have just exhausted my knowledge on it.

Senator MORAN. Let me try one more time, not because you've exhausted your knowledge, but because I've been inarticulate in asking the question.

I think what I'm interested in knowing is the timeline of the ability to implement self-certification for agricultural swaps.

Mr. GENSLER. I know that it would most definitely come if we finalized a handful of new rules sometime this spring or summer. The other issue that I was briefed on in the last day was, is there some way to shorten the time?

And all I know is that our staff's looking at that to see if there's a way to do it.

Senator MORAN. Thank you for working your way through that question.

Mr. GENSLER. Okay.

SPECULATION AND PRICING

Senator DURBIN. Chairman Gensler, I'd like to address, as we started talking about at the outset, the connection between speculation and pricing.

And you said that the jury is split on that based on what you have read. I would say that for at least 20 of my colleagues, they have come down on the side that speculation is linked to higher prices.

And these colleagues sent you a letter, on March 5 of this year, calling on you to enact strong position limits to eliminate excessive oil speculation. I won't read the whole letter. You've received it.

For the record, I'll put it in the record here.

[The information follows:]

LETTER FROM THE CONGRESS OF THE UNITED STATES

MARCH 5, 2012.

Hon. GARY GENSLER, Chairman,
Commodity Futures Trading Commission, Washington, DC.

Hon. MARK WETJEN, Commissioner,
Commodity Futures Trading Commission, Washington, DC.

Hon. SCOTT WALLA, Commissioner,
Commodity Futures Trading Commission, Washington, DC.

Hon. BART CHILTON, Commissioner,
Commodity Futures Trading Commission, Washington, DC.

Hon. JILL SOMMERS, Commissioner,
Commodity Futures Trading Commission, Washington, DC.

DEAR CHAIRMAN GENSLER, AND COMMISSIONERS CHILTON, WETJEN, SOMMERS, AND O'MALIA: We are writing to urge you to immediately enact strong position limits to eliminate excessive oil speculation as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. As you know, the Dodd-Frank Act mandated that your agency promulgate and enforce such limits no later than January 17, 2011. We are disappointed that, more than a year later, the Commission has not fulfilled this important regulatory duty.

Congress determined that speculative position limits are an effective and critically important tool to address excessive speculation in America's oil and gasoline markets. It is one of your primary duties—indeed, perhaps your most important—to ensure that the prices Americans pay for gasoline and heating oil are fair, and that the markets in which prices are discovered operate free from fraud, abuse, and manipulation.

There has been a major debate over the last several years as to whether spikes in oil prices are caused entirely by the fundamentals of supply and demand or

whether excessive speculation in the oil futures market is playing a major role. It is clear to us that debate has ended. Exxon Mobil, Goldman Sachs, the Saudi Arabian government, the American Trucking Association, Delta Airlines, the Petroleum Marketers Association of America, and even a report last year from the St. Louis Federal Reserve have all indicated that excessive oil speculation significantly increases oil and gasoline prices. According to a February 27, 2012 article in Forbes, excessive oil speculation "translates out into a premium for gasoline at the pump of $.56 a gallon" based on a recent report from Goldman Sachs.

The facts bear this out. According to the Energy Information Administration, the supply of oil and gasoline is higher today than it was 3 years ago, when the national average price for a gallon of gasoline was just $1.90. And, while the national average price of gasoline is now over $3.70 a gallon, the demand for oil in the U.S. is at its lowest level since April of 1997. Nor is the global supply of oil at issue. According to the International Energy Agency, in the last quarter of 2011 the world oil supply rose by 1.3 million barrels per day while demand only increased by 0.7 million barrels per day. Yet, during this same period, the price of Texas light sweet crude rose by over 12 percent. Meanwhile, oil speculators now control over 80 percent of the energy futures market, a figure that has more than doubled over the past decade.

As the cost for American people to fill their gas tanks continues to skyrocket, the CFTC continues to drag its feet on imposing strict speculation limits to eliminate, prevent, or diminish excessive oil speculation as required by the Dodd-Frank Act. Although the CFTC has adopted initial position limits, they are not strong enough and not yet in force owing to industry opposition, delays in swaps oversight and data collection. This is simply unacceptable and must change.

We urge you to take immediate action to impose strong and meaningful position limits, and to utilize all authorities available to you to make sure that the price of oil and gasoline reflects the fundamentals of supply and demand. This could entail promulgation of rules only with regard to the currently regulated exchange markets. Swaps rules should also be implemented immediately, but even so, waiting for swaps rules to trigger all position limits is simply not adequate to protect consumers. We urge you to develop alternative methods of moving forward and to do so as swiftly and expeditiously as possible.

We have a responsibility to ensure that the price of oil is no longer allowed to be driven up by the same Wall Street speculators who caused the devastating recession that working families are now experiencing. That means that the CFTC must do what the law mandates and end excessive oil speculation once and for all.

Thank you for your attention to this important matter. We look forward to receiving your response.

Sincerely,

Daniel K. Akaka; Mark Begich; Richard Blumenthal; Barbara Boxer; Sherrod Brown; Benjamin L. Cardin; Robert P. Casey, Jr.; Al Franken; John F. Kerry; Amy Klobuchar; Patrick J. Leahy; Carl Levin; Joe Manchin, III; Robert Menendez; Jeff Merkley; Barbara A. Mikulski; Bill Nelson; Mark L. Pryor; Jack Reed; John D. Rockefeller, IV; Bernard Sanders; Tom Udall; Jim Webb; Sheldon Whitehouse; Ron Wyden.

Gary L. Ackerman; Tammy Baldwin; Timothy H. Bishop; Suzanne Bonamici; Leonard L. Boswell; Bruce L. Braley; David N. Cicilline; Gerald E. "Gerry" Connolly; John Conyers, Jr.; Peter A. DeFazio; Rosa L. DeLauro; Lloyd Doggett; Joe Donnelly; Anna G. Eshoo; Bob Filner; Marcia L. Fudge.

Raúl M. Grijalva; Brian Higgins; Maurice D. Hinchey; Mazie K. Hirono; Michael M. Honda; Henry C. "Hank" Johnson, Jr.; Marcy Kaptur; Dale E. Kildee; Dennis J. Kucinich; Barabara Lee; Sander M. Levin; John Lewis; Zoe Lofgren; Jim McDermott.

Michael H. Michaud; Eleanor Holmes Norton; John W. Olver; Bill Pascrell, Jr.; Chellie Pingree; Mike Quigley; Nick J. Rahall, II; Lucille Roybal-Allard; Bobby L. Rush; Tim Ryan; Janice D. Schakowsky; Louise McIntosh Slaughter; Jackie Speier; Fortney Pete Stark; John F. Tierney; Paul Tonko; Peter Welch.

Senator DURBIN. Based on statements made from financial interest experts in the field and so forth, the belief is that speculation has driven up the price of a gallon of gasoline in America as much as 56 cents a gallon. That's what I believe Goldman Sachs reported in one of their recent reports, February 27 of this year.

So there's a bill that's also been filed; are you familiar with it? A bill that was filed today in the Senate?

Mr. GENSLER. As I was coming to this, I was briefed on it, but just briefed on it, just in the last 2 hours.

Senator DURBIN. Well, I have not seen it myself, so I can't tell you exactly what's in the bill.

But I do believe that it calls on you to use your emergency powers to establish these position limits when it comes to trading in terms of oil futures. And I'd like to ask you a few questions about that.

EMERGENCY AUTHORITY

First, would you tell me what you believe to be your authority under those emergency powers, or CFTC's authority I should say, when it comes to making that kind of a decision?

Mr. GENSLER. I think with only roughly 15 percent of the positions in the oil market or natural gas futures markets being the producers, merchants, and end users, and 80 to 85 percent being financial actors and speculators, it's kind of unarguable that financial actors and speculators aren't affecting prices. They are.

Studies are split on whether at any given time it's higher or lower and things like that. That's what they split on. But I think it's hard to say that 80 to 85 percent of the market don't influence price. They do. And they're part of it.

In terms of the emergency authorities, as I understand it, we've used it a handful of times, maybe four times, in the 1970s and early 1980s. There was even a court case at the time that I have not yet read the case, but I need to read it, where somebody challenged our use of it at the time.

It is about disruption of the forces of supply and demand in a particular marketplace, and the statute specifically refers to things about governmental actions or foreign governmental actions. So it was used, for instance, at that time, during the grain embargo.

Senator DURBIN. I'd like to interrupt you for just a second. This isn't a test on the final, so I want to make sure that we share the language.

The law defines emergency as market manipulation, an act of the U.S. or foreign government affecting a commodity, or any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for a commodity.

Proceed. I'm not correcting you. I just wanted to enter that into the record.

Mr. GENSLER. No, you're helping me. You're helping me. As I recall it that fits the four times we brought emergency actions.

There was a supply disruption in the one case because of the grain embargo related to the Soviet invasion of Afghanistan. There were one or two other instances where a crop—potatoes—literally were, had a problem, and so there was a situation in your example where you couldn't deliver the plywood.

Back to your plywood example. The plywood couldn't be delivered. In that case, it was potatoes, that couldn't be delivered.

It's those types of circumstances. I've asked our general counsel, because I know this is a very important matter to many members of this body, to brief us at CFTC level, to brief us all on the legisla-

tive history and the legal, what really is the contour of the limits of that emergency authority.

Senator DURBIN. So, is that authority given to you as chairman, or to CFTC?

Mr. GENSLER. To the Commission, Sir.

Senator DURBIN. And so any designation or use of the emergency authority would require CFTC action, right?

Mr. GENSLER. That's correct.

Senator DURBIN. A majority vote by CFTC?

Mr. GENSLER. That's correct.

Senator DURBIN. All right. And, to your knowledge, does the Congress have any authority to order you to exercise that emergency power?

Mr. GENSLER. Not as I understand the statute, but, of course, you could change our laws.

EMERGENCY ACTIONS

Senator DURBIN. I guess the obvious question that follows once we understand the process under the law and the history of the law is whether or not you and the commissioners believe that we are facing 1 of the 3 options that would lead to emergency action.

And let's just suggest that, I guess, market manipulation, could be discussed, or more likely, any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for a commodity.

So, are those things, those elements, 2 of the 3 in the law, have they been spelled out as it relates to gasoline prices or oil futures, to your satisfaction, at this point?

What I'm asking is, whether or not there's been an analysis done by your CFTC staff as to whether or not the current gasoline pricing and the oil price future trading would put you in a circumstance where you could logically consider one of these options for emergency authority, exercise of emergency authority?

Mr. GENSLER. I've actually asked for some advice as to what that provision means, how we've used it, what that court case in 1979 said about it, so that we can be best informed as to how narrow or broad that authority is.

As I understand it, we have used it in a very narrow sense when there was actual manipulation.

We've brought 30-plus manipulation cases in the history of our agency, and we've only gone and won in court once. I mean, our manipulation authority was very narrow, and now the Dodd-Frank Act has broadened it.

But those previous emergency actions were pre-targeted narrow provisions, but I've asked our general counsel's office working with others at the agency to best inform the five commissioners on that provision of the statute.

Senator DURBIN. I'm asking two questions, and I want to make sure that they're clear each.

The first, I think you've answered. That you have asked the appropriate legal authorities, people with background on the history of the agency, to talk about your authority under the law, and how it has been exercised in the past.

What I'm asking more specifically is whether or not you have asked whether or not the current situation with our rising gasoline prices and the speculation in the area of oil futures would apply to any of these three possible reasons to exercise your authority?

Mr. GENSLER. And I think I can best answer the first, but I'm limited in answering the second because I'm trying to understand the contours from our general counsel and our hardworking, dedicated folks at CFTC, how wide or narrow that is, the first before trying to answer the second.

But, I will say, historically, it's been used only in a very targeted way.

Senator DURBIN. So, have you at least started the factual inquiry about possible market disruption related to gasoline prices?

SURVEILLANCE TO DETECT EMERGENCIES

Mr. GENSLER. We meet as a Commission in a closed-door meeting every Friday, and we have for 30-plus years, and we put it in the Federal Register, people know we do this, to do surveillance on markets, from the grain markets to the interest rate markets to the energy markets.

And we have about 50 to 55 people in a surveillance unit that bring information to us in these closed-door sessions every Friday. The energy markets come up, as you would think, as a regular basis, as the grains do and the financials.

The staff is always tasked to come and bring to us matters, if they see issues, in these marketplaces. I mean I'm trying to——

Senator DURBIN. I understand the nature of your answer. I think you are carefully avoiding saying whether there's been any specific factual inquiry on anything until you have satisfied the first question.

Don't let me put words in your mouth, stop me at any point here. First question, about your authority, historic precedence, before you go to the next question, which will be raised by this bill and by the letter from the Senators, as to whether or not your authority can or should be exercised when it comes to gasoline prices.

SURVEILLANCE MEETINGS

Mr. GENSLER. But I want to assure you and the American public, our staff, even though it's, I believe, underfunded, our staff every day and every week is bringing to the Commission concerns if they think they see manipulation in these markets, if they think they see something about position limit violations and the like.

We're not waiting for anybody to say what the limits of emergency authority are. I mean, our agency, again, not a pricing agency, it is to ensure transparent markets, free of fraud and manipulation, and the people are following the rules of the road.

Senator DURBIN. Now, I'm going to ask a question. I already know the answer.

Can you tell me if your staff has produced any information for CFTC to consider at these weekly meetings relative to rising gasoline prices and the impact of speculation on oil futures?

Mr. GENSLER. We look at the statistics on a pretty regular basis. We actually publish to the market every Friday the size and scope

of the nonproducer merchant side, the speculative side, of the markets.

So we're looking at that, in the natural gas markets, in the heating oil markets, the oil markets, on a very regular basis.

Senator DURBIN. Are these Commission meetings public?

Mr. GENSLER. They're closed-door meetings under the Sunshine Act, but we publish, we put in the Federal Register every week, that we have these Friday meetings.

Senator DURBIN. You announce the meetings are taking place?

Mr. GENSLER. Yes. Oh, absolutely.

Senator DURBIN. But not the substance of your discussions?

Mr. GENSLER. That's correct, because we're talking about confidential information that the Congress has actually directed us under Commodity Exchange Act section 8 not to disclose material, about individuals and their transactions.

POSITION LIMITS

Senator DURBIN. I've gone way over my time. I'm going to yield back to Senator Moran for another round of questions, if he has them.

But the last thing I want to say is, CFTC has adopted a rule to implement position limits on 28 commodities including oil contracts as soon as the joint rule between CFTC and SEC defining swap is adopted, the rule-implementing position limits will go into effect?

Mr. GENSLER. For the spot month limits, that is correct.

Senator DURBIN. And, can you give me any indication of how soon that will occur?

Mr. GENSLER. We stand ready at CFTC to move forward whenever the SEC gives us the full document.

Senator DURBIN. Well, since we fund SEC, we'll tell them, at least, I'll tell them, to hurry along. I'm not sure if my colleague agrees with that position.

But I want to do it right. And I understand their work has been challenged in court, as yours has been, and most other agencies have faced. I want them to do it right, but I want them to do it in a timely way.

Senator Moran.

SPECULATION

Senator MORAN. Chairman, again, thank you.

Chairman Gensler, this conversation about speculation in the oil market, you indicate that about 85 percent of the crude oil futures market is made up of speculators.

Mr. GENSLER. Well, financial actors and speculators.

Senator MORAN. And the difference between financial actors and speculators?

Mr. GENSLER. Well, people, colloquially, use the word, but some swap dealers are part of that 85 percent, and they are helping others hedge. They have producers and merchants on the other side.

So the 80 to 85 percent are swap dealers, hedge funds, money managers, even pension funds sometimes are investing. And hedgers and speculators meet in a marketplace, but some financial actors would prefer not to be called speculators.

Senator MORAN. And I think your testimony was an indication that with that magnitude of speculation, there is a consequence to the price, either up or down, that's what you were indicating in the studies is what the consequence is, but there is a consequence to that level of speculation?

Mr. GENSLER. Well, I think that every participant in a marketplace can influence a price. Again, we're not a price-setting agency, but it's critical I think that we have an agency that brings a bright sunshine to that market, that it's transparent, free of fraud and manipulation.

We use the position limits to help limit any one sort of speculative party's footprint in the market place.

Senator MORAN. I just would indicate that when we use the word "speculation", it seems to have developed a negative connotation.

Mr. GENSLER. Not to me.

Senator MORAN. And you did differentiate between different, within that 85 percent, there's different actors.

Mr. GENSLER. That's correct.

Senator MORAN. And I think there's always a suggestion out there in today's media world, that speculation is something that causes bad things to happen.

But you just indicated that's not your belief. In fact, speculation, what benefits arise from those who speculate in markets, in the oil market.

GENESIS OF THE MARKET

Mr. GENSLER. I'd be glad to answer that.

I think that going back to the genesis of this market, and it happened in Senator Durbin's State, in Chicago, in the 1860s, when a wheat farmer or somebody growing corn, they needed to lock in a price at harvest time.

And they wanted to lock in that price so they could focus on what they really did well, and tilling the field, and so forth. And so they needed somebody on the other side, and the party on the other side is what we call a speculator.

So there's the hedger, the natural hedger, meeting the speculator in the marketplace, probably since Roman times. In the 1920s, the Congress said we need to regulate so that it's transparent.

And so we were founded inside the Department of Agriculture, and then by the 1970s, we became a Commission and you know the history.

But it's still a marketplace where hedgers and speculators meet. That the natural hedgers need to meet somebody on the other side. But what's critical is that we have clear rules of the road against manipulation.

I believe that the position limit authority is that no one speculator sort of has this big footprint, and that we have great transparency in the marketplace.

Senator MORAN. Speculation is useful to the economy including in establishing a market for oil and gasoline. And I guess the point you make is that you want to be careful about the magnitude of any one individual's position within that market.

Mr. GENSLER. That's right. That's right.

Senator MORAN. Thank you, Mr. Chairman. Mr. Chairman, I need to go to the Department of Homeland Security Appropriations Subcommittee hearing.

FUNDING NEEDED FOR NEW RESPONSIBILITIES

Senator DURBIN. Thank you very much, Senator Moran. You've been very patient. I thank you for that.

I want to kind of move into another area here and probably make a statement and ask you a question along the way.

Your current-year appropriation is in the range of $205 million.

Mr. GENSLER. Yes.

Senator DURBIN. The President had requested close to $300 million, I believe, for this current fiscal year.

Mr. GENSLER. Right. Correct, $308 million.

Senator DURBIN. And so what you were given is dramatically less than the President's budget and less than what the Senate had suggested.

And my feeling is that your agency, based on your testimony and the clear evidence we have, needs more resources to deal with the challenges that you are facing and that we've given you by law, passed by the Congress, signed by the President.

It isn't as if you're dreaming up new assignments. We're sending them your way in volume as we move you from the well-known marketplaces like Chicago, which I'm very proud to represent, to a new world of swaps and over-the-counter (OTC) trading, that is dramatically larger in volume.

For the record, what is the difference if we can speculate, I guess we can do that here, if we can speculate, the difference in size between that regulated marketplace that we can see on the street in Chicago and what is going on over the counter?

What's the difference in size?

Mr. GENSLER. It's about eight times the size in terms of the aggregate dollar amounts. There's $300 trillion notional in swaps, which is $20 for every $1 of goods and services produced by America.

Senator DURBIN. That is an indication of new assignments coming your way, to deal with that market, and to try to have appropriate oversight.

And so when the President asks for more resources, it's because you have a new and large responsibility coming.

Mr. GENSLER. That's right.

Senator DURBIN. Now, I have said to my friends in the industry, the Chicago Mercantile Exchange (CME), and others, that I have felt their position since I have been a Congressman and Senator, has been very clear and concise.

They believe that their strength in the marketplace is the fact that they do follow the rule of law. They are subject to oversight. There is transparency, and it is rare, I wouldn't say never, but it is rare that an embarrassing situation arises.

And that marketplace becomes a magnet for people all around the world because of those features. And that all depends on appropriate regulation from my point of view. And I think from theirs too. I don't want to put words in their mouth.

Now, there are people who argue that if the Congress does not give you the resources to do your job, appropriate regulation of not only the existing marketplace, but new market responsibilities like OTC, that the alternative should be a user fee, a transaction tax, mirroring the example of SEC, which generates its annual budget through fees collected.

And now is linked up more closely to the collection to the actual budget that they have to spend. And I, for one, have had misgivings about that because I question what will that do to the competitiveness of the American marketplace or CME, for example, against other countries with marketplaces that don't charge the same user fee or transaction tax.

Does it create a competitive disadvantage for the United States in what has become a global industry? For the record, would you like to tell me your position or your belief about this issue?

Mr. GENSLER. My position is I would like to work with the Congress on whatever helps get the funding, and so, I don't have a philosophic bias on this.

I believe that just as in the securities field, the transaction volume is so significant that it would end up being a very small fee if the Congress wanted to move forward on it.

Senator DURBIN. Well, let me take a step beyond where conversations have been in the past, and ask you, if you included the OTC market in this user fee, transaction tax, whatever you want to characterize it, what you've said to me is that it is dramatically larger than the marketplaces that we're aware of, the exchanges we're aware of.

And that, do you include that in, when you say it would be a very small fee?

Mr. GENSLER. Oh, absolutely. I think that if the Congress were to work on this, that it would be appropriate, it would be spread across the swaps marketplace if it included futures.

In this $300 trillion swaps marketplace that we're supposed to oversee, we have a $300 million budget, so just the arithmetic, that's $1 of budget request, $1 of budget for every $1 million in the swaps market, just to give a sense of the scaling.

Senator DURBIN. What I've said to my colleagues on both sides of the Rotunda is that if we do not adequately finance your agency to keep up with the responsibilities that have been sent your way, and the dramatic increase in the volume of trading in the traditional markets, that there will be growing pressure for some other funding source.

And I hope that we rise to the occasion. I hope that we find the financing and appropriations to meet the President's request in the next fiscal year.

FEAR OF GROWTH

The last question is this: There is always a fear, I've served on the appropriation committees in the House and the Senate that we're giving an agency too much money too fast. And that the net result of it will be waste and bad decisions.

To take your budget of $200 million and increase it by 50 percent in a 12-month period of time is a pretty daunting assignment. Now, you've said, most of it will go to technology, and I'll let you say for

the record, how much of that is scheduled, that you can see, it's going to happen.

We are just moving along a path we had already created to create the technology that we need. But 40-percent-plus will be in new hires, and that too, is a challenge, to come up with the talent you need in your agency. I have visited your office in Chicago. I have met with your people.

You have some extraordinarily talented people. The folks who would like to get on the floor and kick around Federal employees ought to sit down for 5-minutes with your staffers in Chicago and tell me that they can even comprehend what they do for a living, let alone dismiss it as wasteful bureaucracy.

So tell me about increasing your budget by 50 percent in 1 year, and whether this can be spent in a way that a year later you could come before us and say we saw it coming. We're ready, and will spend it well.

Mr. GENSLER. I thank you for those comments, and I'll pass them on to the staff, particularly in Chicago.

I'm very proud of what they've been able to do. I think we can, but just as you worked with us last year, I think you had been conscious of that and I think it's called 2-year money, as a term of art is not incorrect, but I think that we could work with you.

And, you know, how to ensure that we just didn't waste any taxpayer dollars. I mean, we're not going to put money to work if we can't hire the right people. So to hire 300 people in a year is a significant endeavor.

The sooner we would know it, obviously, the better, if we end up in a process where this is after October and then continuing resolutions, then we have to be realistic that it would probably be best that it's put off into 2013 and 2014.

But I think the sooner we'd know it, we would work with you to make sure we would never waste any taxpayer money

Senator DURBIN. Thank you, and thanks for your patience. I apologize again for being late, and I know we'll continue to work with you as we prepare the appropriations bills.

We have a deeming resolution that has been filed this week in the Senate by Senator Conrad of the Senate Budget Committee which reflects the statutory bipartisan agreement on spending levels.

There is some difference of opinion between the House and the Senate now as to whether that is going to be the guiding rule or some other effort will be intervening, but I think the Senate is likely to proceed based on this bipartisan law signed by the President.

And I'm hoping that we can move on it on a timely basis to meet your last observation. The later in the process you are given notice, the less time you have to make it work right.

And for your agency, for all those regulated by it, and for the taxpayers of this country, we ought to do our best to avoid that problem. Thank you very much for being here.

Mr. GENSLER. Thank you, Mr. Chairman.

SUBCOMMITTEE RECESS

Senator DURBIN. I'm going to have the subcommittee stand recessed. You may get some written questions. It's infrequent, but if you do, and could reply in a timely way, I'd appreciate it.

Mr. GENSLER. Thank you.

Senator DURBIN. Thanks.

[Whereupon, at 3:53 p.m., Wednesday, March 21, the hearing was concluded, and the subcommittee recessed, to reconvene subject to the call of the Chair.]

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2013

WEDNESDAY, MARCH 28, 2012

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

The subcommittee met at 2:30 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin, Lautenberg, and Moran.

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

STATEMENT OF HON. TIMOTHY F. GEITHNER, SECRETARY

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Good afternoon. I am pleased to convene this hearing of the Appropriations Subcommittee on Financial Services and General Government. Senator Moran is at the Supreme Court—I do not know why—but will be back momentarily, and I will give him a chance if he would like an opening statement at that time.

Welcome to Treasury Secretary Timothy F. Geithner. Glad to have you here. We are going to discuss your Department's critical work in support of economic recovery—particularly programs and policies dealing with the foreclosure crisis. And I am going to raise issues about what I consider to be a looming debt crisis involving student loans and where that will take us.

The Department of the Treasury, as you know, plays a key role in promoting economic stability and prosperity, developing policies and strategies to promote not just recovery, but sustainable growth. Now, one of the largest barriers to economic recovery, we have discussed many times, is our struggling housing market. Under the Home Affordable Modification Program, the Treasury Department provides financial incentives for lenders to prevent foreclosures through principle reduction.

Our economy, I am afraid, will not make a full recovery until we address the $700 billion worth of underwater mortgages held by more than 11 million homeowners. I believe that around 20 percent of homeowners are affected. There are 3.3 million homeowners currently facing foreclosure.

There are a number of approaches that can help families save homes, but many economists, banks, administration officials, and attorneys general from both political parties believe that principle reduction has to be one of the tools we use. Reducing principle often makes sense for both the homeowner and the lender, not to mention the communities which are being littered with foreclosed and abandoned property. That is why the recent bipartisan settlement between the five major lenders and a coalition of attorneys general of both parties includes $10 billion in principle reduction for underwater homeowners. I think we have to do everything we can to stop this foreclosure problem from getting worse as a means of simple justice, as well as making certain that economy recovery continues.

Here is the issue I am going to raise with you. Of the 11 million underwater mortgages, 3 million are being held by Fannie Mae and Freddie Mac. To date, the Department of the Treasury has provided $170 billion in taxpayers' dollars to keep Fannie Mae and Freddie Mac afloat. I want to explore today what more your Department can do to help these homeowners, especially through carefully tailored principle reduction.

The second issue is the student loan crisis. And I had a hearing last week that really focused on what is happening. As you are undoubtedly aware, total outstanding student loan debt exceeded $1 trillion last year. There is now more student loan debt than credit card debt in America. The credit rating agency, Standard & Poor's, warned us that "Student loan debt has ballooned and may turn into a bubble."

The hearing I held last week brought several things to light, including the impact of high-interest loans on young people, and many times on their parents. I want to discuss the impact of this growing student loan debt, the numbers that are associated with it, and what it means for our future.

It was interesting to me that the 32-year-old woman who testified before us has started off with $79,000 in student loan debt 5 years ago. It is now up to $98,000. The private loan that she has incurred, which is in the range of $40,000, will ultimately cost her more than $111,000, if paid off over the term. And it has completely changed her life. She cannot borrow another penny to go to a real school. She wasted her money on a for-profit school. And she is about to lose her home.

I think these things are connected unfortunately, and the student loan debt, if it does not cost young couples their homes, may impede them from ever having one. That will have a long-term impact on economic growth.

Now, the money for your Department, which I am sure is first and foremost on your mind: the request from the administration is $14.072 billion for fiscal year 2013. It is a $909 billion or 6.9-percent increase more than current levels. And the majority is needed for the Internal Revenue Service, which constitutes more than one-half of the discretionary funding in our jurisdiction.

I am pleased to see your budget request continue to prioritize the Community Development Financial Institution Fund (CDFI). And if you would like to say a word about that, we will give you a chance. Last year this subcommittee held an in-depth hearing on how

CDFIs have leveraged small amounts of Federal funds to develop affordable housing, retail, small business lending, and the like. I have seen the impact on some neighborhoods in Illinois, and I would like to know if you share my positive impression. I hope you do.

And I am going to give Senator Moran a chance to speak when he arrives, but at this time I would like to turn the floor over to a busy man, our Treasury Secretary Tim Geithner. Welcome.

SUMMARY STATEMENT OF TIMOTHY F. GEITHNER

Secretary GEITHNER. Mr. Chairman, nice to see you. Thanks for having me here, and thanks for all your support and your colleagues' support for Treasury over these years.

PREPARED STATEMENT

You know, if you would like, since we are here alone, I would be happy to just leave my opening statement for the record and get to the conversation, whatever is best for you.

Senator DURBIN. Okay.

[The statement follows:]

PREPARED STATEMENT OF TIMOTHY F. GEITHNER

INTRODUCTION

Let me start with the broader challenges facing the national economy.

Our economy is gradually getting stronger. Over the last 2½ years, the economy has grown at an average annual rate of 2.5 percent. Businesses have added nearly 4 million jobs over the last 2 years, including 429,000 manufacturing jobs.

While the economy is regaining strength, we still face significant economic challenges. Unemployment is still far too high, the housing market remains weak, and the overall effects of the financial crisis remain an obstacle to growth. The strength of our recovery will depend in part on events beyond our shores, as we saw last year when United States growth was buffeted by headwinds from Europe.

The harm caused by the crisis came on top of a set of deep, pre-existing economic challenges, including a long period of stagnation in the median wage, diminished confidence in the ability of children to exceed the economic achievements of their parents, a substantial ongoing shift in the risk and cost of healthcare and retirement security away from employers and onto workers, poverty rates much higher than in any economy with comparable wealth, and the dramatic erosion in our fiscal position between 2001 and 2008.

The President has laid out a strategy to address these challenges. His strategy entails a carefully designed set of investments and reforms to improve opportunity for middle-class Americans and strengthen our capacity to grow by improving access to education and job training, promoting innovation in our manufacturing sector, and investing in infrastructure.

These critical investments are combined with a balanced plan for restoring fiscal sustainability. The President's budget reduces projected deficits by a total of more than $4 trillion over the next 10 years by adding more than $3 trillion in deficit reduction to the approximately $1 trillion in savings already enacted through the discretionary caps included in the Budget Control Act. These savings are sufficient to stabilize our debt as a share of the economy by 2015 and begin placing our debt on a downward path as a share of Gross Domestic Product.

Treasury plays a vital role in helping to shape and implement the President's economic policies, driving reform of the financial system, encouraging lending to small businesses, working to reform the tax system, promoting economic prosperity, and monitoring risk in the financial system.

Treasury is working hard with the Department of Housing and Urban Development and with the Federal Housing Finance Agency to repair the housing market. We have active programs to modify mortgages for distressed homeowners so that people can stay in their homes, help States in the hardest hit areas provide both loan principal reduction and payment forbearance for the unemployed, transition va-

cant homes to the rental market and make it easier for homeowners who are underwater to refinance their loans.

As the President has made clear, more can be done to help, and we urge the Congress to consider the President's plan to help homeowners refinance their mortgages to take advantage of lower rates.

Treasury is also working with other agencies, in particular the Department of Education, on a range of ways to help make college more affordable, such as the President's proposal to make permanent the American Opportunity Tax Credit. The administration is also moving forward with its "Pay As You Earn" proposal to help reduce debt burdens, and the President has called on the Congress to stop the interest rate on Stafford loans from doubling in July.

In addition to our core policy functions, the Congress has given Treasury a very broad mission, with responsibilities that touch many aspects of the lives of Americans.

Treasury is responsible for raising the resources necessary to fund critical government functions, from national defense to protecting national parks. The Department disbursed more than $2.4 trillion in Social Security benefits, veteran's pensions, and other benefit payments to more than 100 million Americans last year. Treasury delivered tax credits to drive investment in clean-energy production and to help families finance college education. We design and enforce the financial sanctions necessary to prevent the spread of nuclear weapons and the financing of terrorism. Our Internal Revenue Service (IRS) collected the $2.4 trillion in taxes necessary to fund core Government operations. We run the factories that produce every American dollar and coin.

Treasury's fiscal year 2013 budget proposal supports the President's strategy through key priorities that will strengthen economic growth and make the Government more efficient while delivering essential services at lower costs to the taxpayer. The proposal also reflects Treasury's contributions to protect our national security interests and prevent illicit use of the financial system.

Unlike most Federal agencies, Treasury's annually appropriated budget is about people more than programs. Salaries and operating costs make up 96 percent of our budget, and most of the rest of our budget is for investments in technology they require to function.

IMPROVING EFFICIENCY, REDUCING TAXPAYER COSTS, AND REFORMING GOVERNMENT

The Treasury budget request reflects our commitment to deliver core services more efficiently and at the lowest cost to the taxpayer. Our request includes efficiencies, program reductions, and other measures that will produce savings of $286 million in fiscal year 2013 and additional cost reductions in the years ahead.

Key proposals include the consolidation of the Bureau of the Public Debt and the Financial Management Service. This consolidation will save $36 million over 5 years, starting with fiscal year 2014, through management, administrative, and support service efficiencies.

As you know, these bureaus provide the financial infrastructure for the Federal Government. Both bureaus have successful track records working together on joint initiatives, including a recent information technology consolidation, which is projected to save $129 million over 5 years. I am confident that they will build on this success by consolidating and improving the delivery of their core services.

The budget also proposes legislation to provide Treasury with the ability to change the composition of coins to utilize more cost-effective materials. Currently, the costs of making the penny and the nickel are more than twice the face value of each of those coins. In addition to this proposal, Treasury is implementing measures to improve the efficiency of coin and currency production, including improved manufacturing practices and administrative cost reductions, which will save more than $75 million in fiscal year 2013.

These savings build on a number of steps that the Department has taken during the last 3 years to improve efficiency and reduce taxpayer costs.

Last December, we announced that we were suspending the production of Presidential dollar coins for circulation. At that time, there were 1.4 billion surplus $1 coins sitting unused in Federal Reserve vaults. These surplus coins will now be drawn down over time. Taking this simple step will save taxpayers $50 million per year in production and storage costs.

We are also continuing to achieve results in our ongoing paperless initiative, which will yield more than $500 million in savings over 5 years. These efforts not only improve our internal management but provide modernized services to meet the public demand for more electronic services. In response, we have changed the way

we provide services and are achieving savings while providing taxpayers the services they deserve.

To give you an example of this, 6 years ago, just more than one-half of individual taxpayers filed their returns online. We have worked proactively to increase electronic filing, and today, 77 percent of taxpayers choose to file online. In 2013, it is our goal to get 80 percent of taxpayers to file online, achieving an additional $8.1 million in savings on top of the $63.9 million we have saved since 2009.

The fiscal year 2013 budget for Treasury's operating bureaus is 2.7 percent below fiscal year 2012 and 6.8 percent below our fiscal year 2010 enacted budget, excluding the IRS. The request for the IRS includes investments in enforcement activities that will contribute significantly to improving voluntary compliance with the tax code and closing the tax gap. For each additional $1 we propose to spend on compliance activities we bring in more than $4 in additional revenue. The enforcement investments in our request will bring in an additional $1.5 billion in annual revenue once fully implemented.

ECONOMIC GROWTH AND JOB CREATION

We are also supporting small business growth through our Small Business Lending Fund (SBLF) and State Small Business Credit Initiative (SSBCI). Last year, we provided more than $4 billion to 332 community banks through the SBLF. Participating institutions estimate that they will increase their small business lending by $9 billion within 2 years of receiving the investments. By the end of this fiscal year, we will have provided approximately $1.5 billion to State programs that support small business lending and investment through SSBCI. States expect these investments to spur at least $15 billion in new small business financing.

Our $221 million request for the Community Development Financial Institutions Fund (CDFI Fund) is focused on key community development priorities designed to improve services in underserved communities, including access to healthy food and financial services. Of the total request, up to $25 million is for the administration's Healthy Food Financing initiative, which will support increased availability of affordable, healthy food alternatives in these communities.

The CDFI Fund's core program for financial and technical assistance provides monetary awards to CDFIs, which in turn provide loans, investments, financial services, and technical assistance to underserved populations and low-income communities. In 2010, CDFIs were awarded $105 million in grants under the CDFI program, which should contribute to $589 million in community development activity and the creation or preservation of approximately 10,000 jobs.

PROTECT OUR NATIONAL SECURITY INTERESTS AND PREVENT ILLICIT USE OF THE FINANCIAL SYSTEM

Finally, Treasury's financial intelligence and enforcement activities play a significant role in protecting our financial system from threats to our national security. Our funding request for the Office of Terrorism and Financial Intelligence is maintained at $100 million and reflects our continued efforts to combat rogue nations, terrorist facilitators, money laundering, and other threats to our financial systems and our Nation's security.

The work that this office conducts is far reaching and of critical importance to national security. The sanctions the administration imposed on Libya were a critical factor in removing the Gaddafi regime, and they continue to add pressure to the regimes in Iran, Syria, and North Korea.

CONCLUSION

Treasury benefits from a talented and dedicated group of public servants. Their work affects the lives of all Americans. They have played a critical role in pulling our economy out of crisis and setting the Nation on a path to recovery.

Our Treasury team helps to protect America's economic interests and national security—so seniors can get their Social Security benefits, families can borrow money to buy a home or send a child to college, and businesses can grow and create jobs. They have worked hard to continue to make Treasury a leaner, more efficient organization that effectively delivers essential services to the American people.

I appreciate the support of this subcommittee over the past several years in helping to make sure we have the resources to carry out these important responsibilities.

FEDERAL HOUSING FINANCE AGENCY'S LACK OF PRINCIPLE REDUCTION POLICY

Senator DURBIN. So, let us start talking about this situation involving Mr. DeMarco's Federal Housing Finance Agency (FHFA). Here is how I understand it, and I would like to hear your take on it. I have heard him defend his position against principle reduction saying, that is not my job. My job is to oversee Fannie Mae and Freddie Mac as to their solvency. And I am not promoting any type of housing project or any type of recovery project when it comes to mortgage foreclosure. I just look at the bottom line. How is it going to affect Fannie Mae and Freddie Mac? That is perhaps as brutally honest. I do not know if it is true, but that is how he sees it.

You are in a position where you are providing $170 billion in assistance to the government-sponsored enterprises (GSEs) through preferred stock purchase agreements. The administration has made it clear that principle reduction is an important component in stopping foreclosures and economic recovery. Now, reconcile these things.

Secretary GEITHNER. Excellent question, and I am glad you are drawing attention to it.

The law the Congress passed that put the GSEs into conservatorship and gave the FHFA more authority, gave them in some ways two mandates. One was to promote policies that help the overall housing market, but as important as that, and this is the critical constraint, they need to make sure they are operating in the interest of the taxpayer, looking to working to minimize losses, maximize returns to the taxpayer as a whole. They are doing a lot of different things to help people to modify mortgages with payment reductions and to help homeowners refinance, even homeowners that are deeply under water.

But in the area of principle reduction, as you have heard Mr. DeMarco testify, they adopt a program they call principle forbearance, and they have been very reluctant to reduce principle. There is a very strong economic case for investors, any investor, whether it is the Government, or a bank, or a private investor, to reduce principle in some circumstances because that might increase overall recovery to the investor and the taxpayers. And where that is true in the private market, it is equally true for Fannie Mae and Freddie Mac.

And so, we have been encouraging Fannie Mae and Freddie Mac to take another look at the math, at the economics of it, the finance, because we think there is a strong case in some circumstances to add principle reduction as part of their strategies to help maximize return to the taxpayer.

Now, what Mr. DeMarco has said is that they are taking another look at their numbers, looking at our economic case. We are in the process of working through that with him, and I hope he is going to be in a position to indicate what he plans to do in the next several weeks.

But you are right to emphasize this as an important part of a credible national strategy, that they have been reluctant to move, even though they have done a lot of things that have been very,

very helpful. The art in this to try to make the financial case that for homeowners that are deeply under water, and you and your spouse loses a job, there are some cases in which principle reduction is not just good for the homeowner and the community, but it is good for the taxpayer too.

Senator DURBIN. So, am I right to say that 30 percent of these mortgages, roughly, through Fannie Mae and Freddie Mac would be at least subject to this principle reduction?

Secretary GEITHNER. I do not think it is that high, but I have to look at the numbers and see. You know, Fannie Mae and Freddie Mac, contrary to what is popular perception in some quarters in Washington, were actually more conservative than the private markets and their underwriting standards, and required larger down payments in areas. So, in fact, the overall quality of the loans they made and the record of delinquencies performance is better than the overall market. I do not know what the exact numbers are in terms of how many people are under water, worst case. But, again, the economic case is there. There is a set of homeowners who are deeply under water and experience a hardship where it is better for the taxpayers to reduce principle. And our job is to try to encourage them to recognize that.

Senator DURBIN. So, let me just pursue this along a similar question, a little different line. It is the stated policy of the administration that principle reduction is one of the key elements in reducing foreclosures, stabilizing the real estate market, and perhaps reaching a point where we know what the value of real estate is, which I think is one of the still largely unanswered and central questions to our economic situation. And now you have the power through the Treasury Department to fund the group that oversees Fannie Mae and Freddie Mac, which is basically saying we do not buy that. We do not buy principle reduction. Do you need to be told by me or the Congress to close the carrot drawer and open the stick drawer? How do we get Fannie Mae and Freddie Mac to run the same play as the rest of the economy?

Secretary GEITHNER. I have asked that question of my staff many times and of my predecessor because the law that gave them this authority was passed in the fall 2008, before I took office as the Secretary. And the Congress, in considering how much authority to give the administrator at that point, decided to keep it completely independent of the Secretary of the Treasury and the administration. I have no power to compel, even though you are right to remind people that in a sense those institutions exist only because we are providing the kind of support in terms of capital they need to be able to borrow at affordable rates and to continue to play the role they are playing in the housing market.

I wish it were different, but the Congress considered this and decided at that point to—and they did it—I understand why they did it, to leave that entity, which had been subject to a lot of political pressure and political influence in the past, to leave it completely independent of any influence by the administration.

Senator DURBIN. Do you have anything to say about what they do with the senior preferred stock purchase money that you send their way?

Secretary GEITHNER. Well, let me say they were limited to the power of our persuasive abilities.

Senator DURBIN. Carrots.

Secretary GEITHNER. Of course, if the Congress were to change it, change that balance of authority, I would welcome that. But I think that, again, we are working very closely together, and we think there is a very strong economic case in this context, and we think that should govern.

Senator DURBIN. You know more about this business than I will ever know. Give me the Fannie Mae and Freddie Mac argument from their point of view against principle reduction.

Secretary GEITHNER. Well, I think Fannie Mae and Freddie Mac themselves are actually pretty supportive of this. FHFA has been a little more conservative over time because their argument would be this: they would say that, look, we have to make sure we are maximizing returns to the taxpayer. If there is a chance that over time if we forbear on principle but do not forgive it, we could get a higher return to the taxpayer, we are obligated to pursue that path. That is the argument they would make.

But ours is a simple choice. We think there is a set of cases where it is clearly in the interest of the taxpayer for them to do principle reduction up front. It is not an overwhelming number, but where it makes sense to do it, we should do it. That is what we are trying to convince them.

Senator DURBIN. I am going to turn to my colleagues with one last question. Can you think of an example where foreclosure would be in the best interest of Fannie Mae and Freddie Mac?

Secretary GEITHNER. Well, I hate to say it this way, because as you pointed out, and you have said this many times, across the country there are thousands and thousands and thousands of people who are completely innocent victims of the fact that they either lost their job or they saw their house price decline precipitously, or they face another hardship and could not afford to stay in their home. And in that context, the first best solution is for the bank or Fannie Mae and Freddie Mac to work with the homeowner to restructure their payment obligations so it is within the ability of the homeowner to pay so they are given a little more time to find another job to get back on their feet.

But not everyone will be able to do that. So, there are some cases where the best case for the homeowner is for them to be able to leave their house and go and find some affordable option, even if they have to rent.

But, again, the obligation of all of us should be to do everything we can to make sure where people have the chance to stay in their home, and when that is clearly better for the Government in some context, not just for the community, we want to give them that chance.

But there is one dimension of this that I would like to come back to, if we can, after your colleagues have a chance to do a——

Senator DURBIN. Sure. Okay. I will let Senator Moran.

Senator MORAN. I would yield to Mr. Lautenberg.

Senator DURBIN. Senator Lautenberg, would you like to proceed?

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. I apologize for being late. And perhaps, Mr. Secretary, welcome you. And I do not want to be repetitive, but I may run into that as a consequence of not having heard your full presentation.

PREPARED STATEMENT

One of the things that we see here, and especially in the private sector—I ask unanimous consent that my full statement be included in the record.

Senator DURBIN. Without objection.

[The information follows:]

PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Mr. Chairman, we have stepped safely back from the edge of financial crisis, and our economy is steadily recovering. But some effects of the crisis remain. More than 11 million homeowners owe more than their homes are worth. A path forward for these homeowners is essential for the health of our housing market and our economy. Unless there is some relief, 9 million homeowners could face foreclosure and eventual liquidation. While the impact on our economy would be severe, the human cost would be unthinkable. None of us can afford foreclosures at this scale—not homeowners, not investors, not taxpayers. The path forward is clear. Writing down some of the principal owed by underwater homeowners will help stem the tide of foreclosures and revive the housing sector, which has long been a drag on our national recovery. Principal forgiveness for responsible homeowners will give hope to those families, and reason for optimism for our economy as a whole.

We must also be attentive to emerging risks to our financial system, and growing levels of student loan debt are raising alarms. I am concerned about reports that students are being swindled into borrowing more than they can afford. This sounds similar to the predatory mortgage lending practices that preceded the financial crisis. Like mortgages in the years before the crisis, student loans are difficult to understand and difficult to value. And Americans are taking out student loans—including private student loans—at a rapid pace. Many borrowers don't realize that private student loans lack the borrower protections of Federal student loans. Christopher Bryski—a constituent of mine who studied at Rutgers University—passed away in 2006. His Federal student loans were discharged by law when he passed, but his private loans were not. Six years later, Christopher's dad is still sending monthly payments to his deceased son's bank. Student loans should be designed to protect borrowers, not just enrich banks. If we learned anything from the recent crisis, it's that financial products designed to generate profits for banks at the expense of consumers pose serious risk to the economy as a whole.

I look forward to hearing from Secretary Geithner about what we can do to reduce risks and restore our economy back to full health.

MORTGAGE PRINCIPLE REDUCTION

Senator LAUTENBERG. But I am concerned about the students, and I know that you have been discussing the homeowner foreclosures, and I have a question there about—and I think I heard you say it. A few of us or none of us can afford foreclosures at this scale, not homeowners, not investors, not taxpayers. And I will have an opportunity to ask you questions about that.

But writing down some of the principle owed by underwater homeowners will help stem the tide of foreclosures, and revive the housing sector, which has long been drag on our national recovery. Principle forgiveness for responsible homeowners will give hope to these families and reason for optimism for our economy as a whole. And we have also got to be attentive to emerging risk to the financial system, growing levels of student loans.

STUDENT LOANS

I want to look at that, please, for a moment. And I am concerned about reports that students are being swindled into borrowing more than they can afford. And it sounds similar to the predatory mortgage lending practices that preceded the financial crisis.

Like mortgages in the years before the crisis, students are difficult to understand and difficult to value, and Americans taking out student loan, including private student loans, are running into difficulties at a rapid pace.

Many borrowers do not realize that private student loans lack the borrower protections of Federal student loans. And a case of a young man named Christopher Bryski, a constituent of mine who was studying at Rutgers University, who passed away very young in 2006, his Federal student loans were discharged by law when he passed. But his private loans were not. Six years later, Christopher's dad is still sending monthly payments to his deceased son's bank. And student loans should not—should be designed to protect borrowers, not just in rich banks.

So, if we learned anything from the recent crisis, it is that financial products designed to generate profits or banks at the expense of consumers pose serious risks to the economy as a whole.

So, I want to talk about that, and if I can use the remainder of my moments, Mr. Chairman, I would appreciate it.

FEDERAL HOUSING FINANCE AGENCY'S LACK OF PRINCIPLE REDUCTION POLICY

Opponents of principle forgiveness for struggling homeowners have argued that lowering the amount owed on underwater mortgage costs would cost taxpayers too much. We already heard that. However, analysis by the FHFA suggests that forgiveness would save taxpayer money.

And forgive me if this is repetitious, but what has your analysis of the Treasury's principle forgiveness program revealed about the benefits of principle forgiveness for taxpayers and homeowners?

[The information follows:]

THE EFFECT OF THE PRINCIPAL REDUCTION ALTERNATIVE ON REDEFAULT RATES IN THE HOME AFFORDABLE MODIFICATION PROGRAM: EARLY RESULTS [1]

EXECUTIVE SUMMARY

Since the inception of the Making Home Affordable Program, more than 1 million homeowners have had their mortgages permanently modified through the Home Affordable Modification Program (HAMP). As of May 2012, more than 63,000 homeowners have received permanent modifications with loan principal reduction under HAMP Principal Reduction Alternative (PRA).[2] This document presents an analysis of the performance of HAMP modifications with and without PRA. To date, this analysis has shown the following results:

—Payment reduction is an important driver of HAMP modification performance.

—HAMP modification redefault rates also fall as the loan's after modification mark-to-market loan-to-value, or MTMLTV, ratio decreases (i.e., as the size of the loan's current principal balance relative to the home's value decreases).

—HAMP PRA participating servicers tend to use the principal reduction feature on loans that have relatively riskier credit characteristics than the overall

[1] The logistic regression described in this paper was performed by Fannie Mae in its role as program administrator under Treasury's Making Home Affordable Program. The data points, figures and tables reflected herein were sourced from Fannie Mae as program administrator.

[2] Fannie Mae and Freddie Mac do not participate in the PRA program.

HAMP population—borrowers with much lower credit scores and that are more seriously delinquent at time of modification.

—A logistic regression controls for these riskier characteristics. The regression shows that for a given payment reduction, homeowners who received a HAMP modification with principal reduction perform better than homeowners who receive a HAMP modification without principal reduction.

EARLY EFFECTS OF HOME AFFORDABLE MODIFICATION PROGRAM PRINCIPAL REDUCTION ALTERNATIVE ON REDEFAULT RATES

In June 2010, the Department of the Treasury announced the HAMP Principal Reduction Alternative program. HAMP PRA provides financial incentives to investors for reducing principal owed by homeowners whose homes are worth significantly less than the remaining balance owed on the mortgage. As of May 2012, homeowners have been granted more than 63,000 HAMP PRA permanent modifications.

HAMP data show that the amount of the monthly payment reduction affects the performance of HAMP modifications. Twenty-four months after converting to a permanent modification, there is a 28-percentage-point difference in the redefault rate between loans that received a 20 percent or less monthly payment reduction and loans that received more than a 50-percent monthly payment reduction. Figure 1 shows the redefault curves by the percent of monthly payment reduction.

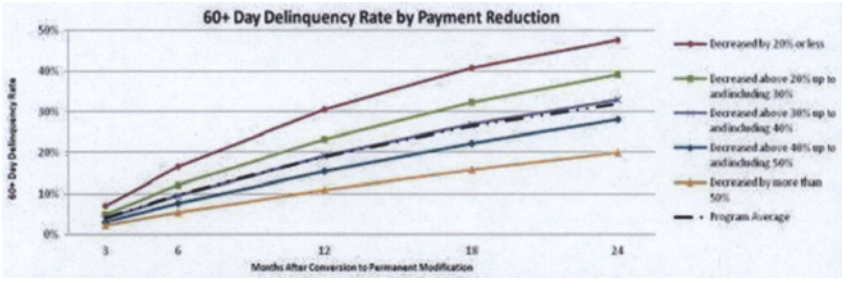

FIGURE 1. 60+ Day Delinquency Rate by Payment Reduction

The redefault rate of HAMP modifications also decreases as the after-modification MTMLTV ratio decreases. At 24 months, loans with less than or equal to 80-percent MTMLTV redefault at a rate that is 12-percentage points lower than loans with more than 170-percent MTMLTV. Figure 2 shows the redefault curves by MTMLTV. The gap in the redefault rate between loans with higher and lower postmodification MTMLTVs increases as the loans age. This gap is smaller for the redefault rate after 6 months than for the redefault rate after 24 months.

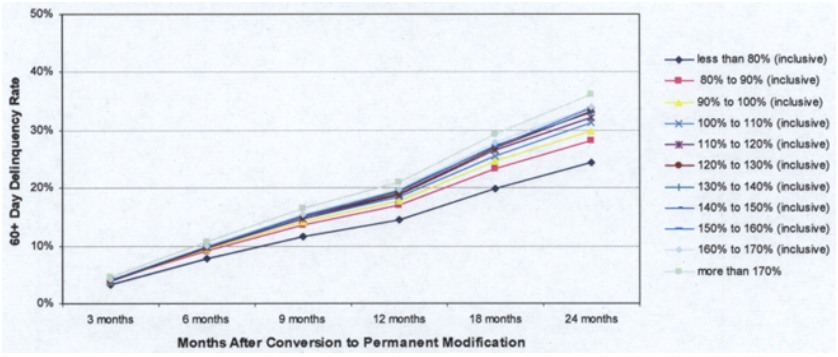

FIGURE 2. 60+ Day Delinquency Rate by After Mod MTMLTV

To date, participating servicers have selected loans with riskier credit characteristics to receive the principal reduction feature under HAMP PRA—loans that are

more seriously delinquent at the time of modification and borrowers with lower overall credit scores than all HAMP modifications.

If one were to look only at the early redefault performance of HAMP PRA versus all HAMP modifications without controlling for these riskier characteristics, it would appear that loans modified with the principal reduction feature under HAMP PRA are performing slightly worse than overall HAMP modifications, as shown in Table 2.

TABLE 2.—HAMP MODIFICATION PERFORMANCE AFTER 6 MONTHS WITHOUT CONTROLLING FOR RISK CHARACTERISTICS [1]

All modifications		Modifications with PRA forgiveness	
Number of permanent modifications	Percentage of 90+ days delinquent at 6 months	Number of permanent modifications	Percentage of 90+ days delinquent at 6 months
800,613	5.80	30,345	6.30

[1] Sample shown includes all HAMP loans that were modified at least 6 months before March 2012.
SOURCE.—Making Home Affordable Program System of Record—data through March 2012

The standard approach in statistical analysis for disentangling the impacts of different factors influencing an outcome is called regression analysis. In this case, a logistic regression controls for risk characteristics, which allows a better comparison of the performance of HAMP modifications with and without the principal reduction feature. These loan characteristics include MTMLTV, origination loan-to-value ratio, percentage monthly payment change, credit score at modification, age of the loan, delinquency of the loan at time of modification, investor type, vintage of the modification, unpaid principal balance of the loan at time of modification (including all past due amounts), delinquency number of months in trial, whether the loan received principal reduction, whether the modification was done under the HAMP PRA program or received principal reduction under traditional HAMP, whether the loan received principal forbearance, geography, servicer, and home price forecast following the modification.

This analysis indicates that for loans with similar characteristics, there is a measurable improvement in performance when the HAMP modification includes principal reduction.

This result is consistent with an assumption of the HAMP net present value (NPV) default model that a homeowner who receives a modification with principal reduction will perform similarly to a homeowner at the same post-modification MTMLTV who receives a modification without principal reduction.

Some have wondered if principal forbearance has a similar effect on modification performance as principal reduction. These results indicate that a homeowner receiving a HAMP modification with principal forbearance performs slightly better than a homeowner who receives a HAMP modification without forbearance as well as without principal reduction. This improvement, though, is smaller than the improvement seen for a HAMP modification with principal reduction.

The regression analysis allows us to separate the impact of the principal reduction from other characteristics that influence default. For illustrative purposes, we constructed a hypothetical homeowner with a premodification MTMLTV of 165 percent and a 10-percent chance of redefault (90+ days delinquent) within 6 months without a payment reduction. We then consider the redefault rate after 6 months implied by the same regression model for three different modifications, each of which provides a 30-percent payment reduction. The three different modifications provide the 30-percent payment reduction in the following ways, via:

—Rate reduction and term extension to achieve a 30-percent payment reduction, an example of a standard HAMP modification: The model shows that the homeowner would have a 4.6-percent chance of redefault.

—Forbearance (no rate or term adjustment) to achieve a 30-percent payment reduction: The model shows that the homeowner would have a 4.4-percent chance of redefault.

—Principal reduction (no rate, term, or forbearance adjustments), to achieve a 30-percent payment reduction and an after-modification MTMLTV of 115 percent: The model shows that the homeowner would have a 3.5-percent chance of redefault.

Table 3 illustrates these results for our hypothetical borrower with an MTMLTV of 165 percent.

TABLE 3.—ESTIMATED DEFAULT OUTCOMES BY MODIFICATION STRUCTURE FOR HYPOTHETICAL BORROWER WITH 10 PERCENT INITIAL DEFAULT PROBABILITY

Modification structure	Probability of advancing to 90-day delinquency within 6 months (percentage)
No modification	10
Rate reduction and term extension to achieve a 30-percent payment reduction (no change in MTMLTV)	4.6
Forbearance to achieve a 30-percent payment reduction (no change in MTMLTV)	4.4
Principal reduction to achieve a 30-percent payment reduction and MTMLTV of 115 percent	3.5

NOTE.—These early redefault rates are just a fraction of expected redefault probabilities over the loan's lifetime, and so the absolute differences in probabilities that we see here would be expected to increase over time.

CONCLUSION

While it is still early, data show that there is a measurable improvement in borrower performance when the HAMP modification includes principal reduction. The outcome of the regression test is consistent with the assumption in the HAMP NPV default model that a homeowner who receives a modification with principal reduction to a certain MTMLTV will perform similarly to a homeowner getting a modification at that MTMLTV without principal reduction. In summary, the table above demonstrates that principal reduction leads to a 20-percent reduction in redefault probabilities as compared to a modification utilizing forbearance, and principal reduction leads to a 24-percent reduction in redefault probabilities as compared to a modification that receives payment reduction, but neither forgiveness nor forbearance.

Secretary GEITHNER. Well, if you look at the economics of it and the finance, we believe that there is a very strong case for some homeowners who are deeply under water, experiencing hardship, there is a very strong case to provide principle reduction up front instead of other forms of payment reduction. And we are trying to make that case to FHFA.

Now, you know, what you do with these cases, you look at a range of options, and you try to figure out what is the best option for both the borrower and the family and the home at the least cost to the taxpayer. And in some cases, it may be a payment reduction that substantially reduces the level of your monthly obligations for a long period of time. In some cases it may be principle reduction.

What we are trying to do is to work through the case with FHFA and convince them that it is in the interest of the taxpayer and consistent with conservatorship for them to adopt the type of program we put in place for their book of mortgages. And they are working with us on this. They have been a little hesitant, a little more conservative so far. But they are reasonable people, and they are amenable to argument, and we think the facts are very compelling.

Senator LAUTENBERG. You will be able to have another——

Senator DURBIN. Yes. We will have a second round for sure.

Senator Moran.

STATEMENT OF SENATOR JERRY MORAN

Senator MORAN. Mr. Chairman, thank you. Mr. Secretary, thank you very much. Thank you for calling and giving me the opportunity to visit with you. I am sorry I was not able to do that.

I continue to hear concerns about a lack of coordination among the Stability Council members on various Dodd-Frank Act rulemakings, especially those related to the derivative titles.

DERIVATIVE MARKET REFORMS

As the chairperson of the Financial Stability Oversight Council, do you have confidence that you will be able to encourage the harmonization of derivative market reforms at a time at which it appears that you are unable to encourage or facilitate consensus between the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC)?

Secretary GEITHNER. Well, you were right to point out that we have a very complicated system in the United States, and by preserving a lot of different people with authority over the pieces of the system, it makes it a little harder to coordinate, and frankly, makes the process more complex. The additional challenge is these are global markets.

And so, it is very important to us that we get the world to move with us. What we do not want to do is raise the standards of the United States, have the world decide not to raise its standards and have markets just ship outside of the United States.

So, we have got two dimensions of complexity. One is we want to get the U.S. agencies in the same place on the sensible terms, and we want to get the world in the same place.

Now, the Congress in its wisdom did not give the Secretary of the Treasury the authority to write these rules, and I do not have the authority to force convergence on these agencies. But we are working very closely with them to try to make the case that we are not going to be able to get the world in a sensible place unless U.S. entities are aligned. And where the SEC and the CFTC, under their independent jurisdiction, have the discretion to be fully aligned, we think that makes a lot of sense.

I am actually pretty confident that the broad framework of oversight and derivatives is going to get landed in a sensible place, both here and globally. I am much more confident than I was 1 year or 18 months ago. There are still a lot of concerns out there about some of the details, and you know in our system we go out for public comment on each of these rules, and everyone has a chance to assess the implications in their context. That gives the regulators a chance to adapt.

So, we are on it. We are focused on it. We care a lot about making sure these rules land in a sensible place. And, you know, we have got some ways to go, but we are going to keep working on it.

Senator MORAN. Generically, Mr. Secretary, not necessarily your comments, but when a person says the Congress in its wisdom failed to do something, is that said just factually or with disrespect?

Secretary GEITHNER. No, that was extraordinary deference and respect.

Senator MORAN. All right, thank you.

Secretary GEITHNER. And to be fair, we did not seek authority to write the rules and derivatives. We thought they should be left with the SEC and the CFTC. And the SEC and the CFTC, not surprisingly, agreed.

Senator DURBIN. Let the record show that the witness is not under oath. Proceed.

Senator MORAN. He is not what?

Senator DURBIN. Under oath.

ENTREPRENEURSHIP OPPORTUNITIES

Senator MORAN. Under oath. Mr. Secretary, at the end of January, President Obama sent to the Congress his Startup American legislative agenda, and three items that are currently on the way to his desk, the so-called Jobs Act. And I am supportive of that development. In my view, there remains to be a lot of work done in regard to innovation and startups, creating an entrepreneurship environment. I got interested in this topic because, in my view, the Congress and the administration has failed to do much of anything about the deficits. And while I am not walking away from the spending and revenue sides of the deficit issue, another way—an additional way to deal with our growing deficit is to grow the economy.

And so, I started looking at entrepreneurship opportunities, trying to create that circumstance in the United States in which somebody who has an idea and goes to work in their backyard, their garage, their basement, has a greater opportunity of succeeding than they otherwise would have.

Senator Warner and I introduced legislation called the Startup Act that would make permanent zero capital gains for investments in small businesses. The President signed a temporary version of that provision that expires at the end of 2010—it went into effect in 2010 and has since expired. And I am interested in knowing your view, your opinion, as to the impact of this exemption in 2011, what additional investment we might expect if it was reinstated as either suggested by the President or in our legislation.

Secretary GEITHNER. Well, we are with you on this completely, and we think it should be extended and made permanent. And we think it would have a powerful incentive in encouraging investment in startups, and that is a good thing.

I do not have with me today an estimate of the magnitude of the impact, but I would be happy to see if there is anything with enough integrity we could share with you. We would be happy to do that.

Senator MORAN. I would welcome your input. Thank you very much.

Thank you, Mr. Chairman.

[The information follows:]

The administration supports a 100-percent exclusion from income for long-term capital gains on qualified small business stock from capital gains tax, and we proposed in our fiscal year 2013 budget to make this favorable tax treatment permanent. While we are not aware of any studies on the economic impact of this particular provision, largely due to the required 5-year holding period, it is no doubt an important incentive to encourage and reward investment in new and growing businesses, such as many startup companies.

Secretary GEITHNER. Just because you raised it, I think that there are other things in the tax law, too, that would be helpful in this context. And just for you to consider as you think about this legislation going forward, we think there is a very strong case to

reinstate expensing, full expensing, for a temporary period of time, too. That creates an incentive for people to invest, good for the economy, good to grow the economy now. We have also suggested various ways to encourage through the tax code small businesses to add to payroll, hire more people, add hours, when we are trying to get more people back to work. I think those things will work by incorporating a grain of permanent capital gains inclusion for investment in small businesses. There is a lot of merit to those things.

ACCELERATED DEPRECIATION

Senator MORAN. Mr. Secretary, I am glad you added those points, and I share that view. I would add that it would be helpful in regard to one of those particular accelerated depreciation issues is general aviation. And the President has a habit of talking about general aviation aircraft and corporate jets. And the provision that we are always talking about that is being criticized is accelerated depreciation. And it is certainly an important one to the manufacturing base in Kansas and across the country.

But I know just as a rural member of, well, of the Congress, somebody who represents a very rural State, if we are going to have small businesses, manufacturers located in small towns, we ought to have a viable general aviation industry that encourages those businesses to be able to fly to places to connect with the rest of the world so that we are not all centered around airports. And I just would ask you to encourage the President to reduce the rhetoric about accelerated depreciation when it comes to general aviation aircraft.

Secretary GEITHNER. I think our proposal, Senator, is to put them on the same footing, to level the playing field, with other people who make aircraft. But I get your point, and I understand your concern.

Senator MORAN. Thank you very much.

STUDENT LOAN CRISIS

Senator DURBIN. Mr. Secretary, I mentioned student loans earlier, and I want to draw some parallels. There are interesting parallels between mortgages and American student loan debt.

There is $1.4 trillion in mortgage debt in this country held by about 52.5 million mortgage holders, and 11 million, or about 20 percent of them, are under water. We are talking about what we do for principal reduction, to deal with the reality of foreclosure, and the impact it has on their lives, and our communities, and the future of the housing market.

Now, look at the parallel universe. Student loan debt totals $1 trillion—not $1.4 trillion, but $1 trillion. The number of students is 37 million; and 15 million, or 39 percent of them, are actually paying on their debt. That is 39 percent. The remainder, 61 percent, or 22 million, are not paying on their debt. Some are in school, but many of them are in a position where for a variety of reasons, they cannot pay on their debt.

One of your charges is to look ahead at the impact of certain financial decisions that are being made on the future of our economy. And when I look at what the foreclosure side on the mortgage

market is doing to our economy overall, I then try to jump ahead a few years and anticipate the impact of this student loan debt on our economy.

Now, there is a significant difference. The most significant difference is that the mortgage debt is dischargeable in bankruptcy; the student loan debt is not. I ask people at the Federal agency, well, what do you think of this, that we have so much student debt out there owned by our Government, and so much it is not being paid, and defaults, and the like.

And their answer was a little smug. They said, we will get our money. Someday we will get our money. It may be a Social Security check, but we will get it. That is a grim prospect for someone 22 years old, and their mom, and signing up for a student loan to think that is the outcome of this decision.

Tell me what you think in terms of whether or not this should be a matter of concern. Are we dealing with a potential bubble as some analysts have said? And what do you think we should do about it?

Secretary GEITHNER. A very important question, and my compliments to you for drawing attention to it.

Let me just say a few general things, and we do share your concern, particularly about the unique challenges in the private student loan market.

In the Government student loan market, as you know, there are a lot of various forms of flexibility to make sure you can adjust payment to income over time, many other ones, too, and that is very important. In the private market, those protections do not exist, and we would like to work with you on how best to think about solving that problem. I know Secretary Duncan is thinking a lot about this.

As you know, the Consumer Financial Protection Bureau (CFPB), has responsibility and some authority to look at practices in these areas, and they are responsible now for taking a look at whether you are seeing behavior by lenders that would magnify the risks in this context. We think it is very important that—and the President has been very focused on this, to try to make sure we are holding all providers of postsecondary education—community, private, public—to higher standards for the quality of the education they provide to the country because, as you pointed out, many people are going to very expensive schools where they have not been able to earn a return that justifies the expense. And we are working very hard to make it more affordable for people to go to college with the Congress' support, a range of tax incentives, and other options.

But even with what CFPB is doing, even with these efforts to deal with some of the special challenges posed by these private universities and for-profit universities across the country, and even with steps the Congress has supported to make it affordable to go to college, we have a problem we do not how to deal with yet in the private student loan business. So, we would like to work with you on your specific proposal. There is definitely some merit in it. We want to do it carefully, but for all the reasons you said.

It is important to recognize that the average earnings for somebody who goes to college are much higher than somebody who just

graduates with a high school diploma. There is a very good case for society as a whole and for the individuals to be able to borrow money, and afford, a community college or a 4-year college program. But you want to make sure you are doing that in the most financially sensible way for you, and with the protections you deserve in that basic context.

A lot of those protections exist in the Federal student loan market, and we have got some work to do to bring those to the private market.

Senator DURBIN. Let me add one other element I should have added, and the difference if we contrast mortgage loans and student loans. The bubble in the mortgage market was brought on by overpricing real estate. And as a result of people losing their homes, being unable to pay, real estate prices came down dramatically. The President raised this point in his State of the Union Address about the cost of higher education. It seems like there is no ceiling. It is just on its way up forever. And I am not sure if the bubble bursts and more and more students cannot make their payments, whether the message will be driven home to a lot of these institutions.

Some of the tuition charges at schools, including some I attended, I think have reached an outrageous level, and I do not think that they are sensible anymore in terms of the debt that a student has to incur. But they need to be. We have to create incentives for them to price a product that is worthy of the investment that many young students and their families are making.

It turns out that when it comes to the private loan side of it, more and more of these schools, even with the fact that you cannot discharge the loan in bankruptcy, are insisting that the parents sign on, too. And many parents who thought they were headed for retirement with a college-educated child end up continuing to work because of student debt that cannot be paid at the end of the day.

Secretary GEITHNER. It is also true that many people used to have the ability to borrow against their house to cover the cost of college for their kids, which was a very financially attractive way to pay for higher education. But, of course, that opportunity no longer exists for many people because of how much home prices have fallen.

Senator DURBIN. I am much larger than the average canary, but I hope that this testimony today will start some people thinking about what this student loan debt is going to mean to us in the longer term. And I am not sure which way to turn at this point.

Senator MORAN. Mr. Lautenberg is fine.

Senator DURBIN. Senator Lautenberg.

Senator LAUTENBERG. Thanks very much. Unscrupulous mortgage brokers' practices have led Americans to buy homes that they clearly could not afford, and today we see some for-profit colleges are pushing students to run up debt they can never repay. What, if anything, can the administration do to make sure that for-profit colleges do not put our economy at risk like the mortgage brokers did?

Secretary GEITHNER. Well, excellent question. The President and Secretary Arne Duncan have in place a range of policies designed to address just this question. So, in addition to what the CFPB, we

hope, will do in improving the quality of disclosure and providing information about borrowing choices for its students, in addition to what we can do through the tax system and elsewhere to help make college more affordable, the President and the Secretary of Education are working hard to try to reduce the rate of growth and costs.

You are both right to highlight this. You want individuals to know when they are thinking about how they pay for college or community college, about the difference between the protections you get with a Federal student loan and a private loan. So, you want them to go in eyes open. You do not want them to have unrealistic expectations about what they are going to be able to earn after college, not justified by the quality of the education they get. Those things are very important. And, again, you are right to bring attention to it.

I spent some time talking to the President and Secretary Duncan before our hearings; I knew you were going to raise it. I know that they are very focused on your specific suggestions and would like to work with you on it.

Senator LAUTENBERG. Well, is it possible that private student loans could have some of the same borrowing protections as Federal loans?

Secretary GEITHNER. Well, that would really be a matter for consideration by the Congress and the CFPB. That is something we have to look at. I know the chairman has proposed or is considering some specific legislation that would allow private student loans to be discharged in bankruptcy with a full set of protections. That would be one approach, and we will look at all sensible ideas in this area.

Senator LAUTENBERG. Right now, budget cuts would slash Pell Grants, 10 million students, by at least $1,000. What might be the impact of cutting Pell grants for student loans?

Secretary GEITHNER. Well, again, if the U.S. Government were at this time, with all the concerns we have about the basic competitive position of the American economy, and the need to equip Americans with the skills they need to get jobs to significantly reduce the assistance it provides students going to college, that would be a bad thing for the country. And it is one reason why it is important for us to recognize that even though we recognize our deficits are unsustainable, and even though we recognize we are going to have to bring them down over time, to understand where we cut and how we do it is as important as doing it itself.

And so, here we put in place tax reform and fiscal reforms to help reduce those deficits in the future, we have to be preserving room—and we can afford to do this as a country—preserving room to make it easier, not harder, for kids to go to college.

Senator LAUTENBERG. Going back some years, I was a beneficiary of the GI bill, and was able to get a pretty good education at Columbia Business School. And I helped co-found a company that now employs more than 40,000 people and presents the employee statistics every month, ADP. And we built the greatest generation, so called. I was one of the builders, but I do not know whether I carried my share of the 8 million people who got a GI bill education.

And not to avail ourselves out of what can come out of a broad-scaled educational program that encourages people, does not discourage them, does not put them under unrealistic burdens, and put our society further in debt, understand that watering those flowers produce—it is not only a beautiful scent, but a beautiful view.

Thanks very much.

Secretary GEITHNER. I agree. Could I just say, Mr. Chairman, that I, too, borrowed to finance my college and graduate school education, and I was able to repay those loans on a civil service salary, which was a very fortunate thing for me. I think as a country, if anything, we are under investing in an investment that would have very high returns for the country as a whole, and the GI bill is the best example.

Again, it's a good thing to remember as we think about how we find a bipartisan agreement on ways to reduce those long-term deficits, because we need to be doing that in a way that preserves room for these kinds of investments.

VOLCKER RULE

Senator MORAN. Mr. Secretary, I am going to ask you to advise one of my bankers in their efforts to comply with the record keeping requirements of the Volcker Rule.

The way I understand the situation is a bank without any proprietary trading ambitions, either before or after the financial crisis, would now have an affirmative obligation to prove the negative. In other words, although they never had a proprietary trading operation, the Dodd-Frank Act now forces them to develop an expensive compliance system to prove that fact to the Government.

Has the Treasury Department made any efforts to quantify the costs of that compliance, and how would you suggest a banker do that?

Secretary GEITHNER. I have heard that concern, and that is one of the many comments and concerns expressed by the private market in response to the rule proposed by the regulators. Again, this is a rule proposed by a group of independent regulators. I know they are taking a look at that concern among many.

I think the question they face is, can they find a way—and I am very confident they can—can they find a way to achieve the objectives of the law, which is to limit proprietary trading by the largest banks in the country, but still preserve exceptions the Congress designed for market making and hedging, and make sure that complying with that does not put an undue burden on the rest of the system. I am very confident they can do that, but they have got some work to do. And it is important to me, not just to your banker, that they get this right.

Senator MORAN. Thank you. I appreciate that confidence that it can be accomplished. And it is that reminder that this premise about too big to fail, one of the things we have to be very cautious of is that because of regulatory burdens, we do not force financial institutions to become bigger and bigger to cover the costs of the regulatory burden created by the Dodd-Frank Act and other legislative rulemaking.

SMALL BUSINESS LENDING FUND

Let me ask another one dealing with a similar topic, your written testimony references support for community banks from the Small Business Lending Fund (SBLF). But I am concerned about a lack of an exit plan for those several hundred banks that received TARP money from the Capital Purchase Program, that were not eligible or were otherwise prevented from participating in the SBLF. Do you have a strategy to recover those taxpayer dollars and to allow community banks to exit the program?

Secretary GEITHNER. Excellent question, and we are very focused on this. I should point out that we have already recovered more than $10 billion of the total amount invested by the Government in the banking system in the crisis. The expected return on those investments for banks is going to be north of $20 billion.

But you are right, we still have a series of quite small investments left in a number of community banks across the country. And we are working with those institutions and their regulators to encourage them to repay and make it possible for them to repay. Not everybody is going to be able to do it. There will be some banks that cannot do it. But we are trying to figure out a way to encourage those firms to replace those investments by the taxpayer with private investments as quickly as possible. And they generally want to do it, too. They are very eager to return those investments.

Senator MORAN. Mr. Secretary, thank you. Mr. Chairman, thank you.

FINANCIAL CRIMES ENFORCEMENT NETWORK INFORMATION TECHNOLOGY MODERNIZATION

Senator DURBIN. Mr. Secretary, in your Financial Crimes Enforcement Network (FinCEN), there has been a lot of work for a long time to upgrade the technology. Tell us where you are.

Secretary GEITHNER. Well, we have got some work ahead of us. And, as you have said, this has been a challenge for many arms of government. We have a stronger management team in place in working how to design and execute this modernization. We have drawn on resources outside FinCEN to help reinforce it. I would be happy to give the subcommittee more details on how things are going. But I think they are doing okay.

OFFICE OF FOREIGN ASSETS CONTROL SANCTIONS AGAINST IRAN, SUDAN, BELARUS, AND SYRIA

Senator DURBIN. There is another aspect of your agency. Most people might think about it instantly, the Office of Foreign Assets Control (OFAC), and it oversees economic sanctions against targeted foreign countries and regimes, terrorists, and other threats to America.

So, I would like to ask you, is work being done relative to the situation in Sudan by your Department?

Secretary GEITHNER. Absolutely, and I thank you for drawing attention to this part of the Treasury.

This part of the Treasury is responsible for designing and executing these financial sanctions we have in place with many countries around the world. And in Sudan, we have in place the most

powerful sanctions available to us. They are very comprehensive, and I think they have been a pretty powerful incentive to reinforce the broader objectives of the State Department and the President in Sudan.

OFAC's work goes well beyond Sudan, and, of course, a big part of their work today surrounds Iran where we are making tremendous progress in bringing more pressure on Iran from countries around the world.

Could I just take this moment to convey my best wishes to Senator Kirk, who I know has been such a champion of a tougher approach in Iran. I want him to know as he recovers that we are making extraordinary progress using the authority he has helped give us at the Treasury working with countries around the world to bring more pressure to bear on Iran. We are having, we think, a big impact economically on them.

Senator DURBIN. I will make sure he gets that message.

One of the witnesses before the Foreign Relations Committee last, when we asked about Sudan and what we could do, said that there are at least three Sudanese leaders who have been found guilty of war crimes before the International Criminal Court: President Bashir, Defense Minister Hussein, and Government Minister Harun. And they asked whether we could and whether we are tracking their financial assets.

Secretary GEITHNER. Well, I would be happy to take a look at that more specifically and talk to my colleagues about it. The sanctions we have in place cover the government as a whole, but, of course I welcome that suggestion and I'm happy to consult with my colleagues. We will get back to your staff on whether we think that makes sense.

Senator DURBIN. I would like to ask you at the same time to consider the situation in Belarus with Viktor Lukashenko, the last dictator in Europe, as well as the Syrian dictator, Bashar al-Assad. If you would like to say another word or two about the situation in Iran. The President has told us and others, Secretary Clinton and others, that the sanctions regime is making an impact. Can you give us any testimony today about what you think the impact has been on the Iranian economy?

Secretary GEITHNER. Yes. All evidence suggests, and you can see it in what has happened to their exchange rate, the rate of inflation, and the difficulty they are having, frankly, trading with the rest of the world and selling their oil, that it is having very substantial economic effects.

You have seen 10 countries in Europe and Japan announce that they are going to substantially reduce imports of oil from Iran. The Europeans are going to cut them off completely. Countries around the world are in the process of taking additional steps to reduce their imports of oil. But beyond that, these financial sanctions are making it very difficult for countries to do business with Iran, very difficult for Iran to get paid for the oil they do ship, and to get paid for other things. And that is absolutely having an effect on the economy as a whole.

Now, we do not know, of course, what effect that is going to have on their nuclear ambitions. Of course, our ultimate objective is to convince Iran that they should join the consensus of the inter-

national community to renounce those ambitions. We think these sanctions are necessary, and we hope will be an effective path to achieve that.

I want to say in the Belarus context—happy to report in more detail—but we have put sanctions in place in Belarus on a number of senior government officials, including Lukashenko and others.

Senator DURBIN. Thank you.

Senator Moran.

Senator MORAN. Mr. Chairman, you started me down another line of questioning, and one of the areas—I think both of the areas we agree upon. I just would encourage the Treasury Department to fully implement, to enforce the sanctions as authorized by the Congress in regard to Iran, and I would encourage you to do that.

SALE OF AGRICULTURAL GOODS TO CUBA

On the topic of Cuba, one that the chairman and I have dealt with in the past, the administration has made—the Obama administration has made changes in our relationship, bilateral relationship with Cuba in regard to travel and regard to money being sent to Cuba. But you have not done anything in regard to the sale of agriculture commodities, food, and medicine.

And going back to the year 2001, the Congress passed legislation that authorized the sale for cash up front of those items. We had regulations developed by the Treasury Department that were in place for a number of years. The Bush administration Treasury Department changed those regulations, made it more difficult for those cash sales to occur in really two ways: third-party financing and the definition of when the shipment arrived or left the United States, the determining factor of when the cash had to be paid. Prior to those regulatory changes, it had to be paid when the ship landed in Havana. The Treasury Department changed the rules and said it had to be paid before the ship left the United States, making the United States' sales significantly less competitive.

And other countries' exports to Cuba have increased, for example, to Brazil. Ours following those Treasury regulation changes were reduced, diminished. And as—this goes back to my days in the House of Representatives, Representative Peterson and I wrote the administration asking, if you are going to do those other two things, why do you refuse to take the steps necessary to deal with the agricultural sales—it is not even trade—agricultural sales for cash up front, and return us at least to the days that pre-existed the change by the previous Treasury administration.

I would be happy to know your response, but mostly I want to ask you to encourage the administration to do that, and to work with us as we try to craft legislation if you will not.

Secretary GEITHNER. I will be happy to work with you on it. And, as you know, there are Members of the Congress who have a somewhat different view than you on this, and they have occasionally tightened——

Senator MORAN. I have met them.

Secretary GEITHNER [continuing]. The things you are trying to loosen. And we have to be guided by what they put into law.

Senator MORAN. But the same thing could be true—be said for the other two aspects of trade in regard to the money being sent

and the opportunity to travel to Cuba. And it just seems odd this is the one that there seems to be—there is an unwillingness for the administration to make the changes.

Secretary GEITHNER. Again, happy to listen to your concerns on this and to work with you on it. We try to hew closely to the line that Constitution draws, and when you change the law, then we move. But we are happy to talk to you.

Senator MORAN. I think we have had this conversation before. Your happiness to talk to me has been demonstrated previously, but the rules remain the same.

TAXPAYER SUPPORT OF FREDDIE MAC AND FANNIE MAE

The only—I think, Mr. Chairman, the only other question I would ask is, this is a question that Senator Kirk asked me to ask in regard to taxpayers being made whole in their investments and the rescue of Freddie Mac and Fannie Mae. And I think the point he wanted me to raise with you is that in the Senate Banking Committee, February of this year, Secretary Donovan estimated that the taxpayer exposure to the bad loans of Fannie Mae and Freddie Mac could exceed $1 trillion. Do you agree with that assessment?

Secretary GEITHNER. No, and I do not think it is likely he said it that way. Let me tell you how we look at this.

FHFA does a regular periodic assessment of what future losses might be even in the event we face another recession or another crisis, those are put in the public domain, and they periodically revisit those.

But I will tell you what they show. What they show is that all the losses they face going forward now are really the legacy problem of the choices they made during the financial boom. And today, because of the changes put in place since the crisis under the legislation the Congress passed, they have much more conservative underwriting standards and much more conservative lending practices.

Most independent economists assessing their book of business would say that the new business they are doing today, which is still very important—the housing market—is done on much more conservative financial terms and looks relatively profitable. And over time, those profits are helping reduce the losses we inherited.

But what FHFA does, and which is appropriate, is to periodically publish estimates of what those losses might be in the future to the taxpayer under even a significantly worse economic scenario. But the estimates out there, including the ones made by CBO, are nothing close to $1 trillion.

We will lose some money, but I think the current estimates are more in the range of $100 billion. And even those losses look like they are going to be largely offset by the Government's return on the range of other things that we did as part of the financial rescue done by the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) and the Treasury.

ADDITIONAL COMMITTEE QUESTIONS

But, you know, we got some ways to go, and really at the very early stage of putting in place reforms that will make the housing

finance system work better in the future. We are pretty far advanced on the broader financial reforms, but not very far along on the reforms to the housing finance system.

Senator MORAN. Mr. Secretary, thank you.

Senator DURBIN. Mr. Secretary, thank you for your time and your valuable testimony.

Secretary GEITHNER. Thank you.

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

QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

Question. What is the Department of the Treasury doing in its role as manager of the Senior Preferred Stock Purchase Agreements—through which the Government-sponsored enterprises (GSEs) have received about $170 billion in taxpayer assistance—to ensure the GSEs are engaging in behavior such as principal reduction that, as Secretary Geithner has stated, when appropriately used would "limit the futures losses of the GSEs"?

Answer. The Federal Housing Finance Agency (FHFA), as Conservator of Fannie Mae and Freddie Mac, is responsible for the oversight and management of the activities at Fannie Mae and Freddie Mac.

As part of the Senior Preferred Stock Purchase Agreements, Treasury has certain protections on its investment, which include approval rights over any asset sales not at fair value.

Treasury assisted the FHFA in its analysis of the effects of principal reduction when made in connection with a Home Affordable Modification Program (HAMP) loan modification. In July 2012, after months of deliberation, FHFA announced it would not allow Fannie Mae and Freddie Mac to provide borrowers with principal reduction in connection with a modification. Treasury is ready to consult with the FHFA if they wish to continue a further analysis of principal reduction.

DOMESTIC FINANCE—HOUSING

Question. Who at Treasury is in charge of managing and overseeing the Senior Preferred Stock Purchase Agreements?

Answer. The Under Secretary of the Treasury for Domestic Finance is responsible for the management and oversight of the preferred stock investments under Senior Preferred Stock Purchase Agreements.

Question. How many Treasury employees work on a daily basis to oversee the financial assistance provided to FHFA?

Answer. Treasury takes very seriously its responsibility to oversee the financial support it provides under the Senior Preferred Stock Purchase Agreements. Employees of a number of Treasury offices, including the Office of Financial Markets, the Office of Financial Institutions, the Office of the Fiscal Assistant Secretary, and the Office of the General Counsel, provide support to the Under Secretary for Domestic Finance for the management and oversight of the financial support provided under the Senior Preferred Stock Purchase Agreements.

Question. What information, if any, is Treasury receiving from the GSEs to ensure that the billions in financial assistance they have received under the Purchase Agreements isn't being misused?

Answer. The respective management and Boards of Directors of Fannie Mae and Freddie Mac are responsible for the proper use of the financial support they each received under the Senior Preferred Stock Purchase Agreements. FHFA, as Conservator of Fannie Mae and Freddie Mac, is responsible for the oversight and management of the activities at Fannie Mae and Freddie Mac. Both Fannie Mae and Freddie Mac submit annual risk management plans to Treasury which provides information about the enterprise risk management at both firms.

Question. What is Treasury doing to ensure FHFA completes its principal reduction analysis in a timely manner and that FHFA does not indefinitely delay its results?

Answer. In 2012, Treasury assisted the FHFA in its analysis of the effects of targeted principal reduction on underwater mortgages owned or guaranteed by Fannie Mae and Freddie Mac in connection with payment-reducing loan modifications under HAMP. Treasury believes that principal reduction should be assessed as part of a payment-reducing modification, and the overall economic result compared to a

modification without principal reduction. This approach ensures that principal reduction is implemented where it produces the best result from an economic standpoint. FHFA, as Conservator of Fannie Mae and Freddie Mac, is responsible for the oversight and management of the activities at Fannie Mae and Freddie Mac. In July 2012, FHFA announced it had concluded its analysis and it would not allow Fannie Mae and Freddie Mac to provide borrowers with principal reduction in connection with a modification. Treasury is ready to consult with the FHFA if they wish to continue a further analysis of principal reduction.

Question. Has Treasury done its own analysis about the benefits of the GSEs participating in principal reduction? Who at Treasury would be responsible for completing this analysis?

Answer. Treasury assisted FHFA in its analysis of the effects of principal reduction when made in connection with a HAMP loan modification. The assistance was provided by Treasury staff within the Office of Domestic Finance and the Office of Economic Policy.

Question. Does Treasury have access to the necessary information, including the books of the GSEs, to conduct its own analysis about the benefits of the GSEs participating in principal reduction?

Answer. Treasury assisted the FHFA in its analysis of the effects of principal reduction when made in connection with a loan modification, however Treasury does not have access to the detailed data of the GSEs to conduct our own analysis. Treasury is ready to consult with the FHFA if they wish to continue a further analysis of principal reduction.

Question. Isn't it true that the GSEs could target principal reduction to those homeowners for which it makes the most business sense, which would address most of the concerns critics and those with philosophical objections have with principal reduction?

Answer. Treasury believes that principal reduction should be assessed as part of a payment-reducing modification, and used in those cases where it produces a better overall economic result when compared to a modification without principal reduction. This targeted approach ensures that principal reduction is implemented where it produces the best result from an economic standpoint. The application of principal reduction to an underwater loan can, in many cases, help reduce a struggling borrower's monthly payment to a level where the borrower can sustain this lower, modified monthly payment and is less likely to default going forward. Currently, of all of the eligible underwater non-GSE loans receiving a HAMP modification in December 2012, for example, Treasury has reported that 71 percent included some principal reduction.

As noted, FHFA announced in July 2012 it had concluded its analysis and it would not allow the GSEs to provide borrowers with principal reduction in connection with a modification. Treasury is ready to consult with the FHFA if they wish to continue a further analysis of principal reduction.

Question. How does Treasury interpret FHFA's conservatorship mandate?

Answer. FHFA placed each of the GSEs into conservatorship on September 6, 2008. At that time, FHFA set out the purpose and goals of conservatorship as follows:

"The purpose of appointing the Conservator is to preserve and conserve the Company's assets and property and to put the Company in a sound and solvent condition. The goals of the conservatorship are to help restore confidence in the Company, enhance its capacity to fulfill its mission, and mitigate the systemic risk that has contributed directly to the instability in the current market."

Question. Does anything in FHFA's conservatorship mandate prohibit Acting Director DeMarco from allowing the GSEs to engage in activity such as principal reduction that even private investors are using to reduce losses?

Answer. FHFA is an independent Federal regulator and as such, it would not be appropriate for Treasury to comment on FHFA's mandate.

Question. Has FHFA shared their resource concerns with Treasury about implementing principal reduction as indicated in FHFA's January 20 letter to Representative Cummings? Has Treasury offered to help address resource issues?

Answer. In January 2012, Treasury announced that it was willing to pay principal reduction investor incentives to servicers participating in HAMP who were modifying underwater GSE loans, if the FHFA permitted the GSEs to participate in the HAMP Principal Reduction Alternative program (HAMP–PRA). After that announcement, Treasury engaged with FHFA regarding their concerns with resources needed to implement principal reduction and offered to pay additional administrative costs required to implement HAMP–PRA. As noted, FHFA decided in July 2012 not to allow GSEs to provide borrowers with principal reduction in connection with

a modification. Treasury is ready to consult with the FHFA if they wish to continue a further analysis of principal reduction.

Question. What is Treasury doing to ensure that the tax consequences of principal reduction do not outweigh the benefits of principal reductions?

Answer. Treasury worked closely with Congress to ensure that the Mortgage Debt Relief Act of 2007 was extended through December 31, 2013. The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of qualified mortgage debt on their principal residence. Principal residence mortgage debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, can qualify for the relief.

In addition, Treasury worked closely with the Internal Revenue Service on recent IRS guidance (Revenue Procedure 2013–16) addressing principal reduction. Under this guidance issued on January 24, 2013, principal reduction is excluded from homeowners' income to the extent the holders of the loan receive Government-paid incentives. Homeowners may elect whether to treat any principal reduction from non-Government sources as income in the year of the permanent modification or as the principal is reduced on the loan. Additionally, the guidance permits homeowners to amend returns filed in previous years. As a result of this guidance, homeowners' compliance with their tax obligations should be improved and homeowners' access to existing exclusions from taxable income should be simplified.

DOMESTIC FINANCE—FINANCIAL INSTITUTIONS/FEDERAL INSURANCE OFFICE

Question. Treasury's Federal Insurance Office (FIO) has a significant workload, particularly in international forums like the International Association of Insurance Supervisors (IAIS). FIO's work at the international level, in conjunction with state insurance supervisors, is important to the competitive standing of U.S. insurers and will help ensure that the United States gets the best outcome in reviews of international insurance standards. Please provide a progress report on the work that FIO is undertaking, including what the Department is doing to stand up and provide resources to this office and how many staff are expected to be in place by the end of each of fiscal year 2012 and fiscal year 2013.

Answer. By virtue of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Department of the Treasury's FIO is authorized to coordinate and develop Federal policy on prudential aspects of international insurance matters, including representing the United States at the International Association of Insurance Supervisors (IAIS). FIO became a full member of the IAIS in October 2011. FIO became a member of the IAIS Executive Committee in February 2012, and the FIO Director was selected to chair the IAIS Technical Committee in October 2012. FIO also represents the United States on the IAIS Financial Stability Committee, the Macro-Prudential Surveillance Working Group, and numerous subcommittees.

In January 2012, FIO initiated an insurance dialogue project (Project) with State regulators and European Union (EU) insurance officials in order to identify those subject regulatory matters appropriate for improved convergence and compatibility between the EU and the United States. The Project will conclude in 2018.

FIO has participated in the Insurance and Private Pensions Committee of the Organization for Economic Cooperation and Development (OECD). In this capacity, FIO supports the leadership of the U.S. Department of Commerce.

FIO has developed numerous bilateral relationships with insurance supervisors from around the world. For example, FIO participated in the U.S.-China Strategic and Economic Dialogue and the U.S.-China Joint Economic Committee. FIO also participated in the 2012 NAFTA Financial Regulatory Dialogue, and has initiated a joint semiannual insurance supervisory discussion with the lead insurance supervisors of Canada and Mexico, in addition to State regulators.

In addition to its authorities relating to international insurance matters, the Director of FIO also serves on the Financial Stability Oversight Council. FIO has been actively engaged in the work of the Council, and expects to increase its engagement as staff resources increase. FIO has also been preparing a number of studies and reports that will be issued in 2013.

As of February 20, 2013, FIO has 11 full-time employees and is building to a staff of 15 employees. The Treasury Department supports FIO with the additional support resources needed to fulfill its statutory authority.

TERRORISM AND FINANCIAL INTELLIGENCE—FINANCIAL CRIMES ENFORCEMENT NETWORK

Question. The Financial Crimes Enforcement Network (FinCEN) collects Suspicious Activity Reports from financial institutions. Patterns in the data allow FinCEN to identify criminal "hot spots" that can be addressed through enforcement

and coordination among law enforcement entities. In fiscal year 2010, FinCEN began a second attempt to upgrade the IT system that hosts this data.

When will the final product be available, and how will it improve financial intelligence efforts?

Answer. The Bank Secrecy Act (BSA) Information Technology (IT) Modernization Program is a 4-year program, which began in fiscal year 2010, that has delivered multiple products that fundamentally improve FinCEN's information technology infrastructure, applications, and ability to provide support to users from hundreds of Federal, State, and local law enforcement, regulatory, and intelligence agencies. The Program has continuously and successfully delivered products on time and within budget, meeting the rapid incremental milestones established by the Office of Management and Budget (OMB).

Question. What improvements have FinCEN and the Department made to the planning and implementation process that will avoid problems that plagued the previous failed upgrade?

Answer. The BSA IT Modernization Program has continuously and successfully delivered products on time and within budget, meeting the rapid incremental milestones established by OMB. Treasury's Office of the Inspector General (OIG) has produced two reports on the program and in the most recent of those, OIG had no recommendations.

Question. How have FinCEN and Treasury involved the wide variety of stakeholders in the planning for this IT overhaul—including banks, Federal law enforcement, State and local law enforcement, and other Federal intelligence agencies?

Answer. Throughout the modernization effort, FinCEN has consulted with a Data Management Council (DMC), which is comprised of representatives from more than a dozen Federal law enforcement and regulatory organizations. In addition, FinCEN collaborated with the Bank Secrecy Act Advisory Group, which includes both public and private sector participants, to obtain feedback on various aspects of the program.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

DOMESTIC FINANCE—HOUSING

Question. Opponents of principal forgiveness for struggling homeowners have argued that lowering the amount owed on underwater mortgages would cost taxpayers too much.

However, analysis by the Federal Housing Finance Agency suggests that forgiveness would save taxpayers money.[1] What has your analysis of Treasury's principal forgiveness program revealed about the benefits of principal forgiveness for taxpayers and homeowners?

Answer. Treasury supports using principal reduction on a targeted basis where it makes economic sense to do so. When used in combination with a payment-reducing loan modification such as a Home Affordable Modification Program (HAMP) modification, principal reduction can be an effective way to help underwater borrowers avoid foreclosure and help housing markets to recover. The application of principal reduction to an underwater loan can, in many cases, help reduce a struggling borrower's monthly payment to a level where the borrower can sustain this lower, modified monthly payment and is less likely to default going forward. Currently, of all of the eligible underwater non-Government-sponsored enterprises (GSEs) loans receiving a HAMP modification in 2012, nearly three-quarters included some principal reduction.

DOMESTIC FINANCE—HOUSING

Question. Some have suggested that principal forgiveness on Fannie Mae and Freddie Mac mortgages would enrich banks that hold second liens.[2]

But principal forgiveness is essential for struggling homeowners and for restoring the health of our housing market. How can the Congress help homeowners while preventing a windfall for banks?

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[1] See February 8, 2012 Letter from House Oversight Committee to FHFA Director DeMarco, which reads, in part, "according to the latest report you provided from December 2011 . . . implementing principal reduction programs for borrowers who are Net Present Value (NPV) positive would reduce overall losses by $28.3 billion, while principal forbearance programs for these borrowers would reduce overall losses by $27.9 billion compared to the cost of taking no action."

[2] See, for example, "A Bailout by Another Name", New York Times, March 24, 2012.

The concern that principal reduction could offer a benefit to large financial institutions that hold subordinate second liens is addressed HAMP through the associated Second Lien Modification Program (2MP). Servicers participating in 2MP are contractually obligated to proportionately modify each eligible second lien that is matched to a first lien HAMP modification. In the case of any first lien that has principal reduced in connection with a HAMP modification, the participating servicer is required, at a minimum, to reduce a proportional amount of principal on the associated second lien. Most major servicers are participants in 2MP (including the five largest mortgage servicers), so instead of providing a windfall to the banks, if Fannie Mae and Freddie Mac's (the GSEs) allowed principal reduction in connection with HAMP modifications on GSEs loans, it would compel the largest banks to help homeowners even further by writing down more second liens through 2MP.

Prior to the launch of 2MP, it was often difficult to even determine the owner of a second lien on a property subject to a first lien modification. Treasury facilitated the creation of a nationwide system to match first and second liens, thereby facilitating and ensuring that second liens are modified when there is a first lien modification, whether or not the modification involves principal reduction.

ECONOMIC POLICY

Question. In 2006, Christopher Bryski, a constituent of mine, passed away after not regaining consciousness from an injury he suffered 2 years prior. His Federal student loans were discharged by law when he passed, but his private loans were not, so his father is still paying them off. Do you believe that private student loans should have the same borrower protections as Federal loans?

Answer. Treasury defers to the Consumer Financial Protection Bureau (CFPB) on the issue of private student loans. CFPB issued a report in July 2012 that discussed borrower protections for private student loans.

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

DOMESTIC FINANCE—HOUSING

Question. In your response to a question during the March 28 hearing, you indicated that you were not familiar with the statements made by Department of Housing and Urban Development Secretary Shaun Donovan during a hearing before the Senate Banking Committee on February 28. Secretary Donovan replied to questions from Senator Johanns as follows:

"Senator JOHANNS. Let me ask you about that, because I think you're making my point. How much today would the taxpayers be on the hook for when it comes to Fannie and Freddie? Everything, right?

"Secretary DONOVAN. There—there is no question that taxpayers are at risk for those loans being made. What I would also say, though, is all the evidence that we have is that the new loans being made are safe, good loans; that the exposure that taxpayers have is to the legacy loans that were made before they went into conservatorship.

"Senator JOHANNS. How much——

"Secretary DONOVAN. This is where the confidence issue is important. The single-most important thing we can do to protect taxpayers is ensure that those old loans, which we can't make go away, perform in a way that improves their value, rather than continue as their value decline. In that sense, improving the housing market more broadly, keeping confidence in the securities that are issued by Fannie and Freddie, is critical going forward.

"Senator JOHANNS. How much are those legacy loans? If you're the average taxpayer out there, and you're tuned into this hearing, and you want to know how much you're on the hook for, how much is that?

"Secretary DONOVAN. I'm sorry, Senator. I don't have a number in front of me. Perhaps—I know that FHFA will be testifying on the next panel. I'm sure that they would have more specific details. But it's obviously substantial, in the over-trillion-dollar range."

Your specific response during the March 28 hearing was:

"The FHFA does a regular periodic assessment of what future losses might be, even in the event if we face another recession or another crisis. And those are put in the public domain and they periodically revisit those. But I'll tell you what they show. What they show is that all the losses they face going forward now are really the legacy problem of the choices they made during the financial boom. And today, because of the changes put in place since the crisis under the legislation Congress

passed, they have much more conservative underwriting standards and much more conservative lending practices. And most independent economists assessing their book of business would say that the new businesses they're doing today, which is still important to the housing market, is done on much more conservative financial terms and looks relatively profitable. And over time, those profits are helping reduce the losses we inherited. But what FHFA does—and this is appropriate—is to periodically publish estimates of what those losses might be in the future to the taxpayer under even much—even, you know, a significantly worse economic scenario. And—but the estimates out there, including ones made by CBO are nothing close to $1 trillion."

To clarify the precise level of exposure, please provide Treasury's estimate of the value of outstanding mortgage loans that carry a direct or indirect Federal guarantee, broken down by "legacy loans" and "loans since 2010", accompanied with an estimate of taxpayer exposure to loss. Also respond as to whether you view debt forgiveness as part of a plan to minimize the taxpayers' long-term loss exposure.

Answer. The majority of losses at the GSEs stem from loans guaranteed prior to 2009. FHFA has conducted stress tests in order to project potential GSE losses and draws from Treasury over a 3-year forward-looking window. However, it is important to note that these are modeled projections and can change over time as inputs and assumptions change.

In the "Projections of the Enterprises Financial Performance", FHFA reported on October 26, 2012, FHFA projected results for the period of 2013–2015. These results estimated that the cumulative amount of draws from Treasury less the dividends paid to Treasury for FHFA baseline scenario since conservatorship and through 2015 was $53 billion for Fannie Mae and $23 billion for Freddie Mac. Under a stress scenario, FHFA projected these amounts to be $94 billion for Fannie Mae and $38 billion for Freddie Mac.

The administration uses these projections as the starting point for its budget estimate of the cost of Treasury support for Fannie Mae and Freddie Mac and will provide updated estimates in the fiscal year 2014 budget. In the administration's fiscal year 2013 mid session review, net payments of senior preferred liquidity payments minus dividends were projected to be $12 billion through the budget window of 2009–2022. The lower figure reflects FHFA's projected stronger results and dividend payments to Treasury in the 2015–2022 period.

Treasury supports using principal reduction on a targeted basis where it makes economic sense to do so. When principal reduction is used in combination with a payment-reducing loan modification such as a HAMP modification, it can be an effective way to help underwater borrowers avoid foreclosure and help housing markets to recover.

Question. The debt limit increase approved as part of the Budget Control Act of 2011 is expected to accommodate the Treasury's borrowing needs until the end of this year. Following the Student Aid and Fiscal Responsibility Act of 2009, student debt issuances by the Federal Government have widely expanded to displace loans no longer made through the subsidized student loan market, adding new demands for Treasury funding.

What is the numerical change in dollars to debt subject to the limit caused by this expansion in Government-issued student debt? How many days did student loan debt accelerate the need for a debt limit increase in 2011?

Currently, the Government is recovering 85 percent of every student loan dollar that goes into default status.

Are default rates greater than expected, and how is that affecting Treasury's ability to project its cash flow needs?

Answer. Student loans are a critical part of the administration's goal to increase access to higher education. Treasury plays an important role in financing direct loans and supporting delinquent debt collection across the Government. Borrowing related to student loans and grants increased our overall borrowing needs in fiscal year 2011 by approximately $155 billion, which was one of the factors that contributed to the need for a debt limit increase in 2011. Treasury has been working with the Office of Management and Budget and the Department of Education to analyze the data relating to student lending in order to accurately ascertain the lending program's impact on cash flows. This is an important issue that Treasury will continue to analyze and monitor closely.

INTERNATIONAL AFFAIRS

Question. A recent Federal Reserve paper concludes that Chinese foreign official flows into the United States and acquisition of United States Treasuries has had significant effects on Treasury yield, reducing interest rates.

Should we be encouraging foreign holdings of Federal debt, rather than criticizing them?

What are the risks related to foreign holdings of Federal debt that might offset our interest savings?

Answer. The market for Treasury securities is the deepest and most liquid fixed income market in the world. As a result, Treasury securities have a diverse investor based—domestic and international, small and large. We view this as a source of confidence in our market and an indication of the status Treasury instruments occupy in global fixed income markets. More broadly, the United States has a longstanding open investment policy, which has been beneficial to our growth and employment.

TERRORISM AND FINANCIAL INTELLIGENCE—TERRORIST FINANCING AND FINANCIAL CRIMES/OFFICE OF FOREIGN ASSETS CONTROL SANCTIONS

Question. On February 27, 2012, the Treasury Department issued a fact sheet entitled "Treasury Amends Iranian Financial Sanctions Regulations to Implement the National Defense Authorization Act" in which you wrote, "Beginning on February 29, 2012, privately-owned foreign financial institutions that knowingly conduct or facilitate any significant financial transaction with the CBI other than for the purchase of petroleum or petroleum products from Iran face U.S. sanctions, consistent with subsection 1245(d) of the NDAA." Nearly 1 month later, no sanctions have been imposed pursuant to subsection 1245(d) of the fiscal year 2012 National Defense Authorization Act (NDAA) (commonly known as the "Menendez-Kirk" amendment). As you know, unlike other sanctions law, the imposition of sanctions under "Menendez-Kirk" is not contingent on a Presidential determination. Simply put, under U.S. law, sanctions must be imposed when sanctionable activity is found.

Why is the administration not complying with the "Menendez-Kirk" amendment when it comes to the imposition of sanctions with regard to nonoil transactions conducted with the Central Bank of Iran?

Answer. The Treasury Department is aggressively implementing the "Menendez-Kirk" amendment, along with the full range of sanctions that we administer against Iran, to disrupt the Government of Iran's incoming revenue streams and its access to its existing revenues. As a key part of these efforts, we will continue to target both oil and nonoil dealings with the Central Bank of Iran under all appropriate authorities.

Question. Are you willing to report to us in writing that since February 29, 2012, the Treasury Department has found no evidence of activity sanctionable under subsection 1245(d) of the fiscal year 2012 NDAA?

Answer. The Treasury Department is aggressively implementing the "Menendez-Kirk" amendment, along with the full range of sanctions that we administer against Iran, to disrupt the Government of Iran's incoming revenue streams and its access to its existing revenues. As a key part of these efforts, we will continue to target both oil and nonoil dealings with the Central Bank of Iran under all appropriate authorities. Treasury will continue to work closely with the Congress as we implement the range of United States sanctions against Iran.

Question. Are you willing to report to us in writing that since February 29, 2012, the Treasury Department has seen no intelligence indicating foreign financial institutions have conducted nonoil transactions with the Central Bank of Iran?

Answer. Treasury is fully committed to targeting any foreign financial institutions engaged in sanctionable dealings with the Central Bank of Iran. However, it is longstanding Treasury policy not to comment on possible investigations.

Question. My staff has repeatedly asked the Treasury Department to brief in classified session on current intelligence relating to these issues. Why is the Department unwilling to meet with members of the Senate or their staff to discuss the administration's failure to comply with subsection 1245(d) of the fiscal year 2012 NDAA?

Answer. The Treasury Department is unaware of any outstanding briefing requests, but has been and remains willing to provide classified briefings as appropriate to the Congress.

Question. Has the Treasury Department observed any financial transactions with Central Bank of Iran since February 29, 2012, or designated Iranian banks since July 1, 2010, that were deemed nonsignificant and for which sanctions under Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 or the "Menendez-Kirk" amendment were not imposed? If so, on what basis were the determinations made that the transactions were not significant? What foreign financial institutions were responsible for processing these transactions?

Answer. Treasury is fully committed to a robust implementation of the range of Iran sanctions that we administer to maximize their impact on the Government of

Iran. However, it is longstanding Treasury policy not to comment on possible investigations.

SUBCOMMITTEE RECESS

Senator DURBIN. The subcommittee will stand recessed.

[Whereupon, at 3:23 p.m., March 28, the hearing was concluded, and the subcommittee recessed, to reconvene subject to the call of the Chair.]

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2013

WEDNESDAY, APRIL 18, 2012

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

The subcommittee met at 2:33 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin and Moran.

GENERAL SERVICES ADMINISTRATION

STATEMENT OF DANIEL M. TANGHERLINI, ACTING ADMINISTRATOR

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Good afternoon. Today, we convene the hearing of the Appropriations Subcommittee on Financial Services and General Government, to discuss the report of the Inspector General of the General Services Administration (GSA), as well as budget issues facing the GSA.

I welcome my colleague, Senator Jerry Moran of Kansas, the ranking member. I also welcome the Acting Administrator, Daniel M. Tangherlini. Did I pronounce that right, Dan? Thank you. And GSA Inspector General Brian D. Miller.

Earlier this year, I made decisions about which of the many agencies under our jurisdiction—and we have quite a few of them—would actually appear for a formal public hearing for the fiscal year 2013 funding needs. GSA was 1 of the 4 that I designated, and we started preparing for this hearing some time ago.

The inspector general's recent release of disturbing findings disclosing serious mismanagement deficiencies related to an internal conference have added a new dimension to this hearing. Today, we'll attempt to gain a clear understanding of what transpired and what is being done to change it.

I was outraged and embarrassed to learn about the spending that occurred as a result of that conference, and I'm eager to hear how GSA will ensure that it never happens again.

We'll also examine GSA's ability to fulfill its program obligations and the future space needs of Federal agencies during a time of debt reduction.

Recently, the Office of Inspector General of GSA issued a management-deficiency report detailing an array of highly troubling

findings resulting from the investigation into a 4-day internal staff conference held in October 2010. The report describes how a host of Federal contracting rules were skirted, ignored, or violated in the planning and execution of this event.

Issuance of the report on April 2 sparked the immediate resignation of the GSA Administrator and two other key agency officials and the imposition of other personnel decisions for five other high-level regional management staff.

It also has generated a flurry of attention here in the Congress. I think we're the fourth of four hearings in 4 days on this issue.

Some of the more appalling lapses are not necessarily the activities that have caught a lot of media attention, some of the sensational events, such as renting a clown costume or a session featuring a mentalist.

What's baffling to me is that there were apparently numerous examples of excessive spending and improper adherence to contracting rules, brazen finagling of event sessions to justify food and other expenditures, multiple occurrences of advance long-distance travel to the site and appalling lack of adherence to longstanding Federal law about holding Federal events in lodging facilities that meet fire-safety specifications.

It's also mind-boggling that somewhere along the way during the year of planning for this conference that someone didn't say, "Wait a minute. Isn't this going overboard?"

What is most regrettable is that incidents such as this tarnish the public perception of the workings of the entire Federal Government, the services delivered by an otherwise dedicated workforce and the stewardship of precious Federal funds, taxpayers' dollars.

In fact, the investigation began because the Deputy Administrator of the GSA asked the inspector general to examine the matter as soon as two employees mentioned to her activities that sounded improper. I expect action to be taken swiftly to ensure that all rules are explicitly followed in the future.

This all contributes to my dismay as to how all of this was allowed to happen. And I look forward to hearing from the Acting Administrator and the inspector general about the situation that led up to these findings and corrective actions.

While this fiasco in the western regions of the Public Buildings Service (PBS) deserves attention it's been receiving, and corrective measures, as I've mentioned, there are other issues relating to the GSA of importance as well. Those include the ability of GSA to fulfill its statutory responsibility and to meet the needs of Federal agencies across the board that depend on good management.

Most GSA annual spending comes from a large revolving fund, the Federal Buildings Fund (FBF), which finances real property management of the U.S. Government. Through this account, GSA operates, maintains, and repairs federally owned and leased buildings and constructs Federal buildings, courthouses, and border stations. It is financed largely through proceeds from rental payments from other agencies.

Prior to fiscal year 2010, typically between 10 and 20 major construction and repair projects were requested by the President and funded. Most of the balance is used for rent payments to private landlords and building operations.

Once debt-reduction efforts hit in fiscal year 2010, those accounts were dramatically reduced in order to stay within the subcommittee funding allocation.

As GSA examines where it can spend less, certain bills, such as rent and utility charges, must be paid, and those have continued to increase.

The FBF has two contractually obligated bills which continue to increase substantially. The biggest and fastest growing is the rental of space account and, to a lesser degree, the building operations account.

When GSA does not receive full funding for these accounts to meet its contraction obligations, it is legally liable for default. Reductions within the FBF also impact other Federal agencies.

I'm going to put the rest of my remarks in the record, but I'm going to be asking questions along the lines of what has been the impact of these budget and appropriations decisions on ongoing building projects that have been stopped or delayed. Will it cost us more when we resume? Are we actually saving any money by putting off the completion of some of these construction projects?

PREPARED STATEMENT

In addition to the requested increases this year, the fiscal year 2013 request reduces spending by $16.2 million, 20-percent less than the fiscal year 2010 levels for certain administrative expenses and to keep consulting and advisory contract spending levels on GSA operations at $32.8 million (or 15 percent) less than fiscal year 2010 levels.

[The statement follows:]

PREPARED STATEMENT OF SENATOR RICHARD J. DURBIN

Good afternoon. Today, we convene this hearing of the Appropriations Subcommittee on Financial Services and General Government to discuss the report of the Inspector General (IG) of the General Services Administration (GSA) as well as budget issues of the GSA.

I welcome Senator Jerry Moran, the ranking member, and other colleagues who have joined me on the dais today. I also welcome GSA Acting Administrator Daniel M. Tangherlini and GSA IG Brian D. Miller to the hearing.

Earlier this year, I made decisions about which of the many agencies under the jurisdiction of this subcommittee should appear for a formal public hearing relating to their fiscal year 2013 funding needs. GSA was 1 of the 4 I designated, and my staff have been preparing for this hearing for a few months. The IG's recent release of disturbing findings disclosing serious management deficiencies relating to an internal conference have added a new dimension to our discussion.

Today, we'll attempt to gain a clear understanding of what transpired with regard to the conference held a year-and-a-half ago by the western regions of the Public Buildings Service (PBS).

I was outraged to learn about the spending that occurred as a result of that conference and I am eager to hear how GSA will ensure that it never happens again. We'll also examine GSA's ability to fulfill its program obligations and the future space needs of Federal agencies during a time of debt reduction.

GENERAL SERVICES ADMINISTRATION INSPECTOR GENERAL REPORT ON THE WESTERN REGIONS CONFERENCE

Recently, the GSA IG issued a management deficiency report detailing an array of highly troubling findings as a result of an investigation into a 4-day internal staff conference held in October 2010. The report describes how a host of Federal contracting rules were skirted in the planning and execution of this event.

Issuance of this report on April 2 sparked the immediate resignations of the GSA Administrator and two other key agency officials, and the imposition of other per-

sonnel decisions for five other high-level regional management staff. It also has generated a flurry of attention here in the Congress with at least four hearings this week alone and others perhaps in the offing.

Some of the more appalling lapses are not necessarily the activities that are garnering some of the sensationalized media attention such as the rental of a clown costume for a skit or a session featuring a mentalist. What is baffling to me is that there were apparently:

—numerous examples of excessive spending and improper adherence to contracting rules;
—brazen finagling of event sessions to justify the provision of food;
—multiple occurrences of advance long-distance travel to the site; and
—an appalling lack of adherence to long-standing Federal law about holding Federal events in lodging facilities that meet fire-safety specifications.

It is also mind-boggling that somewhere along the way during the year of planning for this conference someone didn't say, "Wait. Stop. This is out-of-line. This does not look right."

What is most regrettable is that incidents such as this tarnish the public perception of the workings of the entire Federal Government, the services delivered by its dedicated workforce, and the stewardship of precious Federal funds. In fact, the investigation began because the Deputy Administrator of the GSA asked the IG to examine the matter as soon as two employees mentioned to her activities that sounded improper. I expect actions will be taken swiftly to ensure that all rules are explicitly followed in the future and that proper oversight mechanisms are established.

This all contributes to my dismay as to how all of this was allowed to happen, and I look forward to hearing from Acting Administrator Tangherlini and IG Miller today about the situation that led to the management deficiency findings and the forecast for corrective actions.

While this fiasco in the western regions of the PBS deserves the attention it has been receiving, along with corrective measures to address it, there are other issues that deserve our attention as well. And those include GSA's ability to fulfill its program obligations and the future space needs of Federal agencies during a time of debt reduction.

THE FEDERAL BUILDINGS FUND

Most GSA annual spending comes from a large revolving fund—the Federal Buildings Fund (FBF)—which finances real property management for the Federal Government. Through this account, GSA operates, maintains, and repairs federally owned and leased buildings and constructs Federal buildings, courthouses, and border stations. It is financed largely through proceeds from rental payments from other agencies (using appropriated funds).

Prior to fiscal year 2010, typically, between 10 and 20 major construction and repair projects were requested in the President's budget and funded. Most of the balance is used for rent payments to private landlords and building operations. Once debt reduction efforts hit in fiscal year 2010, those accounts were drastically reduced in order to stay within the subcommittee's funding allocation, which couldn't provide for all the priority needs.

As GSA examines where it can spend less, certain bills, such as rent and utility charges, must be paid and those have continued to increase.

WE MUST PAY THE OBLIGATORY BILLS

The FBF has two contractually obligated bills which continue to increase substantially. The biggest and fastest growing is the rental of space account (the leasing of privately owned buildings) and, to a lesser degree, the building operations account (the cleaning, utilities, and maintenance expenses of leased and Government-owned space). When GSA does not receive full funding for these accounts to meet its contractual obligations, GSA is legally liable for default.

Reductions within the FBF also impact other Federal agencies.

EFFECTS OF LITTLE CONSTRUCTION AND OF NO MAJOR REPAIRS TO BUILDINGS

The construction and repair accounts have been drastically reduced, significantly impacting Federal agencies' abilities to operate efficiently.

The near-elimination of construction projects also makes these projects more expensive by delaying them. It will have the effect of requiring more leasing of Federal buildings, which is more expensive over the long-term than federally owned space. A good example of this is the Department of Homeland Security (DHS) St. Elizabeths headquarters consolidation project, which has slowed to a crawl, prompting

fears that not all Department elements will move and costing the Government more than planned as DHS agencies stay in leased space.

The complete elimination of major repair projects for the past 2 years has put some current projects on hold, such as the Daniel Patrick Moynihan U.S. Courthouse in New York, which is a top priority of the Federal judiciary. This Courthouse is one of the buildings housing the Southern District of New York—the busiest and largest Federal court in the country. Also, this has meant no funding for the requested main Interior Department building (currently under refurbishment, including hazardous material abatement) or the requested final phase of the State Department building (Truman Building).

The American Recovery and Reinvestment Act allowed GSA to begin to reduce the backlog of $8.4 billion in buildings needing repairs or alterations by $1.4 billion, while creating more than 60,000 jobs in the process. Now, that backlog is growing again and how long that will continue is anyone's guess.

I recognize that all agencies need to do their part to address our current economic situation, but we need to do it in a way that makes sense; not this drastic approach that leaves our agencies in substandard facilities or ill-equipped to carry out their missions efficiently, often costing the Government more money in the long run.

Now, we turn to GSA's fiscal year 2013 budget request.

FISCAL YEAR 2013 BUDGET REQUEST

The fiscal year 2013 request for GSA's appropriated accounts is a net increase of $33 million from the fiscal year 2012 enacted level, the majority of which ($21 million) is for modernization, upgrades, and continued operation of a Governmentwide information system. This new system will improve contract and grant award management and reporting.

In addition to the requests increases, the fiscal year 2013 request reduces spending $16.2 million, 20-percent less than fiscal year 2010 levels, for certain administrative expenses and keep consulting and advisory contract spending levels on GSA operations, at $32.8 million (or 15 percent) less than fiscal year 2010 levels.

I now turn to my Ranking Member, Senator Moran, for any remarks that he would like to make.

Senator DURBIN. I'm now going to turn the floor over to my ranking member and friend, Senator Moran, for any remarks he'd like to make.

STATEMENT OF SENATOR JERRY MORAN

Senator MORAN. Chairman Durbin, thank you very much for conducting this hearing. As members of the Senate Appropriations Committee, our oversight of spending by Federal agencies, in my view, is our most-critical responsibility.

I was appalled, as you said you were, to read the accounts of the inappropriate actions of some GSA employees outlined in the inspector general's report of abuses connected to a regional conference held in 2010.

I have since learned that this was not an isolated incident of abuse of taxpayer dollars and that other questionable expenditures have come to light as a result of the inspector general's investigation.

I would also add that it reminds me of the value of inspector generals and the investigations that they conduct on behalf of seeing that the right is wrong, that wrong is altered.

This conduct on the part of these few Federal employees is an unacceptable abuse of the American taxpayers' trust. It is unconscionable that, at a time when our national debt stands at more than $15 trillion, individuals within the Federal Government completely ignore our country's fiscal reality and behave in ways that reflect an attitude that the funding of their particular agency belongs to them rather than to the American taxpayer.

This is the kind of behavior that exacerbates opposition to Federal spending, even where that spending is legitimate. It is also important to note that every dollar misspent by GSA was funding that could have been used to fund other critical Federal programs.

If Americans lack faith in the Federal Government as a responsible steward of taxpayer dollars, why would they ever support decisions related to Federal spending?

I welcome this opportunity to ask our witnesses today for answers to how this type of conduct could happen. How can an agency responsible for providing guidance to the rest of the Federal Government on correct use of taxpayer dollars tolerate a lack of accountability?

Those responsible should be held accountable. An agency culture which allowed such behavior to flourish must be altered.

I hope that this is just not the tip of the iceberg. Billions in taxpayer dollars have been spent on Government conferences. We must have safeguards in place to ensure that this conduct, this spending pattern never happens again at GSA or any other Federal agency.

I welcome the opportunity to work with my colleagues to determine whether legislative action is necessary to institute more stringent safeguards to ensure appropriate spending on legitimate Government functions, transparency and accountability.

All Federal agencies have a duty to act as careful stewards of the taxpayer dollar, and those who disregard that duty should and will be held accountable.

Senator MORAN. Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator Moran.

Mr. Tangherlini, the floor is yours.

SUMMARY STATEMENT OF DANIEL M. TANGHERLINI

Mr. TANGHERLINI. Thank you, Chairman Durbin, and thank you, Ranking Member Moran and members of the subcommittee.

My name is Daniel M. Tangherlini and I'm the Acting Administrator of GSA.

I appreciate the opportunity to come before the subcommittee today to discuss the GSA inspector general's report as well as the GSA fiscal year 2013 budget request.

First and foremost, I want to state that the waste and abuse outlined in the inspector general's report is an outrage and completely antithetical to the goals of this administration.

The report details violations of travel rules, acquisition rules, and good conduct. But, just as importantly, those responsible violated rules of common sense, the spirit of public service and the trust that the American taxpayers have placed in all of us.

I speak for the overwhelming majority of GSA staff when I say that we are as shocked, appalled, and deeply disappointed by these indefensible actions as you are.

We've taken strong action against those officials who are responsible and will continue to do so where appropriate. I intend to uphold the highest ethical standards at this agency, including referring any criminal activity to appropriate law enforcement officials and taking any action that is necessary and appropriate.

If we find any irregularities, I will immediately engage GSA's Inspector General, Brian D. Miller, and, as indicated in the joint letter that the inspector general and I sent to all GSA staff, we expect an employee who sees waste, fraud, or abuse to report it. We want to build a partnership with the inspector general, while respecting their independence, that will ensure that nothing like this will ever happen again.

There'll be no tolerance for employees who violate or in any way disregard these rules. I believe this is critical, not only because we owe it to the American taxpayers, but also because we owe it to the many GSA employees who work hard, who follow the rules and deserve to be proud of the agency that they serve.

We have also taken steps to improve internal controls and oversight to ensure this never happens again. Already, I have cancelled all future Western Regions Conferences (WRC). I have also cancelled 35 previously planned conferences, saving nearly $1 million in taxpayer expenses.

I've suspended the Hats Off stores and have already demanded reimbursement from Mr. Bob Peck, Mr. Robert Sheppard, and Mr. Jeff Neely for private, in-room parties.

I've cancelled most travel through the end of the fiscal year GSA-wide, and I am centralizing budget authority and have already centralized procurement oversight for regional offices to make them more directly accountable.

I look forward to working in partnership with this subcommittee to ensure that there's full accountability for these activities, so that we can begin to restore the trust of the American people.

I hope that in so doing GSA can refocus on its core mission, saving taxpayers money by efficiently procuring supplies, services, and real estate and effectively disposing of unneeded property.

We believe that there has seldom been a time of greater need for these services and the savings they bring to the Government and the taxpayer.

There's a powerful value proposition to a single agency dedicated to this work, especially in these austere fiscal times. We need to ensure we get back to basics and conduct this work better than ever. And at GSA our commitment is to service, to duty, and to our Nation and not to conferences, awards, or parties.

The unacceptable, inappropriate, and possibly illegal activities at the WRC stand in direct contradiction to the express goals of this agency and the administration. And I'm committed to ensuring that we take whatever steps are necessary to hold responsible parties accountable and to make sure that this never happens again.

We need to refocus this agency and get back to the basics, streamlining the administrative work of the Federal Government to save taxpayers money. The goal is supported by the GSA fiscal year 2013 budget request. This will help to deliver a more effective and efficient Government.

PREPARED STATEMENT

To conclude, I look forward to working with this subcommittee moving forward, and I welcome the opportunity to take any questions.

Senator DURBIN. Thank you.

[The statement follows:]

PREPARED STATEMENT OF DANIEL M. TANGHERLINI

Chairman Durbin, Ranking Member Moran, and distinguished members of the subcommittee: My name is Daniel M. Tangherlini, and I am the Acting Administrator of the General Services Administration (GSA). Thank you for inviting me to appear before you today to discuss the GSA Inspector General's (IG) report as well as the GSA fiscal year 2013 budget request.

First and foremost, I want to state my agreement with the President that the waste and abuse outlined in the IG report is an outrage and completely antithetical to the goals and directives of this administration. We have taken strong action against those officials who are responsible and will continue to do so where appropriate. We are taking steps to improve internal controls and oversight to ensure this never happens again. I look forward to working in partnership with this subcommittee to ensure there is full accountability for these activities so that we can begin to restore the trust of the American people.

At the same time I am committed to renewing GSA's focus on its core mission: saving taxpayers' money by efficiently procuring supplies, services, and real estate, and effectively disposing of unneeded Government property. There is a powerful value proposition to a single agency dedicated to this work, especially in these fiscal times, and we need to ensure we get back to basics and conduct this work better than ever.

PROMOTING EFFICIENCY AND REDUCING COSTS

The shocking activities and violations outlined in the IG report run counter to every goal of this administration. The administration makes cutting costs and improving the efficiency of the Federal Government a top priority. On June 13, 2011, the President issued Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government". This Executive order emphasized the importance of eliminating waste and improving efficiency, establishing the Government Accountability and Transparency Board to enhance transparency of Federal spending and advance efforts to detect and remediate fraud, waste, and abuse.

The President further established the goals of this administration in Executive Order 13589, "Promoting Efficient Spending", which set clear reduction targets for travel, employee information technology (IT) devices, printing, executive fleets, promotional items, and other areas. The President's fiscal year 2013 budget request for GSA would achieve $49 million in savings under this Executive order, including $9.7 million in travel.

HOLDING OFFICIALS RESPONSIBLE

It is important that those responsible for the abuses outlined in the IG's report be held accountable. We are taking aggressive action to address this issue and to ensure that such egregious actions will never occur again. We have taken a series of personnel actions, including the removal of two senior political appointees. We have also placed 10 career employees on administrative leave, including 5 senior officials.

I intend to uphold the highest ethical standards at this agency and take any action that is necessary and appropriate. If we find any irregularities, I will immediately engage the IG. As I indicated in my joint letter with GSA's IG, I intend to set a standard that complacency will not be tolerated, and waste, fraud, or abuse must be reported.

I believe this commitment is critical, not only because we owe it to the American taxpayers, but also because we owe it to the many GSA employees who conform to the highest ethical standards and deserve to be proud of the agency for which they work.

TAKING ACTION

I have taken a number of steps since I began my tenure on April 3, 2012, to ensure this never happens again. GSA has consolidated conference oversight in the new Office of Administrative Services, which is now responsible for:

—Oversight of contracting for conference space, related activities, and amenities;
—Review and approval of proposed conferences for relation to GSA mission;
—Review and approval of any awards ceremonies where food is provided by the Federal Government;
—Review and approval of conference budgets as well as changes to those budgets;

—Oversight and coordination with GSA conference/event planners and contracting officers on conference planning;
—Review of travel and accommodations related to conference planning and execution;
—Handling of procurement for all internal GSA conferences; and
—Development of mandatory annual training for all employees regarding conference planning and attendance.

Additionally, we have cancelled the 2012 Western Regions Conference (WRC) as well as a number of other conferences that only or primarily involved internal staff. To date, I have cancelled 35 conferences,[1] saving taxpayers $995,686. As we put in place greater controls and oversight, we are reviewing each event to make sure that any travel is justified by a mission requirement.

We have also begun review of employee relocations at Government expense, and will require all future relocations to be approved centrally by both the Chief People Officer and the Chief Financial Officer.

To strengthen internal controls, we are bringing in all Public Buildings Service regional budgets under the direct authority of GSA's Chief Financial Officer. The autonomy of regional budget allocations is, in part, what led to this gross misuse of taxpayer funds on both the regional conference and the employee rewards program known as "Hats Off". The additional approvals and centralized oversight are intended to mitigate the risk of these problems.

In response to concerns over spending on employee rewards programs, I have eliminated the "Hats Off" store that was operating in the Pacific Rim region, as well as all similar GSA programs.

I am moving aggressively to recapture wasted taxpayer funds. As a first step, on April 13, I directed that letters be sent to Bob Peck, Jeff Neely, and Robert Shepard demanding reimbursement for private, in-room receptions at the WRC. I will pursue other fund recovery opportunities.

I am engaged in a top-to-bottom review of this agency. I will continue to pursue every initiative necessary to ensure this never happens again and to restore the trust of American taxpayers.

FISCAL YEAR 2013 BUDGET REQUEST

The GSA fiscal year 2013 budget proposal aligns with our value proposition: GSA helps agencies deliver more for their missions.

Across a range of program areas including the move to cloud email, developing one-stop shop IT security protocols through Federal Risk and Authorization Management Program (FedRAMP), leveraging the bulk cooperative buying power of the Government with Federal Strategic Sourcing opportunities, and using the latest in real estate portfolio planning, GSA brings expertise and efficiency to the table in service of our customers and the taxpayer.

COST SAVINGS AT THE GENERAL SERVICES ADMINISTRATION

In accordance with Executive Order 13589, "Promoting Efficient Spending", our fiscal year 2013 budget would achieve $49 million in savings, including $9.7 million in travel. In addition, GSA will maintain consulting and advisory contract spending at $32.8 million less than fiscal year 2010 levels.

TARGETED INVESTMENTS IN CRITICAL INFRASTRUCTURE

Federal Buildings Fund

Our fiscal year 2013 budget requests $8.6 billion in New Obligational Authority (NOA) for the FBF associated with $9.7 billion in estimated fiscal year 2013 revenue. This request includes a capital investment program of $551 million. GSA is not requesting an appropriation to the FBF, and would fund the fiscal year 2013 new obligation authority request from balances in the FBF. This year we are requesting a very limited amount of funding to support exigent need and high return on investment capital projects. Over the longer term, we will need to work with the Congress to ensure adequate investment in the capital program to ensure the Federal buildings portfolio does not deteriorate, and we complete critical construction projects already initiated such as the Department of Homeland Security consolidation at St. Elizabeths.

[1] A conference is "a symposium, seminar, workshop, or other organized or formal meeting lasting portions of 1 or more days where people assemble to exchange information and views or explore or clarify a defined subject, problem or area of knowledge."

Our request for $56 million in NOA for new construction and acquisition would allow GSA to acquire, through existing purchase options, two buildings under lease to the Federal Government in Martinsburg, West Virginia, and Riverdale, Maryland. The Government has the option to purchase both buildings at a set price prior to the lease expirations. Both facilities are fully utilized by the Federal Government, specifically the Internal Revenue Service in Martinsburg, West Virginia and USDA in Riverdale, Maryland—and both locations have been identified as a long-term Federal need. The execution of these purchase options would eliminate costly lease obligations and result in millions of dollars in out-year cost avoidance to the Government.

GSA requests NOA of $495 million for repairs and alterations to Federal buildings. Our proposed repairs and alteration program includes:

—Exigent needs projects in 20 Federal buildings to repair critical building and safety systems including elevators; fire and life safety, electrical, and heating and ventilation systems; and repairing structural deficiencies ($123 million);
—Nonprospectus repairs and alterations projects ($341 million);
—Energy and water retrofit and conservation measures ($15 million); and
—Consolidation activities to alter interior space in the Daniel Patrick Moynihan Courthouse, New York, New York, and Peachtree Summit Federal Building, Atlanta, Georgia, to consolidate various agencies from lease space into federally owned space ($16 million).

Like the lease purchase options outlined above, consolidation of Federal activities from leased to owned space will result in millions of dollars in annual cost avoidance.

In addition to our capital program, GSA requests NOA for our operating program, in the amount of:

—$5.5 billion for the Rental of Space program, which will provide for 199 million rentable square feet of leased space;
—$2.4 billion for the Building Operations program; and
—$120 million for the Installment Acquisition Payments program.

We intend to assure PBS dollars will be spent on cost-effective projects and services that advance our customer's missions. We will not fund projects or services that have questionable returns or excessive overhead expenses.

General Services Administration Operating Appropriations

The GSA fiscal year 2013 budget requests $272 million for our operating appropriations that provide for the Office of Governmentwide Policy, the governmentwide programs of the Operating Expenses account, the GSA IG, the Electronic Government Fund, the pensions and office staffs of former Presidents, the Federal Citizen Services Fund, and, if needed, Presidential transition.

Our budget requests an additional $23 million more than the fiscal year 2012 level for the Governmentwide policy appropriation, including $21 million for the continued modernization of the Integrated Acquisition Environment (IAE) investment in the Systems for Awards Management (SAM) project and $2 million for Information Sharing and Identity Management (ISIM). GSA is the program manager for the IAE, an Electronic Government (EGov) program. On behalf of all Federal agencies, GSA is managing 10 outdated, separate systems which will be consolidated into a single, integrated platform to support Federal acquisition, grants, and loans management. The first phase of the ongoing consolidation effort will launch May 2012. For fiscal year 2013, GSA is requesting SAM investment funding to further consolidate and simplify the disparate systems. Further consolidation will improve Governmentwide reporting on how Federal tax dollars are spent, reduce redundancy and the burden on all businesses—in particular on small businesses who do work for the Federal Government, significantly improve data quality as well as the exchange of information across the acquisition, financial, grants, and loan communities.

The ISIM program is providing the civilian agencies with standards for the Federal information-sharing environment. ISIM will establish capabilities for sharing information—grant, financial, acquisition, and other data—within and across Federal departments using secure, common standards. This investment is critical to allow Federal agencies to share and rapidly access secure information that supports mission delivery. GSA will develop common data standards or attributes in collaboration with agencies that complement our responsibilities for the Federal Identity and Access Management program and ensure security, privacy, and interoperability best practices.

We have requested an increase of $4.3 million for the Electronic Government Fund to improve citizen engagement with the Government through innovative technologies and to improve delivery of Government services to the public. The additional funding will support expanded efforts to improve Government service by pro-

viding other agencies with technology and expertise to improve their interactions with the public. GSA will continue to build governmentwide capability to engage citizens in dialogues and challenges to solve complex issues directly impacting the public.

In accordance with the Presidential Transition Act of 1963, as amended, GSA requests $8.9 million for an orderly transfer of Executive power in connection with the expiration of the term of office of the President and the Inauguration of a new President. This funding is required only in the event of a change in administration.

GSA requests an additional $1 million for the IG. The request also includes $0.3 million for the fiscal year 2013 Federal pay raise and $0.1 million for benefits and contract support for former Presidents.

The proposed fiscal year 2013 increases are offset by net administrative cost reductions of $2.1 million in operating expenses and $2.3 million in the Federal Citizen Services Fund.

SUMMARY STATEMENT

The unacceptable and inappropriate activities at the WRC stand in direct contradiction to the express goals of this agency and the administration, and I am committed to ensuring that we take whatever steps are necessary to hold those responsible accountable and to make sure that this never happens again. At the same time, I believe that the need for a high-quality GSA is more acute today than in any time in its history. We need to refocus this agency and get back to the basics: streamlining the administrative work of the Federal Government to save taxpayers money.

With that said, this goal is directly supported by the GSA fiscal year 2013 budget request as it will help to deliver a more effective and efficient Government.

CLOSING STATEMENT

Mr. Chairman, this concludes my formal statement. I look forward to continuing this discussion on the GSA IG report and our fiscal year 2013 budget request with you and the members of the subcommittee.

Senator DURBIN. Inspector General Miller, the floor is yours.

STATEMENT OF BRIAN D. MILLER, INSPECTOR GENERAL

Mr. MILLER. Good afternoon, Chairman Durbin, Ranking Member Moran. Thank you for inviting me here to testify about our report.

While my report details what went wrong at GSA in connection with the WRC, I want to take a moment to focus on what went right.

The system worked. The excesses of the conference were reported to my office by a high-ranking political appointee, and our investigation ensued. Not one person prevented us from conducting that investigation or obstructed what turns out to be a lengthy investigation.

As each layer of evidence was peeled back, we discovered that there was more to look into. So our investigation continued independently.

While some have suggested that the investigation took too long to produce the final report, anyone familiar with law enforcement investigations understands that when you turn over one stone you often find more stones that need to be turned over as well.

Most people also understand the need to be careful and certain before making public allegations such as those contained in the report, because careers and reputations are on the line, and my office does not take that lightly.

Moreover, the then GSA Administrator ultimately had control over the date on which this report was released because it was the Administrator's response to the final report that triggered its public release.

Finally, the system has been strengthened by the release of the report and by the public attention it has received in the media and from both chambers of the Congress.

While not one of the many career employees and political appointees who were involved in the WRC came forward and reported the waste, fraud, and abuse that occurred there, perhaps for fear of reprisal, GSA's honest and hard-working employees now have been empowered to bring issues to our attention and they are doing so. We have more work than ever.

And I'd like to take this opportunity to thank the numerous dedicated professionals from throughout the Office of Inspector General that worked so many long hours to ensure that the report was accurate and fair and drew no conclusions beyond those fully supported by the evidence. They do great work.

PREPARED STATEMENT

And I would like to thank all the special agents, forensic auditors, and lawyers that worked on it.

Thank you. I ask that you make my written statement and the report part of the record. Thank you.

Senator DURBIN. Without objection.

[The statement follows:]

PREPARED STATEMENT OF BRIAN D. MILLER

Chairman Durbin, Ranking Member Moran, and members of the subcommittee, I thank you for inviting me to testify here today. As you know, on April 2, 2012, the General Services Administration Office of Inspector General (GSA OIG) published a report regarding GSA mismanagement of its Western Regions Conference (WRC) in the fall of 2010.

It may be very difficult to find among all the bad news and repugnant conduct, but there is at least a glimmer of good news. The oversight system worked. My office aggressively investigated, audited, interviewed witnesses, and issued a report. No one stopped us from writing the report and making it public. Based on the final report, swift action has been taken, hearings have been scheduled, and the whole ugly event now lay bare for all to see. Justice Brandeis said that sunlight is said to be the best of disinfectants.

Almost every Federal agency has an inspector general, someone watching and reporting fraud, waste, and abuse of taxpayer dollars. The Congress recently strengthened offices of inspectors general so that we can better perform our oversight work. We are often the last resort for protecting taxpayer dollars—unfortunately catching the fraud, waste, and abuse after the money is spent. More needs to be done to establish early warning systems. This is why Acting Administrator Daniel M. Tangherlini and I recently reminded GSA employees to alert us as soon as they see anything wrong. The WRC could only occur in an environment where the best lack all conviction while the worst skirt the rules.

Benjamin Franklin warned us at our Nation's founding: "There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government." Those tempted to engage in fraud, waste, and abuse need to know they will be caught. The ultimate deterrence against fraud, waste, and abuse is criminal prosecution. We frequently partner with the Department of Justice in civil and criminal cases.

The GSA OIG has about 300 employees to oversee an agency of more than 12,000 employees, who are responsible for almost $50 billion in civilian contracts, most Federal buildings, and the Federal automotive fleet. Despite the ratio of OIG personnel to GSA personnel, our office has achieved more than $6.5 billion in savings to the taxpayer since 2005. In 2008, GAO found that the GSA OIG had an average return of $19 per $1 budgeted (GAO Report 09–88, 2008).

Our special agents, forensic auditors, and lawyers deserve the recognition for this report. But our office and other offices of inspectors general produce great work like this day after day. My own office has issued numerous audit reports relating to GSA's construction and renovation contracts under the American Recovery and Re-

investment Act. We discovered and investigated 11 Federal property managers and contractors taking bribes and kickbacks. All 11 are now convicted. Criminals selling counterfeit IT products were caught and convicted, and are now serving time in Federal prison, because of the work of our office and other law enforcement agencies. Federal contractors have paid back hundreds of millions of dollars, because of our audits. Most recently, Oracle paid $199.5 million to settle False Claims Act allegations.

The core mission of GSA is to provide low-cost goods and services. When GSA wastes its own money, how can other agencies trust it to handle the taxpayer dollars given to them? GSA also has the sole responsibility for the Federal travel regulation, which governs travel and conference planning by agencies across the executive branch. 5 U.S.C. 5707(a)(1). As detailed in my office's report, in putting on the WRC, GSA committed numerous violations of contracting regulations and policies, and of the Federal travel regulation. This is of special concern because other Federal agencies need to be able to look to GSA as a model of how to conduct their contracting and procurement efforts, and manage their travel and conference planning.

In attempting to model the entrepreneurial spirit of a private business, some in the public buildings service seemed to have forgotten that they have a special responsibility to the taxpayers to spend their money wisely and economically. While a private business may use its profits to reward employees in a lavish fashion, a Government agency may not. Even so, this report should not obscure the fact that thousands of GSA employees work hard and do a great job for the American taxpayers. It is only a minority of employees that are responsible for this debacle.

In preparing the WRC report, numerous dedicated professionals from throughout the OIG worked long hours to ensure that the report was accurate and that it drew no conclusions beyond those fully supported by the evidence. My office continued to receive documents relating to this report as late as this January. We are still receiving documents relating to ongoing investigations. It is my hope that these efforts will enable GSA to improve its contracting and conference planning practices in the future, so that GSA may not only be a better steward of taxpayer dollars, but act as a leader within the Federal Government in efficient procurement and conference planning.

I thank you for an opportunity to discuss this important work of the OIG with the subcommittee. I request that the attached report and this statement be made part of the record, and I welcome your questions.

WESTERN REGIONAL CONFERENCE

Senator DURBIN. Mr. Tangherlini, far be it for me to suggest that people sitting on this side of the podium, in our profession, have not been guilty of bad judgment. It's happened. It's been recorded. It's been acknowledged.

Some of us feel that maybe we had the right teachers in life along the way, and I was lucky to work for a number of people who I thought were as honest as could be, and I tried my best to follow their example.

There was always this basic standard before you made a decision, how will it look on the front page of tomorrow's paper. And that has, in many ways, I think, brought me back down to Earth for something that wouldn't have looked very good at all. We decided we're not going there.

My question is when it gets to this conference in region 9 here, it appeared to be a much different mentality. It was, you know, we'll take care of our own. We'll keep quiet. And if it wasn't for the whistleblower sometime later, it appears that this pattern of regional conferences might have just continued.

What have you found since you've been at the agency about that region or that experience or that attitude?

Mr. TANGHERLINI. We're working very closely with the inspector general. We've learned that there is more than just this conference in this region we should be concerned about. And there are other issues that we should be concerned about across the agency.

In fact, in the first week, after I had met with the inspector general, I did that on the first day, and we subsequently had other follow-up meetings.

We agreed to do a joint letter to all 13,000, roughly 13,000, GSA employees, asking them, in the future, to please, if you see something you suspect is wrong to talk to your fellow employees, talk to your supervisor, talk to your supervisor's supervisor, and/or, certainly, if you see waste, fraud, and/or abuse, call the inspector general. Reach out to the inspector general through their FraudNet Hotline.

And then I think both of us are discouraged by the fact that there were 300 attendees that saw what was intentionally designed to be over the top and didn't raise a concern up to the inspector general.

Senator DURBIN. So how do you explain that after this occurred, after this event occurred, this Mr. Neely got more than $11,000 in bonuses? It was almost, not just a seal of approval, but it was congratulations, job-well-done bonuses.

Tell me how the sequence of his decisionmaking didn't come to the attention of those higher up when they're deciding whether he should get even more taxpayers dollars for his malfeasance?

Mr. TANGHERLINI. I regret, Mr. Chairman, I'm not sure I'm able to describe what happened. I have been there a short time. What I've learned I've simply learned through the hearings over the last several days, what I heard through the inspector general's report.

So what I can say, though, is as we look at the agency, we go top-to-bottom. I think the performance appraisal system is one place that we have to start and make sure that we have strong controls in our performance evaluation system that emphasize integrity in our senior leaders, because, to your earlier comment, I think that people watch what their leaders are doing and they model that behavior.

INTERN CONFERENCE

Senator DURBIN. So what about this interns conference in Palm Springs? I mean, I love my interns. I started off as an intern in a Senate office. They do a great job. They don't get paid for it. So why would you hold or why would they hold an interns conference in Palm Springs, California?

Mr. TANGHERLINI. I have no ability to explain what they were thinking in having that conference. I know my experience as an intern had really been about hard work, late hours, low or no pay——

Senator DURBIN. An occasional slice of pizza.

Mr. TANGHERLINI. Which I bought. So, you know, I understand the value of interns. I'm just concerned that a conference like this was almost trying to implicate people from the beginning in this approach to that work.

Senator DURBIN. And the other thing that seemed, I mean, we're aware of advance teams with Presidential candidates and others. The advance work that was being done for these conferences involved lengthy trips, many employees being treated, you know, in kind of lavish circumstances. Was that a standard just in this region or did you find it to apply to other regions as well?

Mr. TANGHERLINI. Again, we haven't had a chance to dig into other regions. What I understand was that certainly was a culture to the approach of this leader within that region.

But I think what it really tells us is we need to look at the way we've structured ourselves, so that other people have a chance to raise the alarm if they see this kind of thing happening.

And so, last week, I asked that all the regional offices' financial staff report up to our Chief Financial Officer (CFO), Alison Doone. In the past, they had been given a budget allocation and they were allowed, within the region, to work within that allocation entirely autonomously.

WESTERN REGIONAL CONFERENCE

Senator DURBIN. So, Mr. Miller, as I understand it, two people who attended the conference came forward to a GSA employee who had worked on Capitol Hill, and she, in turn, notified your office—if that sequence is accurate. I guess my question to you is the environment where a whistleblower feels safe enough to come forward with that kind of information is critically important.

Mr. MILLER. It is.

Senator DURBIN. For us to have oversight on taxpayer spending. What has been your experience before and after this particular investigation?

Mr. MILLER. Well, Mr. Chairman, the Deputy Administrator, Susan Brita, who did work on Capitol Hill, came to our office in December 2010. I believe she overheard conversations. I'm not aware of specific individuals coming to her to complain about it. But she came forward to our office.

We immediately investigated and found a whole string of problems, not only with the WRC, but with other conferences, such as the intern conference and other conferences.

Having whistleblowers is invaluable to our investigations. We rely on the good, hardworking, honest GSA employees who come forward and tell us that things are wrong. That often starts our investigation.

Senator DURBIN. I'm asking you if, before this event was reported to you, and since, can you tell me what the environment is? Do whistleblowers feel that they can come to you?

Mr. MILLER. We have been receiving a lot of whistleblower complaints since this report was released. It has gotten tremendously better in terms of complaints in terms of whistleblowers.

The witnesses we interviewed in connection with this investigation reported an atmosphere where people were not encouraged to speak up. One witness said that when someone spoke up, they were "squashed like a bug".

Others said that the regional commissioner had a way of putting people down in a very uncomfortable way when they would raise concerns about expenditures. And it came forward from a number of witnesses that there was an environment where people were discouraged from coming forward, raising questions, calling into question expenditures.

And, as a result, there are a number of over-the-top conferences, not just the WRC, but the intern conference that you brought up,

where they had a team-building exercise focused on a jeep tour and many other events.

Senator DURBIN. Senator Moran.

Senator MORAN. Mr. Chairman, thank you.

OFFICE OF INSPECTOR GENERAL REPORTS

First of all, let me ask Mr. Miller, you have issued the inspector general's report dated April 2, 2012.

Mr. MILLER. Correct.

Senator MORAN. What is the extent of the problem that this, at GSA, that this report covers? Is this the sum total of the problems that you see at this agency or is this more the proverbial tip of the iceberg?

Mr. MILLER. Senator, it is one event. As an inspector general, we produce reports that we can verify every which way, and it's totally accurate. We did the report on the WRC. We have a number of ongoing investigations. We have not produced reports yet on the number of ongoing investigations, and there are many other ongoing investigations.

Senator MORAN. Can you quantify that, the magnitude of the investigations that you are now conducting?

Mr. MILLER. It's a little difficult because, as I said in my opening statement, every time we turn over a stone, we find 50 more, and, you know, we find other instances.

You know, even today we found out that the wife of the regional commissioner had a parking space throughout the entire year of 2012 at the Federal building. And, you know, we just find one thing after another, and it's difficult for me, even now, to quantify it.

Senator MORAN. Would we expect additional inspector general reports in the near future?

Mr. MILLER. Well, we are doing investigations. Our normal course would be to complete the investigation and then refer it for criminal prosecution, if it's merited.

Civil liability, under the False Claims Act or under another civil statute or for administrative action, we sometimes will do the report, give it to the Administrator to take administrative action against individuals.

REGIONAL OVERSIGHT

Senator MORAN. Mr. Tangherlini indicated about the autonomous nature of the management policy, style, and conduct in this region. Mr. Miller, was that unique to that region?

And I prefer to call you Dan, because I will struggle with your last name, but perhaps Dan would like to answer this question as well.

And is that something that was new at GSA? You indicated now that you've centralized the process, that the CFO now is involved in the decision about paying bills as compared to relegating that authority to somebody in the field. Is that unique to this region, to GSA? And when did that begin? Is that something that occurred in Dan's predecessor's tenure?

Mr. MILLER. Well, there's a number of levels to the answer to that question. With region 9, the regional commissioner for PBS

was also the acting regional administrator in charge of the entire region, because that is normally a political appointment and that was vacant. So he was acting regional administrator for the whole region.

So, in that sense, region 9 was a little bit different. The other acting regional administrators had a shorter tenure because political appointments were made.

But, generally, regions have a somewhat awkward relationship with the central office. They always have. That was exacerbated when Acting Administrator Paul Prouty, when he was acting during the interim before Martha Johnson was confirmed, he was a PBS regional commissioner for region 8, I believe, and he became Acting Administrator.

One of the orders he put into place was to lower the regional administrator from a political appointment of an Senior Executive Service employee down to the equivalent of a GS–15 political appointment and restrict the duties of the regional administrator.

The result was the regional commissioner for PBS had more authority within the region and the regional commissioner for the Federal Acquisition Service had more authority within the region. But, Dan, perhaps you'd like to——

Senator MORAN. Let me follow up before you respond. That would be a change in policy at GSA.

Mr. MILLER. Correct.

Senator MORAN. And that would have been at what point in time?

Mr. MILLER. It was before Martha Johnson was confirmed. I would say about 6 months prior, maybe 8 months prior.

Senator MORAN. Thank you.

Mr. MILLER. I can find the exact date.

[The information follows:]

The exact date was September 15, 2009.

Mr. TANGHERLINI. My understanding of the timeline is as the inspector general described. But it gets to a bigger problem that we had allowed the regions to become almost fully autonomous to the purposes of budget authority and acquisition authority.

One of the steps we've already taken is to centralize the CFO function and make all the regional CFOs, our financial management employees, report up the chain through the central CFO.

We've also required, for conferences and for travel, our chief administrative officer, our Office of the Chief Administrative Officer, in headquarters, to review and approve justifications for conferences and conference travel.

REGIONAL OVERSIGHT

Senator MORAN. Is that because it's the best management practice, regardless of the evidence that you discovered how poorly things were managed, the problems that the inspector general determined?

If you had come to this agency without the inspector general's report describing what had happened in this region, would this be the same policy that you would want to put in place as a new man-

ager, regardless of the facts that the inspector general demonstrated?

Mr. TANGHERLINI. The ability at a senior level to have visibility straight down into expenditures at the field level, at the ground level I think is key to any——

Senator MORAN. So you, as a manager, would have put those policies in place even if we didn't know about what went on in this region?

Mr. TANGHERLINI. I don't know if we would have put the exact ones we put in place. Right now, we're trying to make sure that we get a handle on any kind of travel, any kind of conferencing, get a sense of what the expenditures are.

But I believe that having good central office oversight into the expenditures and operations of a regional office is, frankly, just good, basic best practices management, yes.

Senator MORAN. I have additional questions, but I assume——

Mr. MILLER. With the indulgence of the chairman, the year was 2009 that the order was entered changing the structure.

Senator MORAN. Thank you very much.

WESTERN REGIONAL CONFERENCE

Senator DURBIN. Mr. Miller, I don't know if this is for you or Mr. Tangherlini, but what's next? Are we going to get any taxpayers' money back from this fiasco? And, second, what's going to happen to the people who were responsible for it?

Mr. MILLER. Well, when Dan was appointed, we met immediately, and one of our first conversations was about sending demand letters to the officials that had parties in their room and for the excesses at the conference. And I'll let Dan tell you more about that.

Mr. TANGHERLINI. As I mentioned in my testimony, we sent demand letters to three individuals who had inappropriate parties in their rooms.

We also have, using the inspector general's report, started going through to try to identify those activities, extensions of activities, related activities for which we can very easily, well, very clearly seek reimbursement to the Federal Government, and we're working on that right now.

Senator DURBIN. Has there been a determination made as to whether what you've found so far merits review by the Department of Justice (DOJ) for criminal action?

Mr. MILLER. Mr. Chairman, we have met with DOJ, and we've made a criminal referral.

Senator DURBIN. I won't go into any further. I'm sure you can't either.

Mr. MILLER. Thank you.

CONSTRUCTION

Senator DURBIN. Let me ask about some other issues related to the GSA as an agency. For many years, typically, GSA would spend about $700 to $900 million annually from the FBF to build buildings to house Federal agencies. Because of cutbacks in Federal spending, that funding reached a new low last year of $50 million, compared to the $700 to $900 million in previous years.

I'm trying to establish what I mentioned at the opening. What do you believe is the real cost of delayed construction to specific projects? And I can get into those, the Department of Homeland Security (DHS), the Food and Drug Administration (FDA) and others. And what is the general impact on cost to the Federal Government, realizing that leased space is usually more expensive than an owned building?

Mr. TANGHERLINI. Given that I have just come to this job very recently and have been working very much on the earlier issue we were discussing, I don't know if I'm best equipped to answer those questions fully today, but I would like to work with you and your staff.

I will say, though, the fact that we have reduced our expenditures to the level we have has some concern about this incredibly large and valuable asset that we maintain. And that's something that, collectively, we have to work on to make sure that we are actually investing sufficiently to maintain the quality of those facilities.

Building things, delaying construction can cost additional money, just through the sheer power of inflation and the costs of raw materials, and so that's an additional concern.

Senator DURBIN. I'm going to ask you, when you get back to me, if you would look specifically at the DHS project at St. Elizabeths here in Washington.

The $3 billion project began in 2009 and now is limping along with limited funding. What will be the impact on the cost of this project to not bring it to conclusion and the cost to the Federal Government of delaying the expenditure?

Same thing is happening in Denver, the Denver Federal Center, where there's substantial evidence of hazardous materials. And a remediation effort was underway, a protective effort, that I understand has either been slowed down or suspended as a result of budgetary issues.

And the FDA—White Oak Campus. That's been going on for as long as I can remember. Definitely overdue, with FDA agencies spread around in many different leased buildings.

So if you would get on those three, I would appreciate that very much.

Mr. TANGHERLINI. Yes, Sir.

[The information follows:]

St. Elizabeths and the Denver Federal Center will be addressed in the questions submitted for the record.

With regard to the Food and Drug Administration White Oak campus, General Services Administration (GSA) revised and reduced the project scope to accomplish portions of the campus with fewer funds. GSA originally requested funding for a parking structure on the campus in fiscal year 2012, but changed the plan to instead offer surface parking. The surface parking will provide approximately 1,600 fewer parking spaces than the original plan of a parking structure.

Additionally, GSA will not be able to construct a distribution building that was included in the master plan in order to complete the project within the funding level provided. With the exception of this distribution building and the change in parking, the 2006 master plan will be complete in December 2013.

FEDERAL TRADE COMMISSION BUILDING

Senator DURBIN. This is kind of parochial, but it happens to relate to Capitol Hill and our Appropriations Committee.

There has been a proposal from a Member of Congress to move or to acquire the Federal Trade Commission (FTC) building, which can be seen from the Capitol Complex here, and that it be given to the National Gallery of Art as an annex or a new facility. And, clearly, that suggestion comes with some controversy.

Recently, the Commissioners at FTC sent us a statement—a bipartisan, unanimous statement—that stated serious concerns about the significant and unnecessary cost to the American taxpayer if the historic FTC building is given away to the National Gallery of Art.

I happen to agree with the Commissioners in this regard. As I understand, the proposal is that FTC would be removed from this building, where I believe they started, and sent to some other location. Are you familiar with where that location might be or whether there is a Federal building currently vacant that could accommodate this agency?

Mr. TANGHERLINI. I have met with a number of representatives from the FTC just to gain some initial awareness of this issue. I will actually be meeting with the interested Member of Congress tomorrow to hear that side.

I'm not exactly sure what the proposal is for where the entirety of the FTC would go, because I haven't heard that version yet. But I do know that there is concern on the FTC side about moving out of the Apex Building.

Senator DURBIN. And the Federal Government owns the FTC's current headquarters?

Mr. TANGHERLINI. Yes.

Senator DURBIN. And any replacement building, unless we have a vacant one ready to be moved into that the Federal Government owns, will be a lease expense, at whatever the costs of the lease may be?

Mr. TANGHERLINI. From what I understand, one proposal that's being discussed would be a leased building.

Senator DURBIN. And there would typically be a cost in moving, physically moving the FTC? We have testimony from them that they believe that will be between $70 and $83 million.

Mr. TANGHERLINI. Yes, that's what they told me. A large part of that, I gather, has to do with some high-tech equipment associated with the headquarters facility.

Senator DURBIN. It's my understanding they have forensic labs and a sophisticated information technology system that would have to be moved, relocated at considerable expense to the taxpayers.

There's also this notion that if the National Gallery of Art moves into this building it will cost about $150 million to bring it up to whatever standards they expect to use the space.

And the suggestion is that there would be a solicitation of charitable contributions to the Federal Government to the National Gallery of Art for that purpose, at least that is the proposal.

I look out my window and look down the Mall and notice that there's some construction at the National Gallery of Art Annex. Are you familiar with that construction?

Mr. TANGHERLINI. I am familiar with that construction.

Senator DURBIN. And they're replacing the marble veneer on the building.

Mr. TANGHERLINI. Right.

Senator DURBIN. And I asked my staff to check how much was being paid for by charitable donations, and the answer is nada, nothing. This is all at taxpayers' expense.

So the idea of tens, hundreds of millions of dollars flowing into the National Gallery of Art to renovate the FTC building seems to me to be speculative at least.

So this notion of FTC leaving its traditional place at considerable expense, moving to another space at taxpayers' expense, and then the National Gallery of Art moving into the FTC building and remodeling it seems fairly inconsistent with the notion of a national deficit that has been motivating a lot of our budget decisions recently. You don't have to comment on that.

I will just add that I understand work has been done at the FTC building recently, in terms of plumbing, electrical and such, and that it is in fairly good shape for a building of its vintage to continue to serve the FTC as is. Is that your understanding?

Mr. TANGHERLINI. That's what I've heard from the FTC.

Senator DURBIN. Thank you.

Senator Moran.

WESTERN REGIONAL CONFERENCE

Senator MORAN. Chairman, thank you.

Mr. Miller, you indicated that there's been a referral to DOJ. Do you expect other referrals?

Mr. MILLER. We're working with DOJ every day. We're working very closely with them. When I say referral, I'm specifically being nonspecific. I think I've said everything I can say about it.

We've met with DOJ. Our special agents are working closely with DOJ lawyers.

Senator MORAN. So when you say a referral, that doesn't necessarily mean an individual is under consideration for criminal charges by DOJ. It could be something broader than that.

Mr. MILLER. Well, let me——

Senator MORAN. Tell me what you mean by the word "referral".

Mr. MILLER. Okay. I will tell you what happens in the normal course, and that is that when we do an investigation generally, we will have a matter, we may have one individual. We may have a number of individuals, and they may be related. It may be a scheme. It may be a conspiracy. They may be related in many different ways.

We bring the entire matter to DOJ or to the U.S. Attorney's Office, and DOJ will either accept or decline the case, and then we will do further investigation.

And what we hope will come out of it is indictments against individuals, an individual or more than one individual, as a result of the criminal conduct that is the highest criminal charge that is the most readily provable by the evidence.

Senator MORAN. That answers my question for purposes of what you can answer.

Mr. MILLER. Thank you.

Senator MORAN. I don't understand how, for example, Mr. Miller, the rooms got paid for. There's a per diem that I assume every Federal employee would be able to utilize when traveling, including to this location. I can't imagine that the per diem is sufficient to cover the cost of what the hotel rooms or at least some of those hotel rooms would cost.

In fact, I understand when the inquiry was made of the M Resort, they indicated that some of the rooms that were utilized in this conference were reserved for their, "high rollers" in the casino.

How is it that a Federal employee is able to be reimbursed for the room? How does the per diem that they receive cover the costs that they incurred?

Mr. MILLER. Okay. The per diem for Las Vegas, at that time, was $93. And the hotel then would, what they say is they comp the room. They will give an upgrade, theoretically, for free.

And so what they did was instead of a regular room, they gave an upgraded room. And these rooms were upgraded to the very highest, which was a two-story loft room that normally goes for more than $1,100 a night. And so they were giving these loft rooms.

Now, the hotel can afford to do that because they expect to do catering. And it's part of the overall negotiation with the hotel that the Government has with the hotel to try and get the lowest, theoretically, try and get the lowest price for the taxpayer.

Senator MORAN. Were any of the rooms available for $93 a night?

Mr. MILLER. Yes. Yes.

Senator MORAN. Okay. So some of them were within the per diem.

Mr. MILLER. Correct.

Senator MORAN. Others paid the per diem, other employees received the $93 and paid the hotel that $93, but they got better rooms than what a normal $93 room would be as a result of the inducement by the hotel to have the conference there?

Mr. MILLER. Correct. It was part of the negotiation. Certain upgrades were included. And the upgrades would be charged at the per-diem rate of $93. So even though it was a two-story loft, it was charged $93.

Senator MORAN. Did you discover in your investigation any inappropriate relationship between the vendors, the hotel or the caterers, the folks that GSA contracted with to provide services for this conference? Anything inappropriate between the vendor, any vendor and anybody at GSA in arranging for the conference to occur here and for the entertainment, et cetera to occur? No better word, is there some kind of kickback or inappropriate payment, inappropriate illegal gift provided to the folks who were organizing the conference?

Mr. MILLER. That is under investigation. As we talked about before, we have a criminal referral.

Senator MORAN. Thank you.

Any suggestion in your investigation, when you talk to GSA employees or the management in the region, was there a defense that

kind of this goes on everywhere all the time kind of thing, either within GSA or outside the agency?

Mr. MILLER. Yes. Many of the witnesses we talked to said that this conference was similar to previous WRC, and they cited a number of them that occurred in Oklahoma, New Orleans, and Lake Tahoe.

And the witnesses we talked to said this was along the same lines, that each of the so-called hosts for the conference tried to outdo one another, and the regional commissioner for region 9 for this one said, "I want this to be over the top. I want this to be the best and most lavish sort of conference."

Senator MORAN. In your investigation, did people say, Well, this goes on at other Government agencies, not just the GSA?

Mr. MILLER. Not that I know of, but I'll check the transcripts of the interviews.

TRANSITION AT THE GENERAL SERVICES ADMINISTRATION

Senator MORAN. And then, finally, this may be for you, Mr. Tangherlini. I've been practicing while I've been sitting here. Tell me about Ms. Johnson's resignation. What precipitated that? Was she asked to resign? Was this on her own volition? How did this vacancy occur and then you take that position, at least acting or interim?

Mr. TANGHERLINI. And, Senator, Dan is fine.

Senator MORAN. Thank you.

Mr. TANGHERLINI. But I can only speak to what I've heard former Administrator Johnson say at other hearings that I've participated in over the last couple of days. And from what I understand is that she made the choice herself to resign as a way to allow the agency to move forward.

I was asked by the White House to step in the weekend before her resignation and began my job Tuesday. I guess that would be April 3.

Senator MORAN. So the White House was aware of her pending resignation and had come to you to ask if you would serve in that capacity, and then she ultimately resigned?

Mr. TANGHERLINI. That's what I understand what led them to ask me over the weekend.

Senator MORAN. And do you have any understanding as to whether or not she was asked by the White House or administration officials to resign?

Mr. TANGHERLINI. From what I understand, and this was based on what I heard at these other hearings, was that she made the choice herself.

Senator MORAN. Mr. Chairman, thank you.

CIVILIAN PROPERTY REALIGNMENT BOARD

Senator DURBIN. Mr. Tangherlini, one of the issues proposed by the administration is the Civilian Property Realignment Board. Are you familiar with that concept?

Mr. TANGHERLINI. I'm familiar with it.

Senator DURBIN. Best I understand it, it's something like a base closure commission, where we'd find a way to sell unneeded Federal property. And there have been versions that have originated

in the House, now, in the Senate with Senators Carper and Portman. So what is GSA's view of these bills?

Mr. TANGHERLINI. So as far as I know, the GSA view is that the proposal that the administration put forward is our preferred approach, that it is the most-aggressive proposal. It's the one that will raise the most funds.

I'm not familiar with the Senate draft, but I would be happy to work with my staff to come back and find out what our position is.

[The information follows:]

GENERAL SERVICES ADMINISTRATION POSITION ON PENDING LEGISLATION ON CIVILIAN PROPERTY REALIGNMENT

General Services Administration (GSA) supports the administration's proposal, which addresses the key challenges that exist in the current process and should streamline and accelerate the disposal process. With respect to the current bills being discussed in the Congress, GSA supports legislation that provides additional realty tools and incentives that encourage sound management of real estate portfolios. GSA supports, for example, retention of proceeds by individual agencies and their reinvestment in agency portfolios. Retention of sales proceeds allows landholding agencies to direct equity from unneeded assets to needed assets. Such incentives will foster portfolio management as opposed to individual asset management.

CIVILIAN PROPERTY REALIGNMENT BOARD

Senator DURBIN. As I understand it, and I may be wrong, and this is just a press report, that what they are suggesting is an alternative that would basically eliminate the board. I think our experience with BRAC has us a little shellshocked.

Mr. TANGHERLINI. Okay.

Senator DURBIN. These boards that are supposed to be apolitical and turn out to be totally political, and that may be their motivation. I can't speak for them.

But what are the safeguards that you think need to be maintained when we talk about the disposal of Federal property?

Mr. TANGHERLINI. Again, that's an issue I'm going to have to get much further into, but I think one of the things we just need to make sure is that we have gone through a thorough and thoughtful process, so that we're not disposing of property merely to maximize revenue, but also thinking about the long-term needs of the Federal Government.

Senator DURBIN. And I hope also take into consideration the state of the real estate market at the time that this is taken into consideration.

Mr. TANGHERLINI. Fair enough.

Senator DURBIN. Fair enough.

I don't have any further questions. Do you, Senator Moran?

Senator MORAN. Mr. Chairman, I do not have any further questions.

I just would compliment Mr. Miller and his staff, as he did in his opening statement. It appears to me that you've done a good and thorough job. I thank you for your service to the public.

Mr. MILLER. Thank you.

Senator MORAN. And, Mr. Tangherlini, I welcome you to the GSA at very difficult times. It's pleasing to me that there are individuals who are willing to step forward and perform public service. And I

wish you well in your new position at what obviously is a very difficult time.

Mr. TANGHERLINI. Thank you.

Senator MORAN. And I thank you both for your testimony today.

Mr. TANGHERLINI. Thank you.

Senator DURBIN. And let me echo that sentiment, and also note the subcommittee has received a prepared statement for the record signed by all five members of the bipartisan FTC expressing serious concern about the significant cost to taxpayers resulting from proposals to gift FTC headquarters to the National Gallery of Art, and without objection, the statement will be placed in the record.

[The statement follows:]

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

At the subcommittee's invitation, we write as the five members of the bipartisan Federal Trade Commission (FTC)—Jon Leibowitz, J. Thomas Rosch, Edith Ramirez, Julie Brill, and Maureen Ohlhausen—to voice our serious concerns about the significant and unnecessary costs to the American taxpayer if the historic FTC building is given away to the National Gallery of Art and the FTC is forced to move into commercial leased space.

Instead of saving the Government money, the proposed transfer would needlessly forfeit a valuable Federal building and could initially cost well more than $100 million, with substantial additional costs incurred for years to come. Such an unprecedented giveaway would be contrary to the interests of American taxpayers, especially in this time of fiscal austerity.

First, under proposals in the House of Representatives, the Federal Government would simply give away a Federal building that was recently appraised at $92 to $95 million. In addition, appropriated funds still would be required to pay for the maintenance of the FTC building if given to the National Gallery of Art. Although the National Gallery of Art's East and West Buildings were acquired with private money, their maintenance and operations fall to taxpayers under the National Gallery of Art's charter. For example, over the past several years, the Congress has appropriated more than $80 million just for repairs to the marble façade of the East Building. More troubling, in its fiscal year 2013 congressional budget justification, the National Gallery of Art identified $45 million in additional critical maintenance and repair needs for its East and West Buildings. Although the National Gallery of Art purports to have the ability to raise hundreds of millions of dollars to repurpose the FTC building, if this building is given to the National Gallery of Art, taxpayers would be responsible for paying to maintain and operate it.

Second, American taxpayers would incur $70 to $83 million in estimated costs to move the FTC out of its headquarters building. Moving the FTC headquarters would require the replication of the FTC's sophisticated Internet and forensic labs, litigation support technology, and pre-merger filing databases, as well as the Commission's data center.

The costs to move would represent about one-quarter of the FTC's annual appropriation. We would be extremely concerned if any of these costs had to be taken out of FTC's operational budget, and the Commission had to cut back on its critical work on behalf of American consumers. As this subcommittee knows, FTC has consumer protection and competition jurisdiction over broad sectors of the economy, including healthcare, privacy, technology, and energy. FTC is also working to protect consumers struggling with the economic downturn against all manner of schemes—bogus job opportunities, sham debt relief, and fraudulent mortgage modification plans. At a time when all Federal agencies face budget cuts, FTC is particularly concerned that the Commission might have to bear the wholly unnecessary cost of being moved out of the FTC building and into commercial space.

Third, the latest proposal to transfer the FTC building to the National Gallery of Art would move FTC into privately owned space. To occupy its headquarters, FTC currently pays $6 million annually to the Federal Building Fund (FBF) in lieu of rent. If FTC headquarters were moved to commercial space and the FTC building given to the National Gallery of Art, the FBF would lose that revenue, and more of the FTC's appropriation would be needed to pay a substantially higher rent to a commercial landlord. Moreover, the move out of a Federal building into commercial space could mean that FTC costs to move, including the costs to replicate its technology systems, could recur periodically. Additional appropriations could be

needed every 10 years or so as leases expire and are replaced, through the competitive bidding procurement process, with new leases.

Finally, the facts do not support claims that the proposed FTC building giveaway would save taxpayers hundreds of millions of dollars in building repair expenses because the National Gallery of Art would pay them with private funds. The FTC building is in excellent condition and needs no significant renovation, repair, or maintenance. In particular, the 75-year-old building has up-to-date electrical, plumbing, and HVAC systems, which are in excellent working order. The General Services Administration has listed no major projects on its 5-year maintenance and renovation schedule for the FTC building.

Any money that would be privately raised to pay for hundreds of millions of dollars in renovations to the FTC building apparently represents the costs of repurposing the FTC building to suit the specifications of the National Gallery of Art. This constitutes no savings to taxpayers, but is an estimate of the costs associated with remodeling the building for a completely different purpose than the one for which it was designed and built.

We believe the most cost-effective plan for housing the FTC headquarters is the status quo—keep the FTC in the FTC building. There is no need to appropriate significant additional funds to move the FTC headquarters now and every 10 years or so—and there is no reason the Federal taxpayer should give away a valuable asset. The historic headquarters building was designed and built for the FTC,[1] has been adapted to meet its evolving needs, and well supports the FTC's mission into the 21st century.

ADDITIONAL COMMITTEE QUESTIONS

Senator DURBIN. The record of the hearing will remain open for a period of 1 week, until noon on Wednesday, April 25, for subcommittee members if they wish to submit statements and/or questions.

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

QUESTIONS SUBMITTED TO DANIEL M. TANGHERLINI

QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

WAS TRAINING TO ENHANCE JOB SKILLS CONDUCTED?

Question. There is a long-standing Governmentwide general provision carried in the Financial Services and General Government appropriations bill relating to funds permitted to be expended for training.[1]

To what extent did the General Services Administration (GSA) take this funding limitation into account in planning the Western Region Conference (WRC) for 2010, with respect to ensuring that training met identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties?

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[1] When laying the cornerstone for the FTC building on July 12, 1937, President Franklin Roosevelt stated: "May this permanent home of the Federal Trade Commission stand for all time as a symbol of the purpose of the Government to insist on a greater application of the Golden Rule to the conduct of corporation and business enterprises in their relationship to the body politic."

[1] FSGG bill language:

SEC. 714. (a) None of the funds made available in this or any other Act may be obligated or expended for any employee training that—

(1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;

(2) contains elements likely to induce high levels of emotional response or psychological stress in some participants;

(3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation;

(4) contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems as defined in Equal Employment Opportunity Commission Notice N–915.022, dated September 2, 1988; or

(5) is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace.

(b) Nothing in this section shall prohibit, restrict, or otherwise preclude an Agency from conducting training bearing directly upon the performance of official duties.

Answer. GSA is aware of funding limitations listed in the Financial Services and General Government appropriations bill which outlines how funds can be expended for training. In light of what happened at the 2010 WRC, Acting Administrator Daniel M. Tangherlini has taken a number of steps to ensure that training addresses identified needs for knowledge, skills, and abilities that are directly related to the performance of official duties since beginning his tenure on April 3, 2012. The individuals responsible for the 2010 WRC conference are no longer employed by GSA, and GSA does not know whether or to what extent these limitations were taken into account.

GSA has consolidated conference oversight in the Office of Administrative Services (OAS), which is now responsible for:

—Oversight of contracting for conference space, related activities, and amenities.
—Review and approval of proposed conferences for relation to GSA mission.
—Review and approval of any awards ceremonies where food is provided by the GSA.
—Federal Government.
—Review and approval of conference budgets as well as changes to those budgets.
—Oversight and coordination with GSA conference/event planners and contracting officers on conference planning.
—Review of travel and accommodations related to conference planning and execution.
—Handling of procurement for all internal GSA conferences.
—Development of mandatory annual training for all employees regarding conference planning and attendance.

Additionally, we have cancelled the 2012 WRC as well as a number of other conferences that only or primarily involved internal staff, saving taxpayers $995,686.

GENERAL SERVICES ADMINISTRATION'S CORRECTIVE ACTIONS

Question. On April 2, 2010, then Administrator Martha Johnson issued her response to the Inspector General's (OIG) February 12, 2010 draft "Management Deficiency Report." (As part of that response, Martha Johnson states how on August 9, 2011, she established OAS to provide greater oversight and accountability for all administrative functions of the agency.) How long do you expect it will take for GSA to determine whether it can recover funds improperly expended for nonemployee meals?

Answer. We have formally initiated collection actions for some of the improper expenses incurred at the WRC, including the cost of food provided during in-room parties. We continue to review the invoices and records of the conference to determine whether additional actions are appropriate. GSA is required to conduct debt collection in accordance with the Debt Collection Improvement Act and 41 CFR parts 105–55 and 105–56. These authorities require us to give individuals a minimum of 30 days to examine documents and the right to request hearings regarding GSA's claims. If hearings are requested, it could be several months before the process is complete, and GSA is able to recover funds.

Question. How long do you expect it will take the Senior Procurement Executive to determine whether any of the payment to Royal Productions (the conference A/V firm) can be recouped as a result of double-payment of the lodging charges?

Answer. Royal Productions has already reimbursed GSA for lodging charges by check for $1,962 on April 17, 2012.

Question. What are the procedures and processes that are underway internally within GSA to address disciplinary action against the 10 officials that were placed on administrative leave following the publication of the OIG's report?

Answer. Requirements for taking an adverse action against an employee are outlined in 5 CFR part 752, to which GSA is adhering. GSA placed individuals on paid administrative leave while the agency has been conducting internal reviews and following specified processes. Disciplinary actions have been proposed and employees have due process rights under applicable statutes and regulations.

Question. When do you expect the new OAS to have fully functioning oversight of contracting for conference planning?

Answer. Fully functioning oversight by OAS began as of April 15, 2012.

IMPROPER CONTRACTING

Question. What system or processes are currently in place to ensure that required contract terms are expressly included in documents executed by GSA?

Answer. GSA currently uses two primary systems to ensure that required terms are included in its contracts. The Federal Acquisition Service uses the Solicitation Writing System to automatically insert required contract clauses in its Multiple

Awards Schedules Program. GSA's Public Buildings Service (PBS) uses an acquisition system called Comprizon, in which contract clauses are added manually, using existing clause databases and templates. Comprizon is expected to be replaced by a new acquisition system starting in the second quarter of fiscal year 2013. The new system will have automatic clause insertion capability and, as a result, will better ensure that PBS contracts contain all required clauses and provisions. The clauses and provisions will be maintained in the system to ensure that they are current at the time the solicitation is issued.

Question. As you evaluate the omission of mandatory contract clauses, would a spot review in the approval chain or other checklist help flag this to avoid future incidents of this nature?

Answer. Yes, spot reviews and checklists would serve to flag incidents. Moving forward, GSA will enhance information technology (IT) system capabilities to better manage the contract clause process. GSA is set to test a Web-based clause engine already developed by the Department of Defense's (DOD) Defense Procurement and Acquisition Policy organization. The Clause Logic Service is a centralized tool that will enable increased efficiency, consistency, and accuracy of clause selection in contracts. The use of this system will alleviate the need to develop and maintain similar systems for each service and/or office. The system will automatically include clauses and provisions in contract documents based on their particular prescriptions, and input from the contracting officer on contract attributes. The application of this system will reduce risk to the Government by ensuring all applicable clauses are included in each contract. GSA will work with DOD to add GSA-specific clauses to Clause Logic and commence system testing of the Graphic User Interface feature in October 2012. In the interim, GSA will take steps to strengthen management review of acquisitions to include a focus on contract clauses.

LOST CONFERENCE SURVEY FORMS

Question. In the investigative interviews conducted by agents of the OIG, it is disclosed that the conference survey forms completed by the attendees at the final general session at the 2010 WRC to be boxed and shipped back for review cannot be accounted for, have never been found, and are apparently declared "lost". What procedures are in place to prevent future situations where valuable information including training evaluations can be safeguarded from loss?

In general, GSA's National Records Program (NRP) establishes procedures, from a recordkeeping perspective, to safeguard agency information. Record maintenance and disposition procedures are documented in GSA Order CIO P 1820.1 (June 8, 2007). Within that directive, several key requirements for the successful execution of GSA's records program include:

—Each Service and Staff Office (SSO) and each region is responsible for implementing and operating an effective records management program.

—Heads of SSOs and Regional Administrators must designate a qualified records officer to operate the records management program within their area of jurisdiction.

—Records officers are responsible for ensuring proper records maintenance and disposition within their program and for training, or arranging training for, associates. GSA's National Records Officer is responsible for planning, developing, administering, and providing oversight of records management agency-wide.

During approximately the past 18 months, and continuing today, GSA is on a path to improving our NRP. Specifically, GSA is currently:

—Modernizing our records management policies by updating them to take advantage of National Archives and Record Administration (NARA) bulletins and incorporating cloud computing.

—Updating GSA's records schedules to take advantage of the NARA general records schedules and GSA's new cloud-based applications.

—Rebuilding our records management program infrastructure.

—Supporting GSA's increased usage of electronic documents.

To accomplish these goals, GSA has:

—Contracted with the NARA for expert assistance;

—Requested all SSOs and regions ensure proper personnel are placed in Records Officer roles; and

—Contracted with the Government Printing Office for digitization support to facilitate GSA's move to increased use of electronic documents.

GSA understands the need for safeguarding agency records and information from improper destruction and loss. In addition to the remedial steps noted above, GSA conducts annual records officer training. GSA also conducts records management

training for employees online at GSA Online University. GSA's goal this year is for all employees to have taken this training by September 30, 2012.

INTERNS CONFERENCE

Question. What was the purpose of the conference held near Palm Springs for interns?

Answer. GSA has determined that the conference for interns that was planned by then Acting Regional Commissioner Jeff Neely does not reflect the current priorities for GSA. Mr. Neely is no longer employed as GSA and the agency does not know what his purpose was.

Question. Why would an off-site conference be held for interns?

Answer. The conference was planned by then Acting Regional Commissioner Jeff Neely and does not reflect the current goals and priorities for GSA. As previously stated, Mr. Neely is no longer employed by GSA and the agency does not know what his purpose was. As a part of the Acting Administrator's top-to-bottom review of GSA operations, we concluded that all upcoming conferences should be reviewed in light of new controls over conferences and travel. Many conferences and meetings were cancelled as part of this review. All upcoming conferences must meet the new requirements which became effective on April 15, 2012.

Question. Did the Region 9 Commissioner make that decision?

Answer. Yes. The then Acting Region 9 Commissioner, Jeff Neely, made the decision to have the conference.

Question. Have there been intern conferences before?

Answer. To the best of our knowledge after a review of our records we have not found any evidence of other intern conferences in region 9 or any other region or GSA central office.

REGION 9 COMMISSIONER—HISTORY OF EXCESSIVE EXPENDITURES?

Question. In one of the many documents from the OIG provided to the subcommittee, a special agent of the OIG asserts that the Region 9 Commissioner's travel for almost 5 years is almost $250,000. What should the budget be for a regional commissioner for 5 years?

It appears there may have been additional examples of region 9 excessive expenditures:

—"Interns Conference" in Palm Springs at a cost of $60,000;

—35 off-site visits conducted in 2010;

—Episodes of lengthy travel while minimal work conducted (e.g., in connection with a ribbon-cutting and site visits); and

—Spouse attended a GSA conference with registration paid by GSA.

Answer. PBS headquarters budget office provides a funding limitation to each region for its building operations and maintenance budget. Within that amount, regional management makes decisions about funding priorities within the region, including travel and other budget items. Although the regions and PBS headquarters offices were issued targets for travel obligations starting in fiscal year 2011 in response to Executive Order 13589 "Promoting Efficient Spending", PBS does not set specific travel budgets for each office of the Regional Commissioners.

The amount of necessary travel for a Regional Commissioner during the last 5 years would be dependent on various factors, including:

—geographic composition of the specific region;

—the number and type of construction or major leasing projects;

—the number and type of initiatives or issues with customer agencies;

—responsibilities with national initiatives or teams; and

—the number of management meetings that they attended.

Question. Apparently, the Chief Financial Officer (CFO) for PBS did not review the region's expenditures prior to expenditure. Which GSA official(s) should and will be responsible for catching excessive expenditures like this in the future?

Answer. The GSA CFO is responsible for the expenditure of all funds, including travel costs, for PBS. In addition, the Acting GSA Administrator instituted several layers of review and approval for conferences and travel, including Head of Services or Staff Offices, Regional Administrators, Regional Commissioners, the Chief Administrative Services Officer, and CFO. Travel by a Regional Commissioner for normal business travel would be approved by the Regional Administrator.

Question. How are we going to ensure that this never happens again?

Answer. GSA is realigning financial overview and operations from PBS to the Office of the GSA CFO. GSA is working on the formal restructuring of this organization to achieve the additional levels of control to ensure that there is more oversight over budgeting and expenditures and prevent this type of spending.

One of the first changes we made was to implement measures to catch excessive spending. Importantly, the Acting Administrator consolidated all PBS financial operations into GSA's Office of the Chief Financial Officer, which will ensure that there is more oversight over budgeting and expenditures. As soon as feasible, all GSA financial operations will be consolidated into the CFO's office.

As of April 15, 2012, the Acting Administrator implemented new controls over travel and conferences. Under this policy, all travel is suspended unless it meets certain criteria. Only travel for designated GSA operational mission-related activities is permitted upon approval of the Regional Administrator or other approving office. Travel may also occur for an approved conference. Travel may be incurred for a routine management meeting upon waiver by the Deputy Administrator or Acting Administrator. Travel must be justified and approved, prior to the departure date, by the Head of Service or Staff Office. In addition, conferences must be approved by the Head of Service or Staff Office, Regional Administrator, the Chief Administrative Services Officer, and the CFO before any procurement activity takes place or cost is incurred by the organization sponsoring the event.

GSA continues to work on our top-to-bottom review of its operations. As GSA goes through this review, it is deliberately looking for additional control mechanisms to implement so it can catch excessive spending, save taxpayer dollars, and ensure the most efficient delivery of services to GSA's customer agencies.

PROBLEMS AT PUBLIC BUILDINGS SERVICE—SYSTEMIC?

Question. Clearly, there has there been a culture of excessiveness and lax accountability within PBS, region 9, and perhaps even in some of the other regions. To what degree might this be a problem in other parts of GSA?

Answer. GSA is committed to renewing our focus on our core mission. GSA currently is conducting a top-to-bottom review of the agency and is pursuing every initiative necessary to ensure this type of excessive spending does not occur in GSA. In the meantime we have taken the following steps to improve internal controls and oversight to ensure this type of excessive spending and lax accountability never happens again:

—Established an OAS responsible for oversight and accountability of all administrative functions;
—Require mandatory annual training for all employees regarding conference planning and attendance;
—Canceled or reduced 35 conferences;
—Suspended internal travel unless it is mission-critical;
—Begun to move PBS regional budget under the direct authority of GSA's CFO;
—Implemented new controls over travel and conferences as described above in response to question 14 (How are we going to ensure that this never happens again?); and
—Realigned reporting lines for Regional Administrators directly to Deputy Administrator.

In addition, GSA's Acting Administrator Daniel M. Tangherlini made it one of his priorities to ensure that there is a culture of integrity and responsibility at all levels of the agency and that any questionable activity be reported, investigated, and any appropriate disciplinary action taken. In a joint notice signed by himself and GSA Inspector General Brian D. Miller on April 11, 2012, he instructed all GSA employees that if they suspect any wrongdoing by any employee of the agency, they discuss it with their colleagues, supervisors, or higher levels in the organization. In addition, the notice stated that GSA will not tolerate retaliatory actions against anyone who raises concerns.

EFFECT OF REDUCED SPENDING ON THE GENERAL SERVICES ADMINISTRATION'S ABILITY TO PAY BILLS AND THE EFFECT ON FEDERAL AGENCIES

Question. In recent years, the amount of funding that the Congress has allowed GSA to spend (particularly with regard to amounts allowed from the Federal Buildings Fund [FBF]) has been drastically reduced from the budget requests. How have you been able to pay your contractually obligated bills such as rental of space and building operations, and what effect has this had on building projects, and Federal agencies?

Answer. The administration directed agencies to make additional reductions in travel, administrative support, and contracts. To meet the goals of this Administrative Cost Savings Initiative GSA PBS began making reductions in fiscal year 2011 and continues to do so into fiscal year 2012. These efforts have made it possible for GSA to reallocate funds within our Building Operations account to maintain all es-

sential services at current levels and avoid reductions to the number of Federal employees.

In addition, through the joint efforts of GSA and our customer agencies to focus on consolidating current occupancies and curtail new space and expansions, where possible, GSA has been able to operate the Rental of Space program at the appropriated funding level.

EFFECT ON BUILDING PROJECTS

While GSA has been able to pay our contractual obligations, the reduced funding in our Building Operations account has curbed our ability to make necessary and prudent investments in our buildings. Reduced funding in both the Building Operations and Minor Repairs and Alterations accounts have limited our ability to lead efforts to reduce space, which requires up-front costs associated with planning and delivering the optimal portfolio plan.

The reduced funding in our capital program limits our ability to build out vacant or underutilized Federal space that could be used to consolidate agencies, assist agencies in reducing their overall space utilization, reduce the amount of costly leased space, and maximize the efficiency of our existing Federal assets. Reduced funding for repairs and alterations could also result in Federal agencies needing to move out of Federal buildings if they are unable to carry out their mission due to the repair and reinvestment needs of that building.

EFFECT ON FEDERAL AGENCIES

Consecutive years of reduced levels of funding prevent GSA from reducing repair and alteration liabilities and could lead to major equipment failures and a need to conduct emergency repairs and replacements, which cost more than conducting ongoing repairs and maintenance. Emergency repair and alterations cost more than conducting ongoing repairs and maintenance. This could disrupt customer agency operations and potentially impede them from carrying out their missions.

GSA's fiscal year 2012 Major Capital Program request included repairs at seven Federal buildings throughout the United States and was submitted in support of the operations and missions of several customer agencies including the operations for the Headquarter Offices for the Departments of Agriculture, State and the Interior, the Veterans Benefits Administration, the Federal Bureau of Investigation, and numerous other Federal agencies. The scope of work involved in these projects included space consolidations and interior construction, exterior renovations, roof replacements, mechanical, electrical, heating, ventilation, and air conditioning systems (HVAC) repairs, fire and life-safety upgrades, entrance screening security upgrades, and hazardous materials abatement. In addition to the impact to our minor and major building repairs and alterations, GSA is unable to undertake major life-safety and fire protection, energy and water conservation, and wellness projects in Federal buildings throughout the country.

Finally, GSA will not be able to provide sufficient alterations to owned space to meet agency changing requirements; facilitate consolidation efforts on behalf of our customer agencies to reduce vacant Federal space, and reduce leased space needs, which is more expensive to the taxpayer.

Question. What will be the effect, if this trend continues for long?

Answer. Consecutive years of reduced levels of funding will prevent GSA from being able to fully fund those activities that are essential to our mission and to improving our financial performance. If this trend continues GSA will be unable to make needed repairs and alterations, which can lead to major equipment failures and a need to conduct emergency repairs and replacements, at a greater cost to the taxpayer than conducting ongoing repairs and maintenance. Making necessary investments in facilities extends the life of the equipment and buildings, while also improving overall customer satisfaction.

The reductions in funding in recent years for both new construction and modernization projects prevents the Federal Government from being able to take advantage of the favorable pricing conditions of the current market. This will lead to increased costs as agencies are forced to remain in more costly leased space and higher costs when modernization projects are ultimately executed in the out years.

In addition, GSA's inability to undertake construction and expansion projects at our land ports of entry (LPOE) is a critical concern and impacts both pedestrian and vehicular traffic at our Nation's borders. A majority of the Nation's LPOE facilities currently in operation were designed to accomplish legacy missions from decades ago and require significant refurbishment or replacement to function effectively. Some of these facilities were built more than 70 years ago and cannot fulfill today's increased traffic demands and additional safety requirements resulting from the

1994 North American Free Trade Agreement, the increasing security requirements after September 11, 2001, and the increasing need for 24-hour operations.

If this trend continues it will greatly affect GSA's ability to fund our Building Operations allocation. We need to invest in energy studies and equipment upgrades, such as advanced meters in order to identify ways to save utility costs and implement changes that will pay for themselves through utility savings. While travel costs have been greatly reduced, there is still a need for mission-critical travel, including that for inspectors to visit construction and repair sites to ensure that contractors are complying with contracts and regulations; inadequate oversight could lead to waste, fraud, and abuse. In addition, it is necessary for GSA to train our personnel in order to ensure all staff remains current on applicable laws, regulations, and policies.

Substantial reductions in funding could also impact GSA's ability to meet contractual obligations in our Rental of Space account, of which approximately 98 percent is associated with existing contractual obligations for current leased space that require payment on a monthly basis.

Question. What has GSA done to help lower costs?

Answer. GSA is closely managing and monitoring spending with the goal of increasing efficiency and reducing costs.

PBS has already achieved significant reductions in travel spending in fiscal year 2011, meeting a GSA-established 25-percent travel reduction goal based on the fiscal year 2010 level. GSA will continue to reduce travel in fiscal year 2012 with a cumulative reduction of 30 percent in fiscal year 2013, in accordance with Office of Management and Budget (OMB) Memorandum M–12–12. The reductions have been and will continue to be achieved through implementing new GSA-wide travel approval procedures, leveraging technology where it makes sense, and limiting travel to that which is necessary to support of mission-critical needs of the agency and customer needs.

PBS has taken an active role in reducing management support contracts. In early fiscal year 2012, PBS issued both guidance and reduction targets to the regions and units within the headquarters, and we will continue to monitor the progress toward meeting those targets. In addition, the PBS IT Governance Board currently reviews all IT expenses to ensure that they are meeting the PBS mission in the most cost-efficient manner. Systems reviews have targeted systems for migration or elimination as a means of streamlining business information and reducing operations and maintenance costs.

PBS is looking at cost-savings measures in cleaning, maintenance, and utilities. For cleaning and maintenance, we are reviewing and re-evaluating current contract requirements and models to gain efficiencies and drive costs down. PBS is engaging industry partners and the vendor community to calibrate PBS practices against those used by private industry. We are placing a stronger emphasis on operational audits to ensure that buildings are running at optimum efficiency and that contract services are scoped properly.

PBS is also achieving significant savings in its utility and operational budgets through energy and water reductions. Energy Independence and Security Act 2007 requires Federal agencies to reduce energy consumption by 3 percent per year in British Thermal Units (Btu) per gross square foot (gsf) compared to a baseline of fiscal year 2003, to reach a total of 30-percent reduction in fiscal year 2015. Additionally agencies are required under Executive Order 13423 to reduce water consumption on a gallon per gsf basis by 2-percent per year over a baseline of fiscal year 2007 to achieve an end result of 16-percent reduction by 2015. Reducing agency's energy by the mandated 3-percent Btu/gsf per year would result in approximately 425,230 mmBtus and $11.1 million savings annually. Additionally for each 2-percent reduction in gallons/gsf in water consumption, GSA will save an estimated $440,000 and 49.6 million gallons of water annually.

GSA requested $40 million for Energy and Water line item project funding in the fiscal year 2012 budget request. If fully funded, GSA would realize an estimated annual savings of 400,000 million Btus and $6.4 million. The average payback for these projects is 6.25 years.

PBS is also achieving savings through the energy reverse auction program, which provides a framework and a mechanism to assist more than 300 Federal facilities to purchase natural gas. This real-time auction process allows PBS to receive bids for multiple-term lengths and pricing products in a matter of minutes as each auction only takes 5 minutes in total while providing significant reductions in costs from the 2003 baseline. Based on the auctions held to date, GSA estimates $9.3 million in annual cost reductions comparing old contract rates to new contract rates, and $17 million over the full term of these contracts. From a percentage perspective,

rates have decreased by 25 percent comparing the old contract rate of $5.85 per decatherm (dth) to $4.40 per dth for fiscal year 2012 awards.

Question. How does GSA determine agencies' rental costs?

Answer. GSA's Fair Annual Rent (FAR) process establishes the rates Federal tenants pay for occupancy in federally owned (GSA) space. In federally owned space, rent is based on a rent appraisal specific to the building

FAR appraisals are developed by independent professional appraisers with local market expertise, based on FAR appraisal instructions provided by GSA. They are intended to reflect rental rates that would be realized for occupancy in GSA buildings, from a private sector perspective, and account for characteristics of the building and its market. As markets are dynamic, GSA has the rental rates in every building appraised at least every 5 years. Every appraisal, developed and reported by independent professionals with local market expertise, is subject to a thorough, four-level review process, involving Regional and Central Office appraisers.

For leased space, rent is a pass-through of the underlying lease contract rent, plus any standard operating costs not performed through the lease, the PBS lease fee (7 percent of the lease contract), and security charges.

Question. I am hearing from some of the other agencies funded by this subcommittee, that they are being asked by GSA to "improve utilization of their space" or to reduce their rental space. But even reducing space has costs associated with it. Would you please discuss how improving space utilization can have costs?

Answer. Improving utilization requires agencies to reduce their real estate footprint and possibly move to a mobile workplace environment, which necessitates upfront investments in up-to-date information technology, furniture solutions, and retrofitting of current Federal space at times. The entire Federal community must find ways to finance the investments needed to improve utilization and produce long-term savings.

REDUCED FEDERAL BUILDING CONSTRUCTION AND EFFECT ON AGENCIES

Question. For years, typically in a given year, we allowed GSA to spend about $700 to $900 million from the FBF in order to construct buildings to house Federal agencies. In the past 2 years, that funding has been drastically reduced, to a new low last year of only $50 million. Will this result in agencies being required to move to leased space, which is more expensive for the Federal Government, and is contrary to OMB policy and Government Accountability Office (GAO) recommendations?

Answer. In markets where no other suitable federally owned space exists and a Federal agency has a long-term space requirement, reduced funding in our construction budget could lead to increased occupancy of leased space, often times at a higher cost to the taxpayer.

The reduction in repair and alterations funding also limits our ability to build out vacant or underutilized Federal space that could be used to consolidate agencies out of costly leased space, assist agencies in reducing their overall space utilization, and maximize the efficiency of existing Federal assets.

Question. Aren't we being short-sighted by not doing Federal construction since the market is competitive now, resulting in lower costs than at other times, and projects will only get more expensive in the future?

Answer. It always is preferable to house our tenants in federally owned space for long-term housing needs, as it is the best value overall to the Government and the taxpayer.

GSA has realized significant savings during this competitive bidding climate, particularly through the American Recovery and Reinvestment Act (ARRA), which allowed GSA to fund needed new construction and renovation projects at a time when construction costs were at an all-time low. Building materials costs were rapidly escalating when GSA began identifying projects for ARRA funding. However, market conditions changed and GSA realized lower construction bid estimates, resulting in approximately $565 million in immediate savings from awarding contracts in this bidding climate. GSA's preliminary analysis reports that larger projects were awarded at 8–10-percent less than estimated cost.

With the construction market still favorable, GSA could award additional modernization and new construction projects previously approved for design by the Congress, if construction funding became available. These projects are either fully or partially designed and could be procured for construction quickly. The work would support specific systems and modern workplace needs while creating new and durable jobs in a hard-hit sector of the economy.

Question. Apart from some of the giant Federal department consolidations (such as the Department of Homeland Security's (DHS) St. Elizabeths campus and the

Federal Drug Administration's White Oak campus), some of the larger Federal building construction projects have been courthouses. In recent years, through design guide requirements and courtroom-sharing policies, courthouse construction projects are now smaller. How else have you been working with the courts to reduce costs?

Answer. GSA and the Administrative Office of the U.S. Courts (AOUSC) have taken numerous steps to reduce courthouse costs. After the Judiciary declared a moratorium on courthouse construction in 2004, the AOUSC, with GSA's participation, began an Asset Planning Process to re-examine all of the projects that previously were on the 5-year plan. The new process redefined the selection criteria used by the Courts to select projects for inclusion in the 5-year plan and has eliminated many projects that previously were on the 5-year plan for new construction.

GSA and the AOUSC are reviewing projects to reduce scope and costs and discussing other ways to save on courthouse construction costs, including reducing the size of all projects currently in design or planned for design in the Courts' 5-year plan by eliminating courtrooms and chambers for future projected judges. Courtroom sharing among senior district, magistrate, and bankruptcy judges has dramatically reduced the cost of new courthouses. In addition, the AOUSC is considering limiting raised access flooring to the well of the courtroom, and introduction of flexible office environments where appropriate.

EFFECTS OF SLOWING DOWN THE DEPARTMENT OF HOMELAND SECURITY HEADQUARTERS CONSTRUCTION PROJECT (ST. ELIZABETHS)

Question. The consolidation of the DHS headquarters at St. Elizabeths has been the highest-priority construction project of this and the previous administration's, and is a $3 billion project that will consolidate DHS offices in the Washington area, many of which are in leased space.

Construction began in July 2009, and typically, construction funding requests amounted to a significant investment. Now, this project is limping along, due to the reduced amount of funding the Congress is able to provide for GSA construction due to funding constraints. What are the effects of slowing down this huge project?

Answer. Completion of the consolidated DHS headquarters project was projected for 2016, but curtailed funding of both GSA and DHS has delayed completion by at least 5 years. The Congress has appropriated $1.36 billion to the project through fiscal year 2012, and GSA and DHS will seek remaining appropriations in the coming fiscal years.

GSA and DHS are working collaboratively to update the original project plan to reflect appropriations to date and the impact on cost and schedule for completion. GSA anticipates finalizing the revised project plans this summer and will provide the Congress with the revised plan once finalized.

The effects of the schedule slowdown include increases in total project cost due to escalation, lack of project integration, inability to take advantage of bulk purchases, and continued lease payments in high rental rate submarkets in Washington, DC. For example, there is approximately 1.5 million square feet of leased space in the East End and another 1.9 million square feet in southwest D.C., two submarkets with the highest average rental rates in the Washington, DC area.

The slowdown also affects DHS housing requirements. The DHS National Capital Region Housing Master Plan and the DHS Consolidation Headquarters Collocation Plan provide the mission and operational needs for headquarters campus. DHS is better able to answer questions about specific implications for DHS's mission.

Question. What changes are you considering to the project as a result of construction funding levels?

Answer. Due to the reduced fiscal year 2011 and fiscal year 2012 funding levels for St. Elizabeths, GSA and DHS are working to finalize a revised project schedule. GSA and DHS currently are evaluating the overall consolidation program, including mission support within the national capital region and St. Elizabeths, in order to more efficiently utilize the space at St. Elizabeths.

DENVER FEDERAL CENTER REMEDIATION

Question. Most of the buildings on the Federal Center were constructed in 1941 for the Denver Ordnance Plant that produced ammunition in support of World War II. The site has since been used by more than 27 different Federal agencies for more than 67 years.

Since fiscal year 2004, GSA has received $39 million over 6 years in requested construction funds for remediation of the Denver Federal Center, a 640-acre secured Federal facility located west of Denver in the city of Lakewood, Colorado. GSA has identified more than 600 areas on the site that could be impacted by hazardous ma-

terials, so the Federal Government must conduct remediation under three Colorado State consent orders. Is GSA on track to meet the requirements of the consent orders and what will happen if GSA does not receive the funding?

Answer. The $3 million identified in the fiscal year 2012 the reprogramming request that accompanied the fiscal year 2012 spend plan submitted to the Congress was adequate for GSA to continue to comply with the consent decree through fiscal year 2013 and until such time that future funds can be secured. Based on the consent order, no punitive action will occur if GSA requests funding from the Congress. However, if GSA cannot demonstrate that funding has been requested, the Colorado Department of Public Health and Safety can fine GSA $25,000 per day per incident under the Resource Conservation and Recovery Act.

Question. When do you expect the project to be finished?

Answer. The original project schedule was fiscal year 2008 through fiscal year 2012. This schedule assumed all fiscal year 2012 funds would be provided in full. Due to the limited availability of funding in fiscal year 2012, GSA determined that a lower level of funding could be dedicated to continue the remediation and still adhere to the terms of the consent decress. GSA will need to request additional funds in a future fiscal year to complete the remediation efforts. We anticipate completion of the project 2 years after receipt of necessary funding, assuming that no new, unanticipated issues are discovered on-site during excavation for ongoing remediation.

It is important to note that as investigation and remediation continue, the estimate of future needs may change as we may identify better defined areas requiring remediation as well as the volume of waste and/or contaminated soil.

REDUCED FEDERAL BUILDING REPAIRS

Question. Prior to the enactment of ARRA, GSA had a backlog of $8.4 billion in buildings needing repairs or alterations. Through ARRA, GSA has been able to reduce that backlog by $1.4 billion, while improving the energy-efficiency in 257 of the Nation's buildings, and creating 60,326 jobs. However, for the past 3 years, we have not been able to meet the requested levels for repair projects. In fact, for the past 2 years, no funding has been allowed for major repair projects. How has that affected the backlog and what is the effect on the health, safety, and mission of Federal agencies?

Answer. Prior to the enactment of ARRA, GSA had identified $8.4 billion in its 10-year investment liability, which is the funding GSA should invest in their buildings over the next 10 years. GSA's financial statements did not record a deferred maintenance backlog. In fiscal year 2012, GSA did not have the funds for major modernizations as we needed the allocated funds for minor repairs and alterations in order to maintain our buildings at a basic level. Consecutive years of reduced levels of funding prevent GSA from being able to reduce our current repairs and alterations investment liability of an estimated $4.7 billion, which will continue to increase without adequate funding. GAO has issued audit reports discussing the impacts and concerns over this large backlog estimate. While ARRA has helped, the pool of these needed repairs is still significant with an average age of buildings totaling 47 years. The inability to fund these needed repairs will lead to major equipment failures and a need to conduct emergency repairs and replacements, costing taxpayers more than conducting ongoing repairs and maintenance. These emergency repairs could disrupt customer operations and potentially impede them from carrying out their mission.

Question. What are some of the critical repair projects not able to be addressed?

Answer. GSA's nonprospectus basic repairs and alterations program funds alterations in 1,599 Federal buildings nationwide. Enacted budgets cut GSA's minor repair and alterations budget request by nearly 20 percent in fiscal year 2011 and approximately 35 percent in fiscal year 2012, limiting our ability to do necessary upkeep to maintain the condition of GSA PBS's portfolio.

GSA's fiscal year 2011 Major Capital Program request included repairs at eight Federal buildings throughout the United States and was submitted in support of the operations and missions of such Federal agencies as the Department of State, the Internal Revenue Service, the Social Security Administration, the U.S. Courts, Federal Bureau of Investigation (FBI), and Immigration and Customs Enforcement. The scope of work for these projects included space consolidations and interior construction; exterior renovations; roof replacements; repairs to mechanical, electrical, and HVAC; fire and life-safety upgrades; entrance screening security upgrades; and abatement of hazardous materials.

In addition to preventing GSA from making minor and major building repairs and alterations, these cuts affected our ability to undertake major life-safety and fire

protection, energy and water conservation, and wellness projects in Federal buildings throughout the country.

For example, the proposed but unfunded fiscal year 2012 project at the Major General Emmett J. Bean Federal Center in Indianapolis, Indiana provides for security upgrades to bring the complex into compliance with the DOD's Unified Facilities Criteria standards which is necessary in order for DOD's continued occupancy of the Federal Complex. The project includes important security features such as the introduction of a setback, the installation of blast-resistant windows, the relocation of the loading dock and mailroom, and protection of air intakes. Additionally, the project would remedy drainage deficiencies that plague the complex through the installation of an underground storm water drainage system. GSA has utilized stopgap measures to address the problem, but prospectus level funding is required to resolve the root cause of the problem. This project is critical to ensure the Bean Federal Center remains occupied by DOD as a safe, well maintained asset within the GSA portfolio.

GSA'S SPEND PLAN BASED ON ENACTED LEVELS

[In thousands of dollars]

Repair and alteration	President's budget	Enacted level
Nonprospectus basic repairs and alterations	335,297	271,724
Indianapolis, Indiana—Major General Emmett J. Bean Federal Center	65,813	.....
Van Nuys, California—James C. Corman Federal Building	11,039	.....
New York, New York—Daniel Patrick Moynihan U.S. Courthouse [1]	28,000	2,031
Richmond, California—Frank Hagel Federal Building	113,620	.....
Washington, District of Columbia—West Wing Design Phase II	6,245	6,245
Los Angeles, California—Federal Building/Parking Garage [FBI]	51,217	.....
San Diego, California—Edward J. Schwartz U.S. Courthouse and Federal Building [ICE]	22,336	.....
Washington, District of Columbia—E. Barrett Prettyman U.S. Courthouse	22,900	.....
Energy and water retrofit and conservation measures	20,000	.....
Fire Prevention Program	20,000	.....
Wellness and fitness program	7,000	.....
Washington, District of Columbia—West Wing/East Wing Infrastructure Systems Replacement [2]	.....	46,000
NOA repairs and alterations	703,467	326,000

[1] Design only
[2] Reprogrammed funds

GSA's fiscal year 2012 Major Capital Program request included repairs at seven Federal buildings in support of operations and missions of the Department of Agriculture, the headquarters operations for the Departments of State and the Interior, the Veterans Benefit Administration, the FBI, and numerous other agencies. The scope of work for these projects included space consolidations and interior construction; exterior renovations; roof replacements; repairs to mechanical, electrical, and HVAC systems; fire and life-safety upgrades; entrance screening security upgrades; and abatement of hazardous materials.

In addition to preventing GSA from making minor and major building repairs and alterations, these cuts affected our ability to undertake major life-safety and fire protection, energy and water conservation, and wellness projects in Federal buildings throughout the country.

GSA'S FISCAL YEAR 2012 REPAIR AND ALTERATIONS PROGRAM

[In thousands of dollars]

Repair and alteration	President's budget	Enacted level
Non-Prospectus Basic Repairs and Alterations	402,388	260,000
Washington, District of Columbia—Main Interior Building	50,400	.....
Washington, District of Columbia—Harry S Truman Building	11,039	.....
Honolulu, Hawaii—Prince J. Kuhio Kalanianaole Federal Building and Courthouse	198,650	.....
San Francisco, California—Phillip Burton FBI Consolidation	49,900	.....
Overland, Missouri—Prevedel Federal Building	24,386	.....
Washington, District of Columbia—Eisenhower Executive Office Building Pennsylvania Avenue screening facility	17,000	.....
Los Angeles, California—Federal Building [ICE] Design	9,478	.....

GSA'S FISCAL YEAR 2012 REPAIR AND ALTERATIONS PROGRAM—Continued

[In thousands of dollars]

Repair and alteration	President's budget	Enacted level
Energy and water retrofit and conservation measures	40,000	.....
Fire prevention program	15,000	.....
Wellness and fitness program	7,000	.....
Judiciary capital security program	.....	20,000
NOA repairs and alterations	868,902	280,000

PROPOSAL TO MOVE THE FEDERAL TRADE COMMISSION FROM ITS HEADQUARTERS BUILDING

Question. H.R. 2844 would require GSA to transfer ownership of the current headquarters of Federal Trade Commission (FTC) to the National Gallery of Art. Please provide a status update on the condition of the FTC headquarters building, including the most recent upgrades and the cost of such upgrades. Please include specific detail on the following:

—the electrical system;
—the plumbing system;
—the HVAC systems;
—the roof;
—the windows; and
—any other items GSA deems critical for proper maintenance of the building.

Answer. The administration opposes legislation that would require GSA to transfer ownership of the current headquarters of the FTC to the National Gallery of Art. The FTC headquarters is fully utilized and does not require significant renovation. Investment in FTC headquarters by both FTC and GSA has exceeded $30 million over the last decade. This work entailed capital improvements to the building such as a new roof, a new chiller plant, repairs to the air handling system, new security windows, a new energy management and control system, and upgrades to the building's fire alarm system. This also includes sizable information technology investments made by FTC in its data center and technology labs. Repairs to building plumbing and electrical systems have been minor.

Question. Does GSA have any major projects on its 5-year maintenance and renovation schedule for FTC headquarters?

Answer. GSA has no major projects on its 5-year maintenance and renovation schedule for FTC headquarters building.

Question. Does the current FTC headquarters space fit the needs of FTC, now and in the future?

Answer. Yes. FTC is very satisfied with their current headquarters space and it fits their requirements, including special space and hearing rooms. Currently, the building is in relatively good condition and is therefore not included in GSA's 5-year plan for renovation.

Question. FTC Commissioners submitted unanimous testimony for the record stating that physically moving FTC headquarters operation would cost $70 to $83 million. Are these costs in line with typical moving costs for agencies? What other costs are associated with physically moving an agency?

Answer. Based on FTC's requirements to relocate headquarters components and associated special space (including their data center, technology laboratories, and hearing rooms), these costs are within the average range for agency moving costs.

The cost of physically moving an agency may include moving services, tenant fitouts, furniture, fixtures and equipment, information technology, and telephone needs. If the agency is moving from federally owned to leased space, the rent revenue flows to a third-party lessor rather than another Government agency. Finally, there may be additional costs if the moving agency is displacing a current or intended occupant as a result of the move.

Question. GAO, Congressional Budget Office, and OMB have found that it is more cost-effective to house agencies in federally owned space rather than leased space. Does GSA concur with this assessment?

Answer. Yes. Ideally, GSA would use Federal construction to meet all long-term Federal agency space needs, as leasing is the most expensive form of space acquisition for long-term requirements. GSA relies on the FBF to operate, maintain, and reinvest in all of its owned assets in the Federal inventory, to meet all current lease commitments, and to fund the acquisition of new leased or owned assets. Funds to acquire new assets for emerging Federal agency space requirements are limited to

the FBF resources that remain available after GSA meets all existing commitments for its owned and leased assets. The long-term cost advantages of ownership are preferable to leasing.

Question. If the FTC headquarters building is given to the National Gallery of Art, is there vacant federally owned space for the FTC to occupy, or, would GSA be forced to move the agency into leased space? Would this impose an increased cost on the taxpayer?

Answer. There is no vacant federally owned space available and suitable for housing FTC. In order to accommodate FTC in Federal space, another Federal agency would be forced to move out of the space, and this would be a significant increase in the cost to taxpayers.

Question. Given these findings, what does GSA believe is the best use for the FTC headquarters building?

Answer. GSA believes the taxpayer is best served by maintaining the FTC headquarters' current location. A forced move of FTC would increase the net amount of Government leased space and incur relocation costs and rent, both of which would occur if the building was given to a quasi-governmental entity such as the National Gallery of Art.

Additionally, whenever a federally owned property is transferred to a quasi-Governmental entity, existing laws and regulations require that entity to compensate the Federal Government for the full value of the property involved. In this instance, the value of the FTC headquarters' current location is $92.8 million. Thus the Federal Government risks the potential loss of the building, plus relocation expenses and dislocation costs, if any.

Given the overall negative impact to the American taxpayer, the administration opposes proposed legislation that would direct the transfer of the FTC headquarters.

FISCAL YEAR 2013 BUDGET FOR THE FEDERAL BUILDINGS FUND

Question. Your request for rental of space is a $338.4 million or a 6.5-percent increase. What will you do if forced to be on a continuing resolution of significant duration?

Answer. Typically, obligations for rental of space are higher in the second half of the fiscal year as leases are renewed. Over the last 4 years, obligations through March have only amounted to 47.7 percent of the annual obligations. Unobligated balances and recoveries of prior year obligations, along with the timing of the obligations will allow the Rental of Space account to operate for several months while on a continuing resolution.

Question. Last year, you requested almost $470 million for seven construction projects and this year, you are requesting $56 million for two acquisition (building purchase) projects. Does this represent a shift in your thinking?

Answer. GSA has proposed a responsible budget reflective of the current budget climate. We are prioritizing our existing financial obligations and the most critical and exigent investment needs in our inventory. While there remain additional valuable investments in consolidations like the acquisition of the currently leased buildings in Martinsburg, West Virginia, and Riverdale, Maryland, we must acknowledge the reality of the budget climate.

Question. How much funding do you expect to save with the acquisition of these buildings?

Answer. Purchasing the two buildings at Martinsburg, West Virginia, and Riverdale, Maryland, will eliminate costly lease obligations and result in millions in out year cost avoidance to the Government. The purchase of Riverdale alone could save the Federal Government more than $10 million in annual rent. For Martinsburg, the Congress authorized the appropriations for acquisition, through an existing purchase option, of this building as part of the fiscal year 2011 Capital Investment and Leasing Program. GSA has continued to lease the building and since fiscal year 2011 has spent more than $6 million in rental payments. The current lease expires in 2015, and if it is allowed to expire GSA will lose the purchase option. If GSA is required to extend the lease versus purchasing the building it is anticipated that the rental rate for continued occupancy will be as much as $6 million, or approximately double the current rent rate.

Question. In a departure from your typical requests for major Federal building repair projects, instead, this year you are requesting $123 million for "Exigent Needs" at 16 Federal buildings. Can you give us a few examples of the highest-priority and most-critical needs?

Answer. GSA considers all of the projects requested in the fiscal year 2013 Exigent Needs program to be of high priority and a critical need. GSA is requesting a limited amount of funding to support exigent need projects in 20 Federal buildings

to repair and update critical building and safety systems including elevators; fire and life-safety, electrical, and heating and ventilation systems; and to repair structural deficiencies.

The program addresses such essential work items as fire alarm system replacements on antiquated and irreparable systems that could jeopardize the safety of occupants and the building if left unaddressed. The program also intends to secure the façade and parking structure at two facilities that could pose hazards to building occupants and the general public if unrepaired, and remove hazardous materials at two other locations. Upgrades and repairs to electrical and elevator systems are designed to ensure continued operations of several Government-owned facilities and prevent disruption to agency missions and service to the American taxpayer.

Question. Do you expect that these types of acquisition and repair projects will become a trend in the short-term (in lieu of construction and major repair projects)?

Answer. GSA will continue to assess and prioritize the conditions and needs of our assets, as well as the needs of our Federal tenant agencies. We will work with OMB to discuss these needs in relation to competing priorities from other executive branch agencies. GSA's budget requests for FBF obligational authority will reflect efforts to balance our needs with those of other agencies within the overall Federal budget framework.

COST-CUTTING MEASURES

Buyouts

Question. Of the buyouts GSA is offering, what percentage of employees do you believe will accept them and what will be the effect on the agency?

Answer. GSA implemented a buyout program in March 2012 with an 18-percent take rate. GSA is considering additional requests for Voluntary Early Retirement Authority/Voluntary Separation Incentive Payment authority. If that authority is granted, GSA expects the take rate to be in the same 18-percent range. The agency will be able to reduce the workforce commensurate with the decline in the workload. Also, where the nature of the work has shifted and requires new skills due to process improvements, technology and changing business delivery models, GSA intends to recruit and hire people with the skills required to accomplish the mission.

Question. How will you avoid or mitigate the loss of knowledge when workforce reductions occur?

Answer. The buyout is targeted and focused on specific organizational components or occupations across the enterprise. GSA balanced the need to acquire different skills with the need to avoid or mitigate the loss of knowledge by offering buyouts to a percentage of the organization/population, not the organization/population as a whole.

Effort To Streamline Acquisitions and Reduce Costs

Question. In 2001, OMB established a Governmentwide initiative, to be carried out by GSA, to bring together different acquisition data systems in a unified and fully integrated manner. This effort, called the Integrated Acquisition Environment (IAE), will enable Federal agencies to share data and make informed decisions, make it easier for contractors to do business with the Government, and result in cost savings to the taxpayer. In 2008, GSA began consolidating its own portfolio of 10 stove-piped systems with different contractors into one integrated system called the System for Award Management (SAM), under IAE.

GSA has requested various levels of funding for the past 3 years for IAE.[2] While some costs have increased due to lack of funding in fiscal year 2012, since 2009, development costs for the System for Award Management have increased significantly. Why is this?

Answer. The SAM program encompasses a range of activities beyond just the specific development of the SAM application itself. These activities include requirements definition, architecture and technical design, consolidation of help desk support, transition planning, coordination, and execution for the legacy IAE systems, interface design, and associated support services.

The projected development costs remain substantially the same; however, the overall program costs have increased. For example, GSA has needed to expand the scope and level of support services to meet the needs of the Federal grants and loans communities and incorporate new requirements that were not anticipated at the onset of the SAM planning and costs have increased as a result of needing to incorporate changes to the Federal Acquisition Regulations (FAR) and other legisla-

[2] Fiscal year 2013 request of $21 million; fiscal year 2012 request of $38 million (received zero); and fiscal year 2011 request of $15 million (received $7 million).

tive changes. Funding limitations have also delayed GSA's ability to meet the originally scheduled objectives, which has resulted in the need to retain contract support longer than anticipated for our legacy systems, as well as for SAM program management and integration support. In addition, several contracts were inflexibly structured and payments for services were not well-aligned to the actual work being performed and delivered. GSA is presently taking corrective action to address this.

Question. Do you believe that your current acquisition strategy is the most cost-effective alternative or have you reassessed your plans—where does this stand?

Answer. GSA is actively reassessing its plans, including the acquisition strategy. A GSA conducted "TechStat" to review the current project management and governance structure to determine what additional oversight or change in direction might be needed, in light of the GAO findings. The TechStat validated the findings of the GAO and identified gaps in governance. As a result, GSA established an Integrated Project Team (IPT), comprised of technical, legal, program, and acquisition experts, to assess and ensure a more comprehensive, objective, and transparent understanding of current needs and challenges and to develop options and recommendations on the best way to move ahead. The IPT is in the process of further assessing program and project management, the SAM architecture, performance reporting, cost drivers and corresponding budget requirements, and other control processes.

GSA management is committed to ensuring improved overall management of IAE/SAM. The objective is to develop a new executable vision of IAE/SAM that comprehensively addresses governance, business, technology, program and project management, contracting, and funding requirements.

Question. While the subcommittee is supportive of initiatives that will enable agencies to share data, make it easier to conduct business with the Federal Government, and save taxpayer dollars, there is often an upfront cost as well as annual maintenance costs, as is the case here. You are requesting $21 million, but apparently, we need to fund all of it—it can't be broken into smaller funding amounts?

Answer. The amount of funding that GSA receives directly impacts the schedule and scope of continuing to implement SAM, as well as GSA's ability to retire the legacy systems associated with the functionality that is incorporated into SAM. (For example, Phase One of SAM is focused on "Entity Management" functionality and, once in production, will allow GSA to decommission the Central Contractor Registration system, the Online Representations and Certifications Application system, and the Excluded Parties List System).

That said, GSA is prepared to implement SAM in phases and revise its project schedules as necessary. However, implementing SAM in phases will extend the amount of time that GSA must continue to maintain parallel legacy. Operations and support services for the remaining IAE systems. In addition to increasing costs over the long-term, a phased implementation of SAM would:

—result in the need to revise acquisition plans;
—hamper GSA's ability to readily and more cost-effectively incorporate legislative and FAR changes;
—negatively impact the acquisition workforce's ability to efficiently perform their duties due to the need to access multiple systems; and
—limit how quickly we can move forward on improving data quality and transparency objectives.

CIVILIAN PROPERTY REALIGNMENT BOARD

Question. The administration has proposed an independent entity—the Civilian Property Realignment Board, modeled after the Base Realignment and Closure (BRAC) process—which would sell unneeded Federal property in a streamlined manner. The funding requested for the Board and the Revolving Fund totals $57 million for fiscal year 2013. The House has passed two bills relating to Federal real property disposal and the Senate has introduced a bill on the topic. None of these matches exactly the administration's proposal. What is GSA's view of these various bills (please discuss each one)?

Answer. GSA supports the administration's proposal, which addresses the key challenges that exist in the current process and should streamline and accelerate the disposal process. With respect to the current bills being discussed in the Congress, GSA supports legislation that provides additional realty tools and incentives that encourage sound management of real estate portfolios. GSA defers to OMB to address the administration's position on the various bills drafted.

Question. What are the safeguards that must be maintained if an expedited disposal process is authorized?

Answer. There are four important safeguards that must be maintained as part of the development of an expedited disposal process:

—A process to ensure that disposals are authorized as a consolidated package, as opposed to one-by-one;
—Methods to evaluate which assets are mission-critical and which assets are not;
—Utilization of authorities, resources, and expertise available within the Federal Government to achieve asset repositioning objectives; and
—Incentives such as retention or reinvestment of proceeds from the sale of real estate assets for all landholding agencies to promote broader portfolio management.

Question. For several years, the figure of $15 billion in savings has been stated as the savings that could be achieved by ridding the Government's property inventory. Do you really believe that figure is still accurate?

Answer. From fiscal year 2005 to the end of fiscal year 2011, PBS has disposed of approximately 286 assets, consisting of more than 13 million rentable square feet of unneeded real estate. Proceeds from fiscal year 2005 to fiscal year 2011 were approximately $244 million. PBS estimates that through these disposals, the agency avoided approximately $298 million in reinvestment needs and liabilities during this time period.

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

Question. At a House Oversight and Government Reform Hearing on April 16, 2012, you testified: "Well, I think we definitely had a cultural problem in region 9. Probably tied to a leadership problem. But I can't say that I know enough—enough about General Services Administration (GSA) to say whether we do or do not have a cultural problem across the organization when it comes to these issues." In your testimony for this subcommittee you said, ". . . I am committed to renewing GSA's focus on its core mission: saving taxpayers' money by efficiently procuring supplies, services, and real estate, and effectively disposing of unneeded Government property."

The "Mission, Vision and Goals" of GSA, as listed on the Web site, use the word "green" three times and some variant of the word "sustainable" three times. However, the words "budget" and "cost" never appear, nor does any variant of the word "spending". The word "waste" appears, but in the context of environmental waste, not wasted tax dollars. There are passing mentions of efficiency, but it is unclear if this refers to the environment or efficient use of tax dollars.

Do you believe the failure of the "Mission, Vision, and Goals" of the GSA to clearly make cost efficiency or low spending the top priority is indicative of a broader "cultural problem" or "leadership failure"? I recommend that you begin at the top, and rewrite your "Mission, Vision, and Goals" statement so that cost efficiency is your top priority.

Answer. GSA is currently conducting a top-to-bottom review of our operations and goals with the objectives of streamlining the way we do our business, saving taxpayer dollars, and ensuring the most-efficient delivery of services to our customer agencies and American citizens. We are continuing to pursue every initiative necessary to restore the trust of the American taxpayer.

Question. In the wake of the scandal surrounding the 2010 Western Regions Conference (WRC), you canceled all GSA conferences, creating fairly substantial cost savings. Why were these conferences approved in the first place if they were non-essential enough to be canceled and could create substantial cost-savings?

Answer. As part of the top-to-bottom review of GSA operations, it was determined that all upcoming conferences should be reviewed in light of new controls over conferences and travel. Many, but not all, previously scheduled conferences and meetings were cancelled as a result of this review, saving $995,000. The conferences that were cancelled either did not meet the new standards or were cancelled because we did not have adequate time to conduct the review. All upcoming conferences must meet the new requirements which became effective on April 15, 2012.

Question. What is the oversight protocol for compliance with the terms of Blanket Purchase Agreements (BPAs)? Specifically, what actions does GSA take to ensure that purchases from vendors under BPAs are made at prices matching the bid prices? What protocol is followed if a payment to a BPA vendor substantially in excess of the bid price is reported to the GSA? What, if any, enforcement measures have been taken against BPA vendors whom have charged in excess of their bid prices?

Answer. GSA has risk-management controls in place to ensure that the prices contractors propose when establishing BPAs or placing task and delivery orders are at or below the GSA Multiple Award Schedule (MAS) price. Specifically, Acquisition Management has the Supplier Management Division which has approximately 100

Industrial Operation Analysts (IOAs) who perform contract-compliance reviews of MAS contracts every 2–3 years through the life of the contract. One of the areas the IOAs review for compliance is adherence to GSA schedule pricing. These reviews are performed by taking a sample of the BPA or order information. Review findings are documented in a report that is sent to the Contracting Officer (CO) and Administrative Contracting Officer (ACO) to take action, if necessary as appropriate. The possible actions the CO or ACO can take in response to findings of mischarging could include requesting a postaward audit from the GSA Office of Inspector General (OIG), requiring the vendor to perform a self-audit and develop an action plan to take corrective action measure, and seeking recoveries of overcharges and sending it back to customer agencies or the Treasury.

As an example, GSA recently issued an instructional letter (IL 2011–07) entitled "Procedures for Reviewing Contractor Compliance with prompt Payment Discount (PPD) Terms on Federal Supply Schedules (FSS) contracts". This IL specifically addresses noncompliance with prompt payment discount terms as a result of a GSA audit. The same process will be followed for overcharges to the GSA schedule price.

Question. In a March report, OIG found that some cost-reimbursement contracts entered into by GSA were not in compliance with regulations and that such contracts provide no incentive for contractors to control costs. What does GSA estimate the excess cost of such contracts have been over the past several years? What steps is GSA taking to transition to more cost-effective and regulation compliant contracting processes?

Answer. As a result of the OIG findings, GSA will continue to take steps to ensure that proper incentives are in place to control costs for current and future contracts. The OIG audit did not identify any estimate of excess costs for these types of contracts.

In addition, the July 2009 Office of Management and Budget (OMB) Memorandum M–09–25, "Improving Government Acquisition" and the Office of Federal Procurement Policy's (OFPP) October 27, 2009 guidance, "Increasing Competition and Structuring Contracts for the Best Results" called for heightened management attention on agency use of various types of high-risk contracts and provided strategies for reducing their use. OFPP defined high-risk contracts as those that are awarded noncompetitively, received only one bid in response to a competitive solicitation, are cost-reimbursement awards, and/or are time and material labor awards.

To date, GSA has taken a number of actions to comply with the OMB and OFPP guidance and ensure more cost-effective and regulation-compliant contracting processes, which include:

—Developed a Governmentwide working group team (AcqStat) comprised of representatives from GSA's Office of Governmentwide Policy, Public Buildings Service (PBS) and Federal Acquisition Service (FAS), which has been meeting regularly since fiscal year 2010.

—Conducted quarterly Federal Procurement Data System reporting, which is reviewed by FAS and PBS and discusses high-risk reduction and any specific areas that require attention or training emphasis.

—Established FAS and PBS action plans, which are updated based on quarterly reviews.

—Developed a yearly Competition Advocate report, which summarizes a variety of best practices, lessons learned, and necessary actions.

—Issued an Acquisition Alert (2012–01), which increases awareness among the Acquisition community.

—Developed a training webinar for the acquisition workforce.

—Continued review of high-risk action plans by the Procurement Management Review (PMR).

—Releasing an Acquisition Planning Wizard to aid execution of the acquisition planning process.

—Established a FAS "ask competition advocate" link that allows and encourages contracting professionals to ask questions related to increasing competition and reducing high risk.

—Issued a FAS IL (July 27, 2011), regarding the reduction of high-risk contracting. The instructional letter was intended to provide directions to acquisition personnel for adhering to the new FAR rule on managing cost reimbursement activities—to include requiring documentation on why a contract type was selected, how it will manage and mitigate risk, whether consideration was given to firm-fixed price, and sets rules for appropriate approval and staffing of the contract.

—Continued training to the workforce on high-risk contracting through FAS Acquisition Industry Days.

—Implemented a BPA for strategic sourcing aimed to provide efficiency, lower costs, and reduced environmental impact, while improving competition and reducing high-risk contracting.
—Continued emphasis on proper acquisition planning as outlined in the (OFPP Myth Busting memorandum), to include:
—early engagement with industry;
—development of sound requirements packages;
—ensuring sufficient time for proposals/quote responses;
—challenging brand name specifications;
—limiting period of performance on sole-source/noncompetitive awards;
—encouraging industry days to communicate requirements; and,
—releasing requests for information and proposals, through GSA eBuy and FedBizOpps, as appropriate.

Question. I am encouraged to see that GSA has moved to dispose of excess Federal buildings, a step that will raise revenues and encourage more efficient use of high-cost buildings. What congressional actions could expedite the sale of excess buildings?

Answer. Based on our experience, we believe that a reform to real property asset management must address these central challenges:
—Incentivizing disposals by enabling agencies to realize the benefits of proceeds.
—Addressing the upfront costs associated with disposals and consolidations.
—Resolving competing stakeholder interests that can slow down or prevent good asset management decisions.

To address these challenges the President proposed a bill last year that would usher in a new approach to Federal real estate. The President's proposal would create an independent board of experts to identify opportunities to consolidate, reduce, and realign the Federal civilian real estate footprint as well as expedite the disposal of properties.

This proposal would utilize bundled recommendations, a fast-track congressional procedure, streamlined disposal and consolidation authorities, and a revolving fund replenished by proceeds to provide logistical and financial support to agencies in their disposal of high-value properties. It would serve as a comprehensive solution to key obstacles that hinder the Federal Government's progress on improving real estate management decisions. The proposal expands upon the June 2010 Presidential Memorandum that directed Federal civilian agencies to increase efforts to dispose of unneeded Federal real estate and to maximize the utilization of the current inventory to achieve billions in savings.

GSA supports the administration's goals and those of this subcommittee and other Members of Congress to dispose of unneeded Federal real property and streamline the current disposal process.

The administration's efforts anticipate working with the Congress to create a successful program, and GSA welcomes the efforts of this subcommittee and other Members of Congress to successfully reform and improve Federal real property management.

Question. According to OIG's report on the 2010 WRC, there were multiple violations of contracting regulations resulting in wasted taxpayer dollars. Given the GSA's central role in the procurement process for the Government as a whole, it is very troubling that oversight and controls did not prevent these violations, which included disclosing a competitor's proposal price to a favored contractor, contracting to a large business in violations of small-business set-asides and disclosing to a contractor GSA's maximum budget for 1 day of training, then agreeing to pay the contractor that amount.

What steps is GSA taking, both internally and Governmentwide, to ensure these types of violations do not happen going forward? Specifically, what changes are going to be made to improve contracting oversight, ensure access to contracts for small business and prevent overpayments?

Answer. Internally, GSA has taken corrective action to ensure these violations do not happen going forward. To improve contracting oversight, small business, and overpayment concerns GSA will take the following steps:
—Increase resources devoted to the PMR function to assess the effectiveness of oversight measures and to mandate corrective action where needed.
—Explore changes to the GSA Head of Contracting Activity structure.
—Provide refresher training to Heads of Contracting Activities on key roles and responsibilities.
—Conduct training on ethics and procurement integrity, conference planning, and contracting.
—Continue to encourage employees to report waste, fraud, and abuse.
—Redouble efforts to ensure that small-business set-aside protocols are followed.

—Realign management of Chief Financial Officer (CFO) regional functions to report to the GSA Central Office CFO to provide greater ability to detect and prevent improper payments.
—Centralizing oversight of GSA internal travel activities in the Office of Administration.

QUESTIONS SUBMITTED TO BRIAN D. MILLER

QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

WAS TRAINING TO ENHANCE JOB SKILLS CONDUCTED?

Question. Based on your year-long probe of this event, can you identify any specific seminars or sessions from the Western Regional Conference (WRC) that had the objective of enhancing job skills for the attendees?

Answer. We made the decision not to assess the quality or substance of the training seminars or sessions held at the WRC, but instead focused our investigation on the excessive costs and impermissible contracting actions associated with the planning and execution of the WRC.

IMPROPER CONTRACTING

Question. In your report, you describe the circumstances surrounding the execution of the original agreement with M Resort as the conference site. You state that, among the weaknesses, "the agreement was missing many clauses that statutes and regulations required to be included in contracts with the Federal Government." Can you elaborate on what particular necessary contract terms were omitted?

Answer. Our investigation revealed that the WRC event planner simply signed and returned the M Resort's standard-form contract as opposed to a Government standard-form contract, which would have included the Federal Acquisition Regulation (FAR 12.301) and the General Services Administration Acquisition Regulation (GSAR 512.301 and 552.212–71) clauses (or equivalents) required for the acquisition of commercial items by the Government. The original agreement with the M Resort also failed to include a clause that should per diem rates change for the selected site, the hotel will honor the Government's prevailing per diem rate. The inclusion of such a clause, while not required by the FAR, would be necessary to preserve the Government's interest, because, as GSA should be well aware the per diem rates are subject to change.

Question. What problems arise as a result of omitting required clauses?

Answer. These clauses are intended to protect the United States Government. For example, FAR 52.212–4, one of the required clauses, states the Government's rights under a termination for convenience, sets forth the terms of payment, and requires the contractor to keep its Central Contractor Registration entry up to date, which correspondingly binds the contractor to those representations. It does not appear that GSA needed to use these particular provisions. If, however, GSA had needed to terminate the contract, or had encountered a dispute regarding timely payment, it would have lacked the protection of these clauses. As you are aware, GSA did encounter problems with a change in the Government per diem rate. Had GSA included a clause to anticipate this problem, it might not have felt a need to increase catering in order to cover the "loss" to the M Resort.

Question. Were you able to determine whether omission of the required clauses was negligent or was it deliberate/intentional?

Answer. We do not have sufficient evidence to make a determination as to whether the omission of the required clauses and the use of the hotel's standard contract were negligent or willful.

Question. Based on your experience, was this omission an unusual aberration or have you detected any similar omissions and cited the GSA for them?

Answer. We are currently reviewing other conferences on a case-by-case basis and will examine whether these clauses have been omitted in other contracts with conference vendors.

NONCOMPLIANCE WITH FIRE SAFETY ACT

Question. You also explain that "Federal conferences may only be held at a hotel that is on FEMA's list of Fire Safety Act-approved accommodations." You note that the GSA conference site—the M Resort—is not on that list. While the requirement may be waived, you find no evidence in the contract documents indicating that a waiver was granted. Does the curriculum for contracting officers include a discussion of this? If not, shouldn't it?

Answer. The provision of the Fire Safety Act which mandates that Federal conferences be held at a hotel that is on FEMA 's list of approved accommodations is in section 301–11.11 of the Federal Travel Regulation. We do not believe this requirement is discussed in the curriculum for contracting officers. We also believe, however, that this provision should be known to contracting officers and event planners responsible for selecting a hotel.

PROBLEMS AT PUBLIC BUILDINGS SERVICE—SYSTEMIC?

Question. Clearly, there has there been a culture of excessiveness and lax accountability within the Public Buildings Service (PBS) Region 9, and perhaps even in some of the other regions. To what degree might this be a problem in other parts of GSA?

Answer. Since the release of the WRC report, our Office of Investigations has seen a noteworthy increase in hotline tips and complaints, and our agents are diligently looking into these. Our office is also looking into other conferences. We would not want to make generalizations about other regions or components without the necessary supporting facts. We do note, however, that systemic changes can be put into place to eliminate opportunities for excessive, impermissible, and unchecked spending in the future. We have proposed that the Chief Financial Officer's (CFO) office be centralized to assure that the CFO has direct authority over all regional and service budget offices as well as visibility into all agency budgeting, down to the dollar level. In his testimony before the Subcommittee on Financial Services and General Government, Acting Administrator Daniel M. Tangherlini stated his intention to pursue these reforms. We also believe that the agency should separate the contracting function from the program function—a contracting officer should not report to the program officer. We believe that, if implemented, these steps could produce the necessary checks and balances to ensure top-down accountability in GSA's financial operations.

"HATS OFF" PROGRAM—EMPLOYEE REWARDS PROGRAM

Question. PBS Region 9 developed an awards program store known as the "Hats Off Store" in 2001. The Hats Off program initially maintained items of nominal value such as mugs, mouse pads, and backpacks, labeled with GSA logos or insignia. However, over time, high-value items such as iPods, digital cameras, GPS devices, and other electronics were introduced into the program. The budget for this program went from $45,000 in fiscal year 2007 to $212,000 in fiscal year 2009 and the Inspector General found significant control weaknesses, plus the loss of $20,000 worth of Apple iPods. What began with nominal reward items and gift cards turned into high-value items, and store and restaurant gift cards. Did anyone other than in region 9 have oversight over this program?

Answer. Our investigation identified a serious lack of oversight over this program. In fact, our major concerns with the Hats Off program were the lack of oversight of the inventory and on the exchange of awards between employees. The abuse of the Hats Off employee award store is another example of the importance of a centralized CFO. If GSA's CFO has greater visibility into regional spending, down to the dollar level, these types of abuses might not occur as easily.

Question. What did you find with regard to the employees who received the awards—how many and what types benefited from the program?

Answer. We identified many problems with the exchange of awards. First of all, employees appeared to "swap" awards, meaning that within minutes of one employee receiving award cards, the employee returns the same or nearly the same number of award cards back to the original employee. This occurred no fewer than 300 times. Second, we found that on at least one occasion, a supervisor accepted an award from a subordinate. Additionally, we found that some of the top receivers of awards were actually involved with the awards store administration.

Question. Did you examine what types of actions employees performed to receive awards?

Answer. Exhibit 9 of our Hats Off Report of Investigation lists some of the reasons or justifications for points-swapping, including "taking charge", "promoting fun in the workplace", and "thrilling the customer". We question the value and substance of these justifications, particularly because of the "swapping" patterns we found between employees.

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

Question. At a House Oversight and Government Reform Hearing on April 16, 2012, Acting Administrator Daniel M. Tangherlini testified: "Well, I think we definitely had a cultural problem in region 9. Probably tied to a leadership problem. But I can't say that I know enough—enough about GSA to say whether we do or do not have a cultural problem across the organization when it comes to these issues."

In your experience as Inspector General at the General Services Administration (GSA), and in light of the events surrounding the 2010 Western Regions Conference (WRC), would you say the GSA has a cultural problem across the organization? Do you believe any such problems are tied to a leadership problem?

Answer. We hesitate to make generalizations about other regions or components without the necessary supporting facts and sufficient evidence. We do note, however, that systemic changes can be put into place to eliminate the opportunities for excessive, impermissible, and unchecked spending in the future that were abused by some in region 9. We have proposed that the Chief Financial Officer's (CFO) office be centralized to assure that the CFO has direct authority over all regional and service budget offices as well as visibility into all agency budgeting, down to the dollar level. In his testimony before the Subcommittee on Financial Services and General Government, Acting Administrator Daniel M. Tangherlini stated his intention to pursue these reforms. We believe, if implemented, these steps could produce the necessary checks and balances to ensure top-down accountability in GSA's financial operations.

Question. In your testimony, you mentioned numerous investigations of Federal property managers and contractors taking bribes and kickbacks under the American Recovery and Reinvestment Act (ARRA), specifically saying, "My own office has issued numerous audit reports relating to GSA's construction and renovation contracts under the American Recovery and Reinvestment Act. We discovered and investigated eleven Federal property managers and contractors taking bribes and kickbacks." Did the rapid manner in which projects under ARRA were selected and funded increase the likelihood of malfeasance and corrupt practices?

Answer. ARRA provided GSA with $5.5 billion to convert Federal buildings into "High Performance Green Buildings" as well as to construct Federal buildings, courthouses, and land ports of entry. As you know, ARRA mandated that $5 billion of the funds be obligated by the end of fiscal year 2010, with the remaining $0.5 billion obligated by the end of fiscal year 2011. This short timeframe strained the capabilities of project teams, even with the addition of contract support staff, and forced the acceleration of planning and executing multiple large-scale projects simultaneously. This resulted in contracting irregularities, Federal Acquisition Regulation and Competition in Contracting Act (CICA) requirement violations, and improper negotiations. Our Offices of Audits and Investigations are currently conducting oversight activities related to ARRA-funded projects. We anticipate these activities will continue for the next several fiscal years.

Question. In your testimony you mentioned, "The core mission of GSA is to provide low-cost goods and services. When GSA wastes its own money, how can other agencies trust it to handle the taxpayer dollars given to them?" Do you think that GSA's current statement of "Mission, Vision, and Goals" is consistent with a core mission of providing low-cost goods and services or does it provide greater emphasis on other priorities? Do you think this is indicative of a larger culture of departing from cost efficiency as a central mission and instead focusing on parochial or political priorities?

Answer. We believe that GSA should get back to basics and align its programmatic activities and strategic goals with the core mission of providing low-cost goods and services, as stated by the Acting Administrator. During our WRC investigation, we found that many agency contracting personnel did not fully understand fiscal law or the Federal Travel Regulation, or were unaware of the existence of agency policies that directly governed their daily work. We also believe that the accountability requirement associated with the Anti-Deficiency Act (ADA) should be applied to CICA. Currently, agencies that violate the ADA must "report immediately to the President and Congress", as well as the Comptroller General, the facts surrounding each violation and the actions taken to remedy the program (31 U.S.C. 1517(b)). If agencies fail to "obtain full and open competition through the use of competitive procedures" as mandated by CICA, they should be held to the same accountability standards for violating the ADA. An emphasis on contracting knowledge and the implementation of these accountability standards could achieve greater cost savings. Additionally, GSA must separate its contracting function from its program functions—a contracting officer should not report to the program officer. Fur-

thermore, as mentioned earlier, centralizing the CFO's office could produce the necessary checks and balances to ensure top-down accountability in GSA's financial operations. These steps, and a continued emphasis by the Acting Administrator on cost savings, would help bring GSA back to its core mission.

SUBCOMMITTEE RECESS

Senator DURBIN. At this point, the hearing stands recessed. Thank you.

[Whereupon, at 3:23 p.m., Wednesday, April 18, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

MATERIAL SUBMITTED SUBSEQUENT TO THE HEARING

[CLERK'S NOTE.—The following testimony was received subsequent to the hearing for inclusion in the record.]

ADDENDUM ON AGENCY IMPROVEMENTS

To build on a familiar General Services Administration (GSA) theme as emphasized by previous Administrators, the Administration needs to become "One GSA." One GSA, with top-to-bottom control and accountability should replace a system of diffused "matrix" management that has led to fiefdoms and feudal kingdoms. No Administrator should have to plead ignorance or weakness when the public trust is being abused. If GSA's senior leaders are going to be held accountable for the work of the agency—and they will be as recent events show—leadership must have the authority and tools for carrying out their responsibility. As it is, with senior regional leadership having two supervisors, accountability becomes divided and diffused. The supervisory matrix really becomes a sieve through which oversight is lost. This is the problem with a weak Chief Financial Officer's (CFO) structure. One GSA accountable to the Administrator, as the Western Regions Conference failures attest, also requires One CFO. When financial responsibilities are so dispersed they fall beyond the control of the CFO, there is no CFO—and the Administrator is deprived of one of an agency head's lead reins to control spending and provide leadership over agency programs. A theme of a unified GSA leads to a unified CFO and a unified CIO. Diffused information systems lead to redundancies, cost, and barriers that are inimical to the concept of accountability and transparency.

CENTRALIZE PROGRAM AND BUDGET MANAGEMENT

GSA's CFO testimony before the Subcommittee on Economic Development, Public Buildings and Emergency Management of the House Committee on Transportation and Infrastructure indicated that the CFO is essentially a figurehead.

The CFO should have direct authority over all regional and service budget offices (and should be the only employee with the title "CFO"). The CFO should have visibility into all agency budgeting, down to the dollar level.

CENTRALIZE AGENCY INFORMATION MANAGEMENT

Likewise, the Office of the Chief Information Officer (OCIO) should have control over all agency information systems. Currently, it is not clear that the OCIO is even aware of the full list of the agency information systems that exist. The OCIO should have final authority to access and manage all systems.

Despite the Inspector General Act's requirement that the Office of Inspector General (OIG) is authorized "to have access to all records" of the agency that relate to the OIG's responsibilities, currently requests by the OIG for read-only access to agency information systems are often met with extraordinary delays (sometimes more than a year) or are never fulfilled. GSA systems "owners" who fail to provide access to the OIG within 14 days should be required to make an explanation of that failure to the Administrator, with a copy to the Inspector General, by the end of the 14-day period.

GET BACK TO BASICS

As the Acting Administrator has stated, GSA needs to re-focus on its core missions—procurement and building operations. We found that many agency contracting personnel did not understand fiscal law or the Federal Travel Regulation, or were unaware of the existence of agency policies that directly governed their daily work. This is unacceptable.

The agency must separate its contracting function from its program functions. That is, the Contracting Officer should not report to the program officer.

GET OUT OF THE "MATRIX"

As the former GSA Administrator testified, GSA employee supervision is not presently linear; it is a "matrix". Because many high-level personnel report to two supervisors, each supervisor can deflect supervisory responsibility onto the other, or claim to. The matrix is really a sieve.

REQUIRE PROCUREMENT ACCOUNTABILITY

Currently, agencies that violate the Anti-Deficiency Act must "report immediately to the President and Congress", as well as the Comptroller General, the facts surrounding each violation and the actions taken to remedy the problem (31 U.S.C. 1517(b)). This same accountability requirement should be added to the Competition in Contracting Act, which requires that agencies "obtain full and open competition through the use of competitive procedures in accordance with the requirements of (CICA) and the Federal Acquisition Regulation." (41 U.S.C. 3301(a)(1)). This accountability would indicate that the agency takes seriously the concerns of businesses, particularly small businesses, that have not received a full and fair opportunity to compete for Federal contracts.

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2013

WEDNESDAY, MAY 9, 2012

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

The subcommittee met at 3:48 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin, Moran, and Lautenberg.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF JULIUS GENACHOWSKI, CHAIRMAN

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. My apologies. What can I say? There is no excuse. I'm sorry. Let me just put my opening statement in the record.

Thanks to those for attending this hearing of the Appropriations Subcommittee on Financial Services and General Government. Thank you, Senator Moran. Thank you, Senator Lautenberg, and Chairman of the Federal Communications Commission (FCC), Julius Genachowski.

And, let me at this point, defer to Senator Moran. I'll put my opening statement in the record.

STATEMENT OF SENATOR JERRY MORAN

Senator MORAN. Mr. Chairman, I'll just have a brief opening statement. I want to do that because I requested that you have this hearing, and I appreciate your honoring my request.

This is the first time that the FCC Chairman has appeared before this subcommittee since 2002, and incredible advancements in technology and communications have occurred in the past decade. And I'm thankful to have this opportunity to explore some of those topics with the Chairman.

As we all know, our country faces many challenges, the greatest of which is we have a crippling debt. In my view, there are two steps to get our fiscal house in order, and the Congress must make some responsible decisions to rein in Government spending. And, of course, in the appropriations process, we have that opportunity.

But, second, we need to grow our economy, and because when more people are working, more revenue is generated. And one of

the best ways we can do that is to encourage entrepreneurship and certainly our Nation's communications policies are critical to creating a platform for that entrepreneurial innovation that grows the economy.

Economic growth is central to both addressing our debt and providing our children with a bright future. One of the fastest growing sectors of our economy is technology, and much of that growth is dependent upon advanced telecommunications infrastructure.

I recently met a former National Aeronautics and Space Administration (NASA) engineer, now in the technological world, who described the principles of getting a rocket to launch or an airplane to fly. And he described two forces—thrust and drag.

And we often spend lots of time in the Congress talking about thrust, how to make things happen, and spend more money, create programs. But, it's also important that we eliminate the drag, and our regulatory environment has a lot to do with how much drag that rocket or that airplane experiences.

So much of the focus of Government and the Congress is about generating thrust. I want to make sure that we're reducing all the drag that we can and our economy can grow and people can earn a living and our children can experience the American dream.

So I look forward to exploring a number of issues with the Chairman. I'm very interested in spectrum, and I appreciate you, Mr. Chairman, coming to my office and having a conversation about that, as well as a recent FCC order related to broadband deployment and the Universal Service Fund (USF).

And I have some concerns about the consequences of that order on particularly small and rural providers of broadband services.

So, Mr. Chairman, I thank you for the opportunity that we have to learn more about these topics.

Senator DURBIN. Thank you, Senator Moran. Senator Lautenberg, do you have an opening statement?

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Yes, and I'll try to be short, Mr. Chairman.

I am pleased to see Chairman Genachowski here. He was in New Jersey a few weeks ago at a technology conference on apps making at one of our universities, and we learned something. That therein lies a major area of interest in innovation and that is with the "Apps".

And so we went through innovation, a cornerstone of our economic development, and I introduced new legislation that's going to invest in America's technology innovators.

The American Innovates Act will create a bank to provide capital for researchers and companies to turn their discovery into marketable products. But we will also make sure that our science and technology students get practical training in areas like business development.

And we think that this bill will help support and expand our Nation's innovation economy in which the FCC plays an important role. FCC also plays a vital part as one of the guardians of our democracy.

Increasingly, fewer and fewer companies control what Americans see and hear in the media, and one of those companies was re-

cently found to have misled the British Parliament in order to cover up its wrongdoing.

So it's never been more important to have a strong FCC acting in the public interest to make sure that broadcasters are held to high standards, are held accountable to their communities they are supposed to serve.

And as Chairman Genachowski knows, local service has been an ongoing problem in New Jersey, and I look forward to discussing this issue further. And, we also want to help provide access to communications technology and the opportunity that comes with it.

But it must be done efficiently. And I'm pleased to see the FCC moving the USF reforms. As the FCC updates the funds for the digital age, one of the agency's primary goals would be bringing relief to States like New Jersey where consumers contribute significantly more than we get back.

And I applaud FCC's work on this important issue. I look forward to seeing additional reforms. And, finally, after years of hard work, the Congress has authorized the FCC to devote resources and spectrum to the creation of a public safety network. The 9/11 terrorist attack demonstrated the need to provide our police, firefighters, and rescue personnel with dedicated lines of communication.

And I look forward to hearing more about FCC's progress in ensuring that our first responders are our first priority. So I thank Chairman Genachowski for being here, and I look forward to hearing his testimony.

Thanks, Mr. Chairman.

Senator DURBIN. Thank you, Senator Lautenberg.

Once again, Mr. Chairman, and all those in the audience, I apologize for my tardiness. Please proceed.

SUMMARY STATEMENT OF JULIUS GENACHOWSKI

Chairman GENACHOWSKI. Chairman Durbin, thank you, Ranking Member Moran, and Senator Lautenberg. I appreciate this opportunity to be the first FCC Chairman to appear before you since 2002.

I'm proud to say that few, if any, Federal agencies deliver a higher return on investment than the FCC. Spectrum auctions have raised more than $50 billion for the U.S. Treasury in the past two decades.

And economists place the economic value created by FCC auctions as being about 10 times that number, about $500 billion in economic value.

Shortly after FCC delivered its budget, the Congress authorized the Commission to create, develop, and conduct voluntary incentive auctions—a new market-based mechanism to repurpose underutilized spectrum for flexible use such as mobile broadband.

Incentive auctions are an opportunity to unleash vitally needed additional spectrum for mobile broadband and create tremendous value for American consumers while raising billions of dollars for deficit reduction.

It's a key part of the puzzle to unleashing the mobile broadband opportunity. And, it's a privilege for the FCC to be entrusted with

this responsibility which of course will require a great deal of work and effort by the agency.

Incentive auctions are unprecedented. The United States will be the first country in the world to conduct them. It will be a complex task affecting major parts of our economy and involving many challenging questions of economics and engineering.

FCC staff is hard at work planning for the challenges ahead. We recently announced steps to begin implementing the law which are outlined in my written statement.

Incentive auctions are part of our overall agenda to unleash the opportunities of modern communications technology, to benefit our economy, create jobs, bring opportunity to all Americans.

Just yesterday at the wireless industries annual conference I presented FCC's mobile action plan. This plan will help ensure that America maintains the position it has now regained as the global leader in mobile.

It includes incentive auctions, but recognizes that we must have an all-of-the-above strategy that includes removing barriers to spectrum use, harnessing emerging technologies like small cells and accelerating spectrum sharing between Government and commercial users.

On the latter, I was pleased to announce that we're moving ahead in partnership with National Telecommunications and Information Administration (NTIA) at the Commerce Department to test spectrum sharing between commercial and Government users in the 1755 to 1780 megahertz band, a band that's of particular interest to commercial carriers.

This work reflects FCC's focus on broadband communications, wired and wireless. In 2009, we developed America's first national broadband plan which identified key challenges and opportunities throughout the broadband ecosystem and proposed solutions to ensure that the United States lead the world in broadband access and innovation.

In fact, one of those proposed solutions was incentive auctions. We've been working hard on implementing the broadband plan. Together with my colleagues at FCC, we've made tremendous progress in the past 3 years taking many steps to unleash investment, innovation, and job creation.

These include freeing spectrum for both licensed and unlicensed use, modernizing and reforming major programs like the USF and removing barriers to broadband buildout. Indeed, investment, job creation and innovation are up across the broadband economy.

These metrics are up both when looking at the broadband applications and services and when looking at broadband providers and networks.

Our work is helping create jobs across the country, from workers constructing broadband infrastructure, to agents at new broadband enabled customer contact centers, to employees of small businesses using broadband to expand to new markets, to engineers and other innovators inventing the new digital future.

And, in the past 3 years, the United States has regained global leadership in mobile innovation. American-designed apps and services are being adopted faster than any other. Our mobile innovation economy has become the envy of the world.

We're also now ahead of the world in deploying 4G mobile broadbanded scale with 64 percent of the world's 4G LTE subscribers, the next generation of mobile broadband, here in the United States.

These next-generation networks are projected to add more than $150 billion in gross domestic product growth over the next 4 years, creating an estimated 770,000 new American jobs.

The health of our broadband economy would be enhanced by closing broadband gaps. My written statement highlights FCC's progress addressing the broadband deployment and adoption gaps.

Public safety, as was mentioned, is a core mission of FCC, and the agency is working to harness the power of communications to make our communities safer.

As part of our longstanding role in helping ensure the security and reliability of our communications networks, an FCC-led panel recently issued a series of recommendations to address three critical threats to our cyber security: botnets; Internet route hijacking; and domain name fraud.

Internet service providers serving roughly 90 percent of all U.S. broadband subscribers will implement these proposals. FCC also provides value by protecting and empowering consumers.

For example, smart phone theft is on the rise and poses a real threat to consumers. Last month, together with the wireless industry and law enforcement from around the country, we announced the launch of a new database that will allow consumers and carriers to disable stolen smart phones, dramatically reducing their value on the black market.

We've also made progress tackling consumer issues like bill shock and cramming, which are highlighted in my written statement. At the FCC, we're committed to smart, responsible Government, and we have taken steps to modernize our programs and insure that they are efficient and fiscally responsible, saving billions of dollars.

In addition to our programmatic reforms, we've also reviewed the agency's rules and processes asking tough questions to make sure FCC is operating efficiently and effectively.

In connection with this review, we've already eliminated dozens of outdated rules and five unnecessary data collections. We've identified two dozen more data collections for elimination, and we've done everything I've listed and more with the lowest number of full-time employees (FTEs) in 10 years.

Maximizing the ability of 21st century communications technology to deliver value to the American people, and doing so in a smart and responsible way. That's FCC's record in the past 3 years, and that's our plan for the year ahead as reflected in our fiscal year 2013 request in budget.

To implement our responsibilities under the Communications Act, the budget requested a 2 percent more than the previous year level from about $340 million to about $347 million, essentially flat adjusting for inflation.

As in previous years, this amount will be derived entirely from fee collections. The budget reflects savings in several areas and includes a few new initiatives, primarily, technology investments de-

signed to save money, and public safety investments aimed at saving lives.

The budget also provides a flat number of FTEs, despite increasing workloads in many areas.

PREPARED STATEMENT

In conclusion, the wired and wireless broadband sectors are critically important to our economy and global competitiveness. I look forward to working with the subcommittee on implementing the new incentive auction law and unleashing the opportunities of communication technology for our economy and the American people.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF JULIUS GENACHOWSKI

Chairman Durbin, Ranking Member Moran, and other members of the subcommittee, I appreciate this opportunity to appear before you on the Federal Communication Commission (FCC) fiscal year 2013 budget.

I'm proud to say that few, if any, Federal agencies deliver a higher return on investment than the FCC.

Spectrum auctions have raised more than $50 billion for the U.S. Treasury in the past two decades, and economists regard the economic value created by FCC auctions as being about 10 times that number, or $500 billion in value. FCC has conducted 80 auctions, granting more than 30,000 licenses. A few months ago, a group of 112 leading economists from across the ideological spectrum wrote, "The original simultaneous, multiple-round auction system implemented in 1994 was novel, but the FCC was able to implement the path-breaking auctions that were the basis for successful auctions around the world."

Shortly after FCC delivered its budget, the Congress authorized the Commission to create, develop, and conduct voluntary incentive auctions—a new market-based mechanism to repurpose spectrum for flexible use such as mobile broadband.

Incentive auctions are an opportunity to unleash vitally needed additional spectrum for mobile broadband and create tremendous value for American consumers, while raising billions of dollars for deficit reduction. It's a key part of the puzzle to unleashing the mobile broadband opportunity.

At FCC, we're focused on faithfully implementing this new legislation and maximizing the opportunities of the new law for our economy and all Americans.

It's a privilege for FCC to be entrusted with this responsibility, which of course will require a great deal of work and effort by FCC.

Incentive auctions are unprecedented. The United States will be the first country in the world to conduct them. It will be a multifaceted task affecting major parts of our economy, involving many challenging questions of economics and engineering.

FCC staff is analyzing the complex incentive auction law, assessing the challenges ahead, and last week we announced steps to begin implementing the law.

We will run a process that is open, inclusive, fact-based, and guided by economics and engineering. We have already formed an FCC incentive auctions task force that has brought in staff from across the Commission.

FCC's work will be assisted by world-leading experts, including some of the world's most distinguished auction-design experts.

The work of our task force and staff will feed into a robust public process, which will include webinars, workshops, public notices, and rulemaking proceedings.

In 2 days, FCC will take up its first policy action to put the law into effect—an order establishing a framework for broadcaster participation in a channel-sharing agreement with another station in conjunction with an incentive auction.

We are aiming for Notices of Proposed Rulemaking under the new law by the fall of this year.

Incentive auctions are part of our overall agenda to unleash the opportunities of modern communications technology to benefit our economy and all Americans.

We have focused the agency on broadband communications—wired and wireless. In 2009, we developed America's first National Broadband Plan, which identified key challenges and opportunities throughout the broadband ecosystem, and proposed solutions to ensure the United States leads the world in broadband infrastructure and innovation. In fact, one of those proposed solutions was incentive auctions.

Since the plan's release, we have been working on its implementation. Together with my colleagues at the FCC, we have made tremendous progress in the past 3 years, taking many steps to unleash investment, innovation, and job creation. These include freeing spectrum for both licensed and unlicensed use, modernizing and reforming major programs like the Universal Service Fund (USF), and removing barriers to broadband buildout.

And indeed, investment, job creation, and innovation are up across the broadband economy. These metrics are up both when looking at broadband applications and services, and when looking at broadband providers and networks.

In 2011, the U.S. information and communications technology sector grew three times faster than the overall economy. Broadband is helping create new jobs all across the country—and not just for engineers (although it's vitally important that we lead the world in engineering talent), but also for salespeople, construction workers, and small business owners increasingly using the Internet to boost sales and lower costs.

The apps economy, which barely existed in early 2009, has already created almost 500,000 new jobs, according to expert estimates.

And similar reports estimate that over the past several years wireless innovation and investment are responsible for more than 1.5 million new jobs.

In the past 3 years, the United States has regained global leadership in mobile innovation. American-designed apps and services are being adopted faster than any others. Our mobile innovation economy is the envy of the world.

We are also now ahead of the world in deploying 4G mobile broadband at scale—with 64 percent of the world's 4G LTE subscribers here in the United States and these next-generation networks are projected to add $151 billion in GDP growth over the next 4 years, creating an estimated 770,000 new American jobs.

In 2011, overall investment in network infrastructure was up 24 percent from 2010, with broadband providers investing tens of billions of dollars in wired and wireless networks.

Internet start-ups attracted $7 billion in venture capital in 2011, almost double the 2009 level and the most investment since 2001.

In today's hyperconnected, flat world, the success of American companies, as well as global prosperity, depends on a dynamic and open global Internet. And so we are working to preserve the Internet as a free-market globally, and oppose international proposals that could stifle Internet innovation. Working with our colleagues in government and stakeholders outside government, we are seeking to head off barriers to the global expansion of cloud computing, and encouraging free flows of data worldwide.

And we are working to oppose proposals from some countries that could undermine the longstanding multi-stakeholder governance model that has enabled the Internet to flourish as an open platform for communication, innovation, and economic growth.

If adopted, these proposals would be destructive to the future of the Internet, including the mobile Internet, and the U.S. Government has consistently and strongly opposed such proposals.

This is why at the Organisation for Economic Co-operation and Development last year, I worked with my colleagues in the U.S. Government and in other countries to respond to significant threats to Internet-driven growth by adopting a broadly supported communiqué that emphasized the need for continued support of the multi-stakeholder model which has fostered innovation and opportunity worldwide.

The health of our broadband economy would be enhanced by closing broadband gaps, and so the FCC has focused on bringing universal service into the broadband era.

Today, millions of rural Americans live in areas with no broadband infrastructure. Our plan, adopted unanimously in October, to modernize the USF will spur wired and wireless broadband buildout to hundreds of thousands of rural homes in the near term, and puts us on the path to universal broadband by the end of the decade—while keeping the fund on a budget. Together with my colleagues, we crafted a set of reforms that honor fiscal responsibility and help bring broadband to unserved Americans around the country, in every State.

In addition to the broadband deployment gap, we are making strides on the broadband adoption gap.

Nearly one-third of Americans—100 million people—haven't adopted broadband. The Connect to Compete Initiative enlists government, nonprofit, and private sector leaders to tackle the barriers to adoption—one of several public-private initiatives driven by the Commission to promote solutions to major challenges.

FCC's successful E-Rate program has already helped connect virtually every library and classroom in America, and in 2010 we adopted several important mod-

ernizations of the program, including removing barriers to wireless use, and removing barriers to schools opening their computer labs as hot spots for community Internet use when students aren't in school.

Public safety is a core mission of FCC, and the agency is working to harness the power of communications to make our communities safer.

We are working with multiple stakeholders to advance next-generation 9–1–1. And we accelerated the launch of Wireless Emergency Alerts that allows local, State, and Federal authorities to send targeted alerts to mobile devices of people who are in the vicinity of an emergency.

As the Nation's expert agency on communications networks and technology, the FCC has always had as a fundamental part of our mission the security and reliability of communications networks. In early 2011, I charged a panel of stakeholders from across the broadband ecosystem with developing practical, nonregulatory solutions to three critical threats to our cybersecurity:

—botnets;

—Internet route hijacking; and

—domain name fraud.

This past month, the team issued a series of recommendations to tackle these challenges in a meaningful way. Internet service providers serving nearly 90 percent of all U.S. broadband subscribers have agreed to implement these recommendations that will promote greater security in our communications networks.

Working with government, private-sector, and nonprofit partners, we also developed a Small Business Cyber Planner to help small businesses guard against cyber attacks, which are estimated to cost targeted small businesses an average of $200,000 in damages.

FCC also provides value by protecting and empowering consumers.

Smartphone theft is on the rise, and poses a real threat to consumers. In Washington, DC, New York, and other major cities roughly 40 percent of all robberies now involve cell phones. Two weeks ago, together with the wireless industry and law enforcement from around the country, we announced the launch of a new database that will allow consumers and carriers to disable stolen smartphones and tablets dramatically reducing their value on the black market.

Working with wireless providers, we found a common-sense solution to bill shock, a problem that has cost millions of consumers tens, hundreds, and sometimes thousands of dollars in unexpected charges, and just last week we introduced a new online tool to help consumers track implementation of the commitments made by wireless carriers to provide usage alerts.

This coming Friday, FCC will consider an order to put an end to abusive, third-party charges on phone bills, what's commonly known as "cramming". Previously, FCC's Enforcement Bureau issued $12 million in fines against four companies that had engaged in widespread cramming, part of a record-breaking year for our Enforcement Bureau, which logged $67.2 million in monetary penalties and settlements on behalf of consumers in fiscal year 2011.

I want to highlight not only what FCC has accomplished, but how we conduct our work. FCC is committed to smart, responsible government, and we have taken significant steps to modernize our programs and ensure that they are efficient and fiscally responsible—saving billions of dollars.

Our work to modernize the USF and Intercarrier Compensation will not only spur broadband buildout, it also eliminates billions of dollars in hidden subsidies from consumers' phone bills.

Our work to reform the Lifeline program is expected to save up to $2 billion over the next 3 years. Even before this order was adopted, we made changes that eliminated 270,000 duplicate subscriptions, saving $35 million.

We reformed our Video Relay Service Program, which provides vital communications for people who are deaf or hard-of-hearing, saving $250 million per year without reducing availability of service.

In addition to our programmatic changes, we have also reviewed FCC's rules and processes—asking tough questions to make sure the agency is operating efficiently and effectively.

In connection with this review, we've already eliminated more than 200 outdated rules and five unnecessary data collections. We have identified two dozen more data collections for elimination.

We estimate that internal reforms like consolidated information technology maintenance and new financial system have already saved the agency almost $8 million.

And we've done everything I've listed and more with the lowest number of full-time employees (FTEs) in 10 years.

Maximizing the ability of 21st century communications technology to deliver value to the American people, and doing so in a smart and responsible way. That's the

FCC's record the past 3 years, and that's our plan for the year and years ahead, as reflected in our fiscal year 2013 fiscal year budget request.

To implement our responsibilities under the Communications Act, FCC's budget requests a 2-percent increase more than the previous year level, from $339,844,000 to $346,782,000. This proposal is essentially flat adjusting for inflation.

As in previous years, this amount will be derived entirely from fee collections. These funds will ensure the successful operation of FCC's core activities, including the strategic goals outlined in the Performance Plan submitted with FCC's budget.

The requested amount is based on internal cost savings applied to essential ongoing projects, and necessary adjustments to our baseline.

The budget includes a few new initiatives—primarily technology investments designed to save money, and public safety investments aimed at saving lives.

The budget also provides a flat number of FTEs, which represents the lowest number of FTEs in 10 years, despite increasing workloads in many areas. Last year, a senior Apple executive wrote FCC advocating for additional staffing for FCC's Office of Engineering and Technology (OET). This office certifies that wireless devices use spectrum efficiently and don't create harmful interference, among other things. The number of applications for certified devices has grown at an annual rate of nearly 12 percent each year—from 3,671 in 2001 to 13,645 in 2011—and the explosive growth of complex devices like smartphones has significantly increased demands on OET staff in recent years. Apple's executive wrote, "If OET can complete its work efficiently, companies building innovative devices can get those new products to customers quickly. But if applications for innovative devices are delayed because OET staff are overtaxed, consumers are the losers."

In conclusion, the wired and wireless broadband sectors are critically important to our economy and global competitiveness. I look forward to working with the subcommittee on implementing the new incentive auctions law, and unleashing the opportunities of communications technology for our economy and the American people.

Thank you.

Senator DURBIN. Thanks, Mr. Chairman. Senator Moran had requested this hearing. Let me yield my opening round of questions to him.

Senator MORAN. Mr. Chairman, thank you very much.

SPECTRUM CRUNCH

Let me start first with spectrum. You covered that in your written and oral testimony. But let me reiterate what I think is called out there, the crunch, the spectrum crunch. The demand is significant.

And my question, Mr. Chairman is, are there any proceedings or options FCC can consider to more quickly address the need of spectrum in the private marketplace?

Chairman GENACHOWSKI. It is a central focus of ours. It's why we push so hard for incentive auction legislation, and we've moved quickly to begin to implement it.

There are other proceedings we have opened now that will free up additional spectrum. We have a proceeding that would eliminate unnecessary regulations on certain satellite spectrum so that could be made available for terrestrial use. It's called the S-band.

We have other proceedings to open up new spectrum. I think one of the biggest opportunities is if we can move forward with Federal users of spectrum quickly to accelerate sharing between Federal users and commercial users.

And I'd be happy to talk further about any of those topics.

UNIVERSAL SERVICE REFORM

Senator MORAN. Let me then raise the topic of USF, and the recent order on it and the Intercarrier Compensation Reform.

We have the circumstance, Mr. Chairman, in my view, in which many companies have relied upon grant programs from the Rural Utility Services (RUS), from the stimulus funds, in which they have made significant investments in regard to deploying broadband in rural areas across the country.

In my view, the order now handicaps, significantly, the revenue necessary for them to repay those loans and grants. And you and I had a conversation about this in my office in which you indicated that the waiver process would be an option for those companies.

If they had the need, the waiver process would work in their benefit to see that they had the capacity to continue to deploy broadband, but also to pay for the loans and grants, to repay the loans and grants.

It seems to me, first of all, that the threshold for a waiver being granted is a very high threshold.

Because the words of the order say that, we permit any carrier negatively affected by USF reforms may file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice services.

And that threshold about voice services, that would be a pretty high threshold, in my view, for a waiver to be granted. And so, I'm concerned that while you indicated that waivers would be an option, my guess is that's not a practical option for most companies.

Because voice is always, or almost always, going to be available. Am I missing something?

Chairman GENACHOWSKI. Well, a few points, Senator. One——

Senator MORAN. You're polite not to say I'm missing something.

Chairman GENACHOWSKI. Reforming the USF and intercarrier compensation was one of the hardest things that the agency has tackled. And we were able to do it on a bipartisan basis, and take a program that was wasting Government dollars, focus it on its central mission of getting broadband to people in rural America who are unserved.

Across the country, there are about 18 million people who live in areas that are unserved. In Kansas, I think the number is about 90,000. And we made the commitment as a Commission to do that by reducing inefficiencies, waste in the existing program, operating within a budget, and funding new service out of that.

It turns out that reining in Government spending, being serious about fiscal responsibility is hard work. We all know that. And we have the job now of implementing this in a way that's consistent with the three core principles we had when we put in place the order.

One was getting broadband to rural Americans who don't have it. And the second was fiscal responsibility. And the third was being cognizant of business realities of existing companies.

And there are existing companies that for whom this is challenging. And we have been and we will continue to work with them because we recognize that flash cuts don't make sense. That a waiver process is important. We have several waivers in front of us that we're considering.

We've already adopted some modifications to our rules. My instruction to our staff was let's listen very carefully when we hear concerns and respond to all of the ones that are appropriate.

Senator MORAN. Mr. Chairman, is a waiver available even though voice services continue to be received?

Chairman GENACHOWSKI. Well, the fundamental service that we thought was critical to preserve was voice service. And, certainly, anything that we did that would inadvertently shut off voice service to a local community is something that we wanted to make clear that's something that we will stop.

We do think that in order to accomplish our goals, get broadband to unserved Americans consistent with fiscal responsibility, it will require flexibility on our part to deal with real legitimate issues and address them.

Flexibility on the part of RUS in thinking about its loans. And, in my view, as long as we all focus together on these core objectives, getting broadband to people that don't have it, fiscal responsibility, and cognizance of business realities, we'll work through implementation and individual hard cases one by one, and we'll get them right.

Senator MORAN. I assume we'll have another round of questions.

But I would indicate that Commissioner McDowell stated on March 19 here in Washington, DC that if your company looks like it won't survive, there's a waiver process.

I still want to explore with you the threshold by which, what a company has to demonstrate, because I think there are serious issues here with the ability to continue to deploy broadband.

And, the other fiscal aspect of this is the ability for a company to continue to repay its loans to RUS or others. And I want to explore with you the relationship that you've developed with the Department of Agriculture and the RUS program.

So, thank you, Mr. Chairman.

Senator DURBIN. Senator Lautenberg.

LICENSE RENEWALS

Senator LAUTENBERG. Mr. Genachowski, I know that you are aware of the fact that News Corporation controls 27 local television stations in the United States.

And last week, I mentioned earlier, a British parliamentary committee found that News Corp. misled the committee in order to cover up the illegal activity.

And its chairman and CEO Robert Murdoch, is, ". . . not fit to run an international company."

Now, how do these findings affect your analysis of News Corp.'s license renewals in the United States?

Chairman GENACHOWSKI. Well, Senator, a couple of points, if I may.

As a general matter, it's not appropriate for me to comment on specific adjudications that might come before FCC. But here is how the law works, the Communications Act, and the FCC.

Licensees do have to meet certain qualifications to be licensees. Those qualifications include technical, financial qualifications, and character qualifications.

FCC has issued over the years policy statements and precedents that lay out what that entails. And, of course, if any issues arise, FCC has an obligation. We would take this very seriously. To look at the record, look at the facts, apply the precedent, apply the law.

Senator LAUTENBERG. So that doesn't pass without notice by FCC? The British response.

Chairman GENACHOWSKI. We're certainly aware of the serious issues that have been raised in the United Kingdom, the ongoing process that's going on there.

Senator LAUTENBERG. And the code by which FCC functions, it does say, measure of the character of the applicant though, is to be considered.

Chairman GENACHOWSKI. Character is one of the qualifications, and there are FCC policy statements that spell that out.

Senator LAUTENBERG. Okay. So I assume, therefore, I won't get your word, but I'll take the intent, of the position that FCC has to have, and that is, that character flaw, a character flaw, will be in consideration of any decisions that are made, affecting new or renewal—brand new or renewal applications for license.

Chairman GENACHOWSKI. FCC has serious responsibilities that it applies across the board consistent with our policy statements and our precedent.

UNIVERSAL SERVICE REFORM

Senator LAUTENBERG. New Jersey is a net contributor of close to $200 million a year to the USF. As the USF has grown, the burden on New Jersey and other donor States has gotten bigger and bigger.

And I applaud the FCC for recognizing the need for the reform of the Fund. Now, will these reforms bring some balance to donor states like New Jersey?

Chairman GENACHOWSKI. Well, and thank you for that. The USF is comprised of a high cost fund that's focused on rural areas. The E-rate fund which is focused on schools and libraries across the country.

A lifeline fund which is focused on low-income Americans. One by one, we have been modernizing each of these programs for the broadband era, in each case, bringing accountability and fiscal responsibility to the programs and making sure that they tightly and effectively meet their mission.

There is a compact in this country. We need to make sure that everyone, wherever they live, has a chance to benefit from the opportunities of the communications revolution.

Whether it's someone in rural America. Someone in an urban center. Whether its seniors or small business owners. And that's the challenge that we've taken up.

FUNDING FOR RESEARCH AND DEVELOPMENT

Senator LAUTENBERG. The too-often scientific breakthroughs sit on a shelf for the lack of investment. Last month, I introduced the American Innovation Fund which would provide funds for researchers to turn their discoveries into product.

And has the early stage investment affected the telecommunications industry?

Chairman GENACHOWSKI. The core idea behind new legislation, Senator, is something that's very, very important, and it's related to what Senator Moran said in his opening remarks.

Innovation and entrepreneurship is at the core of how we'll create jobs in the United States. How we will lead the world globally. We have a series of challenges to meet in order to sustain our leadership position.

Your legislation identifies one, which is, that we have in some cases research going on that is underfunded. In some cases research that's going on where some help is needed to commercialize a product that could be commercialized.

And so I certainly applaud the focus on entrepreneurs, innovation, and look forward to working with you on the legislation and on these issues.

Senator LAUTENBERG. And thank you.

Because the cry that we hear from many would be company developments, and that is, that lack of funding slows things down. And perhaps then even diverts them from ever taking place. And we shouldn't be in that condition.

PUBLIC SAFETY NETWORK

I'm proud that the Congress passed legislation to provide our first responders the spectrum and the resources needed to develop the public safety network.

Since the 9/11 Commission report revealed an enormous communication problem 8 years ago, we fought to get the job done. And now, we finally have it. And we look at the FCC, look to the FCC, to implement the network.

When can we expect our first responders to have the public safety network that they must have in order to function efficiently?

Chairman GENACHOWSKI. As soon as possible. The Congress' action in passing that provision was extremely important and something that we'd been calling on for quite some time.

And as you point out, the 9/11 Commission recommended it many years ago. The statute gives much of the responsibility to NTIA for implementation. FCC has responsibilities with respect to setting standards.

We've already begun working very closely with NTIA. There are some early deadlines in the statute that have already been met in terms of setting up boards and processes and proceedings.

It's extremely important, and I know that Assistant Secretary Strickling at NTIA and I are very committed to moving forward on the legislation and to getting our first responders what they need in terms of modern communications.

Senator LAUTENBERG. It's essential that we press on with that because we knew, we learned unfortunately the worst that could happen. And for that not to be corrected by this time seems awfully slow.

And so I look to you to make sure that we're moving at a faster pace.

LICENSE RENEWALS

Last, in November 2007, FCC held a hearing in Newark on the license renewal of WWOR, which is one of the Murdoch-owned stations.

New Jerseyans testified about the station's failure to cover New Jersey and events. Now, 4 years later, the station is still operating under an expired license. And there's evidence that its service to New Jersey has gotten even worse.

And I certainly don't think that it ought to take that long to make a decision about whether or not we ought to close this out. And I would ask when we might expect FCC to make a decision on the WWOR license renewal application?

Chairman GENACHOWSKI. Well, today, the staff is working on that as you know, and we talked about this. There's a complex history involving the station, and the issues of its particular obligations to provide service to New Jersey and moves the station facilities, et cetera.

And so it's complex in a number of different ways, but the staff is working on it, and there will be a decision as soon as possible.

Senator LAUTENBERG. Well, there are not many things that are easy to accomplish, and your structure of responsibilities. This one we ought to be able to get on with, and I look forward to hearing from you about where we stand with this.

Thank you. Thanks, Mr. Chairman.

PRIVACY

Senator DURBIN. Thank you very much, Senator Lautenberg.

I'd like to address a couple issues of privacy. About every other week when I log into iTunes, they tell me I need to have a new agreement with them. A lot of terms and conditions.

And I scroll through page after page after page until I get to the bottom where it says accept, decline, punch accept, go on about my business.

I'm worried that I may have signed off all of my rights to any royalties from music that I produce in the future. I'm not sure what I've done here.

So, tell me, is this your responsibility, to make sure that this kind of a thing is put in simple language and the most important parts of it are highlighted so consumers know what they're actually waiving or giving up in terms of privacy?

Chairman GENACHOWSKI. The Federal Trade Commission (FTC) has taken the lead on the kind of issue you're raising, but it is an issue that we've been engaged with and interested in as well.

One is, consumer protection with respect to communications providers, is part of our statutory mission, number one.

Number two, in addition to the kind of core confusion and privacy issues that you raise, another concern is that the more that people distrust the Internet, the slower broadband adoption will be, which then undermines the economic opportunities of broadband.

And so whether you look at this as just a basic privacy and rights issue, or whether you look at it as an economic issue, you get to the same place.

Senator DURBIN. So is FTC the cop on the beat here? Should they be deciding what should be highlighted, what's important for me to know if I'm about to sign off on something?

Chairman GENACHOWSKI. And they've been doing excellent work.

Senator DURBIN. This isn't your bailiwick?

Chairman GENACHOWSKI. Our statutory responsibility extends to the communications providers, and not to the applications.

Senator DURBIN. Let's talk about Google. They have quite an operation. One of the Fortune 500 companies. One of the top 20, I guess. And they invited me in several times to their headquarters in Chicago. Very impressive.

And in one of the visits I made several years ago talked about how they were mapping America. They literally had vehicles driving all over the streets of America and they were gathering images. They were deployed everywhere.

And they were gathering data and video and putting it into the Google map information and so forth. Turns out they were gathering even more. European and Canadian regulators found these Google vehicles were collecting and storing personal data from unencrypted home networks of private citizens without permission.

The New York Times described the data as personal email messages, instant messages, chat sessions, conversations between individuals, and Web addresses revealing sexual orientation that could be linked by Google to specific street addresses.

So they were collecting all of this as they were cruising. So FCC completed an investigation and came to the conclusion that Google had deliberately impeded and delayed the investigation. And you decided to impose a fine of $25,000 on a company worth $111 billion.

So I would say that is somewhere short of a tap on the wrist. And could you tell me if you thought that what they had done was not that serious. You concluded, I think, that they didn't violate the Wiretap Act.

It turns out a court in California reached the opposite conclusion. So how are you protecting our privacy with a $25,000 fine for that kind of collection?

Chairman GENACHOWSKI. So there are two points. We launched an investigation because in this case there were concerns about using communications networks, Wi-Fi, to get access to personal, private information.

And we did have an obligation to determine whether or not that violated any of our rules and laws. That was the reason for the investigation.

The conclusion of our enforcement bureau and our general counsel's office was that as a legal matter, because it was unencrypted Wi-Fi that information was being obtained from, it wasn't a violation of the law as it was written.

And we suggested that the Congress look at that and that consumers look at that because everyone should encrypt their Wi-Fi. And so as a matter of that issue, the career staff found that it wasn't a violation of law, but encouraged congressional action.

The fine itself was for serious concerns that our staff had about the process itself. The investigation process itself. And the fine that

the bureau imposed was one that's consistent with precedent in this area for companies that act improperly during our process.

Clearly for the company, compared to its revenue and market cap, it's a small amount. On the other hand, the educational purposes that have been served by this, educating them and other companies, educating the Congress, educating consumers, certainly important benefits of the process that we ran.

Senator DURBIN. I guess what puzzles me, and maybe this really does come down to the Congress not doing its job as we're often reminded of that whenever we find fault with agencies and individuals, is the notion that my Internet activity out of my home, if it is not encrypted, is not protected.

And that virtually anyone can tap into it for any purpose, commercial or otherwise, with impunity. It appears if they had cooperated with your investigation, you might not have even fined them in this circumstance.

Now, this California court saw it quite differently, and said that they believe that it was at least analogous to a wiretap for them to be gathering this personal information about street addresses.

So your legal counsel kind of leaned the other way and said, no, you have no rights for privacy if you're not encrypted.

Can you tell me as a former Supreme Court clerk and such, I mean, is that the starting point on your investigation, that there is no protection if it is a close call?

Chairman GENACHOWSKI. Well, I have great confidence in our general counsel, the chief of our enforcement bureau, who are both very experienced lawyers, former prosecutors, who take this as they take all matters, very seriously.

So this was a serious effort, run by serious people, and I have complete confidence in their legal conclusions. I do look forward to working with the Congress on a way to address this because your central point no one can disagree with.

People should, the law should protect people even if they have unencrypted Wi-Fi.

Senator DURBIN. I find it hard to believe that encryption is the threshold, and how in the world would the average person know that or be able to protect themselves.

So, is it possible for you to share the legal memorandum that was the basis for your conclusion that this was not a violation of the Wiretap Act?

Chairman GENACHOWSKI. We will share whatever we can share. So I would be more than happy to provide you with whatever you would like and whatever you would need.

Senator DURBIN. I appreciate it. Let's take a look at it because I think it's something that if it requires change in the law, I'd like to consider that.

[The information follows:]

For more information please access http://transition.fcc.gov/foia/Updated-Release-of-NAL.pdf.

Senator DURBIN. Senator Moran.

Senator MORAN. Mr. Chairman, thank you.

A threshold seems to be the operative word. I want to go back to what we were talking about earlier, Mr. Chairman.

The order published on November 18 clearly states, and then I quoted what the criteria were for a waiver. And it seems to me that there's three components to that. The carrier must be first, negatively affected by the USF reforms.

I assume that's a standard that could be met. It clearly demonstrates that good cause exists for exempting the carrier from some or all of the reforms.

So, number two, there's good cause. And then number three is, that the waiver is necessary in the public interest to ensure that consumers continue to receive voice services. That's the one I want to again focus on.

Because it seems to me you could meet the first two, assuming that I am analyzing the words of your order correctly. A carrier could be negatively affected. It could show good cause.

But still, in most instances, provide voice services. Is that true?

Chairman GENACHOWSKI. Well, I'd want to go back and look at the language myself. I certainly understand that you're looking at it there. If I could, let me explain what we're trying to accomplish.

The kinds of steps that we think we need to take for fiscal responsibility, and emphasize again our openness to companies that have issues to come in and to continue to work with us on how to fine tune our reforms so that we can achieve our goals of serving unserved Americans and being fiscally responsible.

So one of the things that the program had supported, for example, there might be an area where USF subsidies, money that comes from consumers, Government programs, were subsidizing a telephone company in an area that was also being served by another unsubsidized company.

And the decision that we had to make is, can a Government program continue to support those kinds of subsidies? And we answered that unanimously at FCC, no.

And we have to back away from that kind of funding. We had a principle of no flash cuts, and we don't want to turn off anything in a day. But some of the examples that you might be getting at might fit into that bucket.

There are many different kinds of examples where it is simply impossible to justify under any theory of fiscal responsibility the Government supporting these.

And what we tried to do very thoughtfully was say, okay, we can't support these anymore. Let's wind this down in a way that recognizes that some of the companies have loans, some of the companies have made decisions based on certain assumptions.

We recognize that. Those are business realities, but we also have to recognize that these do have to change. We have said we have and we will continue to work with those companies to moderate the impact while we get as fast as possible broadband to the 18 million Americans who don't have it, the 90,000 people in Kansas who don't have it.

Senator MORAN. I don't think you've said anything that I disagree with, but that's the point I'm trying to get to when you tell me that you will work with those companies to get the right result.

My assumption is that you work with those companies through a waiver process, and I'm worried that the waiver process is at least worded in your order that nearly almost no company would qualify for a waiver because there will always be voice services.

We can continue this discussion as you would like. But your point about fiscal responsibility, and I'm certainly not arguing for anything other than that. I particularly agree with your sentiments that you expressed about competition when there's already service provided and one receives USF support and one doesn't.

There's many reasons in which the USF justifiably needed to be reformed, but I'm worried about the consequences. And, again, you tell me, no, I don't know what the words are. No flash.

Chairman GENACHOWSKI. Flash cuts.

Senator MORAN. Flash cuts.

But I'm worried about how a company who's trying to make investment decisions, borrow money, make decisions about whether to invest in additional plant and equipment, expand their business, is going to have the certainty that they're not going to have a flash cut.

Because there's a waiver process that prohibits, that allows them relief. You have, as I understand it, some petitions for reconsideration pending. I think some of those petitions at least are a request for change in that threshold related to waivers.

And, again, on fiscal responsibility, I want to go back to the USF, and its consequences, the alteration of the universal service funds, consequences on another Government agency, RUS, part of the Department of Agriculture.

And what I experienced in our State and we had the administration in many instances following passage of the Stimulus Act encouraging companies to invest in broadband. Again, a noble cause.

Many companies chose to finance that expansion of broadband, their investments, through grants and loan programs using the American Recovery and Reinvestment Act, as well as loans from the USDA's RUS.

RUS telecom portfolio has more than $4 billion in loans. I don't know exactly what percentage of those loans are expected to be repaid by funds generated from the USF that may no longer be there because of your order.

And can you assure me, and I've had this conversation in an Appropriations subcommittee with Secretary Vilsack, and he indicates that he is working with FCC and others within the administration to make certain that we don't have a major default because of a decision by the FCC affecting the ability of a private company to repay another Federal agency—RUS.

Chairman GENACHOWSKI. And for that reason, from early in our process, we worked closely with RUS because we were aware that this would be an issue. And we both agree that both the FCC and RUS and potentially the Congress will have to show flexibility to solve this problem the right way.

The easy solution would be no change. And even in areas where we look at it from the fiscal responsibility perspective and say how

can we justify Government money going to that, well, it's too late to make any changes for many, many years.

That result would be unfair to the people who are paying into the fund. Similarly, a result that says, as a result of these rules, you have to end service tomorrow. That also would be unfair.

So flexibility from us, from RUS, there may be actions that will collectively need the Congress to take, will be important, so we can get the balance right between the legitimate concerns that businesses have, the legitimate concerns that consumers who live in those areas have, and the legitimate concerns that the consumers have who are putting money into the Fund that are funding things that are hard to justify.

And so I look forward to working together on that path through.

Senator MORAN. That flexibility, and again, I would point out, you said it may take flexibility on the Congress maybe to do something that RUS may need to do something, flexibility is required of FCC, and I still would be interested in knowing how that flexibility is going to be granted except through a waiver process.

And in regard to the waiver, if you are granted a waiver. If a company is granted a waiver, where does the money come from to compensate them to be able to, for example, repay the loan? Or the flexibility that you're saying will be there, or may be there, where does that flexibility come from as far as the revenue stream to allow them to repay the loan?

Chairman GENACHOWSKI. It's the right question. It comes from other companies who would use that money to build out broadband to people who don't have it. Because we're committed to a budget.

So getting this balance right, a company that really needs help, will get the help it needs, but that will slow down broadband to other parts of America, other parts of Kansas.

So this is the hard job that we have to make sure that we're turning the dial to the place where we're doing right by consumers wherever they live, right by businesses, whether they're in areas, you know, in this part of the State or that part of the State.

It's a hard challenge, and we'd be happy to take you through a deeper level of detail on it. And, you know, we'd made a suggestion in our national broadband plan that some of these hard issues could be softened by an appropriation for a one-time capital infusion into the USF that would allow us both to turn the dial down over here on spending that's hard to justify, while simultaneously turning the dial up faster over here to parts of Kansas and the rest of America that don't have service.

I continue to think that would be a good idea. I understand the various issues. In the absence of that, we'll work within a budget and we'll do the best we can.

Senator MORAN. Chairman Durbin, I think Chairman Genachowski has once again said the Congress could solve this problem.

Are there waiver requests pending?

Chairman GENACHOWSKI. Yes.

Senator MORAN. And by the numbers?

Chairman GENACHOWSKI. Single digits so far. We issued some clarifications in the last few weeks. It's certainly possible that we'll get more waiver requests in.

We've set aside staff to take the waiver requests seriously, and we understand——

Senator MORAN. How long would the process take to be granted a waiver, if one is justified?

Chairman GENACHOWSKI. We have a shot clock that we've imposed on ourselves. I don't remember the length so I don't want to get that wrong.

We found that in order for us to make a decision in the shot clock, it requires getting certain information from the companies. And so there's a little bit of a cat and mouse where in some cases we stopped the shot clock until we get the information we need.

Again, this is the blood and guts of trying to make this work, and meet these big objectives of broadband to unserved America, fiscal responsibility and recognizing business reality.

Senator MORAN. You're dealing with the macro and the micro.

Chairman GENACHOWSKI. Every day.

Senator MORAN. Mr. Chairman, thank you.

CRAMMING

Senator DURBIN. I'd like to talk to you about cramming. In the 1990s, this became a more serious problem on consumer phone bills.

When telephone companies open their billing up to third- party vendors who were selling satellite services and long distance services, many vendors took advantage of it to put fees on our phone bills that we'd never seen before.

And some people didn't question, just automatically paid it and found out later on that some of these things were not warranted at all.

The Senate Commerce Committee found third-party billing on wire line bills generated $2 billion a year. Much of that was from cramming. The industry voluntarily worked to curb cramming, and FCC adopted Truth in Billing rules to improve disclosure.

Yet, third-party billing was not outlawed and continues to be a problem. Now the crammers are targeting wireless phones for obvious reasons. Cramming complaints on wireless bills as a percentage of total cramming complaints has increased from 16 percent in 2008 to 2010 and now up to 30 percent in 2011.

However, wireless billing is more complicated due to legitimate downloads for videos and apps. FCC approved a rulemaking requiring wire line phone companies to provide consumers a clear opt out of third-party billing.

And both Verizon and AT&T announced in March they would no longer permit unwanted billing by third-party vendors on wire line accounts, not wireless, wire line accounts.

So why did you choose the weaker opt-out provision rather than protecting the consumer with an opt in provision?

Chairman GENACHOWSKI. Well, there were some other things that we did as part of that order too. Cramming clearly is a serious issue, particularly on wire line based on the record that we had.

In addition to the clear opt out, we also required that phone companies separate out third-party billing charges so that it's easy for a consumer to determine whether a third-party charge on their bill was something they ordered or something that they didn't.

The record that we had before us, our conclusion was that if we did that, that would empower consumers, deter crammers. The other thing we'd been doing is increasing our enforcement efforts for crammers.

We issued fines totaling I believe $11 million for crammers. And we continue to monitor this very closely because you're right. It's a very serious issue.

On wireless, the record that we had suggested that there may be a problem, but it wasn't clear. And so when we adopted the new rules for wire line, we launched a proceeding on wireless. We are gathering data. We made it very clear that if there's a problem, we will act in wireless as we did in wire line.

On the wire line side, we made it very clear that if the separate disclosures don't work in eliminating cramming, the next option is opt in.

Senator DURBIN. So what are you waiting for? The percentage of total cramming complaints has almost doubled in 3 years on wireless.

Chairman GENACHOWSKI. I'd have to, if I could, Sir, I'd have to get back to you on the data that we had before us when we did our proceeding. I don't recall what was in the record.

But it was clear to our staff that there is potentially an issue on wireless. We didn't have enough of a record nor to proceed with rules just then.

We didn't close the proceeding. We issued what in our parlance is a further notice of proposed rulemaking so that we can gather more information and put us in a position to act.

It's important for us to have the evidence we need. There's no point in us adopting rules that we'll lose in court. And again, I trust our staff on making sure that if the record is there and we can justify this kind of consumer protection action, we'll do it.

We've done it in many other areas.

Senator DURBIN. Well, and let me go back to the earlier point. Please make this intelligible to ordinary consumers so they know what they're getting into here. And that's why the opt out thing really leaves me cold.

I really think, an opt in, most people will say, why in the world would I do that? And they won't. And that's why the companies beg for the opt out because they think they can just kind of slide in there.

POSTING BROADCASTERS' PUBLIC INSPECTION FILES ONLINE

Let me, if I can, ask a question here. After Citizens United, we virtually have no rules when it comes to money being spent on campaigns. I lived through the McCain-Feingold era where we applauded ourselves for restricting soft money, taking it out of the process.

We're down to hard money, baby, and you report every buck of it, and we're going to have accountability. Then came Citizens United and said, none of this counts anymore.

And a Las Vegas casino magnate can dump $15, $20 million into a Presidential campaign for his favorite and nothing can stop him. I mean Citizens United has opened the gate wide.

I wish a couple Supreme Court justices had stood for office at some point in their life, maybe they would understand this issue a little more.

One of the last sources of information about what's happening is end user, and that relates to the broadcasters file, that they keep the records that they keep.

And, historically, I know because I used to walk into radio and TV stations, and they'd push a questionnaire in front of me, a consumer survey, community survey, which was being collected in the old, old days.

But I know that at most of these stations there is a written record that is kept that includes a lot of basic information. In part of that record that is available in written form is information on political advertising, the amount that's being spent on that.

It's physically available at the station, public comment, political files and so forth. Now, you recently approved a rule that takes this into the 21st century and says the entire file for all broadcasters has to be posted on the FCC's Web site in searchable format.

So no longer does it require a physical visit. You can pick up this information online. And it's searchable for the first time. It increases transparency on political ad buys. It educates the public on which candidates and groups are using the public's airtime.

And it is the public's airtime. This is important because of the rise in anonymous, large political donations through Super PACs and things like that. We have tried to pass a DISCLOSE Act here in the Congress so that the Super PAC folks would have to say, actually say on the ad, I paid for this, or I'm not a foreign national.

Things like that. But we can't get that through. That's considered radical thinking. So how do citizens access the political file now? Is there any information that will be newly available to the public under this rulemaking? And is the FCC considering the same requirement for cable and satellite providers?

Chairman GENACHOWSKI. So until we adopted this rule as you said, the information that the Congress required broadcasters to put in public files, was only available at a station. You had to physically go and you could get it that way.

As part of our general effort to move all of our filing requirements, disclosure requirements into the 21st century, we proposed and now we have in fact required that those political files and everything else in broadcasters' public files be placed on line.

That will go into effect in the first tranche over the next 6 months. In full, over the next 2 years. And then that information will be available to anyone who has access to the Internet.

Senator DURBIN. So has there been a complaint that you've got another Federal mandate here, imposing another expense on a private company, and it's a hardship that some stations won't be able to meet? Have you heard that?

Chairman GENACHOWSKI. We heard those complaints. We took them seriously. We went and did some investigation ourselves. We learned some interesting things.

Our staff went to one station, asked for the public file and it was said, okay, you know, if you wait and sit here for a while, we'll

bring it out to you. You can look at it here, but it's going to take some time.

And, eventually, the person came back and said to our staffer, you know what, here it is in a thumb drive, why don't you just take this.

And we concluded that the arguments about burden really weren't realistic. We're in an era where all of our licensees are increasingly doing everything with the FCC on an electronic basis.

They're submitting their applications, their modifications for engineering. Everything is online. The question for us is should this be the one thing that doesn't go online?

And we concluded that it just didn't make any sense.

Senator DURBIN. So what about the argument that somehow you are forcing disclosure of sensitive pricing data that otherwise would not be disclosed?

Chairman GENACHOWSKI. The data that will be disclosed is data that's already disclosed. It's available already to anyone in the market with an economic interest.

We found in our work that either other ad buyers are interested and they can get the information locally. It's very easy. In some cases, we learned that they did. Or they've concluded that it really doesn't affect the market. They don't need the information because of how ad deals ultimately get negotiated.

The Congress made the decision that this information, and it was explicit, that this information should be made public, including the rate. It was upheld by the Supreme Court explicitly over similar arguments about burden and about the negative effects of disclosure.

But in this case, the Supreme Court said, no, we reject the arguments. This is okay. And our action was completely consistent with the Congress' directive and with the Supreme Court upholding those provisions of the 2002 law.

Senator DURBIN. May I ask one last question if I can, and then I'll turn it over to Senator Moran for whatever he would like to ask.

BUDGET REQUEST FOR THE FEDERAL COMMUNICATIONS COMMISSION INSPECTOR GENERAL

Let's discuss your inspector general's appropriation, the amount that's being requested. You're asking for an overall 2-percent plus increase for the FCC. But you've cut the inspector general's budget by about 10 percent.

Inspectors general around here are a little more popular since the General Services Administration mess, and why would you want to cut back on your inspector general's capacity?

Chairman GENACHOWSKI. I believe that those aren't the correct facts. Our practice has been, is and will be to pass through the inspector general's request for a budget and to support their budget.

The work of the inspector general is incredibly important. The independence of the inspector general is important. There may have been a mistake somewhere in the process.

Senator DURBIN. The fiscal year 2013 request is $8.75 million for the inspector general. The fiscal year 2012 enacted level is $9.75 million.

Chairman GENACHOWSKI. We will work on that with you, but I want to be very clear on this. Our policy is to pass through the inspector general's request and to support him.

Senator DURBIN. Thank you.

Senator MORAN. Mr. Chairman, thank you.

I think this should be able to conclude my questions of the Chairman. Thank you for your patience.

POSTING BROADCASTERS' PUBLIC INSPECTION FILES ONLINE

In regard to the political broadcasting issue that the chairman raised, I just want to ask one question. Does FCC envision going beyond what is currently included in the political file to require the collection of any additional information?

And what I heard you saying is that this is what the Congress authorized to be collected and retained. It's what the Supreme Court said was fine.

So, I assume the answer to that is, "No", but I wanted to make certain that I gave you the opportunity to say that.

Chairman GENACHOWSKI. I think you're right. The steps that we put in place simply said, we've already worked out what should be the disclosures. Let's move them from paper to online.

They're many people with many different views who think that disclosure should be done differently. That's a discussion that could be had including broadcasters who have proposed some ideas on how to modify the disclosures.

We'll be open to those suggestions, but the default is, what has been disclosed is what will continue to be disclosed.

Senator MORAN. Do you have the statutory authority? Are you able to do what you did because of the law you indicated the Congress has passed? Do you have the authority to collect more information?

Chairman GENACHOWSKI. I would presume that we do. There's a long history as part of——

Senator MORAN. I guess collect and disclose.

Chairman GENACHOWSKI. Collect and disclose. As part of broadcasters' public trustee obligations, which go back many, many decades, I would presume we have that authority.

There have been a few instances where the Congress said to FCC, whatever you do, make sure you do this, and this is one of those cases. But I think most people would agree that our authority with respect to information from spectrum licensees is pretty broad.

UNIVERSAL SERVICE REFORM

Senator MORAN. I want to just as a final, a couple of questions related to the regression model that the order outlined.

The order incorporated a regression model to evaluate when companies are perhaps not being as efficient with resources as possible. The regression model has raised concerns, I assume to you and certainly to me.

It was brought to my attention that FCC may have entered incorrect data into the regression analysis used to set the upper limits of high cost loop paid to incumbent rate of return, local exchange carriers.

This is an important aspect for future broadband investment. The other criticism that I've heard is that the outcomes will change, the regression model's outcomes will change from year to year as companies choose whether or not to make investments.

And the concern here is that companies may be fearful to invest because if they choose to but other companies don't, the regression model may return results that indicate the company is an outlier in the model and therefore not eligible for recovery of their investment.

Are either one of those concerns legitimate and something that you're attempting to address?

Chairman GENACHOWSKI. I'm not certain about the status of that back and forth with our staff. But, again, any issues like that that get raised, we have a professional staff that's been directed to take them very seriously.

The kinds of things we're trying to do, and the direction they've received from FCC, if I could be at a macro level for a minute, we want to distinguish instances like the following.

A company is receiving Federal funds who set up multiple subsidiaries with the same CEO at each subsidiary, paying themselves multiple times, using what in effect is taxpayer money. Well, we want to stop that.

We don't want to stop the perfectly honorable company in small town America that's doing the best it can under difficult circumstances to provide communications infrastructure in areas that have low population density.

And our charge, and not just mine, but FCC on a bipartisan basis to the staff, has been let's get this right. Let's distinguish those cases where we can't defend the outflow of money from the ones where they're legitimate businesses doing the right things.

Let's take these cases like what I mentioned before, where there's an overlap and phase them out in a reasonable way. Let's work with RUS to make sure that there's flexibility there on the loans as that's appropriate.

So these are all legitimate issues that you're raising, and I want you to know that we care about any negative effects that we have in places where we don't want to have negative effects.

And it's a hard job, and I'm just so proud of our staff for taking this seriously. The easier thing for us to do would have been to leave the program just the way it was, and not try to reform it, and not try to get broadband to people in rural America who don't have it, and not deal with these problems.

But we took on the challenge. I'm proud of FCC for having done it on a bipartisan, unanimous basis. I look forward to working with you on this, but I'd ask that if we can receive bipartisan support to keep on doing the hard work of reform and fiscal responsibility in meeting these goals, I think we can do great things for the country in moving this program forward.

Senator MORAN. Chairman Durbin, thank you very much for this hearing today and thank you for the opportunity I've had to visit, to question, to have a conversation with Chairman Genachowski.

Mr. Chairman, Chairman Genachowski, I don't think you volunteered to come to Kansas. But, Chairman, in the conversation that

you and I had, you indicated a willingness to accept an invitation. I would like to extend that again.

We'd love to have you come spend some time with folks in rural America, and in the interim, I would ask your commitment that your staff work with me and my staff, the subcommittee staff, as we try to sort out the questions that I've raised and some others, to give some additional information to those who are trying to make decisions about what to do next.

Chairman GENACHOWSKI. I would be happy to do that.

Senator MORAN. Thank you very much. Thank you.

Senator DURBIN. I would consider it an honor to come to Kansas and——

Senator MORAN. Chairman Durbin, I would invite you to come to Kansas, but——

Senator DURBIN. As long as it's Norfolk, Kansas.

Mr. Chairman, thank you for being here today. Thanks for your testimony. Senator Moran, thank you too.

Senator MORAN. Thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator DURBIN. We are going to keep the file open for a week, if there are any questions or comments to be added. You may get a question in the mail, please take it seriously.

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

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

WAIVER

Question. In our previous discussions about Universal Service Fund (USF) reform, you have cited the "waiver process" as a remedy for companies who may experience severe financial challenges as a result of lost USF support. The order published on November 18 clearly states, "We permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those refunds, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service." The threshold you have established for the waiver is related to a consumer's loss of access to voice service. This is an extremely low threshold of service to consumers particularly in the transition to a broadband world.

At the March 19 event here in Washington, Federal Communications Commission (FCC) Commissioner Robert McDowell stated, "If your company looks like it won't survive, there is a clear waiver process." Later the day, when questioned at an appropriations hearing, Commissioner McDowell said "We also looked at a waiver process that is very frugal . . . if indeed there is a carrier experiencing undue hardship because of the reform they can file a waiver with the FCC where they will have to open their books in a very detailed fashion so we know exactly what is going on with the money but they can get a waiver."

Can you explain to me how can we make certain waivers will be granted to those companies who might have to walk away from their current networks?

Answer. In reforming the USF, FCC unanimously agreed that, as a matter of fiscal responsibility and accountability, and to protect consumers and small businesses paying into the USF, a thorough, but fair waiver process was necessary for any company seeking a waiver. Any carrier facing reduced support as a result of FCC's universal service reforms may file a petition for waiver clearly demonstrating that good cause exists for exempting the carrier from some or all of those reforms, and that the waiver is necessary and in the public interest to ensure that consumers in the area continue to receive service.

Waivers will be granted where an eligible telecommunications carrier can demonstrate that, without additional universal service funding, its support would not be

"sufficient to achieve the purposes of section 254 of the Act." In particular, a carrier seeking such a waiver must demonstrate that it needs additional support in order for its customers to continue receiving service in areas where there is no terrestrial alternative. Several weeks ago, I circulated a draft order to my colleagues to clarify that waivers can be granted to prevent loss of broadband service, not just loss of voice service.

A full discussion of FCC's waiver process is available in the Connect America Fund order beginning at page 177 (available at http://hraunfoss.fcc.gov/edocspublic/attachmatch/FCC–11–161Al.pdf).

Question. Additionally, assume a waiver is granted. What rules will companies who are granted a waiver fall under?

Answer. The waiver process is structured to address the specific relief needed by the company and to grant tailored relief to address its needs. Otherwise, the generally applicable rules for the USF will apply. Careful, tailored relief is consistent with fiscal responsibility and accountability and to protect consumers and small businesses paying into the fund.

Question. Will there be increased reporting requirements?

Answer. That is a possible condition for granting a waiver. As FCC stated in the order, we intend to subject such requests to a fair and thorough review and will take appropriate measures to both ensure consumers do not lose service and protect public funds from waste, fraud, or abuse. This is consistent with our commitment to fiscal responsibility to consumers and businesses paying into the USF.

Question. Will companies receive more support to help fund their networks? If so, what money will be used to pay for companies who are granted waivers?

Answer. Any money used to grant a waiver will necessarily come from funds that could otherwise be used to support deployment of broadband to unserved areas. In the order, to address concerns about growth in the USF and to protect consumers and small businesses paying into the fund, we adopted an overall budget for the USF.

Question. Is it possible rural Americans could lose broadband service which is currently available to them today?

Answer. FCC's framework will ensure that consumers who have access to broadband will continue to have access to broadband.

Question. What is the timeframe within which the FCC will respond to waiver requests from companies?

Answer. The Bureau is reviewing each petition individually and will make final decisions as expeditiously as possible. To expedite review of waivers, FCC delegated to the Wireline Competition and Wireless Telecommunications Bureaus the authority to approve or deny all or part of requests for waivers of phase-downs in support. We required that the Bureaus initiate the process for public comment within 45 days of receipt of a waiver petition.

REGRESSION MODEL

Question. That regression model outline in the USF/Intercarrier Compensation (ICC) reform order has raised concerns. It was brought to my attention that the FCC may have entered incorrect data into the quantile regression analysis used to set the upper limit of the high-cost loop paid to incumbent rate-of-return local exchange carriers. This is important for future broadband investment. Another criticism of the regression model is that the outcomes will change from year to year as companies choose whether or not to make investments. I have been told companies are fearful to invest because if they choose to and other companies do not, the regression model may return results that indicate the company is an outlier in the model and therefore will not eligible for recovery of the investment.

Can you comment on the regression model and potential incorrect inputs and what the FCC is doing to address this issue?

Answer. FCC created a streamlined, expedited process to correct any problems. So far, the Wireline Competition Bureau has received two petitions to correct data, and both of the petitioners received responses within 2 weeks. FCC also launched a process to collect a full set of updated data from companies before benchmarks take full effect.

Question. How is FCC determining what caps for support should be in various areas?

Answer. The caps are based on comparing carriers to other similarly situated providers based on a range of criteria. For instance, the benchmarks take account of local conditions like population density, soil type, climate, as well as any recent investment by the company. In some cases, carriers spend almost three times as much per customer as smaller carriers right next door.

Question. How is FCC able to tell companies they should invest in serving their areas if the regression caps are changing year to year?

Answer. The reforms adopted by FCC will make support more predictable for carriers spending efficiently. In response to concerns about the timing of changes to the benchmarks, the Wireline Competition Bureau's order determined that the benchmarks should initially remain in effect until 2014. In the interim, FCC will consider whether benchmarks should subsequently be set for multiple years.

Question. How are you responding to companies who have asked about the regression model?

Answer. FCC has an open-door policy—Commission staff takes all meeting or call requests from companies to address any questions that come up, and has made all aspects of the regressions available for public inspection.

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

Question. I strongly support the deployment of fixed and mobile broadband to increase economic development, productivity and America's global competitiveness. One analysis estimates the productivity gains from the deployment and use of wireless broadband will generate almost $860 billion in additional GDP by 2016. Spectrum auctions and rural broadband development are key tools to accomplishing our ambitious goals and ensuring economic success. However, I am concerned about the administration's execution of these programs and have the following questions.

The administration recently announced its support for spectrum sharing in order to accelerate broadband development throughout the Nation.

Given that the National Telecommunications and Information Administration (NTIA) recently reported that moving Federal users off the Federal Exclusive Band airwaves will take more than a decade and cost $18 billion, how does the Federal Communications Commission (FCC) intend to work with NTIA to ensure that the mutually beneficial short-term goal of spectrum sharing occurs, while at the same time balancing longer-term spectrum reallocation and incentive auction plans?

Answer. FCC's Mobile Action Plan employs an "all-of-the-above" approach to the spectrum crunch which includes more spectrum, but also more efficient use of spectrum and new ways to manage spectrum, both in the near-term and in the long-term. FCC is working now with NTIA and other stakeholders on near-term sharing and small cell opportunities in the 1755 MHz and 3.5 GHz bands. We are moving expeditiously forward with incentive auctions in a parallel process. We will continue to work with all stakeholders to meet the Nation's spectrum needs.

Question. How long will it take to complete the testing process with NTIA before spectrum sharing can be implemented?

Answer. I am hopeful that testing of sharing in the 1755 MHz band can be completed in a timeframe that would allow it to be paired with the 2155 MHz band for auction, as required by statute. FCC intends to initiate a 3.5 GHz rulemaking this year.

Question. How does FCC intend to handle the costs of Federal spectrum relocation?

Answer. FCC will follow the direction of the Congress, as set forth in the statute with respect to reimbursing relocation costs.

Question. What assurances does the FCC have from Government spectrum users that they will participate in spectrum sharing and that such sharing can be implemented in a timely manner?

Answer. FCC will continue to engage in discussions with NTIA and other Federal agencies, particularly the Department of Defense, to find solutions that meet commercial spectrum needs, while also enabling vital Government operations to continue.

Question. I have introduced legislation to establish a process nearly identical to the successful Base Realignment and Closure (BRAC) process to determine which Federal spectrum should be auctioned for sole or shared use by the private sector. I believe this is a key model for spectrum relocation because it forces the relocation process to move forward unless the Congress passes legislation to block it. What is the FCC's position on using a BRAC-like approach to addressing our spectrum crunch and providing the telecommunications industry with a certain path forward to reliably clear spectrum for wireless advancements?

Answer. This is an intriguing approach and I am interested in discussing all potential methods for identifying and deploying Federal spectrum. We should consider a broad range of solutions to the spectrum crunch and ensure that we have not left any concept off the table.

In the meantime, FCC has moved ahead to work with its counterparts to deploy Federal spectrum as soon as possible. The National Broadband Plan recommended a number of approaches to increase the availability of spectrum for commercial mobile and fixed wireless use, including working with NTIA to develop a roadmap to identify opportunities to make Federal spectrum available for exclusive, shared, licensed and/or unlicensed use. FCC continues to collaborate with NTIA on this approach and we will work with our Federal partners to develop plans for identifying and freeing up this valuable resource.

Question. I am concerned about the overlap in programmatic goals and implementation of the Universal Service Fund (USF) and the Department of Agriculture's (USDA) Rural Utility Service (RUS). Additionally, carriers use USF funds, that would otherwise have been used to build out broadband, to repay their RUS loans. What are the default criteria mechanisms in place that the FCC will use to enforce repayment of RUS loans?

Answer. RUS administers its loan program and has a better understanding of its default criteria. That said, as I mentioned at the hearing, we have worked closely with RUS throughout the USF reform process and our waiver criteria specifically consider debt, including RUS loans.

Question. How is the FCC working with USDA's RUS to ensure that taxpayer dollars are not diluted through duplicative projects that are also funded under USF?

Answer. RUS loans and USF support serve complementary purposes. USF provides ongoing support, while RUS provides low-cost loans. More generally, our USF reform was designed to ensure that USF support only goes where it's needed, and includes new accountability and safeguards for all USF spending.

Question. A recent study conducted by a Georgetown University researchers found that, based on the analysis of previous FCC auctions, the success of spectrum auctions depends greatly on whether or not conditions are placed on the auction. The study found that the full auction potential of broadcast spectrum with no conditions imposed could generate as much as $91 billion in revenue, whereas the same auction which carries heavy conditions, such as net neutrality requirements. A free auction could raise 250 percent more funds than an unconditioned one.

What, if any, kinds of conditions will FCC place on the spectrum auctions authorized by Public Law 112–96? Will any restrictions be placed on participants?

Answer. FCC's incentive auctions team currently is preparing rulemaking notices for the incentive auction process. FCC will comply with all statutory requirements, and our process will be open, inclusive, fact-based, and guided by economics and engineering.

Question. How will FCC ensure that the value of the spectrum will be upheld throughout the auction process?

Answer. FCC has a long history of raising revenue through the auctions process, generating $50 billion to the United States Treasury since 1993. Spectrum value goes beyond direct payments to the Treasury for spectrum licenses—spectrum deployment supports technological development, job creation and economic growth. FCC will consider these factors as well as all relevant statutory mandates as it initiates the incentive auctions process.

CONCLUSION OF HEARINGS

Senator DURBIN. This meeting stands in recess.

[Whereupon, at 4:55 p.m., Wednesday, May 9, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

LIST OF WITNESSES, COMMUNICATIONS, AND PREPARED STATEMENTS

SUBJECT INDEX

COMMODITY FUTURES TRADING COMMISSION

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

FEDERAL TRADE COMMISSION

GENERAL SERVICES ADMINISTRATION

○