

FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR 2015

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION

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SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS

**ANDER CRENSHAW, Florida, *Chairman***

MARIO DIAZ-BALART, Florida

TOM GRAVES, Georgia

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NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mrs. Lowey, as Ranking  
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

JOHN MARTENS, WINNIE CHANG, KELLY HITCHCOCK,  
ARIANA SARAR, and AMY CUSHING,  
*Subcommittee Staff*

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**PART 5—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2015**

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# **FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2015**

TUESDAY, MARCH 25, 2014.

## **FEDERAL COMMUNICATIONS COMMISSION**

### **WITNESSES**

**TOM WHEELER, CHAIRMAN**

**AJIT PAI, COMMISSIONER**

Mr. CRENSHAW. I want to welcome our witnesses, Chairman Tom Wheeler and Commissioner Ajit Pai for the committee today. This is the first time both of you have appeared before our subcommittee, so I want to welcome you and thank you for being here today.

The focus of today's hearing is the FCC's fiscal year 2015 budget request. Your request is for a \$35 million, or a 10.5 percent, increase over the current level. And while the FCC is funded by fees, these are fees directly passed on to consumers so I believe that Congressional oversight is an important check on the Commission's activities.

Learning that the Commission, prior to your arrival, had planned to spend money on an inappropriate study outside the agency's jurisdiction on newsroom operations, leads me to think that perhaps the Commission has more money than it really needs.

While we understand that you may have some funding needs in order to keep up with the ever-changing technology landscape, we expect you to look at your current spending first before coming to us for increases. As you both know, the Middle Class Tax Relief and Job Creation Act of 2012 provided the FCC with the authority to conduct spectrum incentive auctions, and this is in itself a complicated process. It is expected to raise over \$25 billion in revenue, as well as create a nationwide communications network for first responders. So these auctions will be quite a task for the FCC to implement and I look forward to hearing more about the development of these auctions and how we are moving forward.

Given today's technological and competitive landscape, my interest in seeing a leaner, more efficient, and a more transparent FCC has not diminished.

Chairman Wheeler, I hope you can take serious the committee's request to review your organizational structure, to reform and reorganize the FCC to more appropriately reflect the Commission's current role, and to keep up with the pace of technology in the industries that you regulate. This committee is committed to fiscal responsibility and we take that charge seriously. We expect all the

agencies that are under our jurisdiction to operate as efficiently and effectively as you can and that includes the FCC.

The industries and services that the FCC regulates are crucial, critical to American communications and businesses. These technologies are advancing at an ever-quickening pace, and the FCC must keep up while not deterring or stifling competition and innovation.

Over-regulation hurts American businesses and markets. The FCC should consider the impact of its regulations and should employ rigorous, cost-benefit analysis in its rulemakings wherever possible. I look forward to discussing these important issues with you all today and there is much to discuss.

So, again, thank you for being here today. I look forward to your testimony. And now I will turn to Ranking Member Serrano for any remarks he might have.

Mr. SERRANO. Thank you, Mr. Chairman. I would like to join you in welcoming Chairman Wheeler and Commissioner Pai before the subcommittee. Both of you are testifying before this subcommittee for the first time, so we will try not to be too hard on you. Besides, we are too close to be angry.

Technology places an ever-growing role in the lives of most Americans. People increasingly depend upon television, radio, satellite, and Internet service to connect with others to better understand the world and to expand their economic opportunities. And from ensuring consumer access to the Internet to promoting media diversity, the FCC is the primary regulator ensuring fair access to and fair play within every aspect of our wide variety of communications methods.

As technology rapidly changes, it is important that the FCC be able to continue to meet these responsibilities and that is why we are here to discuss your budget request today.

Given those broad and growing responsibilities, it is not surprising to see that you are requesting additional resources for fiscal year 2015. Your budget request is approximately \$36 million higher than the funding level you received in fiscal year 2014. I look forward to discussing how you will prioritize this money and how we can better understand the various increases in light of your goals to protect consumers and ensure the integrity of the public airwaves.

One area of particular interest to me is some of the problems that have cropped up with regard to the growing use of smartphones. As smartphones become common in our society, their use has been accompanied by a steep rise in the number of thefts of these devices. Unfortunately, while some steps have been taken by the FCC and others, not enough has been done to deter smartphone theft, which can be lucrative both here and abroad.

I recently proposed legislation to require all smartphone manufacturers and service providers to make, I hate the word, a kill switch available to consumers which will allow individuals to render their smartphones completely useless if taken from them and would eliminate any incentive to steal these devices. I will give you an example. In New York City I think 40 percent of crime now is related to the stealing of a smartphone. I think 20-something attorney generals, including New York's, have come forward and said

that this is a serious issue, one that we have to address. I hope to get your thoughts on this issue and on what more needs to be done in this area to protect consumers.

Once again, we welcome you, and I must say that this is one of those hearings, notwithstanding our starting hour, that I take very seriously because I am a technology user. I have every iPad you can think of. I have every smartphone you can think of. I am not ashamed as a member of Congress to say that I watch TV. You know, most members of Congress say they only watch CNN or Fox and nothing else. I admit that I watch the Westerns channel and everything else. I listen to the radio. I have satellite radio in both cities. And so I take seriously what you do and what chances you have to better the quality of service that you provide the American people, understanding always that the airwaves belong to the American people.

And, Mr. Chairman, lastly, years ago I was very strong on the issue of when the FCC was going after some broadcasters for the way in which they conducted their programming. And I said at that time, All you have got to do is turn Howard Stern off. If you do not like it do not get upset, just turn it off. And I am a big believer in that freedom of expression even if it upsets someone. So thank you and thank you for being here with us.

Mr. CRENSHAW. Thank you, and now I turn to Chairman Wheeler. We will make your written statement part of the record and if you would limit your remarks to about five minutes that would be great.

Mr. WHEELER. Great. Thank you very much, Mr. Chairman, Mr. Serrano. As you both have pointed out, this is my first time presenting a budget before an Appropriations Subcommittee. It is not my first time presenting a budget, however. And what I thought might make some sense would be if I revert to form today as during my days as a businessman and just kind of hit the issues that I think are important that we ought to be paying attention to in this budget.

You were absolutely right, Mr. Chairman. This is a \$35 million increase. This is a 10 percent increase. This is serious money. You have the right to take a serious and hard look at it because it demands explanation.

The increases break into approximately thirds. About one-third is for technology upgrades, which is a cost-saving and efficiency-increasing expenditure. About one-third is for Universal Service Fund reform, which is expanded enforcement and new rules. And about the final third is for two things. One, it is inflation, salary, benefits, mandatory things that we have to do and we are required to do. And the other is the movement of the broadband map from NTIA's responsibility to the FCC's responsibility and how we pay for it. So let me see if I can unpack each of those just very quickly.

For information technology, \$13.5 million is our request. Our IT is old. It is inefficient and is insecure. Forty percent of our IT systems are more than 10 years old. This means that for many of them there is no vendor support. And they are costly to maintain. We have, amazingly I discovered when I came in, 207 different computer systems for an agency of 1,725 people. There is not a business in America that would put up with that. Our systems are

incompatible. They cannot talk to each other. And they are highly inefficient. And worst of all, they are insecure.

I would be happy to go into more detail about that in a non-public setting, but there are serious challenges that we have. Thirteen million dollars, as you point out, Mr. Chairman, is a lot of money but the reality here is if we do not spend that now we will spend that in the next two years in the baling wire and glue that we have to use to hold the existing systems together.

The second issue, Universal Service Fund reform, is about a \$10.8 million expenditure. We oversee an \$8.4 billion Universal Service Fund program that is going through significant change that brings sizeable challenges with it. The Lifeline Program has been abused. We will save \$160 million this year through eliminating unqualified recipients. Companies, not just consumers, have been involved in this. We need to beef up enforcement. If you talk to the Enforcement Bureau folks, my line from day one has been, I want heads on pikes. And we need enforcement capability that we do not have.

The high-cost, rural part of universal service, we are shifting from voice to broadband. We are running some trials in rural areas to help accomplish that, as well. The resources of our Wireline Computation Bureau are constrained and pulled in other directions, not the least of which is overseeing the transition to all IP networks, which is a key component of this. And we do not have the resources there.

And finally, the E-Rate Program, the third part of the Universal Service Fund, is an 18-year-old program built around 18-year-old priorities that is not focused on the priority of broadband delivery to schools and libraries. It needs redirection. It needs cost-efficiency. And we are in the midst of developing new rules to accomplish that.

But let me talk a little bit about management here. We need more muscular enforcement of what is going on in the Universal Service Fund. I am starting up a strike force to focus on waste, fraud, and abuse. We have today 25 FTEs for enforcement and an \$8.4 billion program. I do not think it is sufficient to do the job. We need more muscular enforcement. We need investigators. We need auditors. We need financial enforcement. It is not just more lawyers. We need people who are out there and can make sure that the program is being administered efficiently and we need to spread them throughout the agency: in the Enforcement Bureau, in the Office of Managing Director, in the Office of the Inspector General, and in the Wireline Bureau.

The last leg, the last third, as I said, there is \$5.7 million for mandated personnel pay, benefits, obligations and about \$3 million for the broadband map that NTIA used to pay for.

Finally, Mr. Chairman, two quick notes. As you noted, the agency pays for itself through fees. And also as you noted, this is a huge growth area for the economy. We are trying to bring to regulation, we are trying to wean from regulation, the idea that the regulator knows best. We are trying to encourage competition as a force that regulates the marketplace, to protect competition, to expand competition. And we are trying to have a regulatory policy that reflects that when there is competition there is less need for regulation.

And we also have the responsibility to make sure that we are providing stability for those who make the investment in the capital, for those that create jobs, and that we are fulfilling the consumer protection obligations that the Congress has laid down for us.

I take your admonition about our responsibility for fiscal responsibility very seriously and look forward to discussing it more with you.

[The information follows:]

**Statement of  
Chairman Tom Wheeler  
Federal Communications Commission**

**Hearing on the FCC's Fiscal 2015 Budget Request**

**Before the  
Subcommittee on Financial Services and General Government  
Committee on Appropriations  
U.S. House of Representatives**

**March 25, 2014**

Chairman Crenshaw, Ranking Member Serrano, and members of the Subcommittee, I am pleased to appear before you today, alongside my colleague Commissioner Pai, to present the Federal Communications Commission's Fiscal Year (FY) 2015 Budget Request.

Although I have testified before a number of other congressional committees during my career, this is my first appearance before an Appropriations Subcommittee. I see this as an important opportunity to update you on the FCC's activities while providing you with information essential to developing the Commission's funding levels.

When I assumed the Chairmanship of the FCC last November, I was impressed by the Commission's moderate budget levels and the extraordinary work that this agency has accomplished during the past few decades. The Commission has raised more than \$53 billion for the Treasury in auctions revenues since 1994 – \$1.56 billion of that just last month. We are on course to raise billions more in the next few years to fund, among other things, the deployment of an interoperable broadband network for our nation's first responders, as well as to reduce the deficit. The Commission supports an industry that is essential to our nation's economy and stimulates ever-higher levels of financial growth. We have repurposed and re-engineered significant amounts of spectrum to fuel these industries – including spectrum that would have been considered almost useless barely a decade ago. During the past three years, the Commission has reformed the Universal Service Fund (USF) – a massive undertaking designed to take this 20<sup>th</sup> Century program into the next decades of the 21<sup>st</sup> Century – and now we are building on that reform with a sharpened enforcement focus.

The Commission's activities are entirely funded by those it regulates. In other words, there is a zero relationship between Commission expenditures and the federal deficit. We have no direct appropriation, and we work hard to raise funds to put money back into the Treasury. In fact, the industries that we regulate contributed \$17 million to sequestration since that money

was derived from their licensing fees. Auctions revenues cover auctions costs, and the USF funds cover USF program costs.

The FCC's FY 2015 Budget Request is \$375,380,313, including \$11,090,000 specifically allocated to the Office of Inspector General. Our auctions cap request is \$106,200,000. Adopting this request will allow us to follow through on important priorities identified by your committee and our authorizers: the continued reform of USF programs to combat waste, fraud, and abuse and enhanced enforcement to put teeth into those reforms; as well as internal agency reform designed to make our processes responsive to consumers and the industry in a cost-effective fashion. Importantly, the auctions funds will support spectrum auctions identified in the 2012 Spectrum Act, which will make additional spectrum worth tens of billions of dollars available for commercial licensed services as well as providing nationwide spectrum for unlicensed use; and will support FirstNet.

Although it is important to keep costs down in the current budget environment, let me give you a snapshot of the Commission's recent budget restraints. The FCC's spending levels decreased after FY 2009 from \$341 million to \$335 million, and hovered just at that mark for two years, finally hitting \$339 million during the next three years – with \$17 million of that number going toward sequestration in FY 2013. During FY 2013, the FCC cut its programming to the bone and worked hard to find cost savings, often delaying lifecycle replacements and improvements for facilities and equipment. In FY 2011, the FCC had 1,776 employees. Today, we are down to 1,725, which is a 30-year low in FTEs. The number of FCC contracting personnel also has steadily decreased from a high of 959 in FY 2009 to a current level of 470.

These cost reductions had real consequences. We have been unable to replace our Office of Engineering's Equipment Authorization System, and at this year's Consumer Electronics Show, I heard complaints about how sequestration's impact had slowed the approval of new products before last year's holiday shopping season. Cuts in employees left us chronically understaffed in enforcement, for example, so that our work to police pirate radio activities suffered – a big concern among some broadcasters – as we focused all available resources on public safety and homeland security activities. Likewise, we never replaced or upgraded our enforcement equipment. In fact, we have more than 200 relic IT systems that are costing the agency more to service than they would to replace over the long term.

An effective and well-resourced FCC is critical, because we oversee the networks that power our information economy. The Commission's policies to unleash spectrum, promote competition, and provide regulatory certainty can help spur innovation and investment in a vital sector that drives economic growth and job creation. And the information and communications technology sector continues to be one of the leading lights of our economy and a key to our global competitiveness. For example:

- American firms account for 84 percent of global profits in the computer hardware and software industries.
- In 2010, the ICT sector accounted for 24% of real GDP growth.
- Each year, the ICT sector generates more than \$300 billion in free goods and services that are not captured by GDP statistics.

- The mobile apps economy, which didn't exist at the start of 2008, has created more than 750,000 U.S. jobs.
- Since 2009, more than \$250 billion has been invested by private companies to expand, extend and upgrade broadband networks, which exceeds investment by the major oil and gas or auto companies.
- Annual investment in U.S. wireless networks grew more than 40% between 2009 and 2012.
- Venture capital financing of "Internet-specific" businesses has doubled in the past four years, from \$3.5 billion in 2009 to \$7.1 billion in 2013.

During the next year, the FCC will be hard at work on activities that will deliver significant benefits to consumers, businesses and our economy. We will be developing and licensing spectrum resources to spur innovation in new communications devices; upgrading, enhancing and securing our internal systems to better serve consumers and the industries that rely on us; and modernizing and enforcing our USF programs. That is really what the Commission's FY 2015 budget is designed to support – another boom year of communications services for the American consumer and another year of growth for the industries that we support.

During that same year, the FCC, like the technology and telecommunications industries, needs to adapt to keep pace with the exploding marketplace. The FCC needs the basic tools to sustain and encourage industry growth; to protect licensees; and ensure the reliability and safety of the systems that we use. We need to do so in a way that fosters solid management practices that support, sustain and enhance the industries that we regulate.

One of the primary reasons that I initiated a process reform review upon assuming the FCC Chairmanship was because of my commitment to create an agency that is highly efficient, as well as responsive to the needs of all Americans. Instituting reform at this level will require the expenditure of resources that support essential programmatic changes. To support these efforts, the Commission is requesting a total of 1,790 FTEs for FY 2015, which includes an additional 10 FTEs for Information Technology (IT) programming and 45 FTEs for USF modernization and oversight. These numbers are projections over the current low number of FTEs, and they represent an increase of only 14 FTEs over FY 2011 levels.

The FCC carefully considered the need to hire additional employees prior to submitting its FY 2015 Budget Request. We have far fewer personnel in IT than comparable agencies, and, as I mentioned earlier, we have more than 200 incompatible, aging computer systems that, because they cannot talk to one another, act to increase the cost of doing business. We must overhaul, upgrade, secure and replace IT systems that are antiquated relics – costly to maintain and harmful to agency productivity. The Process Reform report that I commissioned draws a direct line between inefficient and unreliable IT systems and sluggish administrative and regulatory activities. Certainly, the FCC, of all agencies, must be able to communicate effectively inside and outside the Commission. The failure to invest in IT now will keep us from achieving many of the reform goals that Congress has set – from transparency to timeliness.

Our other major spending target is USF modernization and oversight. The need here is urgent and resource-intensive. I intend to place a heavy – but not heavy-handed – emphasis on modernization and enforcement to ensure that USF adheres to Congress' vision and provides essential access to telecommunications services to all Americans – whether they live in a remote area of Alaska, in one of our American territories, or on an Indian reservation in North Dakota. On that note, I would emphasize that closing the infrastructure gaps in Indian country is an agency-wide priority, and I am committed to greater consultation with Tribal leaders to promote broadband deployment and adoption in their communities.

We envision hiring a broad range of USF specialists with the regulatory, enforcement, economic, legal, accounting and auditing skills necessary to provide oversight of the USF programs in multiple offices and bureaus. Although our Budget Estimates for FY 2015 indicate that most hires for USF would be targeted in the Wireline Competition Bureau (WCB), our new Managing Director currently is reviewing and revising the individual bureau staffing levels in accordance with the Commission's mission objectives. While the final recommendation has not yet been made, the USF employees will likely be distributed among WCB, the Enforcement Bureau (EB), Office of Inspector General (OIG), and Office of Managing Director (OMD). Every time I read or hear a news story about someone who tries to game the USF system, I recommit myself to the goal of dedicating qualified staff to reducing fraud.

Our requested auctions spending bump will support current auctions activities as well as the complex process of developing the Incentive Auction Program. Since 1994, the auctions expenses have been approximately two percent of our total auctions revenues. The Commission operated the auctions program for 10 years under a cap without inflationary adjustments, only receiving an increase in FY 2013 to fund the start-up for the Incentive Auctions program.

The Commission welcomed the statutory authority to initiate and operate Incentive Auctions because of its benefits to consumers and stakeholders, as well as the Treasury. We are grateful that you recognized the need to ensure that this program is properly funded and that you provided us with the necessary resources to move ahead with our work, even as other programs were facing sequestration. The importance of this auction to the public safety community and the boost it will provide for nationwide interoperable communications will benefit all Americans. We also see this auction as a significant financial opportunity for many broadcasters – it will enhance the ability of broadcasters retaining their spectrum to continue providing the public with diverse, local, free over-the-air television service.

At the same time, the reclaimed spectrum will promote economic growth and enhance America's global competitiveness. More spectrum means more speed, capacity and ubiquity of mobile broadband services such as 4G LTE and Wi-Fi networks. These benefits will be magnified by another auction scheduled for the next year, AWS-3, which will provide access to reclaimed federal spectrum.

I appreciate this subcommittee's attention to the Commission's funding needs during the next fiscal year, and I look forward to working with you to fulfill our statutory mission efficiently and effectively. Thank you.



**Chairman Tom Wheeler**

Tom Wheeler became the 31st Chairman of the Federal Communications Commission (FCC) on November 4, 2013. Chairman Wheeler was appointed by President Barack Obama and unanimously confirmed by the United States Senate.

For over three decades, Chairman Wheeler has been involved with new telecommunications networks and services, experiencing the revolution in telecommunications as a policy expert, an advocate, and a businessman. As an entrepreneur, he started or helped start multiple companies offering innovative cable, wireless, and video communications services. He is the only person to be selected to both the Cable Television Hall of Fame and The Wireless Hall of Fame, a fact President Obama joked made him “The Bo Jackson of Telecom.”

Prior to joining the FCC, Chairman Wheeler was Managing Director at Core Capital Partners, a venture capital firm investing in early stage Internet Protocol (IP)-based companies. He served as President and CEO of Shiloh Group, LLC, a strategy development and private investment company specializing in telecommunications services and co-founded SmartBrief, the internet’s largest electronic information service for vertical markets. From 1976 to 1984, Chairman Wheeler was associated with the National Cable Television Association (NCTA), where he was President and CEO from 1979 to 1984. Following NCTA, Chairman Wheeler was CEO of several high tech companies, including the first company to offer high speed delivery of data to home computers and the first digital video satellite service. From 1992 to 2004, Chairman Wheeler served as President and CEO of the Cellular Telecommunications & Internet Association (CTIA).

Chairman Wheeler wrote *Take Command: Leadership Lessons of the Civil War* (Doubleday, 2000) and *Mr. Lincoln’s T-Mails: The Untold Story of How Abraham Lincoln Used the Telegraph to Win the Civil War* (HarperCollins, 2006). His commentaries on current events have been published in the *Washington Post*, *USA Today*, *Los Angeles Times*, *Newsday*, and other leading publications. Presidents Clinton and Bush each appointed Chairman Wheeler a Trustee of the John F. Kennedy Center for the Performing Arts, where he served for 12 years. He is also the former Chairman and President of the Foundation for the National Archives, the non-profit organization dedicated to telling the American Story through its documents, and a former board member of the Public Broadcasting Service (PBS).

Chairman Wheeler is a proud graduate of The Ohio State University and the recipient of its Alumni Medal. He resides in Washington, D.C.

Mr. CRENSHAW. Well thank you very much. Commissioner Pai, would you like to make an opening statement?

Mr. PAI. I would, Mr. Chairman, that would be great.

Mr. CRENSHAW. The floor is yours.

Mr. PAI. Chairman Crenshaw, Ranking Member Serrano, and members of the subcommittee, thank you very much for inviting me to testify here today. I expect and welcome your questions about the budget-specific nature of this hearing in the colloquy, but today in my opening statement I would like to focus on two very important policy issues before the FCC. First, the incentive auction and second E-rate reform.

First the incentive auction. Given this subcommittee's focus on appropriations, it is worth noting that the FCC is one of the few agencies in the U.S. government that can generate a profit for the government. Between 2005, and 2008, for instance, the FCC held spectrum auctions that raised over \$33 billion that was devoted to the deficit reduction. The commission's auction program has not always turned a profit. From January 2009 until December of 2013, the FCC raised a paltry \$72 million in auction revenue. Indeed, when you account for the commission's spending on auctions our auctions program actually lost money during those five years.

In 2012, Congress tasked the FCC with pushing new spectrum into the commercial marketplace and raising at least \$27.95 billion for national priorities. Specifically, the Spectrum Act targeted more than \$20 billion for deficit reduction and \$7 billion for the build-out of a nationwide, interoperable, public safety broadband network. Now that build-out makes good on a recommendation, a long-standing one, from the 9/11 Commission, that first responders need interoperable communication systems in times of disaster. The Spectrum Act also set aside up to \$135 million for state and local public safety officials, up to \$300 million for the research and development of wireless public safety communications, and up to \$115 million for the deployment of next-generation 911.

Now the broadcast incentive auction will be the commission's best opportunity to hit that \$27.95 billion target. Now at this point, my greatest worry about the incentive auction is about participation. In order for the incentive auction to be successful, we will need robust participation, both by broadcasters and by wireless companies. And that in turn means avoiding unwise policy choices that will deter participation in both the reverse and the forward auctions respectively. My own position on the reverse auction is simple. Prices paid to broadcasters for their spectrum should be determined by the market. The commission should not set those prices by administrative fiat.

On the forward auction, the commission should not limit the carrier's ability to participate, such as by setting a spectrum cap. The result of doing that would be less spectrum for mobile broadband and less funding for national priorities, a higher budget deficit, and an increased chance of a failed auction. Under the law we have only one option, which is success, because we only have one chance to get it right.

The second issue I would like to discuss briefly is the Universal Service Fund's \$2.4 billion schools and libraries program, better known as E-Rate. Now in many ways, E-Rate has been a success.

Just last year, for instance, 87 percent of educators responding to an independent survey reported that they had “adequate bandwidth for robust instructional needs” in all or most classrooms on a school campus.

But E-Rate also has had its share of difficulties. The application process for one is so complicated that the majority of the Universal Service Fund’s entire administrative cost is focused on E-Rate. Many schools and libraries feel compelled to hire outside consultants to manage all the complexities. Others do not even bother applying at all. Services like paging are prioritized over next-generation services like connecting classrooms. Money is wasted.

One Brooklyn school, for instance, has received millions of dollars in E-Rate funding even though it does not allow its students to access the Internet. And there is no meaningful transparency with respect to either the amount or the impact of E-Rate funding.

To solve these problems I have proposed a student-centered E-Rate program. This means an upfront allocation of funding and a matching requirement so that schools and libraries know in advance how much money they can spend and have strong incentives to spend it wisely. This means simplifying the application process. This means targeting funding at next-generation technologies while still letting local schools set their own priorities. This means making all funding and spending decisions accessible on a central website.

My proposal would reduce administrative costs and in its first year alone a student-centered approach would provide an extra \$1 billion for next-generation services, all without collecting an extra dime from the American people. Accordingly, my view is that we should not increase the E-Rate Program’s budget. And under no circumstances should we do so without finding corresponding savings elsewhere in the Universal Service Fund. We cannot ask Americans to pay even more on their monthly phone bills, especially when the median household income in this country is now lower than it was in 2007.

Finally, I should note that while all commissioners are asked to vote on a budget proposed by the chairman and submitted to the Office of Management and Budget, I have not been asked to participate in the development of our agency’s budget request. With that context in mind, I will do my best to respond to any questions you may have.

Also, Chairman Crenshaw and Ranking Member Serrano, thank you once again for inviting us to testify. I look forward to your questions and to working with you in the days to come.

[The information follows:]

**STATEMENT OF AJIT PAI**  
**COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**  
**BEFORE THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL**  
**GOVERNMENT OF THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE**  
**ON APPROPRIATIONS**  
**“BUDGET HEARING—FEDERAL COMMUNICATIONS COMMISSION”**  
**MARCH 25, 2014**

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the work of the Federal Communications Commission (FCC).

We have been busy, and today I'd like to share with you my views on several important issues that we are confronting, namely: freeing up spectrum for commercial use, reforming the Universal Service Fund's E-Rate program, removing regulatory barriers to infrastructure investment, adjusting our rules to the changing media marketplace, ensuring Americans can always reach help when they dial 911, and reforming the agency's processes.

*Spectrum.*—Given this Subcommittee's focus on appropriations, it is worth noting that the FCC is one of few agencies that can generate a profit for the federal government. By auctioning off spectrum, the Commission has raised tens of billions of dollars for the Treasury over the last two decades. Between 2005 and 2008, for example, the Commission's spectrum auctions raised over \$33 billion that was used for deficit reduction, and the FCC's auctions program was a net contributor to the Treasury each and every year.

But the Commission's auction program has not always turned a profit. From January 2009 through December 2013, the Commission raised a paltry \$72 million in auction revenue, or about two-tenths of one percent of the amount raised in the prior four years. Indeed, when you account for the Commission's spending on auctions, our auctions program has actually lost money during the last five years. This is bad news not just for the Treasury but also for American consumers, whose demands for additional bandwidth have increased as their use of tablets and smartphones has spiked over this same period of time.

That is why, since joining the Commission, I have concentrated on trying to accelerate the allocation of spectrum for mobile broadband and to rejuvenate the Commission's auction program. And I am pleased to report that we recently have made real progress on both of these fronts. Just last month, the Commission completed its first major spectrum auction in six years by auctioning off the H Block, 10 MHz of long-fallow spectrum once thought to be virtually worthless, to the tune of \$1.564 billion. Former Chairwoman Clyburn deserves credit for pushing that auction through, as does Chairman Wheeler for finishing the job.

But our work isn't finished. In the Middle Class Tax Relief and Job Creation Act of 2012, often called the Spectrum Act, Congress entrusted the Commission with holding a number of spectrum auctions, all with the twin goals of getting new spectrum into the commercial marketplace and raising at least \$27.95 billion for national priorities.

What are those national priorities? In short, they are deficit reduction and public safety—two things I'm sure every Member of this Subcommittee holds as priorities. Regarding the former, our incentive auctions hold the promise of raising more than \$20 billion for deficit reduction. Indeed, Congress counted on us raising this money when it passed the Spectrum Act, so if the Commission fails to follow through, we will be responsible for increasing the budget deficit.

As for public safety, successful spectrum auctions will provide money for key public safety priorities, such as the First Responder Network Authority's (FirstNet's) build-out of a nationwide, interoperable public safety broadband network. That \$7 billion build-out makes good on the recommendation of the 9/11 Commission that first responders need interoperable communications systems in times of disaster. The Spectrum Act also set aside up to \$135 million for state and local public safety officials, up to \$300 million to advance the research and development of wireless public safety communications, and up to \$115 million for the deployment of next-generation 911 (NG911). Under the law, all of this funding will be realized only if the net revenues of our wireless auctions are at least \$27.95 billion.

Given these important national priorities, we need to aim high. The H Block auction was a first step towards those goals, but a chunk of the money raised there will pay for running our auctions program. We still have about \$27 billion to go.

The next step towards raising these needed funds will be the auctioning of federal spectrum as required by the Spectrum Act. Most important to that effort are two bands of spectrum, 1755–1780 MHz paired with 2155–2180 MHz, that will hopefully become part of a new AWS-3 service. These bands are already internationally harmonized for commercial use, which means deployment will be swifter and cheaper than other options. That also means carriers are likely to bid more for this spectrum, which can lead to greater net revenues for the national priorities I described above.

Note that I said "hopefully." Under the Commercial Spectrum Enhancement Act, the Commission can only assign commercial licenses for this spectrum if the revenues from the auction exceed 110 percent of the costs of relocating federal users out of that spectrum and coordinating with those that remain. And the best way to make sure that we hit that mark and push that spectrum out into the marketplace is to invite all carriers to participate in the auction and offer a band plan that incentivizes the carriers to bid up the spectrum without restraint.

One further note on this band: I regret that we will not be bringing all of this spectrum to the marketplace free and clear from interference by incumbent federal users. Clearing 1755–1780 MHz of federal users would be the best way to maximize the value of spectrum, both at auction and for consumers. That's what we did ten years ago when we created the AWS-1 band that is so important to mobile broadband today, and that's why the Spectrum Act puts a thumb on the scale for clearing and allows sharing only if clearing is "not feasible because of technical or cost constraints." But it appears that the decision has been made that clearing is not feasible at this point. I therefore hope that the government will do its part for the public, publishing specific and detailed transition plans as early as possible and coordinating with carriers quickly so that this spectrum can be put to use soon.

After this auction of federal spectrum in the fall, the broadcast incentive auction will be the Commission's best opportunity to push a large amount of spectrum well-suited for mobile broadband into the commercial marketplace and raise the billions we need. With this auction, television broadcasters will have the opportunity to relinquish their spectrum that wireless carriers will then have the opportunity to purchase, with the bid-ask spread (i.e., the net revenues) going to the Treasury once the Commission has paid for the relocation expenses of broadcasters remaining in business.

As the Commission moves forward on incentive auctions, I believe that five principles should guide our work. *First*, we must be faithful to the statute. It is our job to implement the Spectrum Act, not to rewrite it to conform to our policy preferences. *Second*, we must respect the laws of physics. Our band plan and approach to repacking must work from an engineering perspective. *Third*, we must be fair to all stakeholders. This is especially important because the incentive auction will fail unless both broadcasters and wireless carriers choose to participate. *Fourth*, we must keep our rules as simple as possible. The broadcast incentive auction is inherently complicated; unnecessary complexities are likely to deter participation. And *fifth*, we need to complete this proceeding in a reasonable timeframe. Prolonged uncertainty is not good for anyone.

My greatest worry regarding the incentive auction, at this point, is about participation. In order for the incentive auction to be successful, we will need robust participation by broadcasters and wireless carriers alike. But right now, I am concerned that the Commission will make unwise policy choices that will deter participation in both the reverse and forward auctions. My position on the reverse auction is simple. Prices paid to broadcasters should be determined by the market. The Commission should not set them by administrative fiat. The Commission should not deter broadcaster participation through a complicated “scoring” scheme that tries to prejudge the compensation television station owners should receive. Any attempt to restrict payments to broadcasters will prove to be penny-wise and pound-foolish. Indeed, without sufficient broadcaster participation, the entire incentive auction will fail.

And on the forward auction, the Commission should not limit carriers’ ability to participate, such as by setting a spectrum cap or narrowing the spectrum screen despite the significant competition that exists in the wireless market. The inevitable effect of such a policy would be less spectrum for mobile broadband, less funding for national priorities, a higher budget deficit, and an increased chance of a failed auction. With a \$27.95 billion target, we cannot let this auction fail.

Finally, there’s one last piece of spectrum I’m excited to discuss: the 5 GHz band. Although we are not planning to auction this spectrum, it can—and I believe will—be of substantial value to the American economy. The 5 GHz band is tailor-made for the next generation of Wi-Fi. Its propagation characteristics minimize interference in the band and the wide, contiguous blocks of 5 GHz spectrum allow for extremely fast connections, with throughput reaching 1 gigabit per second. The technical standard to accomplish this, 802.11ac, already exists, and devices implementing it are already being built. All of this means we can rapidly realize these benefits: more robust and ubiquitous wireless coverage for consumers; more manageable networks for providers; a new test bed for innovative application developers; and other benefits we can’t even conceive today.

Following the instructions set forth by Congress in the Spectrum Act, the Commission launched a rulemaking last year to make up to 195 MHz of additional spectrum in the 5 GHz band available for unlicensed use. We also proposed to allow greater utilization of those segments of the 5 GHz band already available for unlicensed use. Last summer, I urged the FCC to move forward with its 5 GHz proceeding in stages, addressing the easier questions (such as how to modify the service rules for the U-NII-I band) before moving on to the hard ones.

And at the end of this month the Commission will be taking action. Although I cannot comment on specifics, I can say that I am pleased that we will be making the band attractive for commercial Wi-Fi while safeguarding incumbent users. That means better, faster devices for consumers, which is all the more important given the growing congestion in the 2.4 GHz band (which consumers right now commonly rely upon for Wi-Fi access).

**Universal Service Fund.**—Another big ticket item in the Commission’s budget is the Universal Service Fund, which disbursed over \$8.36 billion last year. The Fund contains four separate programs, three of which are capped. The high-cost program has a yearly budget of \$4.5 billion, which is used to keep rural telephone rates “affordable” and deploy broadband to areas where the competitive market would not otherwise go. The E-Rate program, which supports schools and libraries, had a \$2.38 billion cap last year, which is adjusted each year for inflation. And the rural healthcare program is capped at \$400 million, but spending totaled only \$157 million last year. The only uncapped program is the Lifeline program, which disbursed \$1.79 billion last year, more than double the \$817 million disbursed in 2008. In addition to these disbursements, the Fund spent \$109 million in 2013 on administrative costs (not including the costs of Commission staff overseeing the program), with the majority (\$65.6 million) dedicated to administering the E-Rate program.

I want to focus my testimony on the E-Rate program today because I am hopeful that, in the next few months, we will bring about real reform of that program. Established at the direction of Congress 18

years ago, the E-Rate program is intended to bring advanced communications services to schools and libraries across America.

In many ways, the E-Rate program has been a success. Internet access in public schools has almost tripled, and speeds have grown alongside availability. For example, a 2010 FCC survey showed that 22 percent of respondents were “completely” satisfied and another 58 percent were “mostly” satisfied with the bandwidth they’re getting. And just last year, 87 percent of educators responding to an independent survey reported that “access to adequate bandwidth is available for robust communication, administrative and instructional needs” in “all” or “most” classrooms on a school campus.

But like all federal programs, E-Rate has had its share of difficulties. For applicants, the funding process from start to finish can stretch for years. To navigate arcane steps like Form 470 competitive bidding, Form 471 Program Integrity Assurance review, and the Form 500 commitment adjustment process, schools must enlist specialized E-Rate consultants, draining scarce dollars away from students and technology.

For parents, the process is so opaque that they cannot know ahead of time how much funding their child’s school might receive and cannot track whether it is actually spent on enriching the education of their kids.

For school boards, E-Rate’s “priority” system (under which things like paging and Blackberry services for administrators get prioritized over connecting a classroom to the Internet) distorts their spending decisions since some services are discounted by up to 90 percent while others may or may not receive any discount in a given funding year.

For government watchdogs, there’s plenty of waste and abuse to worry about. For example, one Brooklyn school has gotten millions of E-Rate dollars over the years including money for Internet access services—even though the students are not allowed to use the Internet.

And for everyone with a phone line, and who hence contributes to the program, it’s hard to tell what bang we’re getting for our universal service buck—there is no meaningful transparency with respect to E-Rate spending and no real information on the impact of that spending.

There is a better way—one which would focus the E-Rate program on children. To create a student-centered E-Rate program, we need to fundamentally rethink how we structure the program. That means starting each school and library with an upfront allocation of funding so they know how much they can spend and can plan accordingly (a concept a Subcommittee like this one should appreciate). That means establishing a meaningful matching requirement so that schools and libraries have a strong incentive not to waste money. That means cutting the red tape so that the initial application is just one page and there’s only one other form needed before funds are disbursed. That means targeting funding at next-generation technologies like broadband and Wi-Fi while still letting local schools set their own priorities. And that means publishing all funding and spending decisions on an easily accessible, central website so that every parent, every journalist, every government watchdog, every American can see just how E-Rate funds are being spent.

The student-centered E-Rate program I have outlined (a summary is appended to this testimony) would fulfill E-Rate’s statutory mission of bringing advanced services to schools and libraries across the country. It would reduce waste, fraud, and abuse in the program and increase transparency and accountability. By streamlining the rules, we would also reduce the need for administrative overhead, saving the government millions more. And it would free an extra \$1 billion for next-generation services in its first year (\$600 million of which is currently spent each year on basic telephone service and other outdated technologies), all without collecting an extra dime from the American people.

Given the potential savings at hand, I do not support increasing the program’s budget at this time, and I am pleased that Chairman Wheeler appears to be on the same page. For example, last week he said

that “[s]imply sending more money to the E-Rate program to keep doing business as it has been for the last 18 years is not a sustainable strategy.” I concur. Indeed, under no circumstances should we increase the size of the E-Rate program without finding corresponding new savings elsewhere in the Universal Service Fund. We cannot ask Americans to pay even more in their monthly phone bills, especially when median household income in this country is lower than it was in 2007.

If we are willing to make the “hard decisions,” as Chairman Wheeler has put it, I believe that real reform of the E-Rate program can become a reality. A student-centered E-Rate program—that’s what teachers and librarians need, and that’s what America’s students and parents are counting on us to deliver.

**Infrastructure Investment.**—Removing regulatory barriers to the deployment of infrastructure is another Commission priority. To give entrepreneurs, investors, and innovators the regulatory certainty they need to invest in next-generation infrastructure, we need to make sure that we are not saddling them with last-generation rules. That means hastening the IP Transition and facilitating wireless infrastructure deployment.

**IP Transition.**—Almost every segment of the communications industry is competing to offer newer, faster, and better broadband services. Telecommunications carriers are upgrading DSL with IP-based technology and fiber. Cable operators have deployed DOCSIS 3.0 to increase bandwidth tenfold. Satellite providers are offering 12 megabit packages in parts of the country that never dreamed of such speeds. And millions of Americans—many of whom don’t subscribe to fixed broadband service at home—now have access to the Internet on the go using the mobile spectrum the Commission auctioned back in 2006 and 2008. Indeed, according to the State Broadband Initiative of the National Telecommunications and Information Administration, 98.8 percent of Americans had access to high-speed broadband as of December 2012. The common thread knitting all of these changes together is the Internet Protocol (IP), a near-universal way to route and transmit data.

What are the results of all this competition? More choices for consumers, and major challenges to old business models. Thirty years ago, most American consumers had access to one network largely run by one carrier, Ma Bell. Today, Americans are fleeing the copper network. 33.6 million Americans dropped their copper landlines over the past four years. About one in seven households with plain old telephone service over the public-switched telephone network (PSTN) dropped their service last year alone. And competition is rampant: 99.6 percent of Americans can choose from at least three wireline competitors, and 92 percent can choose from *10 or more*. The evidence also shows that consumers are in fact exercising that choice: Interconnected VoIP providers added 14.6 million subscriptions over the last four years. Essentially, voice is becoming just another application riding over the Internet.

Over a year ago, I called on the Commission to move forward with an All-IP Pilot Program, one that would give forward-looking companies a path to turn off their old TDM electronics in a discrete set of wire centers and migrate customers to an all-IP platform. Why? Because we cannot continue requiring service providers to invest in both old networks and new networks forever. Every dollar that is spent maintaining the networks of yesterday is a dollar that can’t be invested in building and upgrading the networks of tomorrow. Our goal should be to maximize investment in IP infrastructure so that high-speed broadband extends to every corner of our country.

I am pleased that, under Chairman Wheeler’s leadership, the Commission adopted an order establishing an All-IP Pilot Program consistent with the four guidelines I set forth last year. *First*, carrier participation should be voluntary—and the order announced that “no provider will be forced to participate in an experiment.” *Second*, trials should reflect the geographic and demographic diversity of our nation—and the order sought “experiments that cover areas with different population densities and demographics, different topologies, and/or different seasonal and meteorological conditions.” *Third*, no one can be left behind—and the order declared that “no consumer [may] lose[] access to service or critical functionalities” and that residential and business customers must receive “clear, timely, and sufficient notice of any service-based experiment.” And *fourth*, we must be able to evaluate an all-IP trial with

empirical data—and the order sought “experiments that collect and provide to the Commission data on key attributes of IP-based services.” With these core principles in place, I am optimistic that the trials will be a success.

I am especially happy that the All-IP Pilot Program is moving forward on a unanimous, bipartisan basis. As I said last year, this isn’t an issue that divides the left from the right or Republicans from Democrats. Accordingly, the order reflects our consensus that companies should have the opportunity to go all-IP. What is more, the order demonstrates that reaching an agreement does not mean compromising your values. I look forward to continuing our collaborations as we assess the proposed trials that are already coming in.

Of course, preparing for the IP Transition does not end with conducting an All-IP Pilot Program. We also need to take a hard look our regulations in light of the coming transition, if for no other reason than that the private sector needs flexibility to make investment decisions based on consumer demand, not outdated regulatory mandates. Accordingly, I believe four principles should shape our approach to the overall transition.

*First*, we must ensure that vital consumer protections remain in place. For example, when consumers dial 911, they need to reach emergency personnel; it shouldn’t matter whether they are using the PSTN, a VoIP application, or a wireless phone. The same goes for consumer privacy protections and antifraud measures like our slamming rules. *Second*, we must not import the broken, burdensome economic regulations of the PSTN into an all-IP world. No tariffs. No arcane cost studies. And no hidden subsidies that distort competition to benefit companies, not consumers. We must also repeal the old-world regulations such as retail tariffing that no longer make sense in a competitive all-IP world. While they remain on the books, wholesale expansion to IP may just be too tempting. *Third*, we must retain the ability to combat discrete market failures and protect consumers from anticompetitive harm. *Fourth*, we must respect the limits of the Communications Act and not overstep our authority. If the law does not give us the authority to act, we must turn back to Congress for guidance rather than venturing forth on our own.

*Wireless Infrastructure.*—Along with ending the economic regulations that deter wireline infrastructure investment and delay the deployment of next-generation networks, we need to address the business and technical challenges of deploying wireless broadband. Building a wireless network is expensive enough, but numerous federal, state, and municipal regulations can make further deployment difficult or even prohibitive. To be sure, some oversight is necessary to ensure sound engineering and safety and to respect environmental, historical, and cultural concerns. But many procedures simply frustrate, rather than facilitate, deployment. That ultimately harms consumers who are denied better and cheaper wireless services.

I am therefore pleased that the Commission moved forward last September with a Notice of Proposed Rulemaking seeking comment on a variety of ideas for reducing regulatory barriers to the construction of wireless infrastructure. In particular, I’d like to highlight three of them in my testimony this morning.

*First*, we should make clear that local moratoria on the approval of new wireless infrastructure violate federal law. The FCC has already put in place a shot clock for localities to address tower siting permits and other building applications. Prohibiting moratoria would address the tactic some localities have used to evade those deadlines by adopting an indefinite “time out” on the approval of wireless infrastructure.

*Second*, we should modernize our rules to exempt distributed antenna systems (DAS) and small cells from our environmental processing requirements, except for rules involving radio frequency emissions. Given their small size and appearance—some small cell equipment can fit in the palm of your hand, for instance—there is no reason to subject DAS and small cells to the same environmental review

process as a 200-foot tower. We should similarly update our historic preservation rules, which add yet more regulatory requirements, in order to facilitate the deployment of DAS and small cells. It bears noting that the greater the deployment of wireless infrastructure like this, the less reliance carriers (and hence consumers) must place on larger, “macro” cell sites and the less power networks and devices will consume.

*Third*, we should address what happens when a local government doesn’t comply with our shot clock. Currently, if a city does not process an application within 150 days, the only remedy is to file a lawsuit. This increases delay and diverts investments away from networks. To fix this problem, we should supplement our shot clocks with a backstop: If a locality doesn’t act on a wireless facilities application by the end of the time limit, the application should be deemed granted. (As a legal matter, I believe the FCC has this authority following the Supreme Court’s decision last May in *City of Arlington, Texas v. FCC*.)

There are also other steps that the Commission can take to hasten the deployment of wireless infrastructure. For example, we have sought comment on clarifying the scope and meaning of section 6409(a) of the Spectrum Act, which prohibits state and local governments from denying certain collocation requests. I hope that we make appropriate clarifications in the near term. And we are looking for ways to expedite the deployment of infrastructure to implement positive train control, as required by the Rail Safety Improvement Act of 2008. I support moving forward on all these fronts swiftly; the American public deserves no less.

*Net Neutrality*.—Given the amount of work the Commission must do to remove regulatory barriers to infrastructure investment, I hope that we do not divert our attention to promulgating rules that may in fact erect new barriers. I am of course talking about “net neutrality,” which has apparently returned to the FCC’s agenda after the courts ruled—for the second time in four years—that the FCC exceeded its authority in attempting to regulate the network management practices of Internet service providers.

Without delving too far into the subject, let me say this. For over a decade, the nation’s broadband infrastructure has been governed by four Internet Freedoms, set forth by then-FCC Chairman Michael Powell. *First*, consumers should have their choice of legal content. *Second*, consumers should be able to run applications of their choice. *Third*, consumers should be permitted to attach any devices they choose to the connection in their homes. And *fourth*, consumers should receive meaningful information regarding their service plans. Although our nation’s broadband marketplace is dynamic and rapidly evolving, these four freedoms have remained vibrant throughout—they are in a sense the pillars, the foundation of the market—and they have long received bipartisan support.

With those principles already entrenched, the FCC should stay its hand and refrain from any further attempt to micromanage how broadband providers run their networks. Such restraint is the best way to ensure that the market—and hence consumers—dictate the future of the Internet. This, in turn, will encourage innovation throughout the entire Internet ecosystem and incentivize the continued deployment of high-speed, quality broadband service. Our goal should be to connect all Americans with smart networks, not to enact rules that require networks to be dumb pipes. So let’s recognize net neutrality for what it is: an unnecessary distraction from the pressing need to end regulatory barriers that stand in the way of ubiquitous broadband.

*Media Marketplace*.—The media landscape has undergone revolutionary change in the last few decades. But the FCC’s rules have not kept pace with the realities of the marketplace. Accordingly, since joining the Commission, I have advocated updating our regulations on a variety of fronts while at the same time preserving the Commission’s commitment to the core values of competition, diversity, and localism. Today I will focus on two aspects of our work: reviewing our media ownership rules and revitalizing the AM radio band.

*Media Ownership.*—The Commission is required by law to review its media ownership regulations every four years. This cycle’s review began in September of 2009 as we announced a series of workshops to begin gathering information from various stakeholders. Now, more than four years later, our review is still not complete. The time has come for us to launch our next review, but we have not yet finished the last one. This is unacceptable and shows a troubling disregard for our legal obligations. We should bring the current quadrennial review to a close at the Commission’s March 31 meeting.

We should make sensible reforms to our rules so that they reflect the marketplace realities of 2014 rather than those of 1975. For example, I supported then-Chairman Julius Genachowski’s proposal to eliminate the newspaper-radio and radio-television cross-ownership rules. I also believe that the time has come to eliminate the newspaper-television cross-ownership rule. In this day and age, if you want to operate a newspaper, we should be thanking you, not placing regulatory barriers in your path. I am a realist and understand that whatever reforms we end up implementing will not go as far as I might prefer. But I do believe that we should be able to find common ground and move forward with some sensible reforms.

Unfortunately, it appears that the Commission is set on tightening our media ownership rules in a piecemeal fashion rather than engage in the holistic review that Congress envisioned. Most disturbing is a proposal to make Joint Sales Agreements (JSAs) attributable under our local television ownership rule. As broadcasters’ share of the advertising market has shrunk in the digital age, television stations must be able to enter into innovative, pro-competitive arrangements in order to operate efficiently.

JSAs allow stations to save costs and to provide the services that we should want television broadcasters to offer, particularly in our nation’s mid-sized and small media markets. In my home state, for example, a JSA between two Wichita stations enabled the Entravision station, a Univision affiliate, to introduce the only Spanish-language local news in Kansas. Across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting not only led to expanded news programming in that market but also nearly \$3.5 million in capital investment. Some of that money was spent upgrading the stations’ Doppler Radio system, which probably saved lives when a devastating tornado destroyed much of Joplin in 2011.

JSAs are also an important tool for enabling minority ownership of television broadcasters. Although the Commission has not studied the link between joint sales agreements and ownership diversity, my office’s own review estimated that 43 percent of female-owned and 75 percent of African-American-owned full-power commercial television stations currently are parties to JSAs. For example, WLOO serves the Jackson, Mississippi market and is owned by Tougaloo College, a historically African-American college. WLOO is also party to a JSA with another Mississippi station, WDBD, which, in the words of WLOO’s general manager, “has permitted WLOO to become a real success story, enabling a new, minority station owner to reinvigorate this station and expand its local services.” Without the JSA, WLOO reports that it would have to stop creating locally-produced programming so that it could redirect that money to hiring a small sales staff, and its general manager is worried that it may not have the funding to survive an equipment failure.

For stations in smaller markets like Wichita, Joplin, and Jackson, the choice isn’t between JSAs or having both television stations operating vibrantly on an independent basis. Rather, the real choice is between JSAs and having at most one television station continue to provide news programming while the other does not. Indeed, the economics suggest that there likely will be fewer television stations, period.

Another piecemeal change to our media ownership rules was teed up in September with an NPRM proposing to eliminate the UHF discount portion of our national television ownership rule. Given the transition from analog to digital television, there is a strong case for ending the UHF discount; UHF signals are not inferior to VHF signals in the digital world. Unfortunately, the Commission’s NPRM went about it the wrong way.

We should not modify the UHF discount without simultaneously reviewing the national audience cap, which currently stands at 39 percent. The NPRM recognized the interdependent relationship between the national audience cap and the UHF discount, acknowledging that “elimination of the UHF discount would impact the calculation of nationwide audience reach for broadcast station groups with UHF stations.” Or, to put the matter succinctly, eliminating the UHF discount would substantially tighten the national ownership limit. For example, one company that is now more than 19 percentage points under the cap would be only three points below the cap if the UHF discount were eliminated.

I was therefore disappointed that we proposed to end the UHF discount without asking whether it is time to raise the 39 percent cap. Indeed, this step is long overdue, notwithstanding *any* change to the UHF discount. The Commission has not formally addressed the appropriate level of the national audience cap since its 2002 Biennial Review Order, and it has been about a decade since the 39 percent cap was established. The media landscape is dramatically different today than it was then, and I wish that the NPRM had addressed the national television rule in a comprehensive manner.

*AM Radio.*—This past October, the Commission launched an AM Radio Revitalization Initiative, something I had championed for more than a year. It’s been over two decades since we last comprehensively reviewed our AM radio rules. Over that time, the AM band has struggled. Interference problems, declining listenership, financial challenges for minority-owned broadcasters, and other factors have brought the band low. But millions of Americans—myself included—still rely on and believe in AM radio. So this initiative is close to my heart.

The Commission’s NPRM embraced a sensible two-stage strategy for improving AM radio service. *First*, we proposed several ways to give AM broadcasters relief in the short term. For instance, we suggested a number of changes to our technical regulations, such as eliminating the “ratchet rule,” which effectively prevents AM broadcasters from improving their facilities. And perhaps most importantly, we sought public input on letting AM stations apply for new FM translators so that it is easier for them to reach listeners with a quality signal. I’m the first to acknowledge that these and other proposals will not be an immediate panacea for the difficulties confronting the AM band. But based on the conversations I have had with AM broadcasters across the country during the past year, I am convinced that they can make a substantial, positive difference to numerous AM stations.

*Second*, we also invited the American public and stakeholders to share their proposals for the long-term future of the AM band. What steps can the Commission take so that there will be a vibrant AM radio service ten or fifteen years from now?

The comment cycle closed last week, and we received many insightful and creative submissions from broadcasters, engineers, and others with an interest in AM radio. While we continue to review those comments, I am optimistic that the Commission will act quickly to implement an initial set of reforms to help the AM band. Indeed, my office’s quick review of the comments that were filed suggests overwhelming support for many of the Commission’s proposals.

*Connecting Americans to 911.*—Federal law designates 911 as “the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance.” So when Americans dial 911, they expect and deserve to reach emergency personnel who can assist them in their time of need. Unfortunately, a recent tragedy shows that this is not always the case.

On December 1, Kari Rene Hunt Dunn met her estranged husband in a Marshall, Texas hotel room so that he could visit their three children, ages nine, four, and three. During that encounter, Kari’s husband forced her into the bathroom and began stabbing her. Kari’s nine-year-old daughter did exactly what every child is taught to do during an emergency. She picked up the phone and dialed 911. The call didn’t go through, so she tried again. And again. And again. All in all, she dialed 911 *four times*—but she never reached emergency personnel. Why? Because the hotel’s phone system required her to dial 9 to

get an outside line. Tragically, Kari died as a result of this vicious attack. Kari's daughter behaved heroically under horrific circumstances. But the hotel's phone system failed her, her mother, and her entire family.

At first, I was shocked to hear that such a situation could exist. But when you think about it, it's probably the case in many places—hotels, office buildings, college campuses, and schools—that use “multiline telephone systems” or MLTS. But the truth of the matter is that we don't know the extent of the problem. That's why I launched an inquiry in January to gather the facts. As a first step, I sent a letter to the CEOs of the ten largest hotel chains in America. As we continue to examine the information provided by those companies, I am encouraged by their willingness to respond and work with us to ensure everyone can reach a 911 operator when they need to. I am also encouraged that the American Hotel and Lodging Association, which represents nine of the top ten chains and many, many more hotels and motels, has convened an internal task force to address the issue.

So what is the issue, precisely? In the case of Kari Hunt Dunn, it was what we call the “Direct Dial” issue—whether somebody picks up on the other end if you dial 911. But there are a couple of accompanying issues that come along with it. First is the question of *who* should pick up the other end of the line. Should it always be someone at the Public Safety Answering Point (PSAP)? Or in some buildings, should it be an on-site security office or front-desk clerk? And if the call does go to the PSAP, how does someone in the building find out that a call has been placed so that he or she can provide more immediate assistance or guide first responders to the correct room?

The second question is *location*. Do the first responders know where the call is coming from? In large office buildings or complexes, on college campuses, and in hotels, it's not enough for first responders to show up at the front door, if one even exists. Conveying accurate location information to these emergency personnel is critical. If someone calls 911 in this building, for instance, think about how long it could take EMTs to find a person in distress if they don't know exactly where to go.

We can't erase the tragedy that occurred in a Marshall, Texas hotel room last December. But we can work to prevent such tragedies from happening again, and that's what I am determined to do. I am confident that everyone here shares my belief that when an emergency strikes, people, whether in a hotel or office building, should be able to reach someone who can help.

**Process Reform.**—Before concluding, I would like to touch on a subject that affects all areas of the Commission's work: process reform. The U.S. House of Representatives recently passed the Federal Communications Commission Process Reform Act of 2013, H.R. 3675. I hope that this common-sense bill, as well as the Federal Communications Commission Consolidated Reporting Act of 2013, H.R. 2844, which the House of Representatives passed 415 to 0 back in September, will soon be enacted into law. Together, these bills squarely address the need to modernize the FCC to reflect our dynamic, converged communications marketplace. And they would eliminate outdated mandates on the agency, streamline its operations, and make it more accountable to the public. These are two pieces of straightforward, good-government legislation, and I hope that the President will soon have the opportunity to sign them.

The FCC, however, should not and need not sit still waiting for Congress to act. We should do what we can on our own to improve our internal processes. Our goal should be clear: The FCC should be as nimble as the industry that we oversee. All too often, proceedings at the Commission needlessly drag on for many years. I am encouraged that Chairman Wheeler has said that process reform is a priority, and many of the reforms proposed in last month's staff process reform report are a good starting point.

Indeed, a variety of reforms would improve the Commission's performance. We should streamline our internal processes where possible. For example, let's adopt a procedure akin to the U.S. Supreme Court's *certiorari* process for handling applications for review—but one that maintains accountability by giving each of the five Commissioners the opportunity to bring a Bureau-level decision

up for a Commission vote. Let's speed up our processing of smaller transactions. Let's establish more deadlines, such as a nine-month deadline for ruling on applications for review and petitions for reconsideration along with a six-month deadline for handling waiver requests—and let's ensure our internal calendar sets a schedule for getting those items prepared and circulated in time so that we can meet those deadlines. When we adopt industry-wide rules, let's more frequently use sunset clauses that require us to eventually revisit the wisdom of (and, if necessary, revise or repeal) those rules.

We should also become more transparent to the public and to Congress about how long it takes the Commission to do its work. One way to do this would be by creating an FCC Dashboard on our website that collects in one place key performance metrics. Let's keep track of how many petitions for reconsideration, applications for review, waiver requests, license renewal applications, and consumer complaints are pending at the Commission at any given time. And let's compare the current statistics in all these categories against those from a year ago, from five years ago, so everyone can see if we are headed in the right direction. If we make it easier for others to hold us accountable for our performance, I'm confident that we would act with more dispatch.

My emphasis on acting promptly is not just about good government. It is also about the impact that the FCC's decisions (or lack thereof) have on our economy. As the pace of technological change accelerates, so too must the pace at the Commission. We can't let regulatory inertia frustrate technological progress or deter innovation.

\* \* \*

Finally, I should note that while all Commissioners are asked to vote on a budget proposed by the Chairman that is delivered to the Office of Management and Budget, I have never been asked to participate in the development of the agency's budget request. With that context in mind, I will do my best to respond to any questions you may have.

## APPENDIX

**A Student-Centered E-Rate Program**

A student-centered E-Rate program focuses on five key goals:

1. **Simplify the Program**
  - Schools need to fill out only two forms: an initial application and a report back on how the money was spent
  - Initial application can be no more than one page
  - USF administrator does all the calculations, reducing the burden on schools
  - Less red tape means fewer delays, more predictability, and no need to hire consultants
2. **Fairer Distribution of Funding**
  - Allocates E-Rate budget across every school in America; every school board and parent knows how much funding is available on day one
  - Schools receive money on a per-student basis; funds follow students when they change schools
  - Additional funds allocated for schools in rural and/or low-income areas as well as small schools to account for higher costs and different needs
3. **Focus on Next-Generation Technologies for Kids**
  - Eliminates disincentive to spend money on connecting classrooms
  - No more funding for stand-alone telephone service
  - Students come first; funding directed only to instructional facilities, rather than non-educational buildings like bus garages
  - Equal funding for all eligible services; local schools (not Washington) set priorities
4. **More Transparency and Accountability**
  - Creates website where anyone can find out exactly how any school is spending E-Rate funds; enables parents, schools boards, press, and public to conduct effective oversight
  - School district superintendent or school principal must certify that E-Rate funds were used to help students
5. **Fiscal Responsibility**
  - Ends the "more you spend, more you get" phenomenon: Schools given fixed amount of money and must contribute at least one dollar for every three E-Rate dollars they receive
  - Better incentives, reduced waste, and less red tape allows program to accomplish a lot more with the same amount of money; over \$1 billion more in first year provided for next-generation technology
  - Caps overall USF budget before any increase in E-Rate budget; any expansion in E-Rate must be accompanied by corresponding cuts elsewhere in USF

	Legacy E-Rate Program	Student-Centered E-Rate Program
<b>Spending Priorities</b>	<ul style="list-style-type: none"> <li>• Prioritizes voice telephone service, long-distance calling, cellphone service, and paging ahead of connecting classrooms with broadband Internet access</li> <li>• Funding available for non-instructional facilities such as bus garages and sports stadiums</li> </ul>	<ul style="list-style-type: none"> <li>• Focuses on next-generation services; no funding for stand-alone telephony service</li> <li>• All eligible services treated equally (including connecting classrooms); local schools, not Washington, should set priorities</li> <li>• Students come first; funding directed only to instructional facilities</li> </ul>
<b>Process</b>	<ul style="list-style-type: none"> <li>• Complicated</li> <li>• Schools face up to 6 separate forms plus outside review by an approved planner</li> <li>• Schools must spend money on consultants to navigate web of rules such as the 28-day rule, the 2-in-5 rule, and discount calculations</li> <li>• Backlog of appeals stretches back a full decade</li> </ul>	<ul style="list-style-type: none"> <li>• Simple</li> <li>• Only 2 forms required; initial application is only one page</li> <li>• Streamlined rules eliminate need for consultants</li> <li>• USF Administrator does all the calculations</li> </ul>
<b>Funding Allocation</b>	<ul style="list-style-type: none"> <li>• Funding tied to discounts; higher-discount schools get more funding overall and funding for more services</li> <li>• Complex rules encourage arbitrage and gaming</li> <li>• Differences in spending among states and within states are largely arbitrary</li> <li>• &gt;\$400 million lost each year due to red tape</li> </ul>	<ul style="list-style-type: none"> <li>• Funding follows the student</li> <li>• Funding allocated to all schools based on student population, adjusted for challenges that schools in rural and low-income areas face</li> <li>• Additional allocation for very small schools and schools in remote areas like Alaska</li> <li>• Much less money lost as a result of red tape means more money for students</li> </ul>
<b>Financial Planning</b>	<ul style="list-style-type: none"> <li>• Funding available to a school may change dramatically from one year to the next</li> <li>• Funding tied to decisions of every other school in the country</li> <li>• Schools must bid out services before they know if funding is available</li> <li>• Funding not secured until months or even years after funding year starts</li> </ul>	<ul style="list-style-type: none"> <li>• Funding available immediately to all schools, independent of decisions made by other schools</li> <li>• Minimal fluctuations from one year to the next allow for long-term financial planning</li> </ul>
<b>Fiscal Responsibility</b>	<ul style="list-style-type: none"> <li>• The more you spend, the more you get</li> <li>• Some schools have little skin in the game by receiving up to a 90% discount</li> <li>• Priority and group-discount rules discourage long-term, efficient-scale purchasing</li> <li>• Cap on E-Rate but not overall Universal Service Fund</li> </ul>	<ul style="list-style-type: none"> <li>• Fixed pot of money for each school and matching requirement of one dollar for every three from E-Rate promotes prudent spending</li> <li>• Reducing wasteful spending allows the program to accomplish a lot more with the same amount of money; over \$1 billion more provided in first year for next-generation technology</li> <li>• Cap overall Universal Service Fund before any increase in E-Rate budget</li> </ul>
<b>Transparency and Accountability</b>	<ul style="list-style-type: none"> <li>• Funding available to schools not disclosed until after the fact</li> <li>• Parents can't go online to see precisely how a school's E-Rate funds are being spent; online catalog just shows funding for each recipient divided into four broad categories</li> <li>• Relies on complicated rules and federal audits and investigations for accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Funding available to schools publicly disclosed immediately to enable parents, school boards, press, and public to conduct local oversight</li> <li>• Schools to report online exactly what they're getting for E-Rate dollars; school administrators must certify it's spent on students</li> <li>• Transparency and local control are key; federal oversight a backstop</li> </ul>
<b>Relation to Libraries</b>	<ul style="list-style-type: none"> <li>• Libraries receive about 10% of E-Rate funding</li> </ul>	<ul style="list-style-type: none"> <li>• Libraries receive about 10% of E-Rate funding</li> </ul>



### **Commissioner Ajit Pai**

Ajit Pai was nominated to the Federal Communications Commission by President Barack Obama and on May 7, 2012 was confirmed unanimously by the United States Senate. On May 14, 2012, he was sworn in for a term that concludes on June 30, 2016.

Commissioner Pai's focus is on creating a regulatory environment in which competition and innovation will flourish, thus benefitting American consumers. He believes that it is vital for the FCC to adopt policies that will give private firms the strongest incentive to raise and invest capital; to develop new products and services; and to compete in established and new markets. Specifically, Commissioner Pai is working to remove uncertainty that can deter businesses and investors from taking risks, to revisit outdated regulations, and to set clear, modernized rules for the road. These steps will result in consumers enjoying better products at lower prices and the communications industry contributing to faster economic growth and more job creation.

Commissioner Pai also believes that the FCC must act with dispatch to reflect the pace of change in today's marketplace. Faced with an industry as vibrant and dynamic as today's communications sector, the Commission must be careful not to cling to twentieth century approaches in addressing the technological landscape of the twenty-first century. Thus, for example, it is a priority of Commissioner Pai to increase promptly the availability of spectrum for high-value uses.

Commissioner Pai's regulatory approach has been shaped by his decade and a half of experience in communications, law, and policy.

Between 2007 and 2011, Commissioner Pai held several positions in the FCC's Office of General Counsel, serving most prominently as Deputy General Counsel. In this role, he had supervisory responsibility over several dozen lawyers in the Administrative Law Division and worked on a wide variety of regulatory and transactional matters involving the wireless, wireline, cable, Internet, media, and satellite industries.

Commissioner Pai's career outside of the FCC has spanned the private and public sectors. With respect to the private sector, Pai worked in the Washington, DC office of Jenner & Block LLP, where he was a Partner in the Communications Practice until being sworn in as a Commissioner. Years earlier, he served as Associate General Counsel at Verizon Communications Inc., where

he handled competition matters, regulatory issues, and counseling of business units on broadband initiatives.

Commissioner Pai also has served in all three branches of the federal government. After moving to Washington, DC in 1998, his first post was with the United States Department of Justice's Antitrust Division as an Honors Program trial attorney on the Telecommunications Task Force. There, he worked on proposed mergers and acquisitions and on novel requests for regulatory relief following the enactment of the Telecommunications Act of 1996. He later returned to the Department of Justice to serve as Senior Counsel in the Office of Legal Policy. Pai has worked on Capitol Hill as well, first as Deputy Chief Counsel to the United States Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, and later as Chief Counsel to the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights. Immediately following law school, he clerked for the Honorable Martin L.C. Feldman of the United States District Court for the Eastern District of Louisiana.

Commissioner Pai received a B.A. with honors from Harvard University in 1994 and a J.D. from the University of Chicago in 1997, where he was an editor of the *University of Chicago Law Review* and won the Thomas J. Mulroy Prize. In 2010, Pai was one of 55 individuals nationwide chosen for the 2011 Marshall Memorial Fellowship, a leadership development initiative of the German Marshall Fund of the United States.

The son of immigrants from India, Commissioner Pai grew up in Parsons, Kansas. He now lives in Arlington, Virginia, with his wife, Janine, son, Alexander and daughter, Annabelle.

Mr. CRENSHAW. Well, thank you very much and as we get into the questions we are going to observe what we call the five-minute rule. I will recognize Members in order of seniority if they were here when the meeting started. Then the latecomers will be recognized in order of their late-coming and we will go back and forth from side to side.

Let me start by just reiterating what Commissioner Pai said. He was not involved in putting the budget together. That is something the chairman does from his office. But he will have a perspective and so if people want to ask him or Chairman Wheeler about budget items, certainly feel free to do that.

I would like to start by just saying that Chairman Wheeler, you came out of the private sector. You had a lot of experience and probably bring a fresh approach to a lot of the issues that will come before your Commission. You and I talked a little bit about how you balance regulation, both from inside and outside. You have become somewhat famous for your famous seesaw. So maybe you could tell the subcommittee a little bit about your view of that seesaw as it relates to regulation.

Mr. WHEELER. Thank you, Mr. Chairman. Yes, and you have got the movement down really well. It is a simple concept. If we are existing in an area where there is competition that is watching out for consumers and the marketplace, then there is less need for the agency to do things. But the important thing is to recognize that the seesaw goes both ways. Our responsibility is how do we encourage this? In a period where there is so much rapid change in technology, we need to recognize that we are not as smart as the Internet. We should not be trying to second-guess it. We should be facilitating competition. We should be protecting competition where it already exists. I talked in my testimony about how we are trying to wean ourselves from the old regulatory model that the regulator knows best and that is the approach that we are on.

Mr. CRENSHAW. Well, when you talk about the 10 percent increase you outline, I appreciate that. As it relates to the regulatory aspect, did you find any places where you could save money where maybe not as much regulation might be needed, because bureaucracies tend to just say, "I will take whatever I had last year and I will add onto it." And one of the things that I think you probably learned in the private sector is that sometimes it is good to make sure you are spending the money in the right places to start with before you ask for more. So I am just curious, did you find any areas that you might be able to save money?

Mr. WHEELER. One of the hardest adjustments in coming to this job is the inflexibility that you have in allocations. So you have got 70 percent of our S&E budget being people. In business you can deal with employees in a way that you cannot in the government. So what you do is you end up moving people around as priorities shift. And what I can assure you is that priorities are constantly shifting because of the new realities in the marketplace. And one day you are over here worrying about narrow band spectrum activities and you get through that, which was a huge undertaking, and you have got to pull those people off to go over and plug this dike. And it is a constant situation of doing that.

[The information follows:]

Mr. WHEELER. It is also important to note that the Commission is at a 30 year low for FTEs and we have almost halved our contractors since 2011. Our staff includes highly credentialed and experienced technologists, engineers, economists, attorneys and para-professionals. We detail and move people as needed to different bureaus and task forces, but we are still working below the staffing levels necessary to carry out our core mission, especially with regard to USF and IT.

Mr. CRENSHAW. So you are looking at that. That is good. Let me just ask Commissioner Pai the same kind of question, recognizing that it is the Office of the Chairman that really puts together the budget, but when you look at the way the FCC is working, does it look like the budget is as lean as it could be, are there areas that you have observed, without being a part of putting the budget together, that there could be some savings?

Mr. PAI. Mr. Chairman, I do think that there are programmatic efficiencies that the FCC could wring out of the system, some on our own and some frankly with Congress' help. To give you an example of the former, my own E-Rate proposal would dramatically reduce the administrative costs that the FCC has to spend because it would simplify the application process. So all the hundreds and thousands of forms that we have to monitor, that schools and libraries across the country have to submit, we could dramatically simplify that with my approach.

Mr. WHEELER. And we need to simplify it for the schools and libraries that are applying as well because of the fact that we have created this structure that does not work for them, either.

Mr. PAI. Exactly. And I completely agree with my colleague because what we found is a lot of schools and libraries do not even bother seeking these funds because the process is so complicated. With respect to the latter category, costs we could save if we had Congress' help, a great example is the FCC Consolidated Reporting Act. Right now FCC staff, and I can say this because I used to be one of them, spend a lot of time compiling, reviewing, and submitting reports to Congress on an individual basis and this takes up a lot of staff resources. With the passage of the Consolidated Reporting Act, we could submit to Congress a single book, essentially detailing all of the facets of the communications industry. That would save us a lot of resources and frankly would be better for Congress, as well. You would have a one-stop shop where you could go for all the facts that you need to discharge your legislative responsibilities. Those are just two examples, but we would be happy to go into further detail.

Mr. CRENSHAW. Well, thank you very much. Let me turn to Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. I seem to get the sense that you both agree that changes need to take place but you do not agree on how the changes or what changes need to take place, at least that is what I am getting from this conversation here.

The FCC is one of the few agencies that touches just about every American. I mean, who does not have a phone or a TV set or a radio, and so on? And so, I would like to see wherever possible, and I am the Ranking Member, I am not the Chairman, but I think I speak for him also in saying that we would like to see a more united front in telling us how and what role we should play. It is not simply for us to say, You are spending too much money, which I must remind people the \$35.5 million increase is fee-funded and

does not increase the deficit at all. So they are not asking us directly for money. But I would like to see, if I can be a mediator here, more of a joint effort in telling us how we can help you. And you can start off by talking about my personal bill, the Smartphone Theft Bill.

Now, does your information, Commissioner, say that that crime has gone up in the country? And in our bill, which is put together with the assistance of Attorney General Schneiderman in New York, we leave it up to the manufacturers to use the technology that they have available. We do not say you must do it this way or you must do it that way, and they have the ability to do it. Number one, have those crimes continued to go up, is that an issue that either one of you or both of you are concerned about? And secondly, can, in fact, Congress not waste time in telling manufacturers to Use what you have available to make sure this does not happen anymore.

Mr. WHEELER. So thank you, Mr. Serrano. Let me take both parts of that. I agree with you about the importance of a commission that is working together, and Ajit and I actually checked this before coming here, Ajit and I have agreed on 90 percent of the votes taken at the FCC since I have arrived. Sure, we disagree on some issues. We disagree on some major issues, and I think that is what makes the commission stronger; and the other part about it is that at some point in time we have to sit down and decide. I think that my job as chairman is to help push decisions, and when you can have an environment where you have got 90 percent of the time you are agreeing, and 10 percent of the time you are not, and when you are moving into decisions, I think the commission is better for that.

Now, let me talk specifically about your bill. I agree it is a problem. I agree it is growing. I just had a meeting, interestingly enough, with my counterpart, the director of communications in Colombia who was talking to me about the great problems they have. It is not drugs any more. It is cell phones, and how do we work together on this. And the kill switch is an idea that is right in concept but with problems in implementation which I think can be solved. I mean I am a guy that came out of the technology business. So I believe in technology to solve things. I mean the problem is that I lose my cell phone; I think it has been stolen; I call and they kill it, which means they fry the innards. I find it in the seat of the couch two days later. My phone is shot. There has got to be a way of overcoming that problem.

Mr. SERRANO. But when you are in the subway, because I do not want to knock my city, but if somebody rips it off of you, you know you did not lose it in the couch.

Mr. WHEELER. So, you have got to be able to deal with both situations. I am on the phone later this week with—I will not say who it is, but a major figure in the production of devices that have redefined the way in which we use mobile devices, and this is my topic with him: What can we do?

Mr. SERRANO. Does it have a fruit attached to it?

Mr. WHEELER. It has a fruit attached to it, and you are very perceptive, sir. This is one of my topics. We have got to solve this, and I think one of the jobs, and I think this is something that Ajit and

I agree, again, another one of these places that we agree, is that it is not just true that thou shalt regulate, but it is also true that we have a bully pulpit. And I think we have got a responsibility as a bully pulpit. He has been doing a great job with hotel safety from his bully pulpit. We are going to try and move on this. As I say, I am talking to folks about it. But I understand your issue and it is a legitimate issue.

Mr. CRENSHAW. Maybe just quickly, Mr. Pai.

Mr. PAI. Sure, I appreciate the question, and the chairman has eloquently stated the rationale behind some of the legislation that you have talked about. I do want to say that by and large we do agree on a lot of issues. I want to lay down a marker now, however there is one issue we are never going to agree. He is never going to root for the University of Kansas. I will never root for Ohio State. Nonetheless.

Mr. WHEELER. I will stipulate to that, sir.

Mr. PAI. I do agree on the power of something he said in his answer, and that is the power of technology to solve problems. That is where we unite. Technology has the ability to cross borders, to cross cultures, and to really solve problems that hitherto have been unsolvable. Now, we might disagree about how we get there, but I never question his love of country, his care for the agency, his knowledge about the issues, and his determination to meet what he believes to be in the public interest. And my own view of regulation is a little bit different. I of course think generally speaking that it should meet three criteria: be consistent with the statute, the cost should always be outweighed by the benefits, and, finally, it should be restrained in recognition of the fact that these are very dynamic markets. But as he said, nine times out of 10 we tend to agree. And that I think heralds well for the course of our dialogue going forward.

Mr. CRENSHAW. Thank you.

Mr. SERRANO. Just very briefly, Mr. Chairman, I was just informed by the good people who are always smarter than I am and more prepared back here, that our legislation allows for technology, which exists already, not to fry it as you said, but actually to bring it back to life in a certain way, but only by the owner, and not by anyone else.

Mr. WHEELER. I do not want to have a hearing on this, but I understand that point, and the challenge becomes how do you prevent that from being hacked. There are solutions. We have got to find those solutions. That is why I am talking to these folks and saying, Let's go find them.

Mr. CRENSHAW. Thank you. Mr. Womack.

Mr. WOMACK. It is refreshing to know that the two of you can agree on a lot of things, with the exception of rooting for each other's team. I am assuming that one of you will not be rooting for Dayton, and the other one will not be rooting for Stanford in the context of the NCAA Basketball Tournament. But I want to join in congratulating you on your positions and welcoming you to the committee.

I want to go to cyber first. While examining the budget request, observed a surprisingly strong emphasis on improving cyber security. The proposed improvements include storage expansion, big

data cyber security analytics, cyber security metrics, among other things. Can you expand on the commission's goals of these programs, both in the near term and over the long haul?

Mr. WHEELER. Okay. Yes, and I would be happy to go into more detail without cameras.

Mr. WOMACK. Absolutely.

Mr. WHEELER. We are on the edge of the DHS minimum standards for what is expected for a federal agency for security. We need to fix that. You just ran through the things we want to put in place to address that. If we are charged with responsibility for the networks of America and everybody keeps saying, "those networks have to be secure, well we better be secure in what we are doing. So as you point out, using big data to do tests in real time on security, I mean security has moved so far past white lists, and black lists, and firewalls. How do you use big data for real time security? How do you make sure that you have got networks in place that themselves are secure, and that the equipment is secure, and that you are not using software programs that themselves are so easily hackable. When you are using 10 year old equipment, this is kind of per se that it is an invitation to hack, but I would be happy to talk a lot more about it. Cyber security has to start at home and it has to start with us.

[The information follows:]

Mr. WHEELER. The Commission's IT request is \$12.5 million. The cyber security efforts include IT storage expansion, Big Data Cyber security Analytics, Cyber security authorization, admission and education, cyber security metrics and modernization of the aging IT systems. Under IT storage expansion, the Commission will expand the tiered enterprise storage solution to include off-site backup and replication technologies—this will lead to improved disaster recovery and COOP capabilities. Current big data technology includes massive data repositories, cloud technology and the use of unstructured data. Big data will present options that automate capabilities, reduce analyst burdens and improve the ability to quickly perform functions. In addition to improved authorization techniques to ensure security with virtualized computers and additional education for internal uses, the Commission also must commit to a global modernization of aging IT systems to ensure that they can resist outside attacks.

Mr. CRENSHAW. Mr. Pai.

Mr. PAI. Congressman, with respect to internal systems that are used by the FCC, I agree that cyber security is critical. Under the law the FCC's authority with respect to cyber security is relatively narrow, and so I see the FCC's role in the overall public dialogue about cyber security as being more of a supporting one. I think other executive branch and independent agencies might be better placed to take a leading role when it comes to that important issue.

Mr. WOMACK. How do you work with other agencies?

Mr. WHEELER. We are part of an interagency working group on this. We also are the home of multi-stakeholder processes, which goes in exact point to what the chairman was talking about, is how do you get the people themselves to worry about it, rather than walking in and saying, I am smarter than you and here is how I am going to do it. So for instance, we have what is called CSRIC, which is a working group on security and reliability of networks. That includes all the major network providers, all of the major suppliers. They have come out with voluntary standards to address the BOTNET issue with standards on DHS security, with standards on router security, that they all did voluntarily, sitting around a table

that we asked them to come to. We have now asked them to help develop metrics. You have got to understand, okay, are we meeting the goals, because that allows you to say, Okay, then I need to zig, or zag to do that. To use this same kind of a process, we've initiated the multi-stakeholder process to address other issues that may be arising in cyber, but doing it in a way where we are bringing the industry in, and we are the convening force. We are saying, Okay, what do you think we need to work on? How do we work on it? Let's come to conclusions on it.

Mr. WOMACK. Good. I know I am about out of time. I will yield back on this round.

Mr. CRENSHAW. Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. Gentlemen, thank you for your service. In my district and obviously in the country there have been incidents that bring about the need for the implementation of positive train control as quickly as possible. It is a difficult enough issue for the rail industry to meet, in the timeframe that has been given, and the cost that are involved, but we are learning of other issues which makes this even more difficult. You all play a role with the poles that are going to be involved with transmitting this information, and while I hear that, you know, they are going to be able to get done within the timeframe needed for a hearing otherwise, it is sometimes you single one can take three to four months. How does this work out where we meet both these deadlines? Yes.

Mr. PAI. Are you asking me?

Mr. QUIGLEY. Yes.

Mr. PAI. Well, Congressman, I think it is a critical issue, and I think that the FCC's general focus on speeding the deployment of wireless infrastructure really hits home, when it comes to the positive train control question.

Recently as the chairman can elaborate, the Wireless Telecommunications Bureau issued a public notice involving trying to streamline this process to identify what some of the roadblocks are, and in a nutshell I am hopeful that in the coming weeks and months you will find a much speedier process that would allow the industry to deploy in a manner that satisfies both the statute and the interests of your constituents.

Mr. QUIGLEY. Both hearing it is taking three to five months.

Mr. WHEELER. Yes, there are two components to PTC. One is spectrum and how you have to have the spectrum to be able to do that, and we have facilitated the transfer of spectrum, the licensing of the spectrum, and I think that you would hear from the railroad folks that that has been quite a success.

On the tens of thousands of poles that have to be put along railroad tracks, there is a statutory requirement that we have to consult with the Native American tribes on the placement of any such poles. It is been true of every cellular tower ever put up. That I think was never really factored into the thinking on this, but there is a clear statutory requirement.

I think also that the railroad industry was not mindful of that until recently, and in fact went out and put thousands of poles in without this kind of approval and then realized oh my golly, we have to do it. Everybody has been in a scramble to do these things.

Here's what we have done. So, we have convened two meetings thus far with the various tribal groups and the railroads, to sit down and develop an expedited batch processing. Frankly they just were not structured for the kinds of tens of thousands of requests that are coming in. It used to be, okay, here is this pole in this area, one at a time kind of thing. So, we have got a batch processing structure in place, and so what we are trying to do is two things. One, we are trying to expedite the process, and two, we are trying to be true to the statute that we are mandated to enforce. And it is crucial that we have the rapid deployment of PTC, period.

Mr. QUIGLEY. Well there is another issue, and I appreciate your response from both of you, but for communal rails in urban areas like mine, like Metra, there is an additional issue of the extraordinarily high cost associated with the purchase of broad spectrum that has going to have to take place there. Is there something you are considering that will help along these lines to assist these rail industries across the country, the industries like Metra?

Mr. WHEELER. So, my understanding is that a group of these freight railroads got together and acquired spectrum, and that that spectrum is now being shared with metro and others, and that we have been working to facilitate the necessary license transfers, et cetera. If there is another situation and we are not aware, I would be happy to get on top of it.

Mr. QUIGLEY. We will get back to you on that.

Mr. WHEELER. Great.

Mr. QUIGLEY. Thank you both for your answers.

Mr. CRENSHAW. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. Gentlemen, thank you for being here, and just listening to the discussion today. I can only imagine how difficult it is, the broadness of the issues from railroads to cellular communications and spectrum.

Mr. Chairman, quickly about a proposed, I guess, rule that has going to be changed here or I guess taking effect at the end of March, dealing with JSAs. I know the intent of the commission is to provide more diversity to be in the marketplace, and there seems to be a lot of disagreement that that might not be the desired outcome, and in fact it might have an adverse effect on diversity in the marketplace. Do you sense that this rule change will provide more minority ownership of stations and broadcasting, or less minority ownership?

Mr. WHEELER. More. Let me give you a couple of statistics. In 2006, there were 19 African American TV stations in this country; today there are four. During that period, there was an explosion, a tripling of the number of these JSA waivers, and let's just make sure that we define what is going on here and what happens in a JSA waiver. The commission approves a waiver from its rule that says there can be only one owner per television station per market.

What has happened is, as there has been this explosion in JSAs, it has enabled the companies that are the base companies for that, that have the agreement with other stations, to buy stations at a price that frankly is higher than would be otherwise available for an independent entrepreneur to come in and buy it, because they have these economies of scale. And so the issue about JSAs is that JSAs are a way around the commission's longstanding rules, and

that they have been done in an off-the-record, nontransparent manner over the years.

What we are going to be proposing at the end of the month is that it be made transparent, that you need to establish why it is that this JSA is in the public interest, and that we believe that one of the results, this is not the main purpose, but one of the results will be an opening up of broadcast licensees for minorities, women, small entrepreneurs, because they are currently being sucked off the market. This is one place that is not part of the 90 percent.

Mr. GRAVES. Just for clarification for record, you said in 2006, there were 19 minority owned JSA.

Mr. WHEELER. Television broadcasters.

Mr. GRAVES. And today?

Mr. WHEELER. Four.

Mr. GRAVES. Four.

Mr. WHEELER. And three of those four are existing under JSAs.

Mr. GRAVES. And if I could get Commissioner Pai's thoughts on that. Do you agree? Will it provide more or less minority ownership of broadcasting?

Mr. PAI. This proposal, if adopted, will result in less minority and female ownership of broadcast properties. Anecdote and then data: the general manager of WLOO, Pervis Parker, in Jackson, Mississippi, sat on my chair in my office and told me point blank that without the cost efficiencies in the JSA that he is involved in with WDBD allows him, he would have to hire his own sales staff. He would have to stop gathering as much news, and long term he worried that the entire station would have to go under. WLOO simply does not have the cost structure that allows them to employ their own sales force, and if you think about it, any business, especially one in the broadcasting industry has certain fixed costs. It cannot avoid those costs.

If the JSA allows a small entrepreneur like Mr. Parker to spread some of those costs among other parties while still retaining the independence of his own news and entertainment operation, that is a good thing. That helps minority entrepreneurs across the board.

With respect to data, Mr. Parker is not alone. Forty-three percent of broadcast television stations owned by women operate under JSAs. As my colleague has pointed out, 75 percent of African American owned broadcast television stations operate under JSAs. To me it strains credulity to suggest that you could take away those efficiencies, predominantly in smaller and medium sized markets where you are not getting the huge revenues that you might get in a New York or a Los Angeles, and it is the hope to have diversity embodied in this industry. It is simply not going to happen given the current economic environment.

Mr. GRAVES. Mr. Chairman, if I could ask one follow-up here, because there is disagreement between you two on this, and I know the rule is taking effect at the end of the month. I mean is this something that the commission has had an opportunity to vote on and have an open dialogue and debate over?

Mr. WHEELER. We are voting on it at the end of the month.

Mr. GRAVES. It is taking place when?

Mr. WHEELER. End of the month, 31st, the vote takes place.

Mr. GRAVES. Yeah, okay, and the rule takes effect?

Mr. WHEELER. Well, there are two parts to it. One is a rule that will then follow and the other is a notice for proposed rulemaking, which will solicit comments.

Mr. GRAVES. I see, I see.

Mr. WHEELER. I need to be clear. There is a danger. If we are going to talk anecdotes, we can talk anecdotes, because the difficulty is that the bad practices often hide behind the skirts of good people. The reality that we are facing here is the JSAs are being used to circumvent the commission's rules. And if we are going to name anecdotes, let's talk about the anecdote where one broadcaster buys a station, realizes that it is in either a conflict situation because they can not have it, gives it to his mother, and then agrees to operate it, and takes all of the cash from it. And then buys another station, gives it to his former financial manager, and takes all the revenue from that.

We have a situation where public company broadcasters are saying to the SEC, "we have control of these stations," and saying to the FCC, "Oh no, that is a different company." What we are trying to accomplish here is transparency, openness, a common set of rules, and indeed a waiver process that will make sure that the examples that Ajit gave get taken care of, while at the same time we are being faithful to our rules and our process.

Mr. CRENSHAW. We will have time to come back to this. Each of you all got one anecdote.

Mr. WHEELER. I have got more.

Mr. CRENSHAW. I mean Mr. Wheeler's was more complicated, but let me call on Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman. I know we think that being here today, I do not expect to come out of our five minutes speed dating process, here in the next few minutes. So, but I expect to follow-up off the record with you.

Anyhow I represent an area that has largely rural. It used to be the whole state of Nevada minus Las Vegas, now it is about half of what it used to be. I have got to tell you, my rural folks whether they are broadcasters or carriers are scared to death. They are scared to death because they do not think that while we are talking about things for the majority of the population that we should, that there is a lot of protection for folks who are still over the air folks in those rural areas in a backup context, in terms of how that has going to be handled, and even the carriers in terms of the cell carriers in those same areas. When you talk about getting rid of spectrum in that area, all well and good, but do we have some sort of safety net for them?

I want to highlight that for both of you in terms of, you know, what is going on with the rural. Just off the top of your head, does the FCC have an office or something that is kind of focused on rural service in both of these contexts, that we could use as a point of contact, or is it something where the same folks are trying to handle things all across the board? Whether it is packaging for broadcast, sale of spectrum for purposes of communications, how do you handle that internally?

Mr. CRENSHAW. You want to do it?

Mr. PAI. Sure, listen, there is no particular office that is focused on rural issues, but I can tell you that a lot of people, myself in-

cluded, are. I come from a rural area myself and I have visited everywhere from my hometown to small towns of 60 and less.

Mr. AMODEI. Well, with all due respect, Kansas is a pretty big state compared to Nevada, but go ahead.

Mr. PAI. That is right.

Mr. AMODEI. They made a movie about somebody there, Dorothy, and her dog.

Mr. PAI. Right, 75 years ago this year. But I think rural issues pop up in all sorts of different contexts, and so in the wireless context for example, one of the things I have been focusing on is trying to make more infrastructure available in rural areas, where you might not necessarily see a business case for doing so. On the wireline side, I have tried to focus on getting the U.S. to assume more standalone support for broadband, so that some of these rural companies can deploy.

Mr. AMODEI. We will be back in touch with you specifically just to get an update on that, so we can get into a little more specifics, and I appreciate that. Also, there is an issue in terms of, and once again, it has to do with billing for communications carriers in terms of, hey, you want to make sure the folks from big places like Kansas are not getting their service in Nevada because they can get a better deal, and I get that. I do also have a concern that it appears, and I hope I am wrong, it appears that that is being done kind of without any regard for what the state public utilities commission processes are and stuff like that to where it is like; I do not know whether I want to say that has a major charm school faux pas or whatever. Is there anything that prohibits the FCC from saying, This is where you need to end up, but you can go through these processes so they at least feel like they have had the benefit of their communications public utilities regulation processes at the state level before you get there?

Mr. WHEELER. Yeah, and we actually have joint boards that work with the National Association of Regulatory Utility Commissioners in identifying issues that need to be addressed, and how do you address them together, and who does what.

Mr. AMODEI. So that has something we can follow up with?

Mr. WHEELER. Absolutely.

[The information follows:]

Mr. WHEELER. The Commission has always recognized that universal service is a joint federal-state partnership, and has recommended various issues to the Federal-State Joint Board on Universal Service over the years. The Federal-State Joint Board on Universal Service was established in March 1996, to make recommendations to implement the universal service provisions of the 1996 Telecommunications Act. The Joint Board is comprised of FCC Commissioners, State Utility Commissioners, and a consumer advocate representative. State members are nominated by the state commission or the governor, and appointed by the FCC. There is also a Federal-State Joint Board on Jurisdictional Separations and a Federal-State Joint Conference on Advanced Telecommunications Services, with different responsibilities. The National Association of Regulatory Utility Commissioners (NARUC) is the national association representing the State Public Service Commissioners who regulate utility services, including telecommunications. The Commission regularly solicits input from the states on rural and universal service issues, in particular through NARUC, and Commission staff interact regularly with our state colleagues.

Mr. AMODEI. They will be some ongoing discussion on how that works.

Mr. PAI. Yes, if I could add a quick comment to that, so this rate floor issue that you are discussing was adopted in 2011, before the chairman and I got to the FCC.

Mr. AMODEI. A lot of stuff that Congress did before I got here. I can appreciate that.

Mr. PAI. I have spoken out against it because in some areas it will increase the rates that rural Americans pay by up to 46 percent, without saving a single dollar for the universal service fund. So, I hope that we reevaluate that policy.

Mr. WHEELER. So let me just be clear. I did not realize that was the specific issue you wanted to talk about, Congressman.

Mr. AMODEI. Probably a poor question, but go ahead.

Mr. WHEELER. And so as Ajit just said, this is something we both inherited that was a unanimous vote of the commission that was following through on the statutory instructions from the Congress that said, "there must be reasonable comparability between urban and suburban rates, and rural rates. So the commission and as I said—by a unanimous vote of the commission—developed an algorithm. What that algorithm determined was what the commissioner just said, a difference where there are subsidies going not to the high cost of building, not just to the high cost of building in rural areas, but there are subsidies going from urban suburban consumers to rural consumers to lower their actual bills.

The law says that they have to be reasonably comparable. The question becomes the implementation. We put this out for comment. Comments are due on Monday. I am going to be proposing that we do a couple of things. One, we need to be moving the effective date on this to provide more time for people to get ready; and two, we need to be thinking about how do we phase it in, so there is not sticker shock in this. But we have got a statutory mandate as to what we are supposed to do. I think our challenge is how do we make sure adjustments have a big impact.

Mr. AMODEI. I appreciate that, and I see my time is up. And I do not disagree with the purpose at all, and I will yield back Mr. Chairman. I would just say that you do not have a mandate to ignore state regulatory processes when you accomplish the federal mandate into the extent that you can accommodate those that would be a nice thing for the federal government to endeavor to do in this context.

Thank you, Mr. Chairman, I yield back.

Mr. CRENSHAW. Thank you. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman, commissioners, Mr. Chairman, thank you for joining us today, a special welcome to a fellow Kansan, from God's country out there near Parsons where I grew up.

Mr. PAI. Objectively spoken, sir.

Mr. YODER. Yeah, I understand, sure, very good. I appreciate that, and certainly as a Jayhawk you want a lot of jocks where you want a lot of respect on this side. So, doing well so far. Thank you both for coming. Thanks for your work and service, as we debate about what our priorities are as a country, as we debate our priorities within the FCC budget, certainly our job is to help support those programs and things that have the greatest amount of support, and we think are consistent with our values as a country.

I know one of the sort of more controversial issues that has come up in recent months is related to the multi-market study of critical information needs, and I thought for the benefit of the committee, you might give us a little bit of background on how we got to this point, and certainly we have limited agenda in terms of what the FCC can accomplish each year. Dollars are scarce and so clearly this got to be a top agenda item, and I guess the chairman I guess asked how we got to this point what the methodology was, what the theory was? What you were aiming at? Why was it eliminated? You both might speak to the thoughts on that. Was this a division on the SEC? And then going forward, what does the future look like in terms of the objectives that were originally attempted to be achieved? Are those objectives going to be achieved in a different way?

I think what we all want on either side of the aisle is protection of free speech and to ensure that our federal government is not in a position where they may be putting pressure on our media entities to portray the news in a certain way, which we certainly would hope would not be the aim or goal of any of our agencies.

Mr. WHEELER. And we identify entirely with. The act requires us to do occasional studies on the critical information needs of various segments of the economy. It is something that commissions have done, whether they are republicans or democrats sitting at the head of it.

When I came in, I discovered that there had been a decision made to move ahead on one of these and that there had been some concerns raised about some of the specific questions that seem to tend towards asking for news judgments. And I raised questions about that. We subsequently heard from the Energy and Commerce Committee about it. And I asked that those questions be removed from the survey.

Subsequent to that, Mr. Pai wrote an op-ed piece in the Wall Street Journal and this became a cause celeb despite the fact that the questions were out. I took the whole thing and shut it down, the whole survey. I mean I think it really became the dog that did not bark because (a) the questions were taken out and then (b) it was shut down. The reason that they were taken out is that we have a strong, and I can assure you, I have a strong sense of the appropriate role of the federal government in news rooms, period.

Mr. PAI. Period end of answer or period end of sentence? Congressman, my position is pretty simple. The government does not belong in the newsrooms of America; government-funded researchers do not belong in the newsrooms of America asking questions such as, What is your news philosophy? Have you ever been asked to cover a certain story, but been told by management that you should not do so?

Not only are those questions inappropriate as a matter of constitutional principles, they are inappropriate and completely irrelevant to our duty under Section 257 to report on barriers that entrepreneurs and small businesses face. There is no relation whatsoever.

Moreover, if the goal, as stated by some who supported the study, is to increase minority participation in the broadcast business. I am chock full of ideas. I was the first one to come out over

a year and a half ago and support increased foreign investment in the broadcast business.

I have been out front talking about the need for a media incubator to allow women and minorities and others the opportunity to enter this business. I have been up front in saying and I championed a revitalization of our AM radio rules. Historically, one part of the communications industry where minorities have disproportionately been represented in terms of ownership. There are a lot of ways to actually take action on this issue without devoting up to a million dollars to a public health researcher that apparently has no expertise whatsoever in FCC related issues. And so I applaud the chairman for stopping the study. I look forward to working with him and my other colleagues to focus on what really matters the value underlying Section 257, which is to get new entrants into this business.

Mr. YODER. Well, I appreciate both of your answers and I think if this was in the study at one point, certainly there was a lack of acknowledgment that it was a problem at the start and I applaud chairman and commissioner for both of your efforts to move us forward. Obviously, we have to continue to be vigilant in this regard because if it was thought of as a good idea at one point, it does not mean that someone is not going to say well, let's just ask it in a different way or try to get to this in a different manner. I think we have to continue to be vigilant and I appreciate both of your efforts to ensure the FCC's role is one that respects the right of free speech in the country, thank you.

Mr. CRENSHAW. Thank you Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thanks Mr. Chairman and thank you both for being here. I apologize. I was actually in another appropriations subcommittee. I have got a lot of work going on these days. Following up on Mr. Amodei brought up and he raised about the issue of the urban rate floor.

Commissioner Wheeler, what I am really interested in is our details regarding the data that the commission used to determine the urban rate floor, specifically, the data and the methodology used. As was said a lot of folks in my area are still struggling especially the rural areas. And I want to know more specifically how the commission determined this rate because a 46 percent increase in their phone bill, in my view is not leveling the playing field. I think it is putting an unfair pressure on folks who have the least ability to pay.

And I think, I would say Commissioner Pai, you definitely, I think hit the nail on the head in your statement on the URF and I would love you to expand on that if there is still remaining time.

Mr. WHEELER. Sure. One, we are statutorily required to do it; two, before either one of us arrived, the commission came up with an algorithm, which I will be happy to get to you. I can not cite it to you. And it produced these results. Seeing these results, your response is a legitimate response. I must say, we have a statutory responsibility. We had a unanimous vote of the commission to use this algorithm; it produced this result.

The question becomes what is the best way to stick with our statutory responsibility and to cause as little impact as possible? And that was why I am going to be proposing that one, we move the

date out; and two, that we have a phase-in process. So, that it is not bam, a 46 percent sticker shock hit, but you move it out over time.

There are parties, including in the industries, who are opposed to that; that has not been my position though. And as the chairman of the commission, that is what I intend to propose.

Ms. HERRERA BEUTLER. I understand that if you put data, information into an algorithm, it is going to pop out something. I guess what I would like to know is the data that went into it and I want to know the validity and the quality of that data.

Mr. WHEELER. Like I said I will be happy to get that for you.

Ms. HERRERA BEUTLER. Sounds good.

[The information follows:]

Mr. WHEELER. The FCC conducted a survey of the fixed voice and broadband service rates offered to consumers in urban areas. The FCC is using the survey data to determine the local voice rate floor and reasonable comparability benchmarks for fixed voice and broadband rates for universal service purposes in accordance with the November 2011 USF/ICC Transformation Order. The data is available on the FCC's website at: <http://www.fcc.gov/encyclopedia/urban-rate-survey-data>. The form and content of the Urban Rate Survey for fixed voice services was adopted in an Order released in April 2013. That Order concluded that the urban rate survey would be conducted from a statistically valid sample of fixed terrestrial voice providers drawn from 2010 Census urban areas and urban clusters within Metropolitan Statistical Areas. The Urban Rate Survey asked for voice service rates from a sample of service providers. To determine which voice providers to sample, the Wireline Competition Bureau (Bureau) relied on data collected via FCC Form 477, which is a biannual voice and broadband data collection. The Bureau used the U.S. Census Bureau's definition of urban to determine what areas were eligible for the survey and then defined as the sample pool any fixed terrestrial voice service provider that operated in these areas.

Mr. PAI. I would simply add that we do have a statutory responsibility with respect to comparability, but that gives the FCC a lot of discretion. And I think if you ask the average person, well if people in Washington pay \$21 and people in Parsons, Kansas, who receive telephone services from a company that gets USF support pay \$14, do you think it makes sense for the people in Parsons to suddenly pay \$21? I do not think many people would agree that that is very fair and certainly not consistent with the overall promise of the statute that universal service should mean just that, that everyone has access to telecommunications services.

I do hope we revisit that decision and try to, not just focus on the data and the algorithm, but the entire concept of what it means for these services to be comparable.

Mr. WHEELER. You know the joy of being chairman is that you get all of these on your desk. The Universal Service Fund statutorily exists for the purpose of off-setting high construction costs so that rural consumers can have equivalent pricing. That is a transfer from urban, suburban consumers to rural companies on behalf of rural consumers.

What this study identified, and your question about the inputs is spot on, but what the study identified was that there is a transfer from urban and suburban consumers, not just to companies to offset their higher costs, but to subsidize rural consumers. That is not provided for in the law. And so my challenge is being incredibly sensitive to the point you raise about the impact on real people, but how do we obey the law and mitigate the impact on people. And that has been what I am trying to work towards.

Ms. HERRERA BEUTLER. Thank you.

Mr. CRENSHAW. Thank you. I think we have time for another round of questions, if people have more questions. I would like to ask one question to start with. We talked about it earlier. Chairman Wheeler, you have been involved in the telecommunications industry and now you are head of an agency that regulates that industry. And sometimes people's perspective changes when you go from being regulated to being the regulator, so I would like to ask you when you were in the private sector, can you give me an example of one or two complaints you might have had about the FCC when you were not the chairman?

Mr. WHEELER. Yes, sir, two things. One, I think my philosophy in the chair, as chairman, is based upon what I learned in business and that is that competition is the root of everything. Competition encourages investment, competition protects consumers, and competition is the goal that ought to be primary.

The thing that business people hate more than anything else is uncertainty. It is not knowing what the rules are. When an agency is not decisive in terms of saying, like it or not, here are the rules. We are not going to run away from tough decisions. People get paid a lot of money to figure out how to exist within the rules—just tell me what the rules are.

My goal has been one, how to be competition driven. How to have competition as the goal and two, how to make sure that we do not keep competitors in limbo and that means you have to make decisions.

Mr. CRENSHAW. Now, the second part of my question is, having outlined those criticisms and complaints, how do you plan to address those now that you are the chairman?

Mr. WHEELER. So, I hope that in the first five months of my chairmanship, we have demonstrated that we are going to make decisions and that we are pro competition and that we believe in the regulatory seesaw. And I hope to keep pursuing that kind of a path.

Mr. CRENSHAW. Mr. Pai, can you comment on that because you mentioned it in your written statement, and you talked about the JSA and the controversy there. As I recall there is a new rule and I think you mentioned in your testimony that there are some things that are statutory requirements that the Commission had not done yet. One of the things has to do with ownership, which I guess the quadrennial review addresses that I think is required, and yet had not been done yet.

I would like you to comment on that. Maybe first comment on what we talked about and what you observe that the Commission is doing to address the complaints that the Chairman talked about. And then second, touch on your view of new rules versus statutorily-required things to do.

Mr. PAI. Sure. Thanks for the question, Mr. Chairman. I agree 100 percent with the chairman that uncertainty is one of the things that frustrates businesses most and I certainly defer to him in his 29 years. He has accumulated vast expertise on the private sector.

Mr. WHEELER. I was going to say, where is your math?

Mr. PAI. But speaking for myself, two of the things that I have found in my somewhat shorter time in public service are number

one, beware of industries and companies seeking the regulation of rivals. A lot of companies would support a particular regulation probably entirely because it would disadvantage some of their rivals. We see it in non-FCC related context from Uber to Tesla to food trucks in Washington; we see it all the time at the FCC. Number two: be restrained about regulation of dynamic markets.

I can tell you when I first got into this industry, 1998 in the Department of Justice, the hot issue considered to be the burning issue of all time was whether to let local telephone companies into the long distance business. A few years later we were told in the context of a merger of AOL and Time Warner, that if we allowed the merger to be consummated, AOL would have a strangle hold on the instant messenger business. A few years later we were told that MySpace needed to be scrutinized because they would have a dominating foothold in the social media industry.

What I have come to understand through this position is that markets change and ideally, regulations would be tailored to the marketplace as it is, not as regulators would wish it to be or, you know as it might end up being, they think it might end up being in a few years. Things go in unexpected directions.

Just before the hearing, the chairman and I were talking about the fact that the iPhone, a platform for innovation that we now take for granted, did not even exist a few years ago and now we see all sorts of applications and services being delivered on that platform.

The lesson I take is that regulators should be modest. Certainly they should stay within the constructs of the statute, but more importantly, I think they should have a sense of restraint because consumers benefit the best when the marketplace is left generally unfettered from government intervention.

If there is an anti-competitive actor or particular competitive harm, then we have a role to step in and play, but otherwise we would do well when we regulate a little bit more modestly.

With respect to your question about media ownership, as I pointed out in my testimony, Congress charges us to reevaluate our media ownership rules every four years. We still have not completed the 2010 quadrennial, long before the chairman and I got there. Needless to say, some of these rules have not been updated since 1975. They are screaming out for updates. I support pro-competitive regulations that reflect the marketplace as it is, as opposed to the way it might have been in 1975. And I would hope that my colleagues agree with me on that score.

Mr. CRENSHAW. Well, thank you for that. And I would hope you all would talk about that as a Commission because so often agencies pick and choose what they do and do not do and I am sure there are probably reasons why things happen slower or faster. But this is something to bear in mind as you seek to restructure the agency, bring it up to date, do all those kind of things. I think that would be something to consider doing. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. You know about the study, I understand why some of our colleagues, especially from the majority party, would be concerned about an intrusion or a lack of freedom of the press and so on. Then there is the other side of the story. As an elected official, I know I will never get a positive story.

That is just not the way it works. You read about Benjamin Franklin and all those guys and they never got a positive story either.

As a Latino, I would like to know at times how people decide to pick what stories they put forth and why it seems that there are so many negative stories and very few positive stories about what we do on a daily basis, like any other community. You know we are no different than any other community.

I find myself, and this is really going to sound like a politician, agreeing with both of you because I do not want intrusion. I do not want the government to tell people what they must print and what they must put on the air.

Then I also say as we said, you know growing up in the public housing project, give me a break. Why does it always have to be so negative? And so, I wonder if you could comment in your newfound unity that I found today if there is a middle ground where we cannot intrude, where we can get my colleagues on the other side not to say that it is a violation of freedom of speech or freedom of the press, but at the same time find out why some groups are treated in a certain way and some groups do not play a role at all in any positive source.

Mr. WHEELER. So, you wrote the article. Do you want to respond?

Mr. PAI. You are the chairman.

Mr. WHEELER. Mr. Serrano, I think that the information is needed. The question is what is the impact of a survey that arrives with a federal eagle on it? So, I would hope that we will see academics, we will see foundations, and we will see groups such as that conducting these kind of surveys. Basically, I think the question you raise is entirely appropriate. And I think that Mr. Yoder's question about the role of a federal agency in that is legitimate as well.

Mr. SERRANO. We have been agreeing a lot lately.

Mr. WHEELER. And so here we are, we are all agreeing.

Mr. SERRANO. Yoder and I agreeing a lot lately, which worries me to death.

Mr. WHEELER. But there are solutions and not all solutions reside in the federal government.

Mr. SERRANO. Right, right. So, how do we get to protect those who do not get a chance to be seen properly?

Mr. PAI. Congressman, I am certainly sensitive to that issue. I can tell you that growing up in a small town in Kansas in the late 1970s, early 1980s, it never even occurred to me that someone like me could be an FCC commissioner; frankly could even be a lawyer. Everyone in my family was a doctor or an engineer or something of the sort. I never saw from the popular media anything depicting Indian Americans as participating in American public life in the way that they are now. It is important for us to make sure that the media landscape represents all Americans.

The question is how do you get there? And so my own view is that nothing, certainly from the FCC or from the law itself prevents anybody from studying these issues, from talking about them, from publicizing gaps in coverage or poor coverage as you might say. But when it comes to the government, there is a special limitation on what we are able to do. It is not just what we are permitted to do, but the mere appearance of what we might be

doing to others raises constitutional concerns. I think that with this particular study, you saw a lot of the concern being raised.

I will say I feel like I personally represent both of your polls. I was born in New York and raised in Kansas and so I am quite confident we can come together on this as well as many other issues.

Mr. SERRANO. He is a New Yorker. Let me, can I just ask one more question?

Mr. PAI. Certainly.

Mr. SERRANO. Let me ask one more question and I do hope that we reach a middle ground because we need to have that information. The last point on that would be yes, government should not intrude, but in this area it is different because those airwaves do not belong to the government, they belong to the people and everybody knowing that. If you are lucky enough to get an air wave to transmit, I think you have a responsibility to be fair to all the people that you are reaching, or ignoring, or whatever. Let me just talk to you very quickly about the JSAs.

Your claim that JSAs support minority, Commissioner Pai, support minority ownership is undermined by the fact that nearly every minority media group, including the Minority Media and Telecommunications Council, National Association of Black Journalists, and the National Hispanic Media Coalition, and public interest groups decry, these arrangements as harmful to promoting a diversity of voices. They claim JSAs and the consolidation they allowed denied them ownership opportunities and resulted in the loss of jobs. How do you explain this difference of opinion between those advocacy groups who do this job on a daily basis and you?

Mr. PAI. Mr. Serrano, I work well with many of those advocacy groups on a regular basis, but all I can tell you is what the facts on the ground are. In my home state of Kansas, for example, a JSA between two Wichita stations allows Entravision, a Univision affiliate, to provide the only Spanish language news in the entire state of Kansas. Without the JSA they have told me point blank that news goes away.

Mr. WHEELER. We need one clarification, just to be clear here. There is nothing in what we are doing that would make that go away.

Mr. PAI. We hope. Wall Street has spoken. You have seen the tanking of broadcasting stocks in recent weeks in anticipation.

Mr. WHEELER. That is a whole different issue. Are we talking about encouraging minority voices or protecting Wall Street barons?

Mr. PAI. Well, never having spent any time in the industry, I certainly do not shill for them. But the point is access to capital is the lifeblood of a lot of these broadcasters. If they do not have the capital, they either cut back on what they are doing or they go dark altogether. A lot of broadcasting companies across the country have told me that these have been pro-competitive arrangements that have allowed them to do things that otherwise they cannot do.

Similarly across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting has allowed those stations to save \$3.5 million in costs. They have poured some of those costs into better news programming and they have poured some of it into Doppler radar.

When the tornado hit Joplin, Missouri in 2011, I would vouch that a number of lives were saved precisely because they had those cost savings. My point is, not necessarily that I think the chairman is acting in bad faith, I would never obviously believe that. What I do think is that if his concern is correct that you have a bucket of apples and there are a few bad ones in there, let's pluck out the bad apples. Let's not throw the entire bucket away saying this is an anti-competitive arrangement that was meant to circumvent the FCC's rules. I certainly would never advocate that.

Mr. WHEELER. The reality is we are trying to deal with a situation where, and as I have said before, there are people hiding behind the skirts of good people. There is no way, shape, or form that the kinds of positive things that you have been talking about here will not be allowed under the process going forward. But the decision has to be made in public, on the record transparently with a known set of rules because what used to happen, is that broadcast attorneys would go and meet with the media bureau of the FCC, they would sit there and say, Okay, now what do we have to do to get this through?

What we have done is say, We want this to be out in the open and we want there to be a known set of rules. And that when there are these situations, which I stipulate to, we want those to continue as well. We do not want the people that are doing a good job getting the Spanish language into Kansas to be the excuse why others have an opportunity to flaunt the rules established by the commission on the basis of the instructions from the Congress.

Mr. CRENSHAW. We will give you the last word. I sound like I am on television, last word.

Mr. PAI. A quick word. So, I think it is all too easy to say that the waiver process the FCC is about to adopt will allow the good ones through and keep the bad ones out. But point number one, this goes to certainty. How is any broadcaster, who is not involved in a JSA, supposed to know in advance whether or not the FCC is going to approve one or not.

Mr. WHEELER. They did not before.

Mr. PAI. Now they will not know until, except on a case-by-case basis.

Mr. WHEELER. They did not before until they sat down and started dealing with the same kind of situation.

Mr. CRENSHAW. He is going to wrap it up, Mr. Chairman.

Mr. SERRANO. Just when I had them getting along.

Mr. PAI. No, number two, I do not think that the fortunes of broadcasters that are involved in a JSA should depend on a temporary femoral majority of politically appointed FCC commissioners. It should be based on the facts on the ground. And if the facts on the ground identify particular bad apples, let's address those problems discreetly without changing the overall rule structure and then setting up an inchoate waiver process where people have to come in individually and hope that they can get relief from the FCC.

Mr. CRENSHAW. Thank you.

Mr. WHEELER. I will follow your instruction.

Mr. CRENSHAW. Unless Mr. Graves wants to ask you all to keep going. I am just going to ask Mr. Graves to ask a question.

Mr. GRAVES. Well, the topic left with me last time and I want to point out what I appreciate here and that there is a debate, there is a dialogue, and it is very respectful, and there is two different opinions. I think coming into this meeting today, there was the understanding that this was going to be a rule that takes place without a lot of open discussion or debate or without potentially even a vote from the commission. Maybe there is some confusion in the industry. There is a lot of uncertainty. You have had some anecdotes in which individuals say they would lose potentially their station or the ability to connect with those whom they are trying to share their information with. I haven't heard you provide an anecdote in which it would advocate, or advance, or give additional licenses or broadcasting in areas with minority ownership either.

I think there are different opinions and I hope that the process that moves forward continues an open and robust and maybe slow down the process a little bit to make sure that all voices are heard because there is clearly some division here in what the outcome is.

Mr. WHEELER. Thank you, Mr. Graves.

Mr. GRAVES. Chairman, I hope you will take that into consideration. One thought that was on my mind and I would like both of your opinion on this because in my district I have heard a lot about it. And it was a few weeks ago that it was announced that the U.S. would relinquish control of the Internet. It is something that I think we see as a space where a lot of enterprise takes place. There is a lot of freedom of expression. We talk about freedom of speech.

Then you have the United Nation's Secretary General praising this decision from the administration and I guess it is the Department of Commerce and not, I guess moving forward with signing a contract in 2015. Is this something that each of you support? Is this the right direction moving forward for the department? I know it is not your agency or department, but there is an overlap of some sort and I think you have already made some comments on the record previously. So, commissioner I know you have probably spoken, Mr. Chairman?

Mr. PAI. Sure. I think that as I said in my statement that the multi-stakeholder model of Internet governance has worked tremendously well over the past several years. Whenever there are changes to that model, we are going to suggest that there could be risks. I think it is critical as we move forward that there is rigorous scrutiny from this body, as well as many others, to make sure that that model preserves. Whatever the next model is going to be, if there is one, it preserves the Internet freedom we have come to enjoy. And that comes into particularly sharp relief when you consider some of the things going on around the world, from Turkey banning Twitter, to Russia blocking particular websites.

A recent Pew study suggesting that overwhelming majorities of people, not governments, but people in developing countries want there to be a free Internet. I think it is critical for the United States to make sure that the multi-stakeholder model, which has yielded so many benefits, continues into the future.

Mr. GRAVES. Thank you.

Mr. WHEELER. I think we agree on the importance of the multi-stakeholder model. I think we also both agree that we are grateful that this is not on our plate. We have enough things that we can

wrestle with, but you know it is interesting that this was used by other countries of the world, as an example of American control over the Internet and therefore why they had to restrict Internet freedoms in their country.

These two responses are indicative of the decisions that you all have to make every day, that we have to make, that here, Commissioner Pai is saying it hurts Internet freedom, if you do this. On the other hand, countries at WCIT in Dubai and other International events, like the one coming up this next month in Rio are arguing that America's role in this, in ICANN is the basis for why they themselves can not trust the Internet and have to get in and do it themselves. That is the challenge that we all face.

In a dynamic situation like the Internet, as Commissioner Pai said, the multi-stakeholder process has proven itself to be far smarter than people like us. My understanding is that this is allowing the multi-stakeholder process to work.

Mr. GRAVES. Well, my hope would be that this decision that has been made by the department does not lead to less freedom on the Internet for our citizens whatsoever and I suspect that is your same feelings as well.

Looking long term, you talk about multi-state stakeholders, the United Nations is certainly very supportive of this, which causes concern as you can imagine with some. Do you sense that this will diminish the freedom of American's access to the Internet, and sites on the Internet, or use of the Internet?

Mr. WHEELER. I have a hard time jumping to that conclusion, sir.

Mr. GRAVES. But you can not rule it out.

Mr. WHEELER. I do not see the connection points. How this would affect American's access to the Internet. In fact, I think as I said, what it does is it opens the door for removing an argument to deny others in the world access to the Internet. I agree with you that the Internet is an incredibly powerful force that must remain open on this side of the Atlantic, and Pacific, and other sites as well.

Mr. PAI. I certainly hope that this does not portend diminishing of Internet freedom for Americans or frankly for anyone around the world. It is an unprecedented platform for innovation and democratization and it would be a tremendous shame for everybody if that went away, thank you.

Mr. CRENSHAW. Thank you. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. On that note the idea that the Internet has been such an inspiration for creativity and innovation in the country and the opportunities it is given for communication and entrepreneurship has been unprecedented. I guess I would like to know in that vein, does the Internet need FCC regulation? In light of the United States Court of Appeals decision tossing out the FCC's Net Neutrality rules, does the FCC tend to go around the Court of Appeals in some manner or is it going to abandon this effort going forward?

What does the future look like under this agreed to premise that it seems like everybody is on the same table here that we want to keep the Internet free and open. Is it free and open because of FCC regulation or in spite of it? What does the future look like as the FCC attempts to expand its role in this area because it gives great concern to many of us that once the FCC gets engaged in this ef-

fort, then it begins to have impacts on what is already such a great opportunity for freedom and creativity. Why do we need the FCC in this world? And what does the future look like once it gets in it?

Mr. WHEELER. An open Internet is essential to an open economy, to an open government, to the things that we have all been talking about here. I am a big history buff. I think that you start looking at today and tomorrow by looking at yesterday. The history of networks has been how do you use networks to shut things down? The way AT&T was built was on the basis of Theodore Vail saying to independent telephone companies, Hey, I have got these long lines here, and unless you sell out to me, you are not going to be able to get on.

The Internet is not a thing. The Internet is a connection of other networks, of multiple networks and we need to make sure that those kind of connections continue to exist and that there is openness in the ability to use the Internet.

I would say one thing, Mr. Yoder, the court was very explicit in saying that the FCC had jurisdiction over the operation of the Internet based on Section 706. I am sorry, based on the openness of the Internet. We are not trying to get into the operation of the Internet. I want to be real clear about that, but on the openness of the Internet based on Section 706. What I have announced that I will propose is that we go back and follow the court's direction on how that should be achieved. The court clearly laid out in its opinion how that could be done and we intend to follow that.

The interesting thing is that immediately after the court decision—which threw out two of the three specific rules, but said you have authority to fix the rules this way or that—immediately after that I got calls from the CEOs of the major Internet service providers, all the household names that we all talk about, telephone companies, cable companies saying, “do not worry, we intend to stick with the rules, even though the rules are not in place.”

The question then becomes one that demonstrates that they are not burdensome, but at the same point in time, you need to go back to this issue of certainty because well, I have got a voluntary agreement by four guys over here, but nobody else over there really has to stick with that. And so how do you come up with certainty that obeys what the court has said and puts forward a structure that the carriers themselves have said they can live with that keeps the Internet open—and that is what we are going to do.

Mr. PAI. Congressman, everyone believes in an open Internet and so the four freedoms that then Chairman Powell endorsed over a decade ago, freedom of consumers to choose content that they wish to view that was lawful, the freedom to use devices of their choice as long as it did not harm the network, the freedom to know what some of these practices were in terms of network management, et cetera. All of these principles existed and were vindicated prior to the adoption of any so-called net neutrality or open Internet rules.

The Internet was open before the FCC took action in this area and I would dare say that assuming the FCC prioritizes what it should prioritize, which is removing barriers to infrastructure investment, that will continue to be the case tomorrow.

My own view is the net neutrality debate has been a solution in search of a problem. And so I think it is also a distraction from what I think is the higher priority, which is removing barriers. I would also add tying it back to the discussion we just had on international Internet governance, it is increasingly difficult for us to say on an international stage that governments should not have a role in regulating the Internet, whether it is operations or openness or what have you. When at home there are strident voices saying that we should classify all broadband Internet access as essentially a utility, like the electric company or like the railroads. That would deter an investment that would increase government regulation, and that would increase the difficulty of some of these multi-billion dollar investment decisions that companies have to make.

In short, it would increase uncertainty to the detriment of consumers. And so I hope that whatever the course the FCC decides to chart in years to come, it is mindful of the fact that businesses have to invest based on a regulatory environment that is certain and the direction that the debate could go is one that would not lend itself to that.

Mr. CRENSHAW. Well, before we wrap things up, Mr. Serrano has a brief comment.

Mr. SERRANO. Thank you, Mr. Chairman. I have a TV watcher's question which is on the minds of most Americans, but no one gets a chance to ask like I do. ME-TV, COZI TV, Antenna TV, they were the results of what action taken by the FCC? Was that the transition to digital? Was that the spectrum or all of the above? Or how do those channels show up?

Mr. WHEELER. Well, those are digital channels that are existing on cable networks and other distribution facilities such as the Internet.

Mr. SERRANO. But they are owned by?

Mr. WHEELER. Well, ME, I guess, is owned by Fox, and that is a digital television transition.

Mr. SERRANO. COZI, I think, is owned by NBC. Because in New York, for instance, at 7:00, they go to the NBC news, then they switch back to their own programming.

Mr. WHEELER. Kind of Like MSNBC does.

Mr. SERRANO. Just one last point: why are some channels 4.1 or 4.2 or something like that?

Mr. WHEELER. That is what the digital television transition did, where you have channel 4 and then you have other channels that now can fit inside that spectrum.

Mr. SERRANO. Okay. And that's what this is?

Mr. WHEELER. On some of them. I can't generalize, Congressman, for all of them.

[The information follows:]

Mr. WHEELER. Antenna TV, COZI TV and ME-TV are digital multicast networks which became available after the digital television transition. Local television stations air these networks as a digital multicast channels, usually on a .2 or .3 channel depending on the city and the station. In addition to being available over-the-air, most major cable companies carry local affiliate feeds of these channels. Launched in 2011, Antenna TV is owned and operated by Tribune Broadcasting and originates from facilities at WGN-TV in Chicago. COZI TV is owned by NBC. ME-TV stands for Memorable Entertainment Television and is owned by Weigel Broadcasting and distributed by Metro-Goldwyn-Mayer.

Mr. CRENSHAW. I think if he pulls out his TV Guide, you will probably figure it out. You do not get the TV Guide? Do they still make that?

Mr. SERRANO. It is an app now. There is an app for everything. It is something that pops up. I watch—and people have asked, Where are those channels coming from?

Mr. PAI. Congressman, as the father of two children under three I am not familiar with television since, say, August of 2011. I am not quite sure of the answer to some of your questions.

Mr. SERRANO. Thank you so much.

Mr. CRENSHAW. Well, let me just thank you both for being here today and for your candid testimony. I think you each bring a great perspective that helps us. And remember: we have a role to play. We are not using taxpayer dollars, but we are using money that is ultimately extracted from consumers.

When we talk about regulation, we start out talking about that seesaw, and generally speaking when agencies say, I want more money, that means they are going to do more regulation. That does not necessarily have to be true, but I think smart regulation and reasonable regulation is necessary. As you work on that seesaw, keep in mind that it tilts both ways. We have talked so much about creativity and innovation, the competition that drives so many things that you all see. We would hope that you keep that in mind as you make the rules that impact so many people.

So thank you again for being here. This meeting is adjourned.

**Financial Services and General Government Subcommittee**  
**Hearing on the**  
**Federal Communications Commission FY2015 Budget**  
**For Chairman Tom Wheeler**

**Questions for the Record Submitted by Chairman Ander Crenshaw**

***Budget***

The FCC is asking for a \$35 million increase over the fiscal year 2014 enacted level. This is a considerable increase for your agency. While the FCC is funded by fees, these fees are passed on directly to consumers, which I hope you think about when putting your budget request together. Within the Financial Services and General Government bill, many of the agencies have asked for small increases, or even decreases, for fiscal year 2015, so the FCC's request for a substantial increase is conspicuous.

With that in mind:

**Question:** How does this budget fit in with the regulatory "seesaw" that you and I talked about? To me this is a budget that supports more regulation, not less.

**Answer:** As I noted during the hearing, our cost increases come in three basic categories: (1) mandatory increases for compensation and benefits as well as non-salary inflationary increases; (2) Information Technology (IT) system upgrades; and (3) USF enforcement and reform. These requested increases will support a more efficient agency, enabling us to achieve our statutory mission more effectively.

This budget supports the lowest level of FTEs in 30 years and a continued decrease in contractors – by almost half since 2011. The non-salary increases are based on the consumer price index (CPI) inflation percentage in accordance with OMB guidelines and cover items such as space rentals, utilities, contractual services and supplies.

The IT increases are necessary to restructure and modernize IT systems essential to licensing and industry priorities, such as new equipment authorization and experimental licenses. As I noted during the hearing, we have over 200 legacy systems, and a profound lack of internal communications that hobble our efforts at reform. I also noted that it will cost nearly as much in "baling wire and duct tape" to hold together antiquated systems as to properly upgrade and design them. If we are spending money, we should focus on the future, versus maintaining relic systems. In order to keep pace with rapid changes in technology, the IT investments we propose will facilitate competition by simplifying application processing and reducing administrative oversight.

As for USF, the FCC oversees an \$8.4 billion program with 25 people handling enforcement. The FCC has been heavily engaged in updating USF to ensure it is a practical program focused on

modern technology, while ensuring that we combat waste, fraud and abuse. Given the size of this program, the increase for USF is modest – and targeted toward realizing cost savings from enforcement efforts. The 45 FTEs will be part of the Joint USF Anti-Fraud Task Force, with about one-third of the employees situated in the Enforcement Bureau, populating the USF Strike Force. The remainder of the employees will provide enforcement support related to auditing and financial review in the Office of Managing Director and enforcement-regulatory operations in the Wireline Bureau. Six employees are designated for the Office of Inspector General. The Joint Task Force concept will permit us to utilize efficiencies across the agency and detail these employees as needed. I have provided specific crosswalks for these employees in a later question where this information is requested.

**Question:** Are there any areas where you believe the FCC could cut back?

**Answer:** The FCC lost \$17M of its FY13 budget to sequestration – money which was paid for by the industries we regulate in order to upgrade our systems and ensure a more efficient agency. Instead, that money is in an unreachable account at the Department of Treasury. As a result, the FCC is at a 30-year low in FTEs and for FY15 adjusted its standing FTE level from 1776 to 1735, at a time when we need to ensure we have the right number and mix of skilled FTEs to carry out mission-critical tasks. The Commission also delayed critical IT life cycle replacement needs which have had a direct impact on our ability to provide functioning, modern IT systems to support the industries that we regulate and handle consumer input.

Despite these funding challenges, in FY 13 the Commission managed its resources efficiently and effectively and made cutbacks where appropriate. For instance, the Commission renegotiated the lease at its Gettysburg facility for a \$660,000 annual savings and reduced costs in its administrative operations unit by over \$405,000. The Commission remains committed to identifying and implementing contract cost savings where appropriate. This year, however, the FCC must increase its budget to support internal operations related to IT modernization and USF enforcement.

**Question:** Is there a way for you to fund these new initiatives out of your base budget?

**Answer:** No. The FCC's budget was developed and reviewed with OMB with a focus on essential services. The first part of our base budget is mandatory increases, such as rent and utilities and existing personnel costs. The new requests specifically focus on IT and USF processes that are essential to the Commission's core mission. We also must spend a total of \$4 million to take over and upgrade the National Broadband Map which had previously been paid for from stimulus funds under NTIA. The FCC has very little flexibility with regard to its uncontrollable costs.

**Question:** Last year the FCC had some cost savings from renegotiating contracts. Is there anything else you can do in fiscal year 2015 in order to bring your costs down?

**Answer:** As I noted above, the Commission will continue to renegotiate contracts and realize cost savings whenever possible, but we need to focus more on systematic changes designed to create

greater efficiencies. As part of my efforts to operate the Commission using modern business practices, I commissioned a top-to-bottom review of internal practices and procedures as soon as I was confirmed in November. By January, my staff had produced a 92 page report detailing actions that could lead to greater administrative efficiencies and potential cost savings. For instance, we identified 207 legacy IT systems and noted that it would cost more in “baling wire and duct tape” to maintain these systems than to modernize and overhaul the existing systems. We also determined that modernization efforts would have positive long-term impacts on internal operations in terms of overall productivity and in addition ensure external communications are secure and reliable for the industry and consumers.

If we do not invest in our IT infrastructure, we will continue to waste money to support antiquated systems that are inadequate for the purposes for which they are designed, and undermine reform efforts. If we do not invest in USF reform, we will not be able to continue our efforts to combat waste, fraud and abuse – which would recognize cost savings in the long run. This year we need to focus on investment in the future – both for the industries that we regulate and the consumers who benefit from these industries.

#### ***Budget Transparency***

I am concerned about the transparency of your budget. For example, the Commission is asking for an \$11 million increase for Universal Service Reform activities, but only \$7.5 million can be linked to the Wireline Bureau.

**Question:** Where are the other FTEs and what is the other \$3.5 million going towards?

**Answer:** The FCC’s \$10,877,000 request would provide 45 additional FTEs for enforcement-based oversight and supplement the 25 FCC employees tasked with oversight of the \$8.4 billion USF programs. Specifically, the requested funds will provide for a Joint USF Anti-Fraud Task Force to combine resources agency-wide and develop a strategic, targeted approach to identifying, preventing, eliminating and prosecuting activities that undermine the integrity of the USF program. The 45 FTEs originally slated for WCB will be spread throughout the agency as follows:

- 6 FTEs for Office of Inspector General (investigations and enforcement)
- 20 FTEs for Enforcement Bureau (double EB’s capacity to handle complex cases)
- 10 FTEs for Office of Managing Director (financial systems and operational oversight – doubling capacity)
- 9 FTEs for Wireline Competition Bureau (oversight and compliance activities such as identifying potential rule violations, reviewing data and reports from beneficiaries)

Below are detailed descriptions of the bureau activities and the bulk of these employees, but note that there may be adjustments based on budgetary constraints and a final programmatic review:

**FCC USF Anti-Fraud Joint Task Force Plan: Wireline Competition Bureau**

- The Wireline Competition Bureau (WCB) oversees the Federal Universal Service Fund. WCB manages the four USF programs--Lifeline, E-rate, Connect America Fund and Rural Health Care—as well as contributions. Because WCB manages the Fund in close coordination with USAC, WCB often becomes aware of potential abuse of the Fund, mainly through USAC audits, appeals, annual filings, press reports and/ or through discussions with stakeholders.
- WCB’s role will fall into three main categories: initial inquiry into potential rule violations; internal support and consultation; and coordination and outreach.
  - *Initial Inquiry into Potential Rule Violations:* WCB is well-positioned to serve as the eyes and ears of the agency to identify potential rule violations. WCB meets with funding recipients and others involved with USF on a daily basis and in the course of those meetings frequently identifies situations that deserve further scrutiny. WCB also coordinates with USAC on a daily basis and often becomes aware through that process of potential violations.

WCB staff will enhance and augment these existing functions by dedicating expert staff to these tasks as well as to analyzing data (e.g., National Lifeline Accountability Database data, FCC Forms and Annual Reports), to identify potential targets for investigation, conduct initial assessments, and make prompt referrals to the EB Strike Force.

- *Internal Support and Consultation:* WCB will serve as a resource on factual (including historical) and legal issues regarding waste, fraud and abuse in each of the USF programs. The team will identify patterns of fraud/fraud risk in and among the USF programs. Based on lessons learned in this process, the team will advise policymakers on how to mitigate the risk of waste, fraud and abuse going forward. The team would also provide USAC with guidance and training on fraud related issues and will have a role in the development and review of compliance plans. Finally, the team will recommend areas for intensive review or auditing to USAC, the EB Strike Force, and the OIG.
- *Coordination and Outreach:* WCB will work with other representatives of the USF Anti-Fraud Task Force to coordinate efforts with OGC and OIG on fraud issues and will work with OMR on crisis communications.

Role	Description	# FTEs
WCB Anti-Fraud Director	Direct overall Anti-Fraud activities for WCB; report to Chief of TAPD	1
Anti-Fraud Dedicated Staff Experts	For each program, at least one legal expert and at least one finance/auditing expert initially allocated as follows with but with flexibility to shift experts among programs as needed: <ul style="list-style-type: none"> <li>• 2 E-rate legal experts (also support Rural Health Care)</li> </ul>	8

	<ul style="list-style-type: none"> <li>• 2 E-rate compliance/auditing experts (also support Rural Health Care)</li> <li>• 1 Lifeline legal expert</li> <li>• 1 Lifeline compliance/auditing expert</li> <li>• 1 Connect America legal expert</li> <li>• 1 Connect America compliance/auditing expert</li> </ul>	
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**Enforcement Bureau USF Strike Force**

- The EB USF Strike Force will target fraud, waste, and abuse in all four components of the USF: Lifeline, E-Rate, High Cost program/Connect America Fund, and Rural Health Care.
- Strike Force – working in teams composed of attorneys, investigators, and forensic analysts – will pursue violations of the Communications Act, the Commission’s rules, the False Claims Act, the Debt Collection Improvement Act, and other laws bearing on USF programs.
- The Strike Force will investigate allegations of wrongdoing by specific targets, analyze data (e.g., NLAD data, USAC E-rate funding request data, etc.) to identify patterns of misconduct, conduct undercover work, and target recidivists who resurface under different corporate guises.
- The Strike Force will coordinate internally with other components of the Joint USF Anti-Fraud Task Force (e.g., on investigations where appropriate, on rulemakings, on policy issues) and externally with DOJ and state authorities (e.g., PUCs, state AGs and other law enforcement) to investigate and pursue wrongdoers.

**Positions**

<b>Role</b>	<b>Description</b>	<b># FTEs</b>
Strike Force Director	Direct overall activities of Strike Force; report to EB Bureau Chief	1
Deputy Directors	Three deputies with responsibilities divided as follows: 1. E-rate 2. Lifeline, Contributions 3. High Cost, Rural Health	3
Strike Force Teams	Three 4-person teams responsible for specific cases. Teams consist of: <ul style="list-style-type: none"> <li>• 1 attorney (team leader)</li> <li>• 1-2 investigator (interviews, undercover, doc production, etc.)</li> </ul>	14

	<ul style="list-style-type: none"> <li>• 2-3 forensic examiners (document and financial analysis)</li> </ul>	
Policy Counsel	One attorney tasked with working collaboratively with other FCC stakeholders on policy matters, rulemakings, etc.	1
DOJ Trial Attorney Detailee	Funding for a DOJ criminal trial attorney detailee dedicated to handling USF fraud, waste, and abuse cases	1

**Office of the Managing Director: FTEs to Eliminate Improper Payments; and Improve Operational and Financial Oversight:**

The Office of the Managing Director (OMD) manages and oversees the functions of the Universal Service Administrative Company related to auditing, improper payments assessments and reporting, finance, accounting, procurement, information technology, administration, and personnel issues.

Identifying, Recovering and Reducing Improper Payments

- As required by the Improper Payments Elimination and Recovery Improvement Act of 2012, OMD has worked to develop assessments for each of the universal service programs that disburse funding: Lifeline, E-rate, High Cost program/Connect America Fund, and Rural Health Care. Improper payments are any payments that were not made or any payments that should have been made. The law requires the Commission to have an error rate of lower than 1.5 percent of total disbursements for each program.
- For the High Cost/CAF, E-rate and Lifeline programs, the Commission must analyze and constantly review and improve procedures to accurately capture improper payments based on OMB guidance. Specifically, additional OMD staff will focus on working with other Commission offices and USAC to bolster the assessments for those programs so we can demonstrate that we are testing all of the key components of those programs. In addition, as the programs are reformed, assessments procedures must be updated and revised accordingly.
- Based on the findings in the completed assessments – as well as findings from other audits and investigations – the Commission must develop corrective action plans to reduce improper payments under the statute. OMD staff will work other Commission offices and with USAC to address areas of concern, including by proposing rule changes, referring actions to the Enforcement Bureau, performing further targeted audits, conducting additional outreach, improving pre-disbursements reviews, and taking other actions as necessary to remediate the issues identified.
- OMD staff will work to increase recovery of funds from payment recapture audits (USF Beneficiary and Contributor Audits, or BCAP). Nearly \$300 million in potential recoveries is outstanding based on audit findings. Staff will determine whether audit

findings were correct and if funding can be collected before recovery can proceed. Staff will review outstanding issues and provide guidance to USAC and stakeholders.

**Operational and Financial Oversight**

- *Financial:* OMD staff will analyze USF program cash management practices to determine whether to revise the current commitment and disbursement policies and procedures. Work with agency’s CFO to ensure compliance with federal financial requirements. Oversee USAC efforts to reduce outstanding commitments and disbursements.
- *Information Technology:* OMD staff will work with USAC and coordinate with other offices to modernize and improve USF financial and programmatic systems. Improvements in the financial systems will (1) ensure the proper funding is being disbursed for each program; (2) provide stakeholders with updated and user-friendly access to Commission and USAC systems, information and data; and (3) improve data collection and analysis to support policymaking and to determine whether the Commission’s programmatic and administrative goals are being met for each program.
- *Risk Assessments:* To comply with GAO recommendations, OMD staff will manage and oversee program risk assessments for E-rate and Lifeline. OMD staff will also analyze, review and implement recommendations that result from the risk assessments.

**Positions**

<b>Role</b>	<b>Description</b>	<b># FTEs</b>
Director of USF Oversight	Direct, plan and coordinate overall activities administrative oversight team; report to Managing Director	1
Improper Payments Reduction and Reporting Team	As described above	3
Information Technology Modernization Team	As described above	2
Financial Management Team	As described above	2
Risk Assessment Team	As described above	2

**Question:** Would you commit to provide for the record, and build in to future budget request documents, a clear crosswalk of proposed increases?

**Answer:** Yes – I understand that you need clear descriptions of our management plans to review our budget. This budget was developed prior to my arrival at the FCC and I’ve worked with our Managing Director to shape the programmatic initiatives so that they support our primary mission objectives. I believe that we have now provided for the record a solid crosswalk based on my USF enforcement program. The FCC will continue to work with you and your staff to ensure that you have the appropriate information that you need to conduct appropriations oversight of our budget request.

*Industry Perspective*

You have previously worked within the telecommunications industry, and now you are head of the agency that regulates that industry.

**Question:** What has your experience in the private sector taught you about this agency?

**Answer:** I served in a number of different roles in the private sector – many of them interacting with the FCC in some way. I saw in a variety of contexts how important it is to for the FCC to engage in a timely and data-driven decision-making process. Regulatory uncertainty is a very strong disincentive to investment and innovation, and these are the two essential ingredients for a robust, competitive communications industry that will serve consumers.

My work in the private sector also taught me about the critical importance of ensuring that the FCC has the management tools in place to make it a transparent, efficient agency. I also bring my experience as a CEO in the private sector to the table, which provides me with additional insight into the budgeting process – especially with regard to the ways that government differs from private companies. We do not have as much flexibility as private companies do, but we can make the budget work with the right emphasis and balance of internal processes and administration.

**Question:** What were your top complaints about the FCC when you worked in the private sector?

**Answer:** One of my primary complaints was that items generally took too much time to complete, which all too often chilled investment and deterred innovative companies from moving ahead with entrepreneurial ideas while they waited for clarity from the FCC. That is why one of the first actions I took was to order a top-to-bottom review of the Commission's internal operations and develop a plan to address obvious issues that hinder efficiency.

But coming into the FCC, I had a very limited understanding of the internal IT problems hindering and impeding operations until I commissioned my reform report, and in parallel received more in-depth briefings on the state of the FCC's IT infrastructure. That is when I learned that our staff – many of them highly skilled and technologically-savvy – are impeded by having to work with outdated and inefficient IT systems. We currently have more than 200 different legacy IT systems that in most cases are very dated, expensive, and resource-intensive to maintain.

**Question:** Do you plan to address these as Chairman of the FCC?

**Answer:** The day after I became Chairman, I initiated an internal Process Reform Review and asked to have it delivered within 60 days. That review identified numerous recommendations to improve our processes, eliminate or modify outdated rules, and enhance the speed, transparency and efficiency of the FCC. The staff of the FCC is now focused on implementing those recommendations to improve our performance. And, as you heard at the Appropriations hearing, I

am also strongly advocating in favor of providing us with the resources we need to deploy the IT tools that so essential to successfully fulfilling our core mission. These tools represent an expensive but cost-effective investment in our industries and consumers – an investment that we cannot afford to delay any longer.

**Question:** Do you believe the FCC is nimble enough to keep up with the fast pace of the telecommunications industry as it is today?

**Answer:** The high-tech telecommunications industries we regulate move at an incredibly rapid pace as they strive to take advantage of technological advances and adapt to fast-evolving market conditions. The FCC must keep pace with these industries and ensure that the regulatory environment evolves as quickly as possible to foster innovation and investment. To accomplish this task, the Commission needs the right mix of expertise and state-of-the art tools necessary to support its work – especially in the area of IT.

**Question:** What are your top priorities for improving the functionality of the FCC as it relates to the telecommunications industry?

**Answer:** The FCC must accelerate our decision-making processes, and many of the recommendations in the Process Reform Report focused on measures to support that goal. In addition, I have made upgrading our IT systems a priority going forward – to replace our antiquated systems to ensure secure and efficient internal and external communications. We have skilled and expert staff, but their productivity is unnecessarily impeded by having to work with outdated IT systems. These legacy systems also create significant burdens for industry as well, given that they too must interact with the FCC’s inefficient IT infrastructure.

I also oversee an agency that is at a 30-year low for FTEs, despite the increasing demands of a growing industry and expanding consumer base. We have approximately half as many contractors as in 2011. We manage an \$8.4B USF program using 25 FTEs for enforcement and we are under constant pressure to step up our efforts to combat waste, fraud and abuse. We need the right people for the right jobs, with the right tools and the proper level of support.

#### *Newsroom Study*

The Critical Information Needs (CIN) study was a real boondoggle and raised some serious first amendment issues. As you know, the CIN study was to study “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services,” not how stories are selected or stations’ respective “news philosophies.”

**Question:** Who designed this study? What were they thinking?

**Answer:** Social Solutions International, Inc. (SSI), a contractor for the Federal Communications Commission, designed the study in conjunction with a diverse team of social scientists, economists, media and journalism experts, and FCC staff. The purpose of the SSI contract was the development of informational resources to assist the Commission in its efforts to meet its obligations under Section 257 of the Communications Act. SSI's approach was to collect data to evaluate how communities receive critical information through a variety of media. When the Commission placed the study on public notice for comment, it became clear that there were significant concerns about the scope of the study methodology, leading to the cancellation of the contract.

**Question:** Did it have your sign-off, or the sign-off of previous FCC Chairs?

**Answer:** Most of the activity surrounding the study occurred prior to my arrival at the Commission. It was my decision to terminate the contract and halt the study after initially attempting to modify the approach with the contractor when concerns were raised.

**Question:** How much did the Commission spend on designing this study?

**Answer:** The total amount of the original contract with all options was \$1,098,764.85. We exercised options totaling \$466,894.05 and of this amount we have paid to date \$227,316.92. We estimate that we will pay an additional \$130,943.75 to close the contract.

**Question:** Do you think this was the best allocation of FCC resources?

**Answer:** It was my decision to terminate the contract due to concerns with its approach. The Communications Act requires the Commission to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications and information services, and we will continue to allocate resources appropriately to achieve this goal.

**Question:** Do you plan to revisit this study again? Will it stick closely to the mandate within the statute?

**Answer:** The FCC is obligated to follow the mandate of the statute. As I stated in my hearing, however, we will not expend federal funds to reinstate a study that raises the same concerns that led to my decision to cancel the contract.

**Question:** Would you oppose a statutory funding prohibition on reconstituting the news study as was originally proposed?

**Answer:** I do not believe such a prohibition is necessary. There is no plan to institute any studies that would raise similar concerns.

*Spectrum Incentive Auctions*

The United States will hold the first ever spectrum “incentive” auction through which broadcasters are incentivized to relinquish spectrum voluntarily in exchange for a portion of the auction revenue. This was mandated by Congress under the Middle Class Tax Relief Act of 2012, also known as the JOBS Act. The proposed incentive auctions are mandated to raise at least \$20 billion for deficit reduction, \$7 billion to create a nationwide broadband for first responders, and approximately \$1 billion more for additional public safety initiatives.

**Question:** Is there a risk that bidding restrictions could result in lower bids, and hence, less spectrum being made available by broadcasters?

**Answer:** The Incentive Auction is a once-in-a-lifetime opportunity to expand the benefits of mobile wireless coverage and competition to consumers across the Nation – particularly consumers in rural areas – offering more choices of wireless providers, lower prices, and higher quality mobile services, while also providing a game-changing financial opportunity to broadcasters and fully funding FirstNet. Maximizing participation by both broadcasters and wireless providers in the auction is crucial to achieving these goals. Consistent with the Spectrum Act, all who want to participate in the Incentive Auction will be able to bid.

I recently presented a draft order to my fellow Commissioners designed to ensure that every mobile wireless provider has the opportunity to bid in every market, and that every consumer enjoys the benefits of a competitive wireless marketplace. The proposal reserves a modest amount of low-band spectrum in each market for providers that lack such low-band capacity. This proposal also contains safeguards to ensure that all bidders for reserved spectrum licenses bear a fair share of the cost of making incentive payments to broadcasters who voluntarily relinquish some or all of their spectrum usage rights.

**Question:** Do you agree that the goal should be to maximize the amount of spectrum that is made available through the broadcaster incentive auction?

**Answer:** The Incentive Auction will marry the economics of wireless providers’ demand for spectrum with the economics of current spectrum holders, and allow market forces to determine the highest and best use of spectrum, and thus the amount of spectrum that is made available. Maximizing spectrum recovery is one of the auction’s principal objectives. The Commission is also committed to generating sufficient revenue to fund FirstNet, should such funding be needed following our H Block and AWS-3 auctions.

**Question:** Does the Commission believe limiting bidder participation in the auctions would generate less auction revenue than would otherwise be generated with open participation?

**Answer:** Maximizing participation by both broadcasters and wireless providers in the auction is crucial to a successful Incentive Auction. Consistent with the Spectrum Act, all who want to participate in the Incentive Auction will be able to bid.

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**Question:** Do you agree that higher bids in the forward auction will incent broadcasters to make more spectrum available through the reverse auction?

**Answer:** Maximizing participation by both broadcasters and wireless providers in the auction is crucial to a successful Incentive Auction. The Incentive Auction will marry the economics of wireless providers' demand for spectrum with the economics of current spectrum holders, and allow market forces to determine the highest and best use of spectrum. I have consistently said that, in order to be successful, the auction will need robust broadcaster participation. The Incentive Auction represents a once in a lifetime financial opportunity for broadcasters, and we expect to offer broadcasters high initial bids in the reverse auction to make participation as attractive as possible.

Similarly, a successful auction will require a competitive forward auction with significant participation by wireless providers.

**Question:** If the Commission is concerned that a bidder could acquire too much spectrum in the auction, is the only way to address that concern through bidding restrictions that could potentially

limit the amount of spectrum that the broadcasters make available? What are some other ways the Commission is addressing these concerns?

**Answer:** Maximizing participation by both broadcasters and wireless providers in the auction is crucial to a successful Incentive Auction. Consistent with the Spectrum Act, all who want to participate in the Incentive Auction will be able to bid.

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**Question:** We understand the increase in the auction administration cap amount has been requested to implement the incentive auctions, but are you expecting this number to decrease once these auctions are over or do you plan to build the increase into the base?

**Answer:** The FCC's auctions are funded under section 309(j) of the Communications Act and are not subject to our S&E account base. Since initiating the auctions process in 1994, the Commission has collected more than \$53 billion and spent less than two percent of those funds on administrative operations and personnel. Congress had capped auctions spending at \$85 million for 10 years with no inflationary adjustments, until the initiation of incentive auction planning in 2013. At the same time, Congress renewed the Commission's auctions authority through the next decade, which required the implementation of lifecycle replacement activities as well as the development of new auctions software and hardware to handle the first of its kind forward and reverse incentive auction process. It is anticipated that some of the personnel necessary for the successful implementation of the incentive auctions will no longer be needed after the completion of the auction, although the hardware and software may be used for future auctions. Although I cannot predict the cap levels going forward, I can predict that the development and distribution of spectrum resources will become more challenging.

#### *Net Neutrality / "Open Internet"*

Your experience prior to becoming Chair of the FCC was in the exact industry that the FCC is now trying to regulate through net neutrality, or "open internet," rules.

**Question:** If you were still working in the private sector, what would you think of what the FCC is doing in this area?

**Answer:** As a former entrepreneur and investor, I understand the importance of supplying businesses with certainty. That's another reason why the sooner we can get enforceable rules in

place, the better off everyone will be. Internet entrepreneurs and those who support them need the certain knowledge that their ability to get to market will not be degraded by manipulation of the Internet.

In my many years in this industry, I have built new technology-based companies as an entrepreneur, and helped other companies grow as a venture capitalist. I know how hard it is to start a company with innovative ideas. Now, as Chairman of the FCC, I do not intend to allow innovation to be strangled by the manipulation of the most important network of our time, the Internet.

**Question:** What do you think are the industry's major concerns and how do you see the FCC responding to these?

**Answer:** The industry's first concern is with regulatory certainty. That's why many of those whom we regulate made it clear that they would continue to follow the guidelines of our former rules until new rules are adopted. I have circulated a Notice of Proposed Rulemaking to my fellow commissioners on the Open Internet. There are two things that are important to understand. This is a Notice, which asks a number of questions and seeks input on the best way to protect and promote the Open Internet. This will give these industries and other stakeholders ample opportunity to provide specific comments on their concerns. Our goal is to put into place real protections for consumers, innovators and entrepreneurs that until now have been only a matter of debate and litigation. I believe this process will put us on track to quickly get to legally enforceable Open Internet rules. All options are on the table.

**Question:** What do you say to those who argue the FCC is "stifling innovation" with this rules?

**Answer:** The focus of this proposal – on which we are seeking comment – is on maintaining a broadly available, fast and robust Internet as a platform for economic growth, innovation, competition, free expression, and broadband investment and deployment. Our goal is rules that will encourage broadband providers to continually upgrade service to all.

#### ***Organizational Structure Report***

In the fiscal year 2014 House bill we included language directing the Commission to submit a review of the current organizational structure of the FCC. We have strong concerns that the Commission is not currently set up to respond and pivot quickly to current technology marketplace needs, nor does it necessarily reflect what the bureau actually does today. For instance, within the fiscal year 2015 request you ask for an increase for Universal Service reform support staff, most of whom will go under the Wireline Bureau. This probably makes the most sense given the structure that you all have now, but if a comprehensive organizational review was done, perhaps bureaus would be combined, collapsed, or created to better reflect the FCC's current priorities.

**Question:** Do you think the Commission's current structure appropriately reflects the industry you regulate?

**Answer:** There are trade-offs under any structure that the FCC might use, but given our current legislative framework, I do believe that our organizational structure enables the FCC staff to work effectively as we regulate the fast-paced and constantly changing communications and technology industries. We maintain concentrated staff in the bureaus with core functions and utilize staff from across the agency to ensure that a particular issue receives the necessary expertise and coverage. When appropriate, we pull staff from different bureaus to form task forces or working groups to support a broad range of activities. But this sort of process only goes so far when an agency such as ours is at a 30-year low for staff. We need properly trained staff to maintain and oversee our programs, including USF, and to improve our internal IT systems.

**Question:** Are there any changes you would like to see that you think would make the Commission function more effectively and efficiently?

**Answer:** Yes. We need the IT software, hardware and personnel requested in our budget to ensure that we have functioning, secure systems. We also need the additional USF FTEs to ensure that we can perform enforcement activities related to oversight of this \$8.4B program.

**Question:** Is the Commission working on this report and can the Committee expect that this report will be submitted on time?

**Answer:** Yes, we are scheduled to provide the report within the timeframe specified in the Committee Report. We already have developed a 92-page Process Reform Report and we will provide additional material not covered there that provides context related to our organization and structure.

#### *FCC Reform*

As I am sure you know, an FCC process reform bill recently passed the House. To me, this is a good government bill, and as I understand it lines up with the process reform that you have already started at the FCC.

Many of the items within the process reform bill, and your own process reform agenda, seem like good government type things to me.

**Question:** Why was this reform not already underway at the Commission?

**Answer:** The goals of the process reform bill and the process reform recommendations that were included in the Staff Working Group Process Reform Report are grounded in a desire for a faster, more efficient and more transparent FCC. I know that former Commissioners and Chairmen shared

those goals, and indeed have been continually working toward improving the FCC's processes. My fellow Commissioners today also support these important goals.

But the pace of change in today's telecom industries demands that we in turn step up our pace, and take aggressive action to change the way we do business at the FCC. We must streamline our processes, speed our decision-making, and move to state-of-the-art IT systems that will provide us with the tools to be more efficient and transparent. In order to do that, we need the necessary staff and technical resources to accomplish our mission, and I look forward to working with the Committee toward that end.

#### *Cost-Benefit Analysis*

**Question:** Is cost-benefit performed on all applicable FCC rulemakings?

**Answer:** The Commission has endeavored to act consistently with the cost-benefit analysis principles articulated in Executive Order 13579 since its release in July 2011, the goal of which is "to produce a regulatory system that protects 'public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'" The Commission maintains a staff of economists within the various offices and bureaus to assist with the analysis of the costs and benefits associated with proposed regulations prior to their adoption.

**Question:** If not, why not?

**Answer:** The Commission does perform cost-benefit analyses consistent with Executive Order 13579.

**Question:** Do you believe the Commission could do a better job in this respect?

**Answer:** All Commission Bureaus and Offices have been directed to perform their responsibilities consistent with Executive Order 13579, and we will continue our work to promote innovation inside and outside government while ensuring that the benefits of our rules outweigh the costs and burdens. We are evaluating ways that we can improve the efficiency and effectiveness of our rulemaking proceedings. With the proper support, the Commission could ensure more internal review and cross-bureau communications related to all aspects of our work, including cost-benefit analyses. Right now, however, the Commission's antiquated IT systems hinder and impede efficient communications across bureaus.

**Question:** Can you commit to prioritizing this analysis on FCC rulemakings under your tenure as Chairman?

**Answer:** The Commission will continue to act consistent with the cost-benefit analysis principles articulated in Executive Order 13579 and to consider all relevant factors and issues raised during the course of our rulemaking proceedings to ensure that our regulatory decisions reflect the best possible outcome for consumers and the industry.

#### *Deaf and Hard of Hearing Services*

**Question:** What has the Commission done to ensure telecommunications relay service to deaf and hard of hearing persons reflects the latest improvements in technology?

**Answer:** The Commission is committed to incorporating technological improvements into telecommunications relay services (TRS) whenever it is feasible and efficient to do so. For example, for video relay service (VRS), which provides telecommunications access for deaf and hard-of-hearing individuals who use American Sign Language (ASL), in 2013, the Commission mandated the establishment of an access technology reference platform and has begun the process of building this platform. This reference platform will enable consumers to access VRS using the latest off-the-shelf video technologies and will ensure that the technologies used by different VRS providers are fully interoperable with one another, so that consumers can call each other and leave messages regardless of which service provider they use.

To enhance TRS generally, the Commission is also working with the National Institutes of Health to fund research on developing applications of technology that will improve the functionality and efficiency of TRS. In addition, the Commission plans to open a proceeding this year to determine how advanced technologies, such as video over IP, may be used to enhance the ability of people with speech disabilities to communicate with other individuals over speech-to-speech relay services (STS).

**Question:** Do you believe current telecommunications relay service to deaf and hard of hearing persons are functionally equivalent to the nation's telephone network?

**Answer:** Yes, we believe that current TRS achieves such functional equivalency. The Commission's rules contain comprehensive mandatory minimum standards designed to ensure that the TRS administered by the Commission are functionally equivalent to voice communications service provided over the nation's telephone network. For example, these standards include requirements for TRS to be provided 24 hours every day, a speed of answer that is designed to minimize the time that TRS users must wait to place a TRS call, guarantees of call confidentiality, requirements for communication assistants who handle calls to be competent in the language and culture of TRS callers and to relay all calls requested without alteration, and prohibitions against charging TRS users any more for calls than persons not using TRS.

In addition, in order to ensure that people with different types of language and hearing needs are served by TRS, the Commission's TRS program offers various types of TRS, including video relay service (VRS) for sign language users, captioned telephone service for people who are hard of

hearing or have lost their hearing later in life, speech-to-speech for people with speech disabilities, and some forms of Spanish relay, for people who have a hearing or speech disability and also speak Spanish. Since the inception of the TRS program, the Commission's rules have been updated regularly to continually enhance the functional equivalence of TRS.

**Question:** What has the Commission done to ensure that functionally equivalent access is provided deaf and hard of hearing persons to the nation's telephone network?

**Answer:** The Commission has a long-standing commitment to ensuring that functionally equivalent access to the nation's telephone network is provided to deaf and hard of hearing persons. In order to achieve this, the Commission has taken a number of recent steps to improve functional equivalence. For example, in respect to Telecommunication Relay Services (TRS), the Commission has recently implemented changes seeking to rid TRS programs of fraud, waste and abuse, to enable them to be more sustainable, and has addressed major improvements to TRS services to enhance their functional equivalence, including:

**Internet Protocol Captioned Telephone Service (IP CTS):** IP CTS is a form of telecommunications relay service (TRS) that permits people who can speak, but who have a hearing loss and have difficulty hearing over the telephone, to speak directly to another party on a telephone call and to use an Internet Protocol-enabled device to simultaneously listen to the other party and read captions of what that party is saying. The volume of users of IP CTS has greatly expanded over the past several years, demonstrating that more Americans with this very common form of hearing loss are being served by TRS and are thereby able to achieve access to the nation's telephone network.

**Video Relay Service (VRS):** VRS is a form of TRS that allows persons with hearing or speech disabilities or who are deaf-blind to use American Sign Language to communicate in near real time through a communications assistant, via video over a broadband Internet connection. Pursuant to its 2013 VRS Reform Order, the Commission has recently taken a number of steps to improve VRS functional equivalence:

- **Interoperability:** The Commission recently released a request for proposals for a neutral VRS access technology reference platform to achieve interoperability so that VRS users can easily call each other and leave video messages, regardless of whether they both use the same VRS provider. This interoperability is a hallmark of functional equivalence.
- **Outreach:** The Commission will be establishing a national outreach coordinator for both VRS and IP-based text relay to ensure that members of the general public, including businesses, as well as potential users, are familiar with TRS.
- **Speed of answer:** The Commission is now requiring VRS providers to respond to calls more quickly, so that the response time for a VRS user is more equivalent to that of other telephone users.

**Speech to Speech Relay Service (STS):** STS is a form of TRS for individuals with speech disabilities. In 2013, the Commission issued amendments to the mandatory minimum standards

applicable to STS to ensure that persons with speech disabilities have access to relay services that address their unique needs.

**Question:** What has the Commission done to ensure next-generation technology is made available for deaf and hard of hearing persons?

**Answer:** The Commission is committed to ensuring that next-generation technology is available for and accessible to deaf and hard of hearing individuals. In addition to the steps described above, the Commission has focused on ensuring implementation of text-to-911, a next-generation technology that reflects how consumers communicate today and can provide a lifesaving alternative for individuals who are deaf, hard of hearing, or have a speech disability. This past year, the Commission worked with the nation's four largest wireless carriers, with the support of leading public safety organizations, to achieve a voluntary commitment to make text-to-911 available to their customers by May 15, 2014, in areas where the 911 call center is prepared to receive texts. The Commission is encouraging other providers to deploy text-to-911 and is considering a proposed rule to ensure wider deployment. As noted above, the Commission is also developing a reference platform for VRS users to enable these individuals to use off-the-shelf next generation video technologies.

**Question:** Has the Commission reevaluated current telecommunications relay service to ensure existing providers offer functional equivalence?

**Answer:** In recent years the Commission has instituted a strengthened audit program and carried out rigorous site inspections. In line with these efforts, the Commission has withheld TRS compensation payments and/or denied or revoked provider certification where providers have proved unable to provide TRS in compliance with the Commission's minimum standards.

### **Questions for the Record Submitted by Congressman Mario Diaz-Balart**

#### ***Carry Over Funds***

During the FY13 budget cycle the Commission committed to me personally to add to the annual budget estimate to Congress a detailed chart estimating funds eligible for carry over (FY13 House hearing record, pg 13). This was information previously contained in the FY 2009 and FY 2010 estimates. I have not seen the promised information in the last two estimates.

**Question:** What is the current balance and why has the Commission failed to include the information in its estimate as it had promised?

**Answer:** The current balance is detailed in the chart below. The Commission provides a quarterly accounting of the cumulative balances of unobligated funds to the Subcommittee on Financial Services and General Government, and the last report was submitted in February. The

Commission will include an accounting of cumulative balances of unobligated funds in the FY 2016 estimate.

**FEDERAL COMMUNICATIONS COMMISSION**  
**Quarterly Balances of Available Funds and Expired Funds (1)**  
**Detail by Revenue Source**  
**As of December 31, 2013**

Treasury Symbol	Fiscal Year	Unobligated Balance
<b>Available Funds (2)</b>		
27X0100		\$15,429,640.06 (3)
27X0300		<del>\$3,216,398.56</del> (4)
Total		\$18,646,038.62
 <b>Expired Funds (5)</b>		
27130100	2013	\$ 289,679.50
27120100	2012	\$1,066,605.48
27110100	2011	\$1,262,494.40
27100100	2010	\$210,831.46
27090100	2009	\$107,273.33
Total		\$ 2,936,884.17

1 - Based on SF-133 Reports on Budget Execution Submitted to the Department of Treasury and OMB as adjusted for corrections.

2 - Available funds represent prior year funds in No-Year Treasury Account Fund Symbols (TAFS) that never expire and have never been obligated or have been obligated and deobligated.

3 - Amount includes \$7.4M in Universal Service Funds for the Office of Inspector General; approved reprogramming funds to settle FLSA claims, to fund capital projects and IT improvements and for unobligated auctions and salaries and expense funds.

4 - Amount includes funds for credit reform program account.

5 - Expired funds represent funds in Single year TAFS that will be transferred to the no-year account or cancelled at the end of the fifth year after the year appropriated. These funds have never been obligated or have been obligated and deobligated.

**Question:** When the Committee provided the Commission with additional funding for the DTV transition, the increases ended up built into the Commission's base after the task was completed. I see a similar scenario unfolding with the Commission's proposed dramatic increase in the Wireline Bureau. Can you provide for the record a detailed breakout of the proposed roles of the 39 new FTEs, the timeline for work the Commission envisions, and whether these funding and FTE increases would be sunsetted after the completion of these reforms?

**Answer:** The FCC's \$10,877,000 request would provide 45 additional FTEs for enforcement-based oversight and supplement the 25 FCC employees tasked with oversight of the \$8.4 billion USF programs. Specifically, the requested funds will provide for a Joint USF Anti-Fraud Task Force to combine resources agency-wide and develop a targeted approach to identifying, preventing, eliminating and prosecuting activities that undermine the integrity of the USF program. The 45 FTEs originally slated for WCB will be spread throughout the agency as follows:

- 6 FTEs for Office of Inspector General (investigations and enforcement)
- 20 FTEs for Enforcement Bureau (double EB's capacity to handle complex cases)
- 10 FTEs for Office of Managing Director (financial systems and operational oversight – doubling capacity)
- 9 FTEs for Wireline Competition Bureau (oversight and compliance activities such as identifying potential rule violations, reviewing data and reports from beneficiaries)

Below are detailed descriptions of the bulk of these employees, but note that there may be adjustments based on budgetary constraints and a final programmatic review:

**FCC Joint USF Anti-Fraud Task Force Plan: Wireline Competition Bureau**

- The Wireline Competition Bureau (WCB) oversees the Federal Universal Service Fund. WCB manages the four USF programs--Lifeline, E-rate, Connect America Fund and Rural Health Care—as well as contributions. Because WCB manages the Fund in close coordination with USAC, WCB often becomes aware of potential abuse of the Fund, mainly through USAC audits, appeals, annual filings, press reports and/ or through discussions with stakeholders.
- WCB's role will fall into three main categories: initial inquiry into potential rule violations; internal support and consultation; and coordination and outreach.
  - *Initial Inquiry into Potential Rule Violations:* WCB is well-positioned to serve as the eyes and ears of the agency to identify potential rule violations. WCB meets with funding recipients and others involved with USF on a daily basis and in the course of those meetings frequently identifies situations that deserve further scrutiny. WCB also coordinates with USAC on a daily basis and often becomes aware through that process of potential violations.
 

WCB staff will enhance and augment these existing functions by dedicating expert staff to these tasks as well as to analyzing data (e.g., NLAD data, FCC Forms and Annual Reports), to identify potential targets for investigation, conduct initial assessments, and make prompt referrals to the EB Strike Force.
  - *Internal Support and Consultation:* WCB will serve as a resource on factual (including historical) and legal issues regarding waste, fraud and abuse in each of the USF programs. The team will identify patterns of fraud/fraud risk in and

among the USF programs. Based on lessons learned in this process, the team will advise policymakers on how to mitigate the risk of waste, fraud and abuse going forward. The team would also provide USAC with guidance and training on fraud related issues and will have a role in the development and review of compliance plans. Finally, the team will recommend areas for intensive review or auditing to USAC, the EB Strike Force, and the OIG.

- *Coordination and Outreach:* WCB will work with other representatives of the USF Anti-Fraud Task Force to coordinate efforts with OGC and OIG on fraud issues and will work with OMR on crisis communications.

**Positions**

Role	Description	# FTEs
WCB Anti-Fraud Director	Direct overall Anti-Fraud activities for WCB; report to Chief of TAPD	1
Anti-Fraud Dedicated Staff Experts	For each program, at least one legal expert and at least one finance/auditing expert initially allocated as follows with but with flexibility to shift experts among programs as needed: <ul style="list-style-type: none"> <li>• 2 E-rate legal experts (also support Rural Health Care)</li> <li>• 2 E-rate compliance/auditing experts (also support Rural Health Care)</li> <li>• 1 Lifeline legal expert</li> <li>• 1 Lifeline compliance/auditing expert</li> <li>• 1 Connect America legal expert</li> <li>• 1 Connect America compliance/auditing expert</li> </ul>	8

**Enforcement Bureau USF Strike Force**

- The EB USF Strike Force will target fraud, waste, and abuse in all four components of the USF: Lifeline, E-Rate, High Cost program/Connect America Fund, and Rural Health Care.
- Strike Force – working in teams composed of attorneys, investigators, and forensic analysts – will pursue violations of the Communications Act, the Commission’s rules, the False Claims Act, the Debt Collection Improvement Act, and other laws bearing on USF programs.
- The Strike Force will investigate allegations of wrongdoing by specific targets, analyze data (e.g., NLAD data, USAC E-rate funding request data, etc.) to identify patterns of misconduct, conduct undercover work, and target recidivists who resurface under different corporate guises.
- The Strike Force will coordinate internally with other components of the Joint USF Anti-Fraud Task Force (e.g., on investigations where appropriate, on rulemakings, on policy issues) and externally with DOJ and state authorities (e.g., PUCs, state AGs and other law enforcement) to investigate and pursue wrongdoers.

**Positions**

<b>Role</b>	<b>Description</b>	<b># FTEs</b>
Strike Force Director	Direct overall activities of Strike Force; report to EB Bureau Chief	1
Deputy Directors	Three deputies with responsibilities divided as follows: 4. E-rate 5. Lifeline, Contributions 6. High Cost, Rural Health	3
Strike Force Teams	Three teams responsible for specific cases. Teams consist of: <ul style="list-style-type: none"> <li>• 1 attorney (team leader)</li> <li>• 1-2 investigator (interviews, undercover, doc production, etc.)</li> <li>• 2-3 forensic examiners (document and financial analysis)</li> </ul>	14
Policy Counsel	One attorney tasked with working collaboratively with other FCC stakeholders on policy matters, rulemakings, etc.	1
DOJ Trial Attorney Detailee	Funding for a DOJ criminal trial attorney detailee dedicated to handling USF fraud, waste, and abuse cases	1

**Office of the Managing Director: Stop Improper Payments Assessments, and Ensure Operational and Financial Oversight:**

The Office of the Managing Director (OMD) manages and oversees the functions of the Universal Service Administrative Company related to auditing, improper payments assessments and reporting, finance, accounting, procurement, information technology, administration, and personnel issues.

Identifying, Recovering and Reducing Improper Payments

- As required by the Improper Payments Elimination and Recovery Improvement Act of 2012, OMD has worked to develop assessments for each of the universal service programs that disburse funding: Lifeline, E-rate, High Cost program/Connect America Fund, and Rural Health Care. Improper payments are any payments that were not made or any payments that should have been made. The law requires the Commission to have an error rate of lower than 1.5 percent of total disbursements for each program.

- For the High Cost/CAF, E-rate and Lifeline programs, the Commission must analyze and constantly review and improve procedures to accurately capture improper payments based on OMB guidance. Specifically, additional OMD staff will focus on working with other Commission offices and USAC to bolster the assessments for those programs so we can demonstrate that we are testing all of the key components of those programs. In addition, as the programs are reformed, assessments procedures must be updated and revised accordingly.
- Based on the findings in the completed assessments – as well as findings from other audits and investigations – the Commission must develop corrective action plans to reduce improper payments under the statute. OMD staff will work other Commission offices and with USAC to address areas of concern, including by proposing rule changes, referring actions to the Enforcement Bureau, performing further targeted audits, conducting additional outreach, improving pre-disbursements reviews, and taking other actions as necessary to remediate the issues identified.
- OMD staff will work to increase recovery of funds from payment recapture audits (USF Beneficiary and Contributor Audits, or BCAP). Nearly \$300 million in potential recoveries is outstanding based on audit findings. Staff will determine whether audit findings were correct and if funding can be collected before recovery can proceed. Staff will review outstanding issues and provide guidance to USAC and stakeholders.

Operational and Financial Oversight

- *Financial*: OMD staff will analyze USF program cash management practices to determine whether to revise the current commitment and disbursement policies and procedures. Work with agency’s CFO to ensure compliance with federal financial requirements. Oversee USAC efforts to reduce outstanding commitments and disbursements.
- *Information Technology*: OMD staff will work with USAC and coordinate with other offices to modernize and improve USF financial and programmatic systems. Improvements in the financial systems will (1) ensure the proper funding is being disbursed for each program; (2) provide stakeholders with updated and user-friendly access to Commission and USAC systems, information and data; and (3) improve data collection and analysis to support policymaking and to determine whether the Commission’s programmatic and administrative goals are being met for each program.
- *Risk Assessments*: To comply with GAO recommendations, OMD staff will manage and oversee program risk assessments for E-rate and Lifeline. OMD staff will also analyze, review and implement recommendations that result from the risk assessments.

**Positions**

<b>Role</b>	<b>Description</b>	<b># FTEs</b>
Director of USF Oversight	Direct, plan and coordinate overall activities of administrative oversight team; report to Managing Director	1
Improper Payments Reduction and Reporting	As described above	3

Team		
Information Technology Modernization Team	As described above	2
Financial Management Team	As described above	2
Risk Assessment Team	As described above	2

**Question:** The GAO's January 2013 report to the Committee (GAO-13-155) on the Commission's need to strengthen controls over its Enhanced Secured Network Project demonstrates that, when it comes to computer security matters, the FCC is ill-suited to handling the issue for its own network let alone others. We should not fund the creation of any cyber security databases that would serve as a precursor to the Commission regulating other networks. Please provide for the record an analysis of your proposed databases, contrasting them with other existing or proposed databases at DHS or DoD.

**Answer:** The FCC's "big data analytics" and related cyber efforts are solely inward-facing, to improve its proactive internal cyber resiliency to behavioral attacks that lack known threat signatures. Accordingly, the FCC's internal cyber security efforts are not are building "cyber security databases" similar to DHS or DoD for the nation. We are working to dramatically improve FCC's own internal cyber security against an ever-increasing trend of new, sophisticated cyber threats to the Commission's networks.

With rising cyber threats, the challenge nowadays is that anything connected to the internet is inherently vulnerable to being compromised, no matter what defenses you apply. As such, we will improve the security of FCC's internal networks and improve the protection of the privacy of user information by baking-in automated alerts, compartmentalized controls, and system resiliency at the code-level of our modular modernization updates. Since the arrival of the new CIO, the FCC IT has deployed "data loss prevention" tools and FCC IT is building an internal resiliency operations center so that we improve protection of electronic privacy, civil liberties, and cyber security on the FCC's internal network by intentional design. Even then, whenever public discourse on net neutrality increases, so does activity probing FCC's firewalls.

At this juncture, it is useful to provide an update on FCC's efforts to improve its inward-facing cyber security as a result of the 2013 GAO report. Since the arrival of a new CIO at FCC, the Commission has:

- (a) Refocused existing personnel to provide a 100% increase in staff involved in the cyber areas of the IT group. This involves networks, systems and internet.
- (b) Taken on a full-time auditor to review present cyber security practices and prepare for the 2014 FISMA audit.
- (c) Assigned accountability for security with clearly defined roles in each of the major sections of IT which are vulnerable to cyber exposure including protecting Personally Identifiable Info (PII) of FCC systems users.

Specific to the GAO report, the new CIO proactively sent a letter, dated February 24, 2014, to the GAO to provide an update on the progress of the FCC's Enhanced Secured Network (ESN) project, to include progress on the public and non-public recommendations.

### ***FOIA***

Two years ago, I raised some concerns about the FCC's transparency. I was concerned that the FCC was denying almost half of all FOIA requests, which seemed very high. The most recent data available on [www.foia.gov](http://www.foia.gov) shows that the FCC handled 574 FOIA requests in 2013. Of these, the FCC granted or partially granted 306 FOIA requests. The FCC denied a total of 268 FOIA requests – 11 denials based on statutory exemptions and 257 denials based on “other reasons.” This means that the FCC denied 46.7% of the FOIA requests in 2012 – that's the same percentage that the FCC denied in 2012 and basically the same as the 48.8% FOIA requests denied in 2011.

I understand that the FCC recently released a staff report proposing to implement most of the FOIA transparency recommendations contained in my amendment and adopted by a bipartisan majority of the House of Representatives.

Two years ago, the FCC said it would publish its FOIA logs on the Internet, but the FCC still has not done so.

**Question:** Why is the FCC refusing to publish its FOIA logs when the Director of National Intelligence, the Department of Defense, the Department of Homeland Security, and other agencies have been doing so for years?

**Answer:** The FCC has been actively working toward implementing reforms to make its FOIA processes and responses more accessible to the public, and we expect that process to be completed in the fourth quarter of 2014. While the agency has released Commission-level FOIA appeal decisions since 1969 and posted them on its website since the mid-1990s, the reforms will greatly expand the information available to the public. Specifically, the agency will begin posting Bureau-level initial decisions as well, including released documents, and any related fee estimates, fee waivers, and other initial determinations.

In addition, Commission staff will be posting logs providing the status of pending FOIA requests. The logs will: (1) provide links to incoming FOIA requests (with sensitive personal information redacted); (2) identify the Bureau(s) responsible for responding to the request; (3) identify the due date (generally 20-30 business days after the request is received); and (4) whether and why any extension has been granted.

The Commission's staff currently is working with the Environmental Protection Agency, which developed and maintains FOIA Online, to implement these reforms. FOIA Online, used by multiple federal agencies, will allow online filing of requests, FOIA logs with the ability to

search for specific requests by requester or subject, and posting of requests, decisions, requested documents, appeals and decisions on appeals. We believe that taking full advantage of FOIA Online capabilities is the most cost-effective and efficient way to implement our reforms and expect to be fully integrated into that system by October 1, 2014.

Press articles have reported that the FCC shows favoritism by granting quickly FOIA requests filed by people who support the FCC's agenda, but denying or slow-rolling requests filed by critics of the FCC.

**Question:** If the FCC were more open, these concerns might be explained. Why is the FCC treating FOIA requesters differently, and what measures will you adopt as Chairman to prevent showing favoritism?

**Answer:** The FCC is treating similarly-situated FOIA requesters in the same way, although I agree that making the Commission's FOIA processes more transparent will help demonstrate that this is the case. Some requests are simply more complex than others, and require more time to process. For instance, processing times are greater for requests that require (1) search and review of a voluminous number of documents; (2) coordination among several FCC Bureaus and Offices, and other Federal agencies; (3) numerous clarifications of what the requester is seeking; or (4) resolution of confidentiality issues.

**Question:** My FOIA transparency amendment would require the FCC to publish all of its FOIA decisions. Since 2009, the FCC has issued almost 3,000 rulings on FOIA requests – but only a tiny fraction of the FCC's decisions are available to the public. Releasing its FOIA decisions would help the FCC address these allegations of favoritism and special treatment.

Why is the FCC refusing to release all of its FOIA rulings?

**Answer:** As noted above, while the agency has provided the public access to Commission-level appeal decisions for decades, later this year the Commission will greatly expand the amount of information available to the public by posting all FOIA decisions, including Bureau-level initial decisions, released documents, and any related fee estimates, fee waivers, and other initial determinations. One exception is that in some instances involving an individual's request for his or her own records, or where the records raise personal privacy concerns, the agency may need to redact the records or withhold them from public release altogether, in order to protect the individual's privacy rights. Otherwise, we plan to start posting all agency FOIA decisions by October 1, 2014, the target date by which we anticipate being fully integrated into FOIA Online. As discussed above, we believe partnering with FOIA Online is the most cost-effective and efficient way to implement the reforms.

**Question:** The FCC has said that "[T]he FCC's FOIA record demonstrates that it grants, in whole or in part, the overwhelming majority of requests it receives and denies very few requests." But [www.foia.gov](http://www.foia.gov) and the FCC's own FOIA reports that the FCC denied 268 FOIA

requests in 2013 – that’s almost half of the 574 FOIAs the FCC processed last year and is again a higher percentage of FOIA denials than other agencies like the Federal Trade Commission.

Why hasn’t the FCC taken any steps to be more transparent since these concerns were last raised? What assurances can you provide that the FCC will change its ways and become more transparent?

**Answer:** In response to the concerns raised in the FOIA transparency amendments and the Process Reform staff report, the agency launched a revised FOIA webpage on March 31, 2014, to make FCC FOIA reports and other FOIA statistics more easily accessible on FCC.GOV. The new webpage can be found at <http://www.fcc.gov/encyclopedia/foia-reports> and provides a link to the FCC’s FOIA Annual Report to the Department of Justice, which provides detailed data documenting the volume, speed of processing, backlog, and use of FOIA exemptions in the agency’s responses and appeals decisions. The webpage also has links to quarterly reports submitted to the Department of Justice indicating the agency’s backlog of initial FOIA requests and the General Counsel’s Chief FOIA Officer Report, an annual report assessing the agency’s FOIA work. In addition, the page contains a comparison of the volume and disposition of the agency’s FOIA requests over a three-year period, and it explicitly links to DOJ’s FOIA.gov, which allows the public to generate reports on the FCC’s FOIA performance and compare the FCC’s data with that provided by other agencies government-wide.

Below is an explanation of how the agency calculated the 268 FOIA “denial” numbers. This explanation clarifies that if the FCC considered as a “denial” only those instances in which a requester willing to pay any applicable fees was refused access to the records in the agency’s possession, then the Commission actually denied only 15 requests, and four of those involved requesters who would not respond to the agency’s requests to better explain what was being sought.

- In 138 cases, the agency denied the requests because it did not have the records that the individuals requested. In many cases, requesters sought records about themselves, even though the requester apparently had no previous interaction with the FCC. For example, we routinely receive requests asking for any documents concerning the government surveillance of the individual. Requests for which the agency has no records are counted as denials under the Department of Justice’s reporting guidelines. In cases in which the agency does have records concerning an individual (e.g., if the individual has filed a document or applied for a license), we provide those documents consistent with the requirements of the FOIA.
- In 55 cases, the requester withdrew the request. These are counted as denials under the Department of Justice’s reporting guidelines.
- In 37 cases, the agency informed the requester that the documents were routinely and publicly available at no charge at [www.fcc.gov](http://www.fcc.gov) (thereby avoiding charging any otherwise applicable fees to the requester). These are counted as denials under the Department of Justice’s reporting guidelines.
- In 18 cases, the agency denied the requests after the requester did not agree to pay the applicable fees for searching, reviewing, and copying the relevant documents.

- In 11 cases, the agency denied the requests based on one or more exemptions in the Freedom of Information Act.
- In four cases, the agency denied requests when, after it made several attempts to clarify what the requester was seeking, the requesters failed to respond or to reasonably describe the records that they were seeking.
- In three cases, the agency denied requests because they were “improper” FOIA requests (e.g., the requester was seeking an opinion on a certain topic rather than an agency record).
- In two cases, the agency denied requests when the requester asked for records under the control of another agency. These are counted as denials under the Department of Justice’s reporting guidelines, even if the FCC refers them to another agency that fulfills the request.

**Question:** A few years ago, the FCC told the public that a decrease in FOIA requests is proof that the FCC is becoming more transparent. Last year, the FCC saw a 20% increase in FOIA requests. Does the FCC believe that this increase in FOIA requests shows that the FCC is becoming less transparent? What will the FCC do to improve its transparency?

**Answer:** The number of FOIA requests to the FCC is increasing and indeed, the rate of increase has jumped by about one-third in the last six months. In particular, we have seen an increase in requests related to informal complaint records (e.g., complaints about individual television and cable television programs) and requests from inmates seeking additional information about the Commission Report and Order lowering the costs of prison phone calls. We have endeavored to make our process for filing FOIAs as accessible as possible for the public and this may have contributed to the increase. At any rate, as discussed above, we are in the process of implementing several reforms that will improve the agency’s FOIA transparency.

**Question:** The FCC recently started denying FOIA requests by claiming it had “no records.” According to [www.foia.gov](http://www.foia.gov), this is the largest single reason the FCC now denies FOIA requests. What is the FCC’s explanation for this trend?

**Answer:** The number of “no records” determinations is a function of the types of requests the agency has received. In 138 cases, the agency denied the requests because it did not have the records that the individuals requested. In many cases, requesters sought records about themselves, even though the requester apparently had no previous interaction with the FCC. For example, we routinely receive requests asking for any documents concerning the government surveillance of the individual. Requests for which the agency has no records are counted as denials under the Department of Justice’s reporting guidelines. In cases in which the agency does have records concerning an individual (e.g., if the individual has filed a document or applied for a license), we provide those documents consistent with the requirements of the FOIA.

*Lifeline*

**Question:** Can you please provide an update of the Notices of Apparent Liability that are pending at the FCC regarding certain Lifeline providers?

**Answer:** Since September 30, 2013, the Commission has released twelve Notices of Apparent Liability (NALs) to Lifeline providers for apparently providing duplicative service to individual subscribers. The Commission adopted each of them unanimously—including four during my tenure as Chairman. The NALs reflect our continuing commitment to combatting waste, fraud, and abuse in the Lifeline program by taking action against companies that apparently have ignored our rules and exploited a program dedicated to providing low-income Americans with basic telephone service.

As required by statute, NALs do not constitute final determinations of liability. Rather, NALs inform targets that they have apparently violated our rules, propose forfeiture penalties as a result of the apparent violations, and direct the targets to either pay the proposed forfeiture or object to it in writing.

Many of the NAL recipients have filed written responses and met with Commission staff to further explain their arguments. Commission staff currently is assessing those arguments.

The recent NALs are only one piece of a much broader effort to modernize the Lifeline program and safeguard it from waste, fraud, and abuse. The Commission launched a broad reform effort in early 2012 that most recently resulted in the launch of the National Lifeline Accountability Database, which is designed prevent customers from receiving more than one Lifeline benefit. On the enforcement side and in addition to the aforementioned NALs, the Commission has issued enforcement citations to hundreds of consumers with multiple Lifeline phones, and worked in concert with the Department of Justice to indict three Lifeline company executives in early April.

Most importantly, I have directed the launch of a cross-bureau task force targeting waste, fraud, and abuse in all of the USF programs. One component of that task force will be a strike force within the Enforcement Bureau dedicated to investigating allegations of waste, fraud, and abuse in those programs. Vigorous enforcement therefore remains a top priority, but – because our case-specific enforcement efforts are presently ongoing – I am unable to comment on specific details.

**Question:** Have you personally reviewed the proposed penalties and are you satisfied that the size of the proposed penalty is proportional to the alleged transgressions?

**Answer:** The Commission voted unanimously to adopt each of these NALs, including four during my tenure as Chairman. I am therefore familiar with the proposed penalties and forfeiture structure used to calculate them. Again, I am limited in what I can say about specific cases and particular initiatives because our investigations and enforcement activities are ongoing.

Consistent with the procedural protections in the Communications Act, some NAL recipients have argued in their responses to the NALs that the proposed penalties are disproportionate to the alleged harm. As with every NAL, Commission staff reviews those arguments as well as the others included in the responses. That process is still underway, and therefore I cannot provide my perspective concerning the results of that review at this time.

**Question:** Some companies have already been issued NAL's while others are still pending. Do you have a timeline when all the NAL's will be issued?

**Answer:** No, we do not have a date or timeline by which we will have issued all Lifeline NALs. Our Lifeline investigations and enforcement activities are ongoing, and we continue to gather new information, identify new targets, and pursue new leads. I cannot discuss the details of any particular case or enforcement initiative, but I can state unequivocally that we will continue to enforce our rules vigorously and protect all USF programs from waste, fraud and abuse. We are working diligently on these matters, and we have no plan to set a deadline by which our enforcement efforts in this area will end.

### **Questions for the Record Submitted by Congressman Tom Graves**

#### ***Regulatory Fee Over-collection***

**Question:** Chairman Wheeler, an August 2012 GAO report addressed the problem of regulatory fee over-collection by the Federal Communications Commission (FCC). Can you please explain what happens to the money that is "over-collected" by your agency?

**Answer:** Assessment of regulatory fees under Section 9 of the Communications Act is not an exact science, but the Commission's staff strives to collect within the appropriate target range for each fiscal year. Any excess regulatory fees collected by the Commission are placed in an account at Treasury, similar to the status of the sequestered funds which likewise were collected from industry licensees and not used for the funding's intended purpose. We are prohibited from accessing those funds under current Fiscal Year appropriations law. Our understanding is that this committee could insert language into its bill directing that the existing funds be used as an offset prior to collections for the next fiscal year, or for other purposes.

#### ***Cyber security***

FCC is requesting approximately \$1.5 billion apparent expansion of cyber security activity, especially to the extent that it may duplicate long-standing efforts in other government agencies. The Administration made a major policy move with the release of its cyber security Executive Order which resulted in significant industry and government collaboration to mitigate

cyber security risk to our nation's critical infrastructure. Multiple joint working groups were organized and it is my understanding that the FCC participated in these inter-agency initiatives.

**Question:** How much of the FCC's current and proposed budget duplicate activities in other government agencies at the analytical, operational or planning level for cyber security?

**Answer:** The FCC does not duplicate the mission objectives of other agencies with regard to cyber security. Our efforts currently involve the use of our specialized knowledge, expertise and relationship to the telecommunications and technology sector to foster cooperative agreements that assist the industry and consumers.

#### *Spectrum Guard Bands*

The Middle Class Tax Relief Act included the mandate that the FCC conduct an incentive auction. The auction is designed to repurpose broadcast TV spectrum for commercial wireless use to meet rising demand for wireless broadband. There are concerns that the FCC may not fully maximize licensed use and instead grant a huge spectrum give-away for unlicensed use in the guard bands. Current law states that "Such guard bands shall be no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands."

**Question:** What do you believe to be a "technically reasonable" sized guard band?

**Answer:** I have circulated an order to my fellow Commissioners that is consistent with the directives of the Middle Class Tax Relief and Job Creation Act. The Commission will consider this issue at our May 15, 2014 Open Meeting. After that meeting, I will direct my staff to provide the details of the Commission's decision to your staff to supplement this record.

#### *Salaries*

**Question:** Please detail the average salary paid to employees in the following:

**Answer:** These amounts reflect average salary based on the pay scale and do not include the cost of benefits

A. OCH and Commissioners	\$130,902
B. Consumer & Gov't Affairs Bureau	\$108,979
C. Enforcement Bureau	\$121,179
D. International Bureau	\$135,327
E. Media Bureau	\$127,796
F. Public Safety/Homeland Security Bureau	\$124,495
G. Wireless Telecommunications Bureau	\$127,939
H. Wireline Competition Bureau	\$132,180
I. Engineering and Technology	\$128,565
J. General Counsel	\$143,263

K. Legislative Affairs	\$125,021
L. Managing Director	\$114,506
M. Media Relations	\$115,343
N. Office of Strategic Plans and Policy	\$139,934

#### ***Budget Appropriation***

Chairman Wheeler, the legislative language that sets the ceiling on how much the Commission may raise for Section 9 activities allows the Commission to retain these fees “until expended.” The FCC’s Managing Director testified to Congress in 2013 that roughly 95% of the agency’s budget is committed to fixed costs such as salaries and benefits, rent and utilities.

**Question:** Given that 95 percent of the FCC Budget is committed to fixed costs, is it necessary for the Commission’s appropriation to continue to be available “until expended”?

**Answer:** Although approximately 90 – 95% of the Commission’s budget is committed to fixed costs, the change made by the Appropriation Committee in Fiscal Year 2014 provides the Commission with efficiencies in procurement and accounting that will make the Commission a more effective and efficient agency. This change provides flexibility to our procurement process to avoid end-of-year contracting risks, allows for multi-year agreements and aligns the Commission’s Salaries and Expense fund with the Auctions fund, for which Congress had already given the Commission appropriation authority to use until expended, in 47 U.S.C. 309(j)(8)(B). This change also provides that funds are available until expended during the entire year. Previous language in the FCC’s appropriation was interpreted as limiting fund availability to one-year until regulatory fees were collected, after which any remaining funds were to remain available until expended.

#### **Questions for the Record Submitted by Congressman Steve Womack**

##### ***Cyber security***

In its budget justification, the FCC has placed emphasis on cyber security, including IT Storage Expansion, Big Data Cyber security Analytics, Cyber security Metrics Program, Modernization of Aging IT Systems, and Cyber security Authorization, Admission & Education.

**Question:** Is the sole focus of these proposed efforts to upgrade and police internal FCC systems? If not, what are the other goals?

**Answer:** There are seven tracks with three specific goals each focused on FCC IT systems. Some of those FCC IT systems are public-facing, such as the National Broadband Map, EDOCS,

compliant process reform, licensing systems, and auctions. The funds will all be used to upgrade and harden to the extent possible these FCC IT systems. The seven tracks are:

1. Improve Secure Telework & Mobility
2. Secure Internal & External Collaborations
3. Strengthen FCC's IT Security Posture
4. Transform Access to FCC Enterprise Data
5. Modernize Legacy Systems & Tracking
6. Improve FCC.gov & Complaint Reform
7. Increase Transparency & System Usability

All of these tracks will improve and/or replace aging, legacy FCC IT systems that must be modernized for the FCC to continue its mission successfully.

**Question:** Is the FCC making any attempts to join the cyber security efforts of the Department of Homeland Security and Federal Trade Commission?

**Answer:** FCC IT historically has engaged the Department of Homeland Security with their EINSTEIN Program, which is an intrusion detection system that monitors the network gateways of government departments and agencies in the United States for unauthorized traffic, to help monitor threats to its own network. More recently, FCC IT engaged DHS's Continuous Diagnostics and Mitigation which would identify and work to remedy any vulnerabilities. We are hopeful this will help to improve FCC's own internal cyber security posture.

**Question:** Once the "legacy" systems have been replaced and the policies have been updated, will these programs cease to exist? If not, why?

**Answer:** Once legacy IT systems have been modernized, we expect the "surge" to modernize them to conclude. FY15 and FY16 will be the most active time periods for this modernization process. Cyber security updates will be ongoing because the FCC will need to continue to remain vigilant to new and emerging threats on an increasingly threatening cyber security landscape. As threats continue to grow, FCC must continue to invest in new defenses for its internal systems and remedy software bugs, upgrade systems, and address newly discovered exploits to defend against cyber intrusions.

For the current 207 different legacy IT systems, with greater than 40% of them more than 10 years old, FCC will be performing a modular approach to update its IT infrastructure, using consistent, reusable components across these efforts to increase the agility, flexibility, and scalability of these systems across the enterprise. The FCC aims to host these systems with a commercial cloud provider, to reduce the hardware upkeep it must do as well. A significant benefit of this approach is internal and public-facing dashboards that allow the FCC, the public, and FCC partners to view data in one place online – as opposed to either manually-intensive data extractions or logging in to many different systems to view relevant data in different places. Another benefit for FCC IT, as it updates legacy systems, is that several of them that included paper-based components or human-intensive amounts of work can be modernized to require less time by humans to achieve better outcomes for the FCC's mission.

***Budget Request***

The budget for the Wireline Bureau proposes dramatic increases in funding and personnel for a Bureau that is supposed to economically regulate voice services. It seems to me that the size of the Bureau should be growing smaller, not larger. While I understand the justification, the fact is we have been previously told by the Commission it had sufficient resources.

**Question:** Is it fair to surmise that these proposed increases in funding and staff are permanent and would not decrease after the completion of these “reforms”?

**Answer:** As noted previously, the FTEs requested for the Wireline Bureau were actually intended as staff for a cross-bureau Joint USF Anti-Fraud Task Force that will include the Enforcement Bureau’s Strike Force, designed to combat waste, fraud and abuse in the Universal Service Fund. I have provided specific cross-walks elsewhere in these QFRs which specifically delineate the activities of the employees requested. USF is an \$8.4 billion program with only 25 FCC staff dedicated to enforcement activities, and the need for enhanced enforcement has been repeatedly cited as essential to maintaining the program. Elimination of waste, fraud and abuse creates significant cost savings for the program and I am committed to ensuring that we follow through on this goal.

***Universal Service Fund***

It has come to my attention that the IRS treats all universal service high-cost funding, including Connect America Fund Phase-1 funding, as “general revenue” and not “contribution to capital.” Such treatment of CAF I funding undercuts the premise of the CAF program, the deployment of broadband to unserved areas. A similar situation unfolded with Broadband Stimulus funding and was ultimately settled after the Departments of Agriculture and Commerce educated the IRS on the goals of the programs.

**Question:** Is the Commission working with the IRS to clarify the differences between the previous High Cost program and the structure of the CAF program, thereby maximizing the deployment of broadband in unserved areas? If so, when can we expect this issue to be resolved?

**Answer:** The Court of Appeals for the Eleventh Circuit has held that both federal and state universal service high-cost support payments made to a corporation are appropriately treated as income to that corporation under section 61(a) of the Internal Revenue Code (Code), and not as a non-shareholder capital contribution under section 118(a) of the Code. Specifically, the Court held that high-cost loop support, local switching support, and long term support all constituted income to the corporation. Similarly, the IRS has issued a Revenue Ruling holding that universal service support received by a corporation under the federal universal service support mechanisms

does not constitute a non-shareholder contribution to capital under section 118(a) of the Code (Rev. Rul. 2007-31, 2007-21 C.B. 1275).

Recent changes to the Commission's approach to universal service through the Connect America Fund (CAF) may warrant a revisiting of this holding by the IRS, as both CAF Phase I incremental support and Phase II support are intended to enable recipients to expand the deployment of broadband-capable infrastructure in rural, high-cost areas to meet the Commission's public policy objective of expanding availability of broadband services. The Commission is committed to working expeditiously with the IRS to encourage a reexamination of its 2007 Revenue Ruling in light of these significant changes to the structure of the universal service program.

**Question:** If not, why? Can you commit to working on this issue to get it resolved as quickly as possible?

**Answer:** As I noted above, The Commission is committed to working expeditiously with the IRS to encourage a reexamination of its 2007 Revenue Ruling in light of these significant changes to the structure of the universal service program.

### **Questions for the Record Submitted by Congresswoman Jaime Herrera Beutler**

#### *Urban Rate Floor*

Individuals and families in rural Southwest Washington are in an economy that's still finding its way. Such an immediate increase to their rate is a significant concern to my constituents and I believe it is important to know more about how the FCC determined this rate.

**Question:** Commissioner Wheeler, can you provide additional details regarding the data the Commission used to determine the Urban Rate Floor (URF)? Can you share with us the data and methodology to set the URF?

**Answer:** The FCC conducted a survey of the fixed voice and broadband service rates offered to consumers in urban areas. The FCC is using the survey data to determine the local voice rate floor and reasonable comparability benchmarks for fixed voice and broadband rates for universal service purposes in accordance with the November 2011 *USF/ICC Transformation Order*. The data and methodology is provided on the FCC's website at: <http://www.fcc.gov/encyclopedia/urban-rate-survey-data> .

The form and content of the Urban Rate Survey for fixed voice services was adopted in an Order released in April 2013. That Order concluded that the urban rate survey would be conducted

from a statistically valid sample of fixed terrestrial voice providers drawn from 2010 Census urban areas and urban clusters within Metropolitan Statistical Areas. The Urban Rate Survey asked for voice service rates from a sample of service providers. To determine which voice providers to sample, the Wireline Competition Bureau (Bureau) relied on data collected via FCC Form 477, which is a biannual voice and broadband data collection. The Bureau used the U.S. Census Bureau's definition of urban to determine what areas were eligible for the survey and then defined as the sample pool any fixed terrestrial voice service provider that operated in these areas.

**Question:** Has the FCC studied the increased cost of land lines to the rural consumer can reduce access to broadband? Doesn't a policy that increases local voice rates more or less push people over time to take only broadband – why would we have a rule that leads broadband rates to increase when that happens?

**Response:** Although I understand the concern regarding increased landline rates because of the increased rate floor, what we have seen since the Commission implemented this rule in 2012 is a minimal impact. The rate floor increased from \$10 in 2012 to \$14 in 2013, a 40 percent increase. Our rules do not require carriers to raise their rates. The fact that many carriers continue to report some lines with rates well below the \$14 rate floor suggests that they may have made a business decision to grandfather the lower rates for those customers and accept the associated support reductions. In 2013, carriers in 34 study areas in 16 states were still reporting a number of lines with residential local service charges of \$5 or less, further reinforcing that individual carriers may choose not to raise rates in response to the current rate floor.

For 2014, the Commission has delayed any further reductions in universal service support until we have more information on the number of lines affected. The Commission adopted an order on April 23, 2014, that maintains the requirement that carriers file with the Universal Service Administrative Company the number of lines with rates below the rate floor, but delays any potential universal service support reductions until January 2015. In addition, the universal service support reductions that go into effect in January will only be for those lines with rates below \$16, with no further increases until July 2016. The Order also excludes Lifeline recipients in order to ensure that people with the least means are not affected. Future reductions will be limited to an increase of no more than \$2 per year.

**Question:** Between the sharp rate increases and the fact that some states require much more notice before a telco can raise voice rates, how do you plan to resolve this problem in a manner that doesn't disrupt service, ensures reasonable comparability between rural and urban local voice rates, and complies with state law?

**Response:** The rate floor is calculated based on an average of urban voice rates and is currently \$20.46. Our rules do not require any carrier to raise its rates. As I explained above, the Commission adopted an order on April 23, 2014, that delays any additional universal service support reductions until January 2015 and phases in further reductions at a maximum of \$2 per year to minimize any impact on carriers and consumers.

**Question:** Should urban and rural rates be exactly the same when the rural consumer might be able to call 5000 people locally while the urban consumer can call a million?

**Response:** Carriers set rates based on their costs, competitive market pressures, and state regulatory requirements. I would not expect that urban and rural companies to have exactly the same rates or even that all carriers in rural areas to have the same rates as one another. As stated in the *USF/ICC Transformation Order* (para. 238), the purpose of the rate floor is “to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.” In other words, it is a matter of fairness: a rural customer paying \$20 per month for basic residential telephone service in one state should not be subsidizing a rate of \$5 for a rural consumer in a neighboring state.

#### *E-Rate*

Commissioner Wheeler, a constituent and local service provider sent me a message to commend your recent remarks to modernize E-Rate to address the needs our students have. He sees the fund spending huge amounts of money to wire classrooms with miles of copper cable for students with iPads.

**Question:** I believe some of the reforms Commissioner Pai outlines in his testimony are on the right track. It’s crucial that we increase efficiency at no cost to the taxpayer and ensure it is a student-centered program that provides next-generation technology in order to keep our students competitive. Can you elaborate how the FCC can ensure that the funds are effectively used and the right technology is being utilized with the most cost efficient means in our schools?

**Answer:** I absolutely agree with you that the E-rate program needs to provide next-generation connectivity to our schools in order to keep our schools competitive. I also agree that increasing efficiency in the program is of fundamental importance. The E-rate rules currently require schools and libraries to purchase the most cost effective solution for meeting their connectivity needs. However, I am convinced that there is more we can do to drive down the prices schools and libraries pay for the services and equipment necessary for broadband connectivity. Towards that end, in seeking to modernize the E-rate program, we have proposed to adopt cost-effective purchasing as one of the goals of the program and we are exploring ways, such as increased consortium purchasing, bulk buying, and reference pricing, that we can use to make E-rate purchases even more cost effective.

#### *JSAs*

I believe Commissioner Pai has suggested conducting a formal and comprehensive study to examine how joint service agreements are used by the broadcast television industry before the FCC implements a rule. It does seem as if we should get the facts first.

**Question:** Chairman Wheeler, would you support that?

**Answer:** The Commission has sufficient facts and information to support its rulemaking process. The Commission initiated a proceeding in 2004 to attribute TV joint sales agreements (JSAs) in the same manner as radio JSAs. As part of the Quadrennial Review, in 2010 the Commission sought additional comment on agreements between local broadcast stations. Since their inception, the Commission has reviewed television JSAs that are part of license application proceedings involving broadcast station.

We have seen an increase in the prevalence of television JSAs and recently they have received more attention in broadcast transactions. There was growing concern that TV JSAs were being used to circumvent the Commission's local TV ownership rules by influencing the core operating functions of the other station in a market where joint ownership would not be permitted under the rules.

From the start, I have supported an expedited waiver process for any entities that believe their otherwise attributable JSA is in the public interest, and the Media Bureau will process these waiver requests within 90 days of closing the record.

#### *Call Completion*

**Question:** Lastly, I'd appreciate an update from the Commission on their efforts to address call completion.

**Response:** The Commission adopted an order on October 28, 2013 to combat problems with incomplete calls or calls of poor quality that are occurring particularly for calls going to rural areas of the country. Among other things, the Commission's order prevents service providers from indicating prematurely that a call has reached its intended destination (false ring signaling), and requires providers to retain and provide specified data to enable the Commission to track rural call completion problems. The prohibition on false ring signaling took effect on January 31, 2014. Several petitions for reconsideration and waivers are pending.

Staff is completing steps necessary to fully implement other portions of the order, which will become effective upon approval of the information collection by the Office of Management and Budget. The Wireline Competition Bureau is currently in the process of seeking PRA approval. In the meantime, the Commission continues to take enforcement actions to ensure compliance with the existing rules.

**Questions for the Record Submitted by Congressman Mark Amodei**

*Translators*

The FCC should provide greater consideration to the role of translators and low-power television stations in delivering over-the-air television to Nevada's rural communities. Many farmers and ranchers, small businesses and families living in remote areas rely on receiving over-the-air television through translators and low-power television stations. The FCC should minimize the impacts of repacking spectrum in rural areas following the upcoming incentive spectrum auction.

**Question:** Chairman Wheeler, Nevada has over 300 television translators which, as you know, are critical in extending the broadcast television lifeline across rural and mountainous areas like northern Nevada. As you proceed towards an order in the first-ever incentive auction, what protections or assurances can you give to broadcasters and the communities that depend on them that they will be held harmless in the repacking process?

**Answer:** I recognize the service that TV translators provide to rural areas. The statutory language authorizing the Incentive Auction provides repacking protection and reimbursement for reasonable costs only to full-power stations and Class A stations, but not to the secondary services of LPTV and TV translator stations. In rural areas there likely will be sufficient spectrum available after the auction to accommodate secondary services. Additionally, we will initiate a rulemaking proceeding after the Commission adopts the Incentive Auction order to consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.

**Question:** Will you commit to sharing the repacking plan in advance of an order to ensure robust public comment?

**Answer:** The Incentive Auction Task Force has sought, and will continue to seek, public comment on the various issues related to the repacking process before the Commission makes a final decision.

**Question:** Will you commit to sharing the FCC's repacking process with your fellow Commissioners and the public before it is brought to a final vote to ensure that television translators, and those communities that rely on them, are not harmed?

**Answer:** The Incentive Auction Task Force has sought, and will continue to seek, public comment on the various issues related to the repacking process. After the Commission adopts an order, there will be additional Public Notices seeking comment on how to resolve any remaining issues related to the repacking process. We will initiate a rulemaking proceeding after the Commission adopts the Incentive Auction order to consider additional means to mitigate the

potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.

**Question:** How will the FCC ensure that translators have space in the repacked spectrum after the auction, and that this essential broadcast service is maintained in rural areas?

**Answer:** As I noted above, I recognize the service that TV translators provide to rural areas. The statutory language authorizing the Incentive Auction provides repacking protection and reimbursement for reasonable costs only to full-power stations and Class A stations, but not to the secondary services of LPTV and TV translator stations. In rural areas there likely will be sufficient spectrum available after the auction to accommodate secondary services. Additionally, we will initiate a rulemaking proceeding after the Commission adopts the Incentive Auction order to consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.

**Question:** Is anything needed from Congress to ensure that rural areas continue to have access to broadcast service?

**Answer:** The statutory language authorizing the Incentive Auction provides repacking protection and reimbursement for reasonable costs only to full-power stations and Class A stations, but not to the secondary services of LPTV and TV translator stations. In rural areas there likely will be sufficient spectrum available after the auction to accommodate secondary services.

#### *Co-op Carriers*

As part of the 2011 Transformation Order that reforms the Universal Service Fund, the FCC instituted a "rate floor" to ensure that companies receiving USF support were not charging their customers too little (i.e. charging rates that were too low relative to urban customers, thus causing contributors to USF to "over-subsidize" rural companies).

**Question:** Carriers were expecting a moderate rate increase, but didn't expect it to be this high. For example, here's what the petition says about Nevada: 30-day notice period for a tariff filing followed by being placed on the Nevada Commission's semi-monthly agenda for approval.

I remain concerned this is not enough time for my constituent companies to get this significant rate increase past state commissions.

**Response:** The Commission has adopted both a delay and a phase-in of the reductions in universal service support resulting from the 2014 rate floor. This decision will minimize any impact on service providers and customers.

**Question:** Commissioner, will you consider extending the deadline for these companies and provide assurances for these companies to comply with minimal impacts to the service providers and customers?

**Response:** The Commission has adopted both a delay and a phase-in of the reductions in universal service support resulting from the 2014 rate floor. This decision will minimize any impact on service providers and customers.

### **Questions for the Record Submitted by Ranking Member José Serrano**

**Question:** Chairman Wheeler, how did sequestration and the shutdown affect the FCC?

**Answer:** The FCC returned \$17 million in regulatory fees provided by our licensees to the Treasury because of sequestration. Our licensees paid these fees to ensure efficient Commission operations – not as a secondary tax to the general fund. The shutdown disrupted Commission work activities, delayed processing of consumer complaints and industry applications and had a devastating effect on employee morale.

During Fiscal Year 2013 the Commission cut its programming to the bone and worked hard to find cost savings, often delaying lifecycle replacements and improvements for facilities and equipment. Commission FTEs in Fiscal Year 2013 dropped to a 30-year low and contractors decreased to barely half of 2011 numbers.

Those personnel reductions had real consequences in terms of application and consumer complaint processing. We have been unable to replace our Office of Engineering's Equipment Authorization System and at this year's Consumer Electronics Show, I heard complaints about how this had slowed the approval of new products before last year's holiday shopping season.

Cuts in employees left us chronically understaffed in enforcement, so that our work to police pirate radio activities suffered as we focused resources on homeland security activities. Likewise, we never replaced or upgraded our enforcement equipment.

Sequestration undermined efforts to upgrade and improve IT systems, leaving us with more than 200 relic IT systems that are costing the agency more to service than they would to replace over the long term.

**Question:** How does the \$35.5 M increase in this request (which is fee-funded and does not increase the deficit) help repair the damage from previous underfunding?

**Answer:** The increase will cover mandatory increases for personnel costs and inflationary increases for non-salary expenses; IT system investments designed to promote long term cost savings and efficiency; and USF reform efforts with expanded enforcement and new rules for

combatting waste, fraud and abuse. The increase also covers the Broadband Map work (\$4 million) that has been transferred to FCC from NTIA.

The FCC lost \$17M of its FY13 budget to sequestration which hindered our ability to hire at the needed FTE level. This budget supports the lowest level of FTEs in 30 years and a continued decrease in contractors – by about half since 2011. We were also forced to delay critical IT system needs which have a direct impact on our ability to provide functioning, modern IT systems to support the industries that we regulate and handle consumer input. The requested budget will help create a more robust cyber security program and upgrade mission critical systems. Without this modernization effort, legacy application support and maintenance will continue to increase at a much higher rate than is sustainable.

**Question:** Please update us on the agency's plan for the remaining auctions. We understand that the H Block auction closed February 27th with a total bidding of \$1.56 B.

**Answer:** The AWS-3 auction is scheduled to begin this fall, and we intend to begin the Incentive Auction in mid-2015.

**Question:** Will there be additional administrative costs associated with them?

**Answer:** Yes, each auction incurs administrative costs. We requested additional funds above previous auctions caps to ensure that we have the resources to handle the more routine auctions such as AWS-3, while also dedicating resources to the incentive auctions process – a first of its kind auction that requires specialized staff and IT systems.

**Question:** How have your staffing needs being impacted? Will additional auctions affect that?

**Answer:** We are adding an appropriate number of additional staff to handle the increased work associated with these auctions. Additional staff requests for the incentive auctions process have been detailed in our auctions reports to your committee, and include economists, regulatory attorneys, auction project managers and other staff responsible for the operations.

**Question:** An important aspect of the spectrum auctions is the spectrum set aside for first responders. What steps do you plan to take to make sure that this part of the spectrum auction is successful? How long do you think it will take before the public safety spectrum is in use?

**Answer:** The H Block auction earlier this year provided a substantial down payment on the funding for FirstNet, and I am hopeful that the AWS-3 auction this Fall will provide another substantial amount of funding to FirstNet. The Incentive Auction will fund the remainder.

**Question:** Has the auction of the H block contributed to the building of an interoperable national public safety network?

**Answer:** The H block auction proceeds that go to FirstNet contribute to the building of an interoperable, nationwide public safety network.

**Question:** Where are you in ensuring that mission-critical systems will be operational during a Continuity of Operations event and how does your \$520,000 requested increase for this program improve the FCC's readiness to face such an event?

**Answer:** The Commission must provide redundancy for its mission-critical systems and ensure that they are fully operational in the event of a COOP event. The Commission maintains over 20 mission-critical IT systems and will utilize these funds to continue its ongoing review of these systems to determine and then implement redundancy capabilities. During the past two years, the FCC has assessed two of the most important mission-critical systems, the Universal Licensing System and the Office of Engineering and Technology Frequency Assignment System. We have prioritized redundancy capabilities for these systems but that leaves 20 systems remaining for COOP assessments and redundancy capabilities. The requested amount will provide necessary resources for completing this process.

### **Questions for the Record Submitted by Congressman Mike Quigley**

#### *Spectrum*

Mr. Chairman, it's my understanding that low power stations are at risk of losing their spectrum in connection with the upcoming incentive auction and repacking of the broadcast band. I also understand that certain low power stations are the functional and competitive equivalents of full power stations in their communities. This is particularly the case in markets where there is less than a full complement of full power stations and where, as a result, top-four national networks must affiliate with low power stations. Further, these stations not only serve their communities with high quality national network programming, but also produce local news, public affairs and sports programming -- indistinguishable from their full power counterparts.

Mr. Chairman, I am concerned that these stations could be swept up in the FCC's efforts to repack the broadcast band, without regard to the essential services they provide to their communities -- raising the potential for what I am sure is the unintended consequence that a major national network could be left without an outlet in a local market, and that viewers in that market, in turn, would be deprived of a major national network service.

I assume you share this concern.

**Question:** How is the FCC proposing to address this situation in its auction planning?

**Answer:** I recognize the service that low power television stations (LPTV) provide to rural areas. The statutory language authorizing the Incentive Auction provides repacking protection and reimbursement for reasonable costs only to full-power stations and Class A stations, but not to the secondary services of LPTV stations. In rural areas there likely will be sufficient spectrum available after the auction to accommodate secondary services. Additionally, we will initiate a rulemaking proceeding after the Commission adopts the Incentive Auction order to consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV stations.

**Question:** Without getting into the questions whether a major national network would be willing to be relegated to a multicast stream, or whether two competing top-4 networks would be willing to share space on a co-branded platform -- aren't you concerned about the loss of a competing outlet for local news and information programming, which would result from collocation?

**Answer:** There is no competition concern with regard to channel sharing, a relatively new concept that would allow a station to share a single 6 MHz channel with another station in the market, and take home a check for the spectrum they vacate.

A recent channel sharing pilot in Los Angeles successfully demonstrated that, technically, two separately licensed full-power stations can share one digital channel, but each retains control of its own station. I am encouraged by the pilot and hope that other broadcasters look into it because it could mean they get a double benefit -- the cash infusion from volunteering in the incentive auction, coupled with the ability to remain a separately licensed station providing valuable programming to the community. Additionally, we will initiate a rulemaking proceeding after the Commission adopts the Incentive Auction Report & Order to consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations, which may include channel sharing.

**Question:** Isn't that inconsistent with your recent decision to subject JSAs to the multiple ownership rules?

**Answer:** No. There has been a growing concern over the last decade that TV stations are using JSAs as a way to circumvent our local TV ownership restrictions by influencing the core operating functions of the other station in a market where joint ownership would not be allowed under the rules. The Commission has a responsibility to enforce its rules, which are designed to protect viewpoint diversity and competition. Channel sharing does not have the same implications for influence or control over competing stations that JSAs above 15% have. Channel sharing involves two separate stations sharing a single 6 MHz channel. JSAs allow one local station to control the main revenue stream of a station that is intended to act as a competitor. In contrast, under the incentive auction option to channel share each station retains control of its own station license and programming while sharing technical facilities.

**Question:** The AAR through the Transportation Technology Center Inc. (TTCI) is conducting a conclusive study on how much spectrum is needed for the Chicago market. Originally this was

due out 1<sup>st</sup> or 2<sup>nd</sup> quarter of this year but it now looks like it will be Q4. Until this study is completed, neither the freights nor the commuters will know how much 220 MHz spectrum is needed for Chicago.

The American Public Transportation Association (APTA) and other industry groups have repeatedly called for the FCC to provide publicly-funded commuter railroads—like Metra in the Chicago region—the wireless spectrum necessary for positive train control (PTC) implementation without cost.

Given that the price tag for PTC is nearly \$3 billion nationwide just for commuter railroads alone, will the FCC waive or otherwise exempt commuter railroads from the costs associated with the purchase of spectrum needed to comply with the PTC mandate?

**Answer:** The best option for the commuter rails is to obtain spectrum on the secondary market. FCC staff has consistently worked to facilitate such transactions. Congress did not direct FCC to provide spectrum to railroads, including commuter rails, in the Rail Safety Improvement Act of 2008. Many commuter rails have successfully filled their spectrum needs through the secondary market, and FCC remains willing and able to aid the remaining commuter rails who are still identifying the scope of their spectrum needs.

**Question:** As people are using more and more devices the current spectrum is becoming crowded and we need more spectrum in order to serve our customers. Auctions for spectrum are coming up. Will all companies will be able to participate in that auction?

**Answer:** Yes. I recently presented a draft order to my fellow Commissioners designed to ensure that every mobile wireless provider has the opportunity to bid in every market in the Incentive Auction and in the AWS-3 auction.

**Question:** Currently cyber issues are covered by several agencies. Can you provide clarity on which agencies have authority over cyber issues?

**Answer:** I can only provide you with information related to the Commission's role. The Communications Act directs the Commission to promote the reliability, resiliency, and availability of the nation's communications networks. Accordingly, the FCC uses its specialized knowledge of the industries it regulates and works closely with our federal partners as well as the owners/operators of communications infrastructure to ensure the security and resiliency of commercial networks, as well as the reliability of crucial public safety functions such as 911 and the Emergency Alert System. As our nation's communications increasingly shift to Internet Protocol-based networks, cyber security will be an important element of the FCC's statutory responsibilities.

Over ten years ago, the former FCC Network Reliability and Interoperability Council (NRIC) advisory committee began addressing cyber security issues. Currently, our Federal Advisory Committees – most importantly, the FCC's Communications, Security, Reliability, and Interoperability Council (CSRIC) – assess and make recommendations in all public safety

arenas, including cyber security. For instance, the CSRIC has recently launched a working group, co-led by a representative of a major telecommunications industry association and the chief security officer for a large cable provider, that will provide guidance for implementing the voluntary best practices and risk management processes of the Cyber security Framework developed with NIST's guidance through the private sector-driven process under Executive Order 13636.

The Commission also will continue public-private collaborative efforts to develop information-sharing practices that will be critical to addressing cyber threats while protecting individuals' privacy and businesses' proprietary information.

#### *Positive Train Control*

The FCC has submitted a program comment to the Advisory Council on Historic Preservation outlining your plan for a review process for the thousands of utility poles necessary for the railroads to install positive train control. I understand that the proposed process includes individual clearances by interested Native American Tribes for each of those poles and by State Historic Preservation Officers for most of them. I also have read that the railroads believe that such clearances average three to five months per location. I understand that your staff has testified before another Senate committee that you believe all these clearances are doable by the end of next year. But I'm looking at your budget request and I don't see any requests for additional resources dedicated to this task.

**Question:** How can you reconcile these facts?

**Answer:** The FCC moved resources from other projects to the PTC project over a year ago and continues to dedicate additional personnel and resources to resolving this issue. The pending budget request for FY15 does not contain a specific request for PTC funding but the Commission has been able to fully fund the necessary resources for this project from its internal S&E account, utilizing FTEs and resources within the Wireless Telecommunications Bureau and the Consumer and Intergovernmental Affairs Bureau.

**Question:** How long will it take for the FCC to allow the railroads to install the poles the Congress has directed them to put in place for PTC?

**Answer:** The ACHP recently requested an additional 28 days to take action on the FCC's proposed Program Comment. I reluctantly agreed to this delay to ensure that ACHP had the time to review all of the comments of interested parties. If the Program Comment is approved by ACHP by the new deadline of May 16, 2014, the FCC is ready to accept filings right away and staff is prepared to help the review process move as efficiently as possible.

**Question:** How can this committee help you clear sites quickly to get PTC installed?

**Answer:** I appreciate your interest and offer to assist. At this time, we are waiting for the ACHP to complete its review of the Program Comment before we can move forward.

#### ***Joint Sales Agreement***

There have been documented benefits of television broadcast Joint Sales Agreements (JSAs) in the FCC's record. They may not all be perfect, but I understand there are clearly some examples of JSAs that are in the public interest and are enabling certain stations to stay afloat. In those instances, these agreements promote diversity in media voices.

**Question:** Have you given any consideration to the NAB's compromise proposal on JSAs, which could crack down on those that are anticompetitive, while enabling JSAs that are in the public interest?

**Answer:** The Commission has a responsibility to enforce its ownership rules in order to protect the public interest, including protection of viewpoint diversity and competition. There has been a growing concern over the last decade that TV JSAs were being used to circumvent the Commission's local TV ownership rules by influencing the core operating functions of the other station in a market where joint ownership would not be allowed under the rules. I support an expedited waiver process for any entity that believes its otherwise attributable JSA is in the public interest. The Media Bureau will process these waiver requests within 90 days of the record closing on the waiver petition.

Using the justification that JSAs create "benefits" or "efficiencies" actually supports the argument that these arrangements violate the FCC's rules. While it is permissible to support changing the ownership limit (which is under consideration in the Quadrennial) –it is not legitimate to support violating existing rules. Despite the claimed efficiencies of joint sales operations, it is essential to consider whether JSAs give the broker the opportunity, ability, and incentive to influence the programming and operations decisions of the brokered station, which is the test for attribution.

Our action in the proceeding was limited solely to attributing certain TV JSAs. Other types of sharing arrangements or financing support that may create public interest benefits – additional news production, sharing of Doppler radar equipment, back office support – are not being altered by our action. These types of agreements will continue to allow parties to experience efficiencies.

**Financial Services and General Government Subcommittee**  
**Hearing on the**  
**Federal Communications Commission FY2015 Budget**  
**for Commissioner Ajit Pai**

**Questions for the Record Submitted by Chairman Ander Crenshaw**

*Budget*

The FCC is asking for a \$35 million increase over the fiscal year 2014 enacted level. This is a considerable increase for your agency. While the FCC is funded by fees, these fees are passed on directly to consumers, which I hope you think about when putting your budget request together. Within the Financial Services and General Government bill, many of the agencies have asked for small increases, or even decreases, for fiscal year 2015, so the FCC's request for a substantial increase is conspicuous.

**Question:** Do you believe the FCC's budget is as lean as it could be?

**Answer:** Given that the overall cap on domestic discretionary spending is scheduled to rise less than one tenth of one percent next year, it is difficult for me to support the FCC's request for a 10 percent spending increase. In any organization the size of the Commission, I believe there are additional efficiencies that can be realized.

**Question:** What areas within the FCC do you believe could be cut?

**Answer:** Among other things, I believe that the Commission devotes too many resources to producing reports. As such, I hope that the Federal Communications Commission Consolidated Reporting Act, which has passed the House of Representatives, soon will be enacted into law.

**Question:** Do you agree with the priorities outlined in the fiscal year 2015 budget request?

**Answer:** While I agree that Universal Service Fund reform is a priority for the Commission, I have not been presented with any detailed explanation for why the substantial funding increase in this area set forth in the Commission's budget proposal is necessary. With respect to modernization of the Commission's information technology systems, I strongly agree that this needs to be a priority. As we move forward with this endeavor, however, it is important that the Commission spends any additional funds wisely. In the past, I have seen instances where such funds have not been used well, such as the Commission's new website, which has received very negative reviews.

**Question:** Is there anything you would have prioritized that is not highlighted within this request?

**Answer:** I have no suggestions for additional spending.

*Industry Perspective*

**Question:** Do you believe the FCC is keeping up with the industry it regulates?

**Answer:** No.

**Question:** Do you believe the Commission is as responsive as it should be?

**Answer:** No.

**Question:** What could the Commission do to be more effective in this area?

**Answer:** The Commission must regularly review its rules and modernize them where necessary to keep pace with the ever-changing communications marketplace. For example, Congress has instructed the Commission to review its media ownership regulations every four years. However, our last review was

completed in 2007, and we have been told that our current review will not conclude until 2016 at the earliest. This is unacceptable. With respect to responsiveness, the Commission, among other things, should establish more deadlines for resolving waiver requests, applications for review, and petitions for reconsideration and report publicly on its effectiveness in meeting these deadlines.

#### *Newsroom Study*

The Critical Information Needs (CIN) study was a real boondoggle and raised some serious first amendment issues. As you know, the CIN study was to study “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services”, not how stories are selected or stations’ respective “news philosophies”.

You wrote a compelling op-ed on this topic in early February. I would like to hear your thoughts on where the FCC may go from here.

**Question:** Do you still have any concerns?

**Answer:** I am pleased that the CIN study was terminated and will be watching closely to ensure that it is not resurrected in another form. Going forward, the FCC should not undertake any new study that would involve sending government researchers into newsrooms. Nor should the FCC attempt to define Americans’ critical information needs and assess whether media outlets are meeting those needs. In our country, the American people decide what information is critical to them, not the government.

#### *Spectrum Incentive Auctions*

The United States will hold the first ever spectrum “incentive” auction through which broadcasters are incentivized to relinquish spectrum voluntarily in exchange for a portion of the auction revenue. This was mandated by Congress under the Middle Class Tax Relief Act of 2012, also known as the JOBS Act. The proposed incentive auctions are mandated to raise at least \$20 billion for deficit reduction, \$7 billion to create a nationwide broadband for first responders, and approximately \$1 billion more for additional public safety initiatives.

**Question:** Are you concerned that limiting bidder participation in the auction could generate less auction revenue than would otherwise be generated with open participation?

**Answer:** Yes. I am very concerned that limiting participation in the incentive auction will result in less revenue and thus jeopardize the FCC’s ability to raise funds for the important national priorities Congress identified in the Middle Class Tax Relief and Job Creation Act of 2012. I am also concerned that limiting participation will result in less spectrum being made available to meet consumers’ growing demands. Studies of bidding restrictions imposed in past domestic and international spectrum auctions show that they reduced auction revenues and led to significant delays in the spectrum being used by consumers.

**Question:** What are your primary concerns with the incentive auctions? How do you believe the Commission should address these concerns?

**Answer:** Although I am continuing to study the Chairman’s proposal and listen to all interested stakeholders, I am concerned that the Commission will jeopardize the success of the auction by imposing bidding restrictions. Relatedly, I worry that the decision to impose those restrictions will mean that an inherently complicated auction will become one that is unnecessarily complex. These two concerns could easily be addressed by allowing all competitors to participate in an open and fair auction.

I am also concerned that the Commission will adopt an auction design that will not even attempt to meet the revenue targets identified by Congress. The Commission should focus on rules that would maximize the net revenues raised so that we can fund the priorities identified by Congress.

*Net Neutrality / "Open Internet"*

I am interested in hearing your thoughts on the FCC's path forward on net neutrality.

**Question:** What is your biggest concern with any potential net neutrality rulemaking?

**Answer:** The history of telecommunications shows that regulatory constraints have been a constant shackle on innovation. Today, for instance, legacy regulations make fiber deployment prohibitively expensive in many places. As such, I fear we will repeat the mistakes of the past and adopt proscriptive regulation that deters innovation, raises prices for consumers, and slows broadband deployment.

**Question:** What do you believe would be the best path forward for the Commission to take on this issue?

**Answer:** The Commission should abandon its quest to regulate network management practices absent a direction from Congress to the contrary. The Internet was free and open before the FCC's rules took effect and it is free and open today, following the D.C. Circuit's decision to strike down the Commission's rules. Any attempt to interpose heavy-handed FCC rules upon the players in a market as dynamic as broadband will only generate wasteful litigation, impede deployment, and ultimately harm consumers.

*Organizational Structure Report*

In the fiscal year 2014 House bill we included language directing the Commission to submit a review of the current organizational structure of the FCC. We have strong concerns that the Commission is not currently set up to respond and pivot quickly to current technology marketplace needs, nor does it necessarily reflect what the bureau actually does today. For instance, within the fiscal year 2015 request you ask for an increase for Universal Service reform support staff, most of whom will go under the Wireline Bureau. This probably makes the most sense given the structure that you all have now, but if a comprehensive organizational review was done, perhaps bureaus would be combined, collapsed, or created to better reflect the FCC's current priorities.

**Question:** Do you think the Commission's current structure appropriately reflects the industry you regulate?

**Answer:** I applaud the effort to review the Commission's current organizational structure. Given the vast changes we have witnessed in the communications marketplace over the course of the last decade, the Commission should seriously examine whether we need to change the way we are organized.

**Question:** What changes would you like to see the Commission make and why?

**Answer:** I believe that the Commission should create an Office of Entrepreneurship and Innovation. This office would be given the responsibility of ensuring that proposals for new technologies and services are acted on within the one-year deadline set forth in Section 7 of the Communications Act. This is a provision of the Act that has not been enforced over the years, and it is important that the Commission not unnecessarily delay the delay of new services or new technologies into the marketplace. Creating of this office would require no new funds. Rather, staff would be reassigned from other Offices and Bureaus.

*FCC Reform*

As I am sure you know, an FCC process reform bill recently passed the House. To me, this is a good government bill, and as I understand it lines up with the process reform that you have already started at the FCC.

I know that you have spoken about the need for process reform. I have heard the Commission is not as responsive as it should be.

**Question:** How will do you believe process reform will help the Commission function better?

**Answer:** I believe that process reform would help the Commission to become more nimble. As the pace of change in the communications marketplace accelerates, the Commission must move more quickly. Too often, the Commission takes too long to resolve proceedings. Whether you are Fortune 500 company, a small start-up, a public interest organization or a consumer, the Commission should strive to respond to your concerns promptly.

**Question:** What do you believe the Commission should especially focus on as this reform process takes place?

**Answer:** The Commission must establish more deadlines for completing its work. I have seen many times at the Commission the truth of the old adage that nothing focuses the mind like a deadline. The Commission also must become more transparent. We must make it easier for Congress and members of the public to hold us accountable for our performance. That is why I support adding an FCC Dashboard to our website.

#### *Cost-Benefit Analysis*

**Question:** Do you believe there is enough cost-benefit analysis of Commission rules?

**Answer:** No. All too often the Commission adopts new rules without taking a hard look at the costs they will impose on regulated entities (and ultimately consumers) and whether less burdensome rules would better serve the public interest.

**Question:** Of the analysis done, are you pleased with the quality of the analysis?

**Answer:** The quality of cost-benefit analysis at the Commission is often disappointing. For example, last December the Commission required carriers that serve public safety answering points (i.e., 911 call centers) to audit their circuits more often than best practices suggest, which means that 911 call centers (and taxpayers) will face millions in additional costs with little expected benefit. And yet the cost-benefit analysis accompanying that decision ignored the tough decisions 911 call centers must make when deploying their scarce resources. I dissented from that decision (my views are available at <http://go.usa.gov/kd33>).

**Question:** If not, why is this kind of important analysis not happening as often as it should?

**Answer:** I believe that cost-benefit analyses are not happening as often as they should be because no law explicitly requires the Commission to complete them and accordingly they have not been a priority.

#### *Deaf and Hard of Hearing Services*

**Question:** What has the Commission done to ensure telecommunications relay service to deaf and hard of hearing persons reflects the latest improvements in technology?

**Answer:** The Commission has refrained from imposing technology mandates on providers of telecommunications relay services, enabling them to use the latest technology to meet the needs of deaf and hard of hearing individuals. For example, many users can now access telecommunications relay services using a tablet or smartphone.

**Question:** Do you believe current telecommunications relay service to deaf and hard of hearing persons are functionally equivalent to the nation's telephone network?

**Answer:** The Communications Act directs the FCC to ensure that telecommunications relay services to deaf and hard of hearing individuals are functionally equivalent to the nation's telephone network, and I will continue to support Commission action to help make that promise a reality.

**Question:** What has the Commission done to ensure that functionally equivalent access is provided deaf and hard of hearing persons to the nation's telephone network?

**Answer:** The Commission has established an Interstate Telecommunications Relay Service Fund to ensure that deaf and hard of hearing individuals do not pay any more than hearing individuals for access to the nation's telephone network. The Commission also has rules to ensure functional equivalence.

**Question:** What has the Commission done to ensure next-generation technology is made available for deaf and hard of hearing persons?

**Answer:** The Commission's Interstate Telecommunications Relay Service Fund supports several forms of Internet-based relay service, such as Video Relay Service, Internet-Protocol Relay Service, and Internet-Protocol Captioned Telephone Service, keeping us on pace with the latest improvements in technology.

**Question:** Has the Commission reevaluated current telecommunications relay service to ensure existing providers offer functional equivalence?

**Answer:** The Commission frequently reevaluates the functional equivalency of telecommunications relay services to comply with the statute.

**Questions for the Record Submitted by Congressman Tom Graves**

**Question:** Commissioner Pai, in what areas is the FCC working to streamline regulations and thereby reduce its regulatory footprint and costs? Can you identify better or additional ways for the FCC to achieve these goals?

**Answer:** The Commission maintains a number of legacy regulations that have not kept pace with technology. For example, our rules require traditional telephone carriers to maintain last-generation, copper-based services, wasting funds that could be redirected to build out next-generation, IP-based services. We commenced a proceeding in January that will hopefully eliminate these outdated regulations while continuing to protect consumers.

**Question:** I often hear from colleagues that questions about the Commission's budget are pointless because its funding is derived from industry fees, as opposed to the general revenues that make up this subcommittee's 302(b) allocation. I disagree, the fact the Commission's budget is derived from industry fees does not mean that consumers somehow avoid having to pay for the agency's operation. Do you agree that the FCC's budget is not simply comprised of industry "fees" but rather a cost passed on to consumers through regulatory measures?

**Answer:** I agree. Regulated entities pass regulatory fees onto consumers, often by putting an "FCC regulatory fee" directly on consumer bills, so any increase into the FCC's budget means higher prices for consumers—at least so far as regulatory fees are used to pay for such an increase.

**Questions for the Record Submitted by Congresswoman Jaime Herrera Beutler**

***Urban Rate Floor***

Commissioner Pai, I believe you correctly assessed the situation in your statement on the URF and would appreciate you to expand on those comments and how the FCC can work to bring the rates in balance but in a more transparent manner and improves this policy.

**Question:** Has the FCC studied the increased cost of land lines to the rural consumer can reduce access to broadband? Doesn't a policy that increases local voice rates more or less push people over time to take only broadband – why would we have a rule that leads broadband rates to increase when that happens?

**Answer:** You are right that raising rates for telephone services are likely to push consumers off the network, which may in turn lead to higher broadband rates as carriers attempt to recover the revenues lost. To my knowledge, the FCC has not studied the extent to which the increased cost of landlines may reduce access to broadband—but that is precisely the type of question we should be ready to answer before we mandate higher telephone rates in rural America.

**Question:** Between the sharp rate increases and the fact that some states require much more notice before a telco can raise voice rates, how do you plan to resolve this problem in a manner that doesn't disrupt service, ensures reasonable comparability between rural and urban local voice rates, and complies with state law?

**Answer:** As far as I can tell, the FCC does not have such a plan. As I stated in dissenting from the Commission's reaffirmation of the rate floor last week (<http://go.usa.gov/kd39>), this FCC-mandated price increase will make rural telephone rates less affordable, will not ensure reasonable comparability between rural and urban local voice rates, and will effectively preempt state *laws intended to keep rural customers on the network*.

**Question:** Should urban and rural rates be exactly the same when the rural consumer might be able to call 5000 people locally while the urban consumer can call a million?

**Answer:** Nothing in the Communications Act requires that rural and urban rates be exactly the same, and the Commission should hesitate to raise rural rates (which as you point out may allow a much smaller local calling area) to urban rates just for the sake of making rural consumers pay more.

**Questions for the Record Submitted by Congressman Mike Quigley**

Commissioner Pai, I know that over the past several weeks you have made several comments on the record extolling the possible benefits of Joint Sales Agreements for certain stations, and expressing concerns over the FCC's proposed order restricting TV broadcast JSAs.

**Question:** Can you explain why the FCC's proposed order raises concerns?

**Answer:** JSAs allow stations to save costs and to provide the services that we should want television broadcasters to offer, particularly in our nation's mid-sized and small media markets where revenues are not as plentiful as they are in large markets. In my home state of Kansas, for example, a JSA between two Wichita stations enabled the Entravision station, a Univision affiliate, to introduce the only Spanish-language local news in Kansas. Entravision told me earlier this month that it will have to end those Spanish-language newscasts if it has to terminate its JSA. Across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting not only led to expanded news programming in that market but also nearly \$3.5 million in capital investment. Some of that money was spent upgrading the stations' Doppler Radio system, which probably saved lives when a devastating tornado destroyed much of Joplin in 2011.

**Question:** I know that the National Association of Broadcasters has offered a compromise on this issue. Is that something you could support?

**Answer:** The proposal offered by the National Association of Broadcasters would be a substantial improvement over the rules adopted by the Commission in March.



TUESDAY, APRIL 1, 2014.

**SECURITIES AND EXCHANGE COMMISSION**

**WITNESS**

**MARY JO WHITE, CHAIR, U.S. SECURITIES AND EXCHANGE COMMISSION**

Mr. CRENSHAW. The hearing will come to order.

I want to welcome our witness, SEC Chair Mary Jo White. Thank you for being here today to testify before our subcommittee.

The Securities and Exchange Commission has a uniquely important job of maintaining fair and efficient securities markets, encouraging capital formation, and protecting investors. This is not an easy task, but it is a critical part of keeping our economy thriving.

For fiscal year 2015, the SEC is asking for a \$350 million, or 26 percent, increase over last year's funding level. This is an especially large increase for any agency, and while the SEC is funded by fees, I believe congressional oversight over your budget is an important check on the Commission's activities.

What we want from the SEC is a securities regulator who is both capable and economical. It is easy to argue that money will solve all the problems in the world, but we expect to see results before appropriating additional dollars.

Last year, the House included bill language fully funding the Office of Economic and Risk Analysis. I am anxious to hear about how you are using that funding to hire more economists in order to increase the cost-benefit analysis performed during the SEC rulemaking process.

In addition, I am interested to hear your thoughts on the municipal advisory rule, which the SEC released early this year. I am concerned that it might be regulatory overreach in an area that could benefit from more competition and not less.

American investors and all those who use the U.S. Security markets deserve to know that there is a cop on the beat who is protecting our markets. The Commission has had embarrassing and damaging inspections and enforcement lapses in the past, such as the failure to catch the Madoff and Stanford Ponzi schemes, as well as lapses in management, best practices, and due diligence, such as the Constitution Center lease debacle, the improper destruction of documents, and material weaknesses in the Commission's financial statements. With the increases that Congress has given the SEC over the past decade, there can be no more excuses.

Chair White, your fiscal year 2015 budget request asks for increases in almost every office and division across the SEC, including an overall request of 467 new FTEs. We have heard the claim that the SEC needs increased staffing and funding to get through

the Dodd-Frank mandated rulemakings; however, the staffing and funding levels at the SEC cannot exponentially increase forever. This is not an efficient use of your funds, nor will it protect American investors. I am eager to hear how the SEC plans to judiciously use its funding in key areas in order to best leverage its expertise and capabilities to protect our capital markets and investors and facilitate the overall growth of capital.

So thank you again for being here today. I look forward to your testimony.

And now I would like to recognize Ranking Member Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. I join you in also welcoming Chair White back before the subcommittee to testify on the fiscal year 2015 budget request for the Securities and Exchange Commission.

Last year when we spoke, Chair White, you were just settling into your new position. Now, with almost a year of service in this new position, I have been heartened by what I have seen in many areas.

I appreciate that, as a former prosecutor, you have taken a tough line on wrongdoers by moving to require more admissions of guilt in settlements. You have also made Dodd-Frank implementation an ongoing priority and have moved the ball forward on some of the law's most important and complicated provisions.

All that said, you cannot continue to protect investors and to make sure that our financial system is secure without sufficient resources. For all the important compromises that were reached in last December's appropriations bill, I think we did fall short of the mark in providing the necessary funding for the SEC.

I am concerned about the impact this funding level is having on the Commission currently, and I believe that more needs to be done in fiscal year 2015, which brings us to your request today.

Your request of \$1.7 billion in fiscal year 2015 allows the SEC to keep pace with the growing markets you oversee, the increasingly complex transactions that take place, and the expanded role you play in the wake of the financial crisis. Without a significant increase from the fiscal year 2014 funding level for the SEC, we are sending a signal that market actors should not expect consequences for risky, unethical, and illegal behavior. And I think that should be extremely troubling for all of us.

At this point, we all know the consequences of an SEC that is underfunded and unable, or unwilling in past administrations, to oversee Federal securities laws. Our markets suffer, our investors suffer, our taxpayers suffer, and, ultimately, our Nation suffers. We need a strong cop on the beat for Wall Street to ensure that we have strong protections in place and to deter future misconduct. I take your request for additional resources seriously, and I hope my colleagues will, as well.

Chair White, once again, welcome. And I look forward to your testimony.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Serrano.

And now I would like to recognize the ranking member of the full committee, Mrs. Lowey.

Mrs. LOWEY. Thank you very much, Mr. Chair. And welcome. I would like to certainly thank Chairman Crenshaw, Ranking Member Serrano for holding this hearing.

And it is a delight—welcome, Chair Mary Jo White—for testifying before us today. And we thank you for your agreeing to serve this great country of ours. We know how important the responsibility you have is.

Madam Chair, you come before us with a budget request for fiscal year 2015 of \$1.7 billion, which would support the SEC's responsibilities as well as the hiring of an additional 639 employees. These additional positions would help the SEC to examine investment advisors, enhance its core investigative functions, continue improvements in technology to keep up with the changing markets.

Year after year, the SEC's budget authority has been kept below what is needed to meet demand and the needs of our increasingly global economy. In fact, the Republican majority kept the SEC budget at more than \$300 million below the President's request in fiscal year 2014. This approach is nonsense. The SEC is entirely fee-funded, and, as such, providing adequate funding authority will not take a dime of U.S. Taxpayer dollars, nor will it have any impact on the deficit or the debt.

I worry that the Republican majority's budget restrictions on the SEC are purposely intended to make it more difficult for the SEC to do its job. By robbing the SEC of its needed funding, the Republican majority is making it more likely that fraud will go undetected and that investors will be left at risk. And when this occurs, they will use that opportunity as a way to deny future funding. It is a cynical and unnecessary cycle.

For our economy to succeed, investors need faith in the ability of the regulator to do its job. These misguided budget restrictions only harm the ability of the SEC to succeed.

I look forward to discussing the importance of the SEC's budget request in a moment, and I thank you again for appearing before us.

Mr. CRENSHAW. Thank you.

I would like to now recognize Chair White for your opening statement. Your written statement will be made part of the record, and if you could keep your remarks to about 5 minutes, that will give us more time for questions.

Please.

Ms. WHITE. Thank you very much.

Chairman Crenshaw, Ranking Members Lowey and Serrano, and members of the subcommittee, thank you for inviting me to testify in support of the President's fiscal year 2015 budget request for the Securities and Exchange Commission.

Now, more than ever, investors and our markets need a strong, vigilant, and adequately resourced SEC. From fiscal year 2001 to fiscal year 2014, trading volume in the equity markets more than doubled to a projected \$71 trillion. The complexity of financial products and the speed with which they are traded increased exponentially. Assets under management of mutual funds grew by 131 percent to \$14.8 trillion, and assets under management of investment advisors jumped almost 200 percent to \$55 trillion.

Today, there are over 25,000 SEC registrants, including broker-dealers, clearing agents, transfer agents, credit rating agencies, exchanges, and others. During this time of unprecedented growth and change in our markets, the SEC has also been given new and significant responsibilities for over-the-counter derivatives, private fund advisers, municipal advisers, crowd funding portals, and more.

The President's \$1.7 billion budget request would enable the SEC to address critical core priorities, including enhancing examination coverage for investment advisers and other key entities who deal with retail and institutional investors; protecting investors by expanding our enforcement program's investigative capabilities and strengthening our ability to litigate against wrongdoers; leveraging technology to make our operations more efficient and to improve our ability to identify a variety of market risks, including emerging frauds.

As you know and have alluded to in your opening remarks, the SEC's funding is deficit-neutral, which means the amount Congress appropriates does not impact the deficit, the funding available for other agencies, or count against caps in the congressional budget framework.

Nonetheless, I fully recognize my responsibility to be an effective and prudent steward of the funds we are appropriated and to pursue only those things we need to advance our mission. I believe our accomplishments this past year should give Congress and the public confidence that we will do so.

While certainly more remains to be done, since my arrival in April 2013, the Commission has adopted or proposed more than 20 significant rulemakings, including many mandated by the Dodd-Frank and JOBS Acts, across the regulatory spectrum of our jurisdiction.

We are also now more aggressively enforcing the securities laws, requiring for the first time admissions to hold certain wrongdoers more publicly accountable and obtaining orders for penalties and disgorgement of \$3.4 billion in fiscal year 2013, the highest in the agency's history.

And we have taken a data-driven, disciplined approach to addressing complex market structure issues, such as high-frequency trading and dark pools, implementing a powerful new analytical tool called MIDAS.

This budget request would permit the SEC to increase its examination coverage of investment advisers, who everyday investors are increasingly turning to for investment assistance for retirement and family needs. While the SEC has made the most of its limited resources, we nevertheless were able to examine only 9 percent of registered investment advisers in fiscal 2013. As a point of reference, in 2001 the SEC had 19 examiners per trillion dollars in investment adviser assets under management; today we have only 8. More coverage is plainly needed, as the industry itself has acknowledged.

Very importantly, this budget request would also allow us to better leverage technology across the agency to support a number of key initiatives, including EDGAR modernization, a multiyear effort to simplify the financial reporting process for public companies and

other filers; completion of the enterprise data warehouse and additional analytical tools which will allow us to organize, integrate, and analyze large amounts of data for improved risk analysis and fraud detection; enhancements to the Tips, Complaints, and Referrals System to maximize our ability to move quickly to act on the high volume of tips that we receive; information security to upgrade tools and processes, responding to the ever-increasing cyber and other security threats; and modernization of SEC.gov to make one of the most widely used Federal Government Web sites more informative for investors and public companies.

This budget request also allows us to continue augmenting our Division of Economic and Risk Analysis by adding financial economists and other experts to assist with economic analysis in rule-making, risk-based selection for investigations and examinations, and structured data initiatives.

I firmly believe that the funding we are seeking is fully justified by our important and growing responsibilities to investors, companies, and the markets. Your support will allow us to better fulfill our mission and to build on the significant progress the agency has achieved, which I am committed to continuing and enhancing.

I am happy to answer your questions. Thank you.

Mr. CRENSHAW. Thank you very much.

[The information follows:]

**Testimony before the  
Subcommittee on Financial Services and General Government  
Committee on Appropriations  
United States House of Representatives**

**by Chair Mary Jo White  
U.S. Securities and Exchange Commission**

**April 1, 2014**

Chairman Crenshaw, Ranking Member Serrano, and members of the Subcommittee:

Thank you for inviting me to testify today in support of the President's fiscal year 2015 budget request for the Securities and Exchange Commission.<sup>1</sup> I appreciate the opportunity to describe how the SEC would effectively use the \$1.7 billion requested for the coming fiscal year and why the agency needs this funding to fulfill its obligation to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.<sup>2</sup>

I am pleased by the SEC's accomplishments this past year. We adopted or proposed a substantial volume of mandated and other key rules. We aggressively enforced the securities laws, changing a key policy that can hold wrongdoers more publicly accountable and obtaining orders for penalties and disgorgement of \$3.4 billion in FY 2013, the highest in the agency's history. We launched MIDAS and intensified our comprehensive review of market structure issues, including high-frequency and off-exchange trading practices. And we have continued to improve our efficiency by enhancing our technology, bringing in more experts, and deploying more risk-based analytics to allow us to do more with our limited resources, and to do so more quickly.

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<sup>1</sup> A copy of the SEC's FY 2015 Budget Congressional Justification can be found on our website at <http://www.sec.gov/about/reports/secfy15congbudgjust.shtml>.

<sup>2</sup> The views expressed in this testimony are those of the Chair of the Securities and Exchange Commission and do not necessarily represent the views of the President, the full Commission, or any Commissioner. In accordance with past practice, the budget justification of the agency was submitted by the Chair and was not voted on by the full Commission.

As described in more detail below, the requested budget level would allow the SEC to build upon its strong efforts and accomplish several key and pressing priorities, including:

- Bolstering examination coverage for investment advisers and other key areas within the agency's jurisdiction;
- Strengthening our enforcement program's efforts to detect, investigate, and prosecute wrongdoing;
- Continuing the agency's investments in the technologies needed to keep pace with today's high-tech, high-speed markets; and
- Enhancing the agency's oversight of the rapidly changing markets and ability to carry out its increased regulatory responsibilities.

#### **Significant Gains, but Work Remains**

The SEC's funding mechanism is deficit-neutral, which means that the amount Congress appropriates to the agency will not have an impact on the nation's budget deficit, nor will it impact the amount of funding available for other agencies.<sup>3</sup> Our appropriation also does not count against the caps set in the bi-partisan Congressional budget framework for 2014 and 2015.

Nonetheless, I deeply appreciate that I have a serious responsibility to be an effective and prudent steward of the funds we are appropriated. Since my arrival a little less than a year ago, we have made every effort to effectively deploy our funds to accomplish our mission and the goals that Congress has set for us. And, within the last year, we have advanced a significant number of rules and other initiatives across the wide range of our responsibilities with respect to the regulatory objectives mandated for the SEC by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and the Jumpstart Our Business Startups Act ("JOBS Act"), proposing or adopting rules concerning, among other things:

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<sup>3</sup> Section 991 of the Dodd-Frank Act requires the SEC to collect transaction fees from self-regulatory organizations in an amount designed to directly offset our appropriation. The current fee rate is about \$0.02 per every \$1,000 transacted.

- The registration and regulation of nearly a thousand municipal advisors;
- The cross-border application of our security-based swap rules in the global swaps market;
- Lifting the ban on general solicitation in certain private offerings and proposing rules to provide important data and investor protections for this new market;
- Proprietary trading and investments in private funds by banks and their affiliates, under what is commonly called the “Volcker Rule”;
- Increasing access to capital for smaller companies by permitting securities-based crowdfunding;
- Programs required of broker-dealers, investment companies, and other regulated entities to address risks of identity theft;
- Further safeguarding the custody of customer funds and securities by broker-dealers;
- Updating and expanding the Regulation A exemption for raising capital;
- The retention of a certain amount of credit risk by securitizers of asset-backed securities;
- The removal of references to nationally recognized statistical rating organization ratings in our broker-dealer and investment company regulations; and
- Enhancing risk management and other standards for the clearing agencies responsible for the safe and efficient transfer of trillions of dollars of securities each year.

In addition, we put forward rule proposals to strengthen and reform the structure of money market funds and require that certain key market infrastructure participants have comprehensive policies and procedures to better insulate market infrastructure technological systems from vulnerabilities.

We also have taken steps to enhance the SEC’s already strong enforcement program, including by modifying the longstanding “no admit/no deny” settlement protocol to require admissions in certain cases. While no admit/no deny settlements still make a great deal of sense in many situations, because admissions achieve a greater measure of public accountability, they

can bolster the public's confidence in the strength and credibility of law enforcement and in the integrity of our markets. Already the Commission has resolved a number of cases with admissions, and my expectation is that there will be more such cases in 2014 as the new protocol continues to evolve and be applied. The Commission also has brought a number of significant enforcement cases across our regulatory spectrum, including actions against exchanges to ensure they operate fairly and in compliance with applicable rules, actions against auditors and others who serve as gatekeepers in our financial system, landmark insider trading cases, and additional cases against individuals and entities whose actions contributed to the financial crisis.

In the past year, the Commission also has made great strides to improve its technology, including through the development of tools that permit us to better understand and protect the integrity of our markets and inform our exam program. In October 2013, the agency brought on-line a transformative tool called MIDAS that enables us to analyze enormous amounts of trading data across markets almost instantaneously. The SEC's Quantitative Analytics Unit in our National Exam Program has developed groundbreaking new technology that allows our examiners to access and systematically analyze massive amounts of trading data from firms in a fraction of the time it has taken in years past. We are laying the technological foundation for unified access to SEC information, applications, and data across the agency, and are making a variety of other technological investments to enable us to meet our mission more efficiently and effectively.

Despite this significant progress, there is much that the SEC still needs to accomplish. Completing the rulemakings and studies mandated by Congress in the Dodd-Frank and JOBS Acts remains among my top priorities. We must continue to seek to address structural concerns about our complex, dispersed marketplace in a responsible and empirically-based manner, and

also continue our current review of the SEC's public issuer disclosure rules. We also need to continue to increase our capacity to examine and oversee the entities under the SEC's jurisdiction, as well as hold accountable those that harm investors through securities law violations. We are at a critical point in the deployment of more sophisticated technology tools and platforms, and it is vital that we have the resources necessary to continue modernizing our IT systems and infrastructure.

The SEC needs significant additional resources to keep pace with the growing size and complexity of the securities markets and the agency's broad responsibilities. The agency currently oversees more than 25,000 market participants, including over 11,000 investment advisers, approximately 10,000 mutual funds and exchange-traded funds, 4,450 broker-dealers, 450 transfer agents, 18 securities exchanges, as well as the Public Company Accounting Oversight Board (PCAOB), Financial Industry Regulatory Authority (FINRA), Municipal Securities Rulemaking Board (MSRB), the Securities Investor Protection Corporation (SIPC), and the Financial Accounting Standards Board (FASB). The SEC also has responsibility for reviewing the disclosures and financial statements of approximately 9,000 reporting companies, and has new and expanded responsibilities over the derivatives markets, an additional 2,500 reporting advisers to hedge fund and other private funds, close to 1,000 municipal advisors, ten registered credit rating agencies, and seven registered clearing agencies. And, as you know, between the Dodd-Frank and the JOBS Acts, the SEC was given nearly 100 new rulemaking responsibilities.

The SEC's responsibilities are extensive and complex and its mission is critically important. The funding we are seeking is fully justified by our growing responsibilities to investors, companies, and the markets. With what I believe is a thoughtful and targeted approach

to our resource challenges, the FY 2015 budget request of \$1.7 billion would allow the SEC to hire an additional 639 staff in critical, core areas and enhance our information technology. Outlined below is a brief overview of some of the key components of our request.

#### **Expanding Oversight of Investment Advisers and Strengthening Compliance**

There is an immediate and pressing need for significant additional resources to permit the SEC to increase its examination coverage of registered investment advisers so as to better protect investors and our markets. During FY 2013, due to significant resource constraints, the SEC examined only about 9% of these advisers, comprising approximately 25% of the assets under management.

The number of SEC-registered advisers has increased by more than 40% over the last decade, while the assets under management by these advisers have increased more than two-fold, to almost \$55 trillion. At the same time, the industry has been increasing its use of new and complex products, including derivatives and certain structured products, employing technologies that facilitate high-frequency and algorithmic trading, and developing complex “families” of financial services companies with integrated operations that include both broker-dealer and investment adviser affiliates. While the SEC has efficiently used its limited resources by improving its risk assessment IT capabilities and focusing its examination staff and resources on those areas posing the greatest risk to investors, much more coverage is clearly needed as the status quo does not begin to provide sufficient protection for investors who increasingly turn to investment advisers for assistance navigating the securities markets and investing for retirement and family needs.

A top SEC priority under the FY 2015 request is to add 316 additional staff to the

examination program in its Office of Compliance Inspections and Examinations (OCIE). This would allow the agency to examine more registered firms, particularly in the investment management industry; build out the examination program to implement newly expanded responsibilities with respect to municipal advisors, swap market participants, private fund advisers, crowdfunding portals and other new registrants; and more effectively risk-target and monitor other market participants. Additionally, OCIE would also be able to continue ongoing efforts to enhance its risk assessment and surveillance through the development of new technologies in areas such as text analytics, visualization, search and predictive analytics.

#### **Bolstering Enforcement**

Strong and effective enforcement of our federal securities laws is central to the SEC's mission. In addition to modifying our settlement policy to require public admissions in certain cases, the Commission in the last year brought groundbreaking cases across the full range of the securities laws, including, among many others, a \$615 million settlement of an insider trading case; a failure to supervise case against a prominent hedge fund adviser; actions against exchanges and municipal issuers; FCPA cases against large multinational corporations; and additional matters against individuals and entities whose actions contributed to the financial crisis.

Notwithstanding these results, the SEC's Division of Enforcement faces a number of key challenges to preserve and enhance its ability to vigorously pursue the entire spectrum of wrongdoing within our jurisdiction. Our Enforcement work includes the detection, investigation, and litigation of violations of the federal securities laws. In each of these areas, we face significant challenges:

- Detection. We receive over 15,000 tips, complaints, and referrals annually, including the more than 3,000 tips that flow into the Division's Whistleblower Office, which generate a fresh stream of case leads in need of investigation. The review and analysis of these tips require significant human and technological resources. We also have focused intensively on potential misconduct in the equity markets and in connection with new rules, including those implemented under the Dodd Frank and JOBS Acts. But detecting misconduct in constantly evolving securities markets, including as a result of the growth of algorithmic, automated trading and "dark pools," requires substantial resources.
- Investigations. Technological advances across the industry allow for more sophisticated schemes, which require improved technology and significant resources to unravel. We also are expanding our focus on financial reporting and auditing misconduct cases, which are highly technical and labor intensive.
- Litigation. We have seen an increase in litigation and trials as we focus more extensively on individual wrongdoing. And, the recent change to our long-standing settlement policy that now requires admissions in certain cases may lead to more litigation. Success at trial is critical to our ability to carry out our mission, and litigation, often against well-funded opposition.

In order to meet the challenges of our rapidly changing and expanding markets, with increasingly complex products and more sophisticated wrongdoers, Enforcement seeks to hire 126 new staff, including additional legal, accounting, and industry specialized experts, primarily for investigations and litigation. These critical resources will enable us to improve our information processing and analysis, expand our investigative capabilities, strengthen our litigation capacity, and better use technology. In addition, the Division will continue to: (1) invest in technology that enables the staff to work more efficiently and effectively, and (2) collaborate with external stakeholders who assist in the Division's identification, investigation, and litigation of securities law violations, including wrongdoing that crosses borders.

#### **Leveraging Technology**

The SEC is strongly committed to leveraging technology to streamline operations and increase the effectiveness of its programs. We are developing new analytic tools designed to

process data more efficiently and make timelier and better-informed decisions. For example, we apply cutting-edge analytics, such as visual data analysis, to increase the speed with which the exam and enforcement program evaluate data and develop evidence. To support these tools, we are investing in our information technology infrastructure to store and process increased volumes of data. We generated over \$18 million in cost avoidance in FY 2013 through a more efficient data center structure, renegotiated contracts, server virtualization, and other process improvements. Our recently initiated Quantitative Research and Analytic Data Support program is structuring vast quantities of financial market data and making it more accessible across the agency. This program will enhance the quality and speed of data-driven analyses and, importantly, link disparate sources of data to allow staff to establish connections not previously possible.

While the agency has made significant progress over the past few years in modernizing its technological systems, progress was set back by our level of funding in FY 2014. Increased funding for these efforts and new technology investments are essential. The SEC's FY 2015 budget request, which includes full use of the SEC Reserve Fund, would support a number of key information technology initiatives, including:

- EDGAR modernization, a multi-year effort to simplify the financial reporting process to promote automation and reduce filer burden. EDGAR provides the most critical window into the capital markets for investors and businesses. With a more modern EDGAR, both the investing public and SEC staff will benefit from having access to better data.
- Enterprise Data Warehouse, a centralized repository for the Commission to organize different sources of data, which can help the public gain easier access to more usable market data, which will facilitate easier and more effective analysis.
- Data analytics tools, to assist in the integration and analysis of large amounts of data, allowing for computations, algorithms and quantitative models that can lead to earlier detection of fraud or suspicious behavior. We have begun deploying these tools on a limited basis within our enforcement and exam programs, but due to current budget constraints have not yet rolled them out more broadly. Under this request, more front-

line staff, including those performing examinations and investigations, would be able to leverage these tools to efficiently identify links, anomalies, or indicators of possible securities violations.

- Examination improvements, to improve risk assessment and surveillance tools and datasets that will help the staff monitor for trends and emerging fraud risks, as well as improving the workflow system supporting SEC examinations.
- Enforcement investigation and litigation tracking, to support Enforcement teams with the receipt and loading of the high volume of materials produced during investigations and litigation, to build the capability to permit the electronic transmittal of data, and to implement a document management system for Enforcement's internal case files.
- SEC.gov modernization, to make one of the most widely used federal government websites more flexible, informative, easier to navigate and secure for investors, registrants, public companies, and the general public. SEC.gov receives more than 35 million hits per day, and there is high public demand for quick and ready access to the tremendous amount of data available there, including 21 million filings in the EDGAR system and 170,000 documents on SEC.gov. When fully implemented, the website will offer dramatically improved search and filtering capabilities that will enhance the transparency and availability of this data.
- Tips, Complaints, and Referral (TCR) system enhancements, to bolster flexibility, configurability, and adaptability. The TCR system is the SEC's central repository of tips, complaints, and referrals that maximizes our ability to search, track, and route workflow for the high volume that the agency receives each year (e.g., over 15,000 in FY 2013). System enhancements will provide automated triage of the items the agency receives, as well as improved intake, resolution tracking, searching, and reporting functionalities.
- Information security, to upgrade security tools and processes, and to develop and train staff to monitor, respond to, and remediate ever-increasing risks and security threats and to permit continuous risk monitoring.
- Business process automation and improvement, to improve the efficiency and effectiveness of the agency's processes, thereby enabling us to better serve the public.

#### **Strengthening Oversight of the Securities Markets and Infrastructure**

To effectively assess constantly evolving market activity across a wide range of complex trading venues, the SEC's Division of Trading and Markets must:

- Enhance its effort to address market structure and technology developments, including through MIDAS and other tools that facilitate the analysis of trade and order data that

reflects, for example, high-frequency trading and trading on off-exchange venues where pre-trade prices are not typically available to the public;

- Continue its work with self-regulatory organizations (SROs) to enhance critical market infrastructures that are essential for the operation of the securities markets; and
- Expand its oversight of clearing agencies, large broker-dealers, exchanges, and other major securities market participants.

Further, in FY 2015 we expect a significant number of new registrants under the Dodd-Frank and JOBS Acts as registration requirements under those laws go into effect, including dealers and other participants in the security-based swap market and crowdfunding portals. Additional resources are needed to undertake these new market-related responsibilities, including staff focused on market supervision, analytics and research, and derivatives policy and trading practices. Accordingly, for these core and new responsibilities, in the FY 2015 budget request the SEC proposes to add 25 positions in its Division of Trading and Markets.

#### **Enhancing Corporate Disclosure Reviews and Supporting Implementation of the JOBS Act**

For FY 2015, the SEC requests 25 new positions for its Division of Corporation Finance. These resources are needed for Corporation Finance to continue its multi-year effort to enhance its disclosure review program for large or financially significant companies, meet the increased workload resulting from expected improved market conditions and additional emerging growth companies confidentially submitting registration statements for non-public review, provide increased interpretive guidance, and evaluate trends in the increasingly complex offerings of asset-backed securities and other structured financial products. During FY 2015, Corporation Finance also will continue to implement the rulemakings required by the Dodd-Frank and JOBS Acts and move forward on a comprehensive initiative to update the disclosure requirements for reporting companies.

**Focusing on Economic and Risk Analysis to Support Rulemaking and Structured Data and Risk-Based Initiatives**

The SEC's Division of Economic and Risk Analysis (DERA) works to integrate analysis of economic, financial, and legal disciplines with data analytics and quantitative methodologies in support of the SEC's mission. DERA is our most rapidly growing division, having more than doubled since its creation in late 2009. In FY 2014, we are planning to hire 45 additional staff for DERA, primarily for additional financial economists and other experts to perform and support economic analyses and research and further enhance our risk assessment activities. In FY 2015, we seek to add 14 positions in DERA, primarily financial economists and other experts who significantly assist with:

- The rulemaking process by providing the Commission and staff with economic analysis and technical advice;
- Data analysis for risk-based selection of firms and issues for inquiries, investigations and examinations; and
- Improving structured data initiatives in order to enable the Commission, investors, and other market participants to more systematically and efficiently analyze and draw conclusions from large quantities of financial information.

DERA also seeks to hire additional technologists with mathematical and statistical programming experience to support the activities of the Division, including by assisting with the development of risk assessment models and risk metrics, data analytics, and economic analysis in the agency's rulemakings.

**Enhancing Monitoring of the Investment Management Industry**

In the past ten years, the number of portfolios of mutual funds, exchange-traded funds,

and closed-end funds has increased by 17%, and assets under management held by those funds has increased by 123% to \$16 trillion. And significantly, during that period, complexity in the investment management industry has increased dramatically, reflecting growing sophistication in product design and portfolio strategies.

For FY 2015, the SEC requests 25 new positions for its Division of Investment Management. With additional resources, Investment Management plans to:

- Improve the reporting of information about fund operations and portfolio holdings by mutual funds, closed-end funds, and exchange traded funds;
- Continue to build capacity to manage and analyze data filed by hedge funds and other private funds;
- Bolster the technical expertise of Investment Management's disclosure review program to, among other things, identify trends and monitor the risks related to the growth and increased product sophistication in the asset management industry; and
- Enhance the ability of Investment Management's Risk and Examinations Office to manage, monitor, and analyze industry data, provide ongoing financial analysis of the asset management industry.

#### **Enhancing Training and Development of SEC Staff**

Nothing is more critical to the agency's success than the expertise of the SEC's staff. And providing in-depth and up-to-date training is essential for the staff to maintain and enhance its expertise over our constantly changing markets. Historically, the SEC's training budget has not matched that of its federal financial regulatory agency peers. The agency is requesting to increase its staff training budget in FY 2015 principally to support training and development for employees directly involved in examinations, investigations, fraud detection, litigation, and other core mission responsibilities of the SEC. This will consist of specialized training about new trends in the securities industry and changing market conditions, as well as analytics and forensics. The investment in training also will allow the SEC to provide continuing education

courses that staff are required to take to maintain necessary legal and financial credentials.

**Conclusion**

Thank you for your support of the agency's vital mission and the opportunity to present the President's FY 2015 budget request. I would be happy to answer your questions.



### **SEC Chair Mary Jo White**

Mary Jo White was sworn in as the 31st Chair of the SEC on April 10, 2013. She was nominated to be SEC Chair by President Barack Obama on Feb. 7, 2013, and confirmed by the U.S. Senate on April 8, 2013.

Chair White arrived at the SEC with decades of experience as a federal prosecutor and securities lawyer. As the U.S. Attorney for the Southern District of New York from 1993 to 2002, she specialized in prosecuting complex securities and financial institution frauds and international terrorism cases. Under her leadership, the office earned convictions against the terrorists responsible for the 1993 bombing of the World Trade Center and the bombings of American embassies in Africa. She is the only woman to hold the top position in the 200-year-plus history of that office.

Prior to becoming the U.S. Attorney for the Southern District of New York, Chair White served as the First Assistant U.S. Attorney and later Acting U.S. Attorney for the Eastern District of New York from 1990 to 1993. She previously served as an Assistant U.S. Attorney for the Southern District of New York from 1978 to 1981 and became Chief Appellate Attorney of the Criminal Division.

After leaving her U.S. Attorney post, Chair White became chair of the litigation department at Debevoise & Plimpton in New York, where she led a team of more than 200 lawyers. Chair White previously was a litigation partner at the firm from 1983 to 1990 and worked as an associate from 1976 to 1978.

Chair White earned her undergraduate degree, Phi Beta Kappa, from William & Mary in 1970, and her master's degree in psychology from The New School for Social Research in 1971. She earned her law degree in 1974 at Columbia Law School, where she was an officer of the Law Review. She served as a law clerk to the Honorable Marvin E. Frankel of the U.S. District Court for the Southern District of New York.

Chair White has won numerous awards in recognition of her outstanding work both as a prosecutor and a securities lawyer. The 2012 Chambers USA Women in Law Awards named her Regulatory Lawyer of the Year. Among other honors she has received are the Margaret Brent Women Lawyers of Achievement Award, the George W. Bush Award for Excellence in Counterterrorism, the Sandra Day O'Connor Award for Distinction in Public Service, and the "Women of Power and Influence Award" given by the National Organization for Women.

Chair White is a fellow in the American College of Trial Lawyers and the International College of Trial Lawyers. She also has served as a director of The NASDAQ Stock Exchange and on its executive, audit, and policy committees. Chair White is a member of the Council on Foreign Relations.

Mr. CRENSHAW. Let me start by asking a couple questions about efficiency. One of the things that I think most of us are aware of, is the funding for the SEC, I think, in the last decade has increased about 66 percent. And if you go back to 2001, from that point until now, the funding has increased about 220 percent.

So, over the years, there has been a lot of money spent by the SEC, and, as has been pointed out by everyone, that it is a fee-funded agency, but we take our oversight responsibility seriously. We are trying to make sure that, whether it is taxpayers' dollars or fee-driven money, that it is spent effectively and efficiently.

Last year, when the SEC asked for a 26 percent increase, you had been on the job a month, but now you have been on the job a year, and your view is that you need another 27 percent increase.

So, when you talk a lot about the importance of technology, let me just ask you, can you point to some of the savings that you have been able to leverage due to this technology and this analytical capability? Is that something you have been working on? Could you tell us a little bit how you have been working on that side of the equation?

Ms. WHITE. Yes. And this is done really throughout the agency, but I specifically work with our chief operating officer on savings throughout the agency, whether it is driven by investments in technology, which it often is, or wherever else, in the agency. To the extent we get more efficient, obviously, there are cost savings that are measured, really, under different metrics.

And I can give you two examples. We saved \$6 million a year, including for this year, from consolidating our operations center. It is now all in headquarters. So we will save \$6 million in fiscal 2015 and \$6 million, going forward for a number of years. We also achieved \$18 million in cost avoidance by our investment in technology to really improve our data infrastructure, enhancing various of our processes, making maintenance less required. And so those are two examples.

But I take very seriously, Chairman Crenshaw, that with the funding that we do get, and then obviously I have made my I hope impassioned plea for, we certainly do need that funding for me to do and the agency to do its job responsibly. But part of that very important, serious responsibility is also to effect cost savings with these moneys, and we are doing that and fully committed to doing it.

Mr. CRENSHAW. Thank you.

Now, the one other thing that I have noticed is that you have a pretty large amount of carryover funding from previous years. I think the quarterly report says that the balance was \$112 million. So that was last year, when you were subject to the sequester, and that fenced off \$66 million, or about 5 percent of your appropriation. And this carryover still amounts to about 8 percent of your total appropriations level.

So you take that with the fact that you have access to this \$100 million mandatory reserve fund and you can spend up to \$100 million per year. I know that you always talk about additional resources and certain constraints, but could you tell us why you have such a high carryover balance?

Ms. WHITE. We have, as you know, no-year funds, so we are actually able to carry over balances if we don't spend it in that year.

And, Chairman Crenshaw, it is a product, in my view, of responsible financial planning. We basically, because of the continuing resolution, spent very conservatively in early 2013, so that is some of it.

We also tried very hard to hire in our new positions when we do get appropriated funds very wisely. So we are hiring the right people to do the job most effectively and efficiently. The fact we have the no-year funds allows us to do that.

And I think about \$30 million of that is also from, again, I think, very good financial management by our folks, which is from de-obligating moneys that were committed on closed-out contracts.

And these moneys are, I will say—and I have spent a lot of time on this—very much taken into consideration in terms of the request we are making.

Mr. CRENSHAW. Now, at the end of 2014, do you expect to have a carryover balance?

Ms. WHITE. You know, I can't answer that as I sit here. Certainly, we are committed to and we have actually enhanced our HR function so that we will be able to hire more efficiently as well as continue to hire prudently. And so that is where a lot of that expense comes from.

But we do think in terms of the request that we have made in 2015 that we would be able, if granted those funds, to hire in those positions. Again, we want to be prudent about those hires, but we do think we can do that, yes, sir.

Mr. CRENSHAW. Well, thank you very much.

We are going to go to questions among the committee members, and we will observe the 5-minute rule. People will be recognized by seniority if they were here when the meeting started. The latecomers will be recognized in the order of which they arrived.

We will actually make a special concession for our ranking member, Mrs. Lowey, and call on her for the next round of questions.

Mrs. LOWEY. You are very kind. Because, unfortunately, there are several hearings going on at the same time. Thank you very much.

Madam Chair, in fiscal year 2013, due to budget constraints, the SEC examined only about 9 percent of registered investment advisers. Over the past decade, the number of investment advisers has increased by 40 percent, and the assets under management by these very advisers has more than doubled to \$55 trillion. And yet funding for the SEC has not kept up with the need.

The overwhelming majority of investment advisers work with their clients's best interests in mind, helping them save for retirement, making smart investments, but, like every profession, there are always bad apples. And I am sure we could all agree that examining 9 percent of investment advisers is much too low.

If only 9 percent of investment advisers are examined per year, how does the SEC prioritize examinations? Why are these exams important to mom-and-pop investors? And how can investors have faith in the market if 40 percent of investment advisers have never been examined?

Ms. WHITE. There is no question that this is a stark example of the extreme challenge presented by our current level of funding. It is elsewhere throughout our functions, but in this investment adviser space, what we do with our limited resources is to obviously try to apply them as wisely as we can. We do risk-based assessments of where we should go based on various parameters—the size of the investment adviser, rates of return, recidivism, kinds of products.

I have also instructed our examiners in our national exam program that I don't want to be absent from the smaller spaces either, because that is where more and more retail investors, in particular, are relying on investment advisers to tell them what to do with their retirement money, with their money for their children's educations. They cannot afford to lose these moneys.

And they are also helped by every exam we do, not only at the smaller level but the ones that we do of the larger investment advisers, as well, because their pension funds, you know, tend to be managed by those larger investment advisers.

And just as another data point of concern—I mean, I have to say it exactly that way—we do find issues when we do these examinations. Seventy-five to 80 percent of our exams across our registrants receive a deficiency letter of some kind, 35 to 42 percent of those have a significant deficiency finding, which means basically a finding by our staff that there is either harm to a customer or client or a significant risk of harm to a customer or client or some kind of recidivism.

A good thing that happens when we examine, just in terms of value return for the exams we do, 86 to 93 percent of the investment advisers we do examine and find a problem with will tell us represent that they have remediated those problems. We obviously test it down the road. About 15 percent of the findings are actually referred to enforcement.

We also return value. Actually, when we visit an investment adviser and we find a problem with fees that may have been overcharged or misallocated, they voluntarily will return them to investors as a result of our exam.

So it is a critical function that we just must find a way. And we are obviously, I believe, using our resources very wisely to get greater coverage.

Mrs. LOWEY. Following up on that, the news often carries stories of the large frauds, and justifiably so, but what we don't hear day-to-day are the stories of working class families being targeted and taken advantage of by fraud.

What trends has the SEC noticed in security frauds? How would the budget request help meet the investigatory and enforcement needs to combat these frauds?

Ms. WHITE. A large part of our budget request is directed directly to trying to meet our examination and enforcement needs so that we can better protect investors.

What we are seeing in enforcement, we clearly still have cases of various kinds against very prominent Wall Street firms. There is a rise in microcap frauds, which can impact the retail investor quite particularly and quite significantly.

We see a rise in affinity frauds, which are some of the most galling kinds of securities violations that one can come across, which is essentially frauds directed at victim investors, based on race, religion, age, or status such as whether they are veterans. And it is something we have been very aggressive about in order to be able to, you know, meet these, really, crimes that are occurring against our retail investors.

There is an uptick really across our range of enforcement priorities: financial reporting frauds, various kinds of market abuses, insider trading, market integrity issues with respect to some of the exchanges, FCPA. So it really is across the board. We obviously try, again, to use our resources in the wisest way we can to go to priority areas.

Mrs. LOWEY. Just lastly, Mr. Chairman, I just wanted to mention one other issue which has concerned me greatly, and I have been part of many briefings focused on this issue, and that is the whole cyber attacks.

Companies have a responsibility to their shareholders. I know that, in the past, when companies should have made security breaches public, which could have helped prevent future breaches conducted in a similar manner, that rather than sharing this information, companies have kept it private, leaving many more at risk.

I do think investors have the right to know if companies that they are invested in have been the victim of cyber attacks so that they can ensure the steps are taken to prevent and mitigate future criminal actions.

So if you can just comment briefly. Should companies that report with the SEC be required to disclose cyber attacks? And when you meet with private-sector partners, what resources do they need from the government to help effectively manage cyber threats? And how can the SEC encourage information-sharing?

This has been a major issue, and I don't know that we are making much breakthrough in it. If you could just—

Ms. WHITE. I share your concerns about how serious and long-term this threat is, really across the issues, not only the impact on investors but to our economy, to our national security, no question about that.

We actually held a roundtable last week on cybersecurity really to emphasize that, and not only with respect to our registrants and public companies, but to bring together the various government agencies who are charged with dealing with the cyber threat—to talk about, among other issues, the coordination among the government agencies. The Department of Homeland Security, for example, which is a national security agency, is, in effect, the coordinating agency among the Federal agencies.

And the emphasis there, which is so critical, is that we must have a public-private partnership on this. I think the government needs to do better at sharing information with the private sector if they get requisite security clearances.

In terms of disclosure by public companies, just to commend the staff of the SEC, in 2011 the staff of the SEC actually put out guidance to public companies regarding their obligations to disclose cyber risks and cyber incidents if they were material, which, of course, is the basis to our disclosure regime.

It has been, I think, regarded as very helpful guidance. The staff has followed up on that, too, to see if the disclosures have improved. We think they have improved, but it is a continuing process and priority.

Mrs. LOWEY. Thank you.

And thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. WOMACK.

Mr. WOMACK. Thank you, Mr. Chairman.

Chair White, as I am sure you are aware, I, along with my colleagues, many of whom are on this dais and others on the Financial Services Committee, sent you a letter asking for an update on actions by the SEC after the proxy advisory firm roundtable back in December. And, as you know, two such firms, one of which is in the process of being sold, control about 97 percent of that market and actually become, kind of, de facto corporate governance standard bearers in the United States.

These firms have obvious conflicts of interest, and their services sometimes don't necessarily reflect their fiduciary responsibility to their clients. So is it safe to assume that the SEC hosted the roundtable because it recognizes that we have problems there?

Ms. WHITE. We hosted the roundtable—which, by the way, I thought was quite constructive and there were actually, I think, more areas of agreement than we might have expected before we called the roundtable. I would make two upfront points.

I mean, one, I think the proxy advisory firms are quite important to our proxy system and engagement of shareholders with the companies they own. But there is also no question that a number of concerns and issues have been raised, including whether the disclosures that they are actually required to make, have been adequate on conflicts of interest. So there was a lot of dialogue about that.

There was also dialogue about the fiduciary duty that investment advisers have when they actually retain a proxy advisory firm, because the investment advisers have a fiduciary duty and they retain that fiduciary duty. So that brings with it certain duties to make sure that the proxy advisory firm is discharging the service they are providing for the investment advisory firm as well and so forth.

I can say, I have actually received quite recently, following that roundtable, recommendations from our staff, primarily in Corporation Finance and Investment Management, as to what steps, if any, what action, if any, the SEC should take following that roundtable on those issues. I expect in fairly short order to be discussing that with my fellow commissioners.

Mr. WOMACK. In your opinion, were there broad areas of agreement on improving the transparency?

Ms. WHITE. I think there was agreement, at least at that roundtable, and I think probably more broadly than just at the roundtable, that in terms of some of the disclosures of conflicts of interest, in particular, that there was room for improvement there.

Interestingly, the Chamber has actually put out a best practices guide on this, if I might call it that, which I think has also spurred very useful dialogue both before and after that roundtable.

So I think one of the positive things that came out of that roundtable is that the various interested parties are continuing to discuss issues that divide them a bit, to try to close that gap and really make the process work better. I think that is very healthy, as well.

Mr. WOMACK. It is my understanding that these firms are relying on SEC staff guidance in choosing not to disclose conflicts of interest. Do you share my concerns that the Commission is effectively encouraging these firms to withhold this information?

Ms. WHITE. The answer is no and I don't think that actually came out as—certainly not as an area of agreement at the roundtable.

I think, from the point of view of the SEC, we want to be sure there is clarity on those issues. And so, to the extent that questions have been raised about that, we want to make sure that there is perfect clarity. And we obviously pay—you know, we would like to pay a lot of attention to, whether it is guidance or one of our rules, what impact it is having. So that is one of the topics we will be considering as we go forward.

Mr. WOMACK. Is the Commission reviewing the Egan-Jones no-action letters that allow for the conflicts to occur unchecked?

Ms. WHITE. Well, again, I think I have described the status, which is I have gotten the recommendation from the staff as to what action, if any, should be taken—

Mr. WOMACK. When would you expect action?

Ms. WHITE. Well, I would expect to be in discussion with my commission and my commissioners about next steps, in pretty short order, within a matter of weeks, I think.

Mr. WOMACK. Okay. Thank you, Madam Chair.

Mr. CRENSHAW. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

One of the things you are going to continue to hear and we continue to hear here from a group of folks, in the majority party especially, is about cuts, cuts, cuts, cuts in the budget in general. And I don't think we pay attention, at times, to the ramification of those cuts.

So my question to you is, are you confident that the meltdown caused by Wall Street in 2008 won't happen again, especially if Congress continues to cut? Or do you think that there are mechanisms in place or is there a balance of both resources for oversight and mechanisms in place that can, in fact, stop us from a meltdown like we had in 2008?

Ms. WHITE. Without making, perhaps, predictions I can't make, at least categorically, certainly the actions and initiatives, including the legislative initiatives, that we have taken since the crisis are designed to prevent that.

And there has been a lot of progress on that. I think the regulatory agencies are doing their respective jobs a lot better. They are more focused on systemic-risk issues. They are working better with each other.

One of the big mistakes we could make, though, is falling into any kind of complacency about the possibility of a repetition of any kind of event even near to what we faced during the financial cri-

sis. The SEC, I think, is a very important agency to be sure it is not underresourced so that it can do its job to prevent risks from actually materializing in the ways that they should not and can be prevented.

I think one of the other mistakes we should not make is that, when we have a reform like, we now, which I think is very positive, regulate the over-the-counter derivatives market—that we are able to implement those rules that we have adopted or are in the process of adopting. So resources for implementation of these reforms is critical. And I do worry that we may be underresourced for that task, and I think that would be a mistake.

Mr. SERRANO. Now, let's assume for a second that I was wrong with my opening part of the statement and that we, in fact, come up with more funding for the SEC. What areas would you like to see where more enforcement should take place?

Ms. WHITE. I think as, you know, broad enforcement as we can bring to bear is what our responsibility is. Let me be a little clearer about that. I think we need to be acting and sending very strong messages of deterrence across market participants. We need not to be neglecting the smaller violations, because smaller violations can become bigger violations. On the exam side, I think we have to, again, be focused on and broadly covering problems before they actually materialize into serious enforcement issues.

So if we were to get sufficient funding—and, clearly, what we are asking for in fiscal year 2015, we asked for 126 new positions in enforcement and some technology that will help us be smarter in detecting fraud sooner. That will help us also when we get tips in—we get 15,000 tips in a year—to not only take them in in the right way but analyze them in the right way, analyze them quickly, and get them out to, you know, our investigative staff, to really jump on them when they occur. Then what we can do is try to act before the money is all gone in a very serious fraud. We can try to freeze assets, we can try to suspend trading. And we do that to good ends.

So across the band of our enforcement functions is where I would apply those resources.

Mr. SERRANO. Now, have the number of SEC enforcement actions dropped recently? And if so, was this the function of the sequester, or are there other dynamics going on, such as the complexity of cases or ongoing investigations?

Ms. WHITE. We brought, actually—and I think, again, the numbers don't tell the whole story, and that is very important always to emphasize, because we brought very high-quality, very complex cases not only this past year but, certainly, I think, for a number of years. We brought, in numbers, 686 enforcement actions in this past fiscal year, compared to, I think, 734 in the prior year, so that is a 48-case difference.

It is hard to tease out the effect of sequester, specifically on that. I think the 686 cases we brought was really a very robust, strong effort by enforcement. Sequester and the budget limitations certainly impacted us elsewhere in enforcement and across the agency.

Mr. SERRANO. I have to tell you something, Mr. Chairman. I don't know if I asked a great question or a bad question, but half the audience left as I was asking that question.

Ms. WHITE. It was probably my answer.

Mr. SERRANO. I have no idea what that is about, but something is going on here that makes me nervous. So I will just stop right here, Mr. Chairman.

Mr. CRENSHAW. Why don't you ask another question and we will clear out the room?

Thank you.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you very much, Mr. Chairman.

I just want to make sure that I understood you, Chairman Crenshaw, when you talked about that the SEC's budget has increased 220 percent since 2001 and, I believe, two-thirds, 66 percent, in the last decade.

And the reason I wanted to just repeat what you said is because I think only in D.C. is a 220 percent increase, you know, since 2001 is considered a cut. I just thought that was illustrative of, kind of, some of the issues that we deal with here in Washington, that I think the American people would have to differ on whether that is a cut or not, and I don't think it is.

Madam Chairwoman, thank you for being here.

Let me throw out a couple of related issues to you in regards to the implementation of the municipal advisory provisions of Dodd-Frank, which, now, many banks—and I am really particularly concerned about community banks. They are having some difficulty determining whether they need to or they don't need to register with the SEC as municipal advisors.

And it is no secret that community banks have long provided financial services to local municipalities, and yet very few of them have ever had to previously register with the SEC. And now I understand that the staff of the SEC is working to develop a set of facts that would assist banks, fortunately, in determining whether registration is necessary.

Now, the deadline for that evaluation, to evaluate their situation and decide whether or not to register—and, by the way, which also would be potentially whether or not they could continue to provide their services to municipalities—is, I believe, coming up on July 1st.

Any idea, can you estimate for the subcommittee, let us know when those facts, which I think would be very helpful, will be available to guide the community banks?

Ms. WHITE. I can't give you a specific timeframe. The staff did put out in January FAQs, staff guidance on a number of issues in that space and who is to register and under what circumstances. It sounds like from your question that those FAQs may not have fully answered the question that you are posing now.

The staff has since—and, by the way, we also actually put off, in effect, the effective date until July, it was actually in January, to give the industry and potential folks who might need to register more time to, dialogue with the staff. That is going on as we speak and has been since before January when the FAQs were put out and also afterwards.

So, you know, I think it is anticipated we will put out additional guidance on some of the additional questions that have been raised before the July effective date, but I can't give you a precise time.

Mr. DIAZ-BALART. It would be great if, once the staff has a better idea, if they could just let us know, let our staff know.

Ms. WHITE. We will.

Mr. DIAZ-BALART. And then, also, kind of a related thing about the rulemaking. The Municipal Securities Rulemaking Board has proposed a rule for, again, municipal advisors that may—could force, I should say, some banks, including the community banks and some regional banks, to choose between, we are being told, between providing advisory services or traditional banking services, whether it is deposits or taking loan money or whatever, to State and local municipalities.

And I understand that the proposed rule, there is a new fiduciary duty which would impose, I believe—that says any entity providing advisory services could not act as a principal in providing other financial services.

Now, the concern is that, obviously, some local municipalities have long looked at banks to provide both banking services and also advisory services. And yet my understanding is, under that rule, that banks would have to choose which one of the two. And I may be wrong, which is why I am kind of throwing it out there. So if that is true, then, some local school boards or town counsels would have to, kind of, decide which one of the two and, frankly, may even have to break long-existing relationships that have worked for them.

So if that rule, and if I am accurate about what I believe to be the case, if it is submitted in that way, will the SEC attempt to make the rule workable to prevent this disruption, this potential unnecessary disruption, in many relationships that might affect a lot of municipalities and school boards?

And to, you know, kind of, throw a pun out there—because, hopefully, if they like their bank, they should be able to keep it. You know, if you like your bank, you should be able to keep it. So, hopefully, that rule will take that into consideration.

Any thoughts on that? And if, in fact, that rule does come out, would you be willing to work with banks and municipalities to make sure that they don't face that?

Ms. WHITE. Again, it sounds like what you are describing implicates MSRB rules—

Mr. DIAZ-BALART. Yes.

Ms. WHITE [continuing]. That will come to the Commission. And, if it comes to the Commission for approval, obviously, we will, focus on all aspects of it.

I will say, I may need to get back to you with whatever additional information I can provide specifically—

Mr. DIAZ-BALART. Great.

Ms. WHITE [continuing]. That is responsive at this stage. I am not sure there is any additional information I can supply.

I will say that when the MSRB and the SEC considers any rulemaking, I mean, you look very, very closely at the economic impacts of those rules, the cost-benefit analysis the chairman was alluding to in his opening statement. That is a very critical aspect of all of our rulemaking.

And so, you know, I can't really speak more specifically today to that point, but maybe I will be able to supply some additional information.

Mr. DIAZ-BALART. Right, because the rule hasn't come out yet, as far as we know.

Ms. WHITE. Right.

Mr. DIAZ-BALART. But if it does come out, that is when it gets interesting for you.

Ms. WHITE. Yeah, no, no, it is—and, also, if we pass on and, you know, I can't get ahead of that train.

Mr. DIAZ-BALART. Right.

Ms. WHITE. Okay.

Mr. DIAZ-BALART. Thank you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Welcome, Madam Chair.

As you know, the SEC requires public companies to report their financial statements in XBRL structured data format. Unfortunately, the SEC doesn't necessarily enforce the quality of that data. And what we are hearing from many is that that renders it virtually useless for them, that the trust that is needed to trust this data to make critical decisions is tough to rely upon.

Can you update us on your efforts to enforce the quality of these submissions for public companies?

Ms. WHITE. Yes. Let me just say, and as you know, the Commission actually began to require that certain financial information be filed in the XBRL format with the largest issuers, actually, in 2009. And then, over the next 4 years, the requirement was phased in for the midsized and the smaller filers, basically allowing them more time to, sort of, adjust to the new requirements, which do have some complexity to them.

This actually also allowed the larger and more sophisticated companies to assist in the market's development of software tools to meet these obligations, provided some, you know, additional time for diversification of the support community that you really need to assist filers in tagging their data.

Over the last 5 years, we have actually seen, from our staff's perspective, an improvement in the quality of data as filers have become more familiar with the process and, frankly, as the number of vendors actually providing the support services has increased.

We still believe there is room for further improvement, nevertheless. And our Office of Risk Assessment and Interactive Data, which is actually within our Division of Economic and Risk Analysis, continues to be a resource for both issuers and vendors with questions about filing XBRL. We have gotten a lot of positive feedback on that.

And staff in our divisions, in not only the Division of Economic and Risk Analysis but also Corporation Finance, have actively participated really in trying to educate the XBRL filer community on how to actually, you know, be able to do this more easily.

And we are basically continuing to evaluate, ways to enhance the usefulness of XBRL and, again, try to give specific guidance—be-

cause I know it has been needed and asked for by those who must file. So that is the current status of it.

Mr. QUIGLEY. And what would it take? I mean, the data is important; the reason we have them file is important. What would it take, besides guidance and education, to let them know that you are serious about this, there is too much at stake to get bad information?

Ms. WHITE. Again, I think we have, particularly in the last, year-plus, been sending a very, I believe, strong message. Maybe not strong enough, from your question. And I will look into it, immediately, actually.

But, really, having our Division of Economic and Risk Analysis as a resource, on these issues, I think, really has helped significantly. But I will see whether there is more we can't do.

Mr. QUIGLEY. Well, I certainly appreciate that. If you could get back to the committee—

Ms. WHITE. Yes.

Mr. QUIGLEY [continuing]. We would certainly appreciate it.

Let me hop over to the JOBS Act.

Mr. Chairman, I think I am correct that every member of this subcommittee voted for the JOBS Act. I think it passed 390 to 23—not something that happens every day here.

But, you know, there has been some delay and some slow progress in implementing all the rules here. Can you give us an update on where the SEC is on that process?

Ms. WHITE. Yes. And, as I said before I was confirmed and I have said after I was confirmed, about a year ago now, that one of my immediate top priorities was to implement, you know, both the Dodd-Frank Act and the JOBS Act rulemaking mandates given to the SEC.

We did in July, this past July obviously, lift the ban on general solicitation. We also at the same time, same day actually, adopted the disqualification of bad actors from that new market. That is actually a Dodd-Frank provision, but very important that they went together.

We have proposed the crowdfunding rules. We have proposed Reg A-Plus. The comment period, I think, has just closed in February on the crowdfunding proposal and in March, actually, with respect to, as we refer to it, Reg A-Plus.

We have some additional JOBS Act rulemakings to do. Some of them are really, kind of, conforming our regulations to what are already statutory mandates. But we are quite focused on getting them done.

Mr. QUIGLEY. Anything else close to being finalized?

Ms. WHITE. Well, once the comment period closes, I, at least—let me say it this way: They are all priorities for 2014.

Mr. QUIGLEY. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Commissioner, welcome. Thank you for—Madam Chair—thank you for joining us today.

Last year, as you may recall, the Appropriations Committee considered an amendment and adopted it on a bipartisan basis that would have required the SEC and the CFTC to develop a single rule as to how they apply the cross-border application of swaps and derivatives regulations.

I think as we have all said repeatedly, it just seems like good government to have the SEC and the CFTC on the same page and have one standard when dealing with a single marketplace on how that market is being treated when regulated. Yet, the CFTC and SEC, I believe, have chosen not to issue a joint rule or a rule that is similar in nature.

And so my questions are: Can you let the committee know what differences, if any, still exist between the SEC's proposed cross-border regime and the one that has been implemented by the CFTC?

Can you let the committee know what steps the SEC may have taken during the past year to ensure consistent application of Dodd-Frank's rules to transnational swaps and security-based swaps?

And then, as you know, your European counterparts have been highly critical of the approach that has been taken by former Chairman Gensler of the CFTC and that they had chosen to take him when Chairman Gensler was there. Will you commit to us that you will work as collaboratively as possible with international regulators to ensure that the U.S. Has a cross-border regulatory approach that works for the global market and doesn't disadvantage U.S. Companies relative to their foreign competitors?

Ms. WHITE. I certainly can give you that commitment. And, really, since I have first arrived, I have been not only in dialogue with the CFTC at the principal level, including with Acting Chair Mark Wetjen now and then presumably his successor, if confirmed, Tim Massad, about this, as well as former Chairman Gensler and our international counterparts.

I guess I would say several things.

I think there are more similarities in our proposed rules and the CFTC rules than there are differences and we have been working to close gaps.

We are really entering our adoption phase in 2014 at the SEC. One of the specific sets of questions that we posed in our cross-border proposal was precisely about the importance of consistency, because we recognize that to be important. We are not actually obligated to do a joint rule, so it is not a joint rulemaking in a technical sense, but we certainly recognize the importance of consistency.

And so, we will be, working and are working with CFTC and our foreign counterparts, you know, on that aspect of these rulemakings. To some degree, we have the benefit of what has gone before, in terms of what is needed to, close the remaining gaps there.

I am not suggesting they will be identical, at the end of the day. The markets are somewhat different, so there may be, some differences. I think a couple of differences I would cite that are still there between SEC and CFTC are, how we go about defining a U.S. Person and the approach to substituted compliance.

But, in substance, we are much more in sync than we are not in sync, and we are going to continue to work on the differences.

Mr. YODER. Well, and I would say the “U.S. Person” difference is pretty significant in terms of ones that are remaining.

Ms. WHITE. Yes.

Mr. YODER. And, frankly, when the Appropriations Committee addressed that issue last year in full committee, that was one of the thrusts behind why I think the committee chose to take it up, is that we have the SEC and CFTC defining who a U.S. Person is differently. You know, that is a real problem for, you know, certainty in the markets and predictability.

And I think we are all concerned, and I am sure you are, as well, about the, really, backlash we received from European treasury secretaries and folks about the CFTC’s rules. SEC has been much, I think, clearer and better in their approach, and we just hope that they will follow your lead and that you will continue to provide leadership to help them work together.

I understand the SEC, I think—and my colleague, Mr. Diaz-Balart, was discussing the muni-bonds issue, I guess. I understand the SEC is close to finalizing a rule that would regulate money market mutual funds. There are concerns that further regulations would particularly harm State and local governments by increasing their borrowing costs and shrinking the market for municipal bonds.

What steps are you taking to ensure that any final rule does not negatively impact municipal financing?

Ms. WHITE. Again, you know, we focus very carefully on all impacts of the rule. I mean, clearly, we have gotten a number of comments since we proposed the money market fund rules, I think it was last—last June.

Whether, in effect, the muni funds should be exempted like the government funds are is a major comment that we have received. And the staff has been quite focused on that, as have our economists, in particular, in our Division of Economic and Risk Analysis.

I can’t be more specific as to where we are on this, you know, the specifics, because it is something that is currently in discussion between the staff and the Commission.

Mr. YODER. All right. Thank you, Madam Chair.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. GRAVES.

Mr. GRAVES. Thank you, Mr. Chairman.

Chairwoman White, thank you for joining us. It is good to see you again. And I can only imagine how difficult it has been over the last year, your first year, to balance the difficult task of consumer protection and free markets in investing and responsibility. And then you combine that with the laws that we pass and ask you to enforce, and the difficulty in doing that, and I know you are doing your best that you can.

I really appreciated your comments a minute ago when you referenced the economic analysis. That is very important as you consider rules that you are going to adopt. And it seems of late one of the most highly concerning rules right now is the Volcker Rule, as you are well aware.

And in an effort to, sort of, work with the authorizing committee some, we would have an interest, I guess, as a subcommittee here, as to the response you gave them to their letter when they asked about the economic analysis. And I guess in the letter it referenced that it had not been performed and yet you were moving forward with the rule, which was in violation of the law, and they had asked for a response to that.

Were you able to provide that response to them? And if you had, could we get a copy of that, as well?

Ms. WHITE. Sure. I would be happy to give you the response. We did respond to that.

I mean, first, I would say we did—and the agencies, again, did not have to do a joint rulemaking on this but did actually act jointly on this. And there was economic analysis done, which is reflected, actually, throughout the rule on various issues. And comments came in, raising economic-impact issues, and the final rule actually was quite responsive to a number of major issues.

What we did not do, given the context of the joint dynamic of the rulemaking, was apply our guidance and no other agency applied a specific agency procedure to the rulemaking. So I think that is what that reference is.

We basically, as a legal matter, we adopted under the Bank Holding Company Act, which, as you know, doesn't have the same requirements as our SEC acts do with respect to various other factors we take into account.

But, as I say, the main point is economic analysis was very much a part of that rulemaking but not per our specific one agency guidance.

Mr. GRAVES. Did the economic analysis that you provide comply with, in essence, the judge's ruling—and I, sort of, have the reference here that the case was the Chamber of Commerce v. the SEC, when the court indicated that an adequate economic analysis had not actually occurred. And, in fact, it was said, "And its failure to apprise itself—and, hence, the public and the Congress—of the economic consequences of a proposed regulation makes promulgation of the rule arbitrary and capricious and not in accordance with law."

So I guess it meets what the court's request is, as well?

Ms. WHITE. Well, you never know until a court tells you, I think, what it meets, but—

Mr. GRAVES. Well, they made it pretty clear there.

Ms. WHITE. But I think the references and the opinion were to various requirements under the securities laws, which are really statutory requirements. Again, this particular rule was adopted under the Bank Holding Company Act, which has different provisions in it.

Mr. GRAVES. Okay.

And if I could ask just another quick question, I have here that the SEC claims that there is an interagency working group that is tasked with the coordination, I guess, of some other—and this is, again, referencing something that the authorizing committee had sent you—but a working group that is working together on some of these, I guess, supposed rules and such.

Can you share with us who is a part of that working group and when they have met, how many times they have met, and such?

Ms. WHITE. I can't give you a precise number on how many times they have met. I mean, essentially, there is staff, senior staff, from all of the adopting agencies, so that means the Federal Reserve Board, CFTC, SEC, FDIC, OCC. I think I got everybody in there. And they meet quite frequently in person. They also meet by telephonic conference call when issues arise.

They have been focused on issues of interpretation. They have been focused on compliance issues that are to come, enforcement issues that are to come. And, again, I think there is a real recognition of the importance, even though not required, to act consistently and as jointly as possible. And that is, I know, one of the, you know, major concerns that has been raised since the rule.

Mr. GRAVES. Right. It is an amazing rule, and I know it is going to have an impact. And I would hope that this working group adopts some metrics to share with everyone so that everybody knows what they are working towards and that there is no ambiguity moving forward.

But thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

I think we have time for another round of questions, if folks have other questions, and I will start.

Madam Chair, it has been brought up a couple times, the whole rulemaking about municipal advisors. And, in fact, I wrote you a letter some time ago that the rule that came out defining "municipal advisor" was so broad that, for instance, if an issuer, whether it is a school board or a nonprofit hospital, somebody that was going to issue debt, and a broker-dealer came in and said, I have a great idea, here is a way you can refinance your debt, or here is a new way to finance your debt that can save you a lot of money—I think, initially, when the rule came out, if an underwriting firm, a broker-dealer, came in and said, here is a great idea, then the issuer would be precluded from hiring that entity that came up with the good idea to actually underwrite the deal, because somehow they became a financial advisor as opposed to an underwriter.

And then I understand that some clarification came out so that if you walked in with a great idea and said, I am actually an underwriter, but here is an idea—now, do you know, has it been clarified? If somebody came with that idea, would they be able to underwrite the deal that they brought in and said, here is a way to save money? Do you know yet where that interpretation has gone?

Ms. WHITE. I think that—and I believe, if I remember your letter—and maybe my response actually came before we actually had issued those FAQs and staff guidance. And, clearly, we addressed, that kind of, questioning the range of the underwriter exemption and also what could be done and could not be done without necessarily triggering the registration requirements. But I don't know if the precise issue has been covered.

I can say that, since we did that staff guidance, we actually have not really gotten, much continuing complaint or interest in that set of issues from the broker-dealers. But, it doesn't necessarily mean

it is solved. I would have to see. But we addressed a pretty full range of issues in those FAQs that came out in January.

Clearly, you can't just do anything and not trigger the registration requirements. I mean, the guidance is not that broad. But it did clarify in a number of areas, so it may have met that concern. I would be happy to be more specific and give you a more specific response on that.

And I will say again, as I did in an answer to an earlier question, that the staff continues to dialogue with those affected by the rule to see whether there are other areas where we need to give further clarification.

Mr. CRENSHAW. Great. Well, I think that is important, because I think everybody would agree that we need regulation, it needs to be reasonable and not burdensome and not have an unintended consequence.

And in a situation like that, you have a pretty competitive marketplace, and also you have some pretty sophisticated issuers, whether it is a school board or whether it is a nonprofit hospital or a county commission, and you always have to ask yourself, what is their responsibility? They are the ones that are making this decision. And while you want to be reasonable in your regulation, you can't oversee and protect everybody all the time from themselves. I mean, some people make bad decisions and some people make good decisions, and the government can't always step in and make sure that everybody is being protected from themselves.

So I appreciate the fact that the Commission is aware of that. And as you try to write these rules and regulations, that you can work with the folks that are impacted by this—that is what economic analysis is all about.

I want to ask you, too, it has been brought up, about the whole money market fund reform. That has been kicking around for some time now. And I guess you are close to promulgating those rules.

I think we all have to recognize that we want to make sure that any kind of reforms don't decrease liquidity or cause rates to go up or increase costs. So we put some language, as you might recall, in last year's bill that said here are some thoughts that you should consider when you are reforming the money market funds.

I think one of the commissioners has come up with an idea that you could either have the floating-rate debt or you could have some sort of redemption penalty—it was like an investor choice model.

Do you know where all that is? You touched on that. Are we close to seeing the proposed rules? And have you taken into consideration some of the different alternatives?

Ms. WHITE. We certainly—and, again, we are in the active stages of discussion towards adoption. I can't give you a specific, you know, timetable on that.

I am familiar with the alternative that you referenced, which has been part of the discussion. I mean, again, I think our proposal, which I think was a robust proposal, basically had two alternatives—the fees and gates, the floating NAV for prime institutional—or could be done in combination.

We got a lot of comments, a lot of points of view on the proposal, which we have considered, you know, very seriously. Again, we did some reforms in 2010 that I think made the money market funds

more resilient, but we are focused on preventing that redemption run risk in times of stress that occurred during the financial crisis.

So we want our proposal to be robust, very robust. And the proposal certainly was. I expect the adopted rules to be robust, as well. But we are considering all of the ideas and impacts and clearly also are sensitive to, not damaging gratuitously the product.

Mr. CRENSHAW. Great. Thank you very much.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Before I ask a couple of questions, I wanted to comment on something you just said, because I think you put in a nutshell part of what I am concerned about—and I am not saying you are agreeing with me, but part of what you hear from this side about resources and about enforcement.

You are right, government can't be in everybody's lives, telling them what to do. But when an individual or a couple of individuals are making decisions that affect a whole lot of people, such as happened in 2008, where there was a national meltdown that then had an effect worldwide, then that kind of involvement, that kind of enforcement by government, that kind of interference, if you will, by government is totally proper, in my opinion, to make sure it doesn't happen again.

And that is what we are talking about here. At least the comments I make whenever I say, you know, we need more enforcement, that is to make sure that what happened then doesn't happen again. Because those folks were not making decisions that affected them only; they made decisions that affected a lot of people, and we are still suffering from it in so many ways.

Mr. CRENSHAW. I would only say, when we talk about municipal securities, if a school board in New York issued \$5 million in debt and they made a bad decision—

Mr. SERRANO. Right.

Mr. CRENSHAW [continuing]. I don't think that is what caused the world economy to almost collapse. But I think, in the broad sense, I agree with you—

Mr. SERRANO. Right.

Mr. CRENSHAW [continuing]. And what you are saying.

Mr. SERRANO. Thank you. Thank you, Mr. Chairman.

Madam Chair, there has been a lot of press lately about high-frequency trading. Are you concerned about these practices? Does the SEC have the resources to keep up with these new technologies?

Ms. WHITE. I think—

Mr. SERRANO. It seems that every time you have a solution to a problem, a new one comes up, right?

Ms. WHITE. Well, you have to be vigilant—which is why we need sufficient resources. But you have to be ahead of the market as much as you can. And, clearly, the marketplace is vibrant, it is evolving and constantly changing. So, it is very important, obviously, for the SEC to be on top of that.

And I think I said, actually, before I was confirmed that one of my immediate priorities for the SEC, in addition to implementing the congressionally mandated rulemakings and strengthening enforcement, was to make sure that the SEC had thoroughly reviewed, really, the range of market structure issues, equity market

structure issues, and then decided what, if any, you know, changes should be made.

Our approach at the SEC on these issues is to be data-driven and disciplined to determine where high-frequency traders fit into the range of market quality issues, to look into all the questions that have been raised, and then to take appropriate action if changes are needed.

Now, clearly, we are focused at the SEC and have been for, you know, quite some time on any unlawful trading practices of high-frequency trading firms, really, of any of our market participants. And that is a very important focus of our enforcement and examination program.

We currently have, I can't talk about specifics, but a number of ongoing investigations regarding various market integrity and structure issues, including high-frequency traders and automated trading. So we are very much focused on, you know, any abuses in that space.

On the policy side, questions have been raised there, should any of the rules be changed. And, again, our approach there is very data-driven, very disciplined. Our experts in trading and markets are, very much involved in this issue, very much on top of these issues.

And I think, you have to sort, separate out, what are the questions you are asking there. I mean, for example, there are many market metrics that show that high-frequency traders, provide greater liquidity, they reduce costs, they lead to better prices. There is another school of thought—

Mr. SERRANO. Right.

Ms. WHITE [continuing]. However, that raises various concerns about unfairness, the lack of a level playing field, what is the real value added. So, I think people would agree that there are advantages of speed, but what is the impact of the advantages of speed? Is it harmful? Is it not harmful? Who does it harm, if it harms?

But these are all, you know, issues that we are very much reviewing intensively and on top of.

Mr. SERRANO. Let me ask you one more question, then, Ms. Chairman. Your request of \$1.7 billion will support 639 new positions. You are requesting 126 new positions in enforcement, 316 in compliance, and 25 each in corporate finance, trading and markets, and investment management.

Can you explain what function these will serve and why they are needed? Will they put you more in line with how other financial regulators are staffed?

Ms. WHITE. We still won't actually be in line with the other financial regulators', staff. But what we are asking for—and, again, we really have tried to be very surgical about our needs here, and I think particularly with the requests for the additional examiners and the additional enforcement staffing. They are critically needed to carry out our responsibilities. And we have talked a fair amount about the investment advisers and frequency of examination there, so I think I don't need to, say more about that.

On the enforcement side, we are also keeping up with a very, complex, fast-moving market. We need to know what Wall Street

knows and, how they may be trying to come in between some of the rules so that we can, be right there on the enforcement side.

Mr. SERRANO. Oh, they wouldn't do that, would they?

Ms. WHITE. No, of course not, right?

Mr. SERRANO. Right.

Ms. WHITE. So, those are—and one of the other things that I think has been an emphasis, certainly in enforcement, and certainly is my emphasis in enforcement, is to focus very closely on responsible individuals as well as institutions.

Mr. SERRANO. Sure.

Ms. WHITE. So we have an increased focus on responsible individuals. That, one would assume, and has to some degree already, led to more litigation, more trials. Individuals tend to contest more than companies do. And so some of those resources in enforcement are really to enhance our litigation capacity, which I think is extraordinarily important to a strong enforcement presence.

Mr. SERRANO. Thank you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. WOMACK.

Mr. WOMACK. Thank you.

A lot has been said already about the MSRB and the rulemaking for municipal advisors. The problem is, not everybody has said it. So let me associate my remarks with those of Mr. Diaz-Balart and our chairman.

And, basically, from the context of I was a mayor for 12 years, issued a lot of debt, had a lot of great ideas presented to me by people, and so I think my overriding concern is that we don't do anything that—I recognize, as my friend, Mr. Serrano, has said, that there is a place for legitimate regulation to protect those people that make decisions that affect a whole lot of other people, which we certainly did. But there has to be a careful balance in there that we don't disincentivize companies, people representing companies, that have workable ideas.

We saw a lot of this when we saw interest rates going down and a whole lot of issuers capitalizing on the fact that they could restructure, do some second-lien bonds, those kinds of things, and really maximize the value, leverage their potential with a lot of capital investment.

So I just want to make sure that we are not going to do something that is going to take away the incentive for these advisory-type folks to be able to give us the proper advice because of some rule that may prevent them from being able to participate in the issuance of the debt.

Ms. WHITE. Well, it is a balance, but, obviously, the need for the rules was a provision of Dodd-Frank. I mean, that marketplace certainly has enforcement investor protection issues that we are responsive to, even apart from the registration requirements.

But I think if you look between our proposal and what we adopted—I am not saying you agree with everything that is in the adopted rules there—that I think we very carefully, looked at how broad should that rule be, who should it apply to, to what activities should it apply to, and, again, considered, the impacts on municipalities and really across the board.

And, we are continuing, as I have said, to dialogue about issues that still remain subject to interpretation and concern.

Mr. WOMACK. And very quickly, on your budget, to kind of pick up on something that Mr. Serrano said just a few minutes ago—and I couldn't agree more that there is a need to protect people that make decisions that affect larger groups of people. But as it concerns the new hires, can you quantify the amount of resources that you are currently using to examine private fund advisors?

I am asking because investors in those funds generally are well-off—millionaires, billionaires. And I get the need to make sure that private funds are above board, but my bigger concern are the retail investors. In my opinion, we should spend more time protecting the mom-and-pop retail investors who may not be as sophisticated when it comes to investing.

So walk me through that scenario.

Ms. WHITE. Well, I think that investors across the board are entitled to protection, and the SEC is their advocate. I mean, I certainly don't exempt anyone from, my thinking on that. It is very important.

And I think, plainly, you have particular concerns for—heightened concerns for retail investors, particularly if they are not advised at all or advised by either a dishonest advisor or not an able advisor.

But I think, again, the registration of advisors to private funds is something that, we have the authority in the Dodd-Frank act to do that. My sense is, our examination staff's sense is that, we have tried to target our resources. We have done some presence exams, which are not the same as full-blown exams, not as resource-intensive in the beginning, on some of this space. But we have found significant issues where we have gone, particularly with respect to allocation of fees and so forth.

So I think there is, a need for resources in that space. We want to be smart about it. We certainly, do not want to compromise protection of retail investors. As I think I said earlier, though, you also have the phenomenon of, the larger investment advisors that are responsible, nevertheless, for the pension funds of the retail investors, so you have that indirect benefit.

Mr. WOMACK. And, very quickly, of 600-and-some-odd employees if this budget were approved that you would hire, can you break those down as to who goes where, where your priorities would be insofar as the allocation of those resources?

Ms. WHITE. I don't know if I can be more specific than—I mean, you have the number for, how many would be, in exam, which was about 240—

Mr. WOMACK. 316?

Ms. WHITE [continuing]. I think. 316 is the total. I think the difference, the delta there, is for broker-dealers and other registrants. So where it is most, frankly, desperately needed is in the investment adviser space.

In terms of, sort of, how they would be deployed across, various kinds of investment advisers, I mean, that is something that, to a large degree, will be driven—I may be able to give you more specific information in a follow-up—by our, risk-based assessment of where the biggest concerns are, the biggest needs are, and, again,

trying to make certain that we are not absent from the smallest spaces as a part of that, too. Because you might not trip, a risk-based metric in the smallest of the investment advisers. So we want to make sure we are there, as well.

Mr. WOMACK. Madam Chair, thank you so much.

I am out of time. I yield back.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Madam Chair, my colleague, Mr. Womack, mentioned earlier in his questioning the proxy advisory firms, and I agree with the concerns he has raised.

Last week, Commissioner Gallagher gave a speech that addressed broader concerns around the proxy process. It does seem that some of the Commission's rules around this process are outdated, in need of updating. No one wants to interfere with shareholders, who have legitimate points, from placing proposals to their fellow shareholders, but when we examine who we are making many of these submissions, it feels we have ventured from the original goals of the proxy process.

Consistent with Commissioner Gallagher's speech, do you believe that the Commission should revisit the resubmission thresholds and the holding period requirements?

Ms. WHITE. I think that—and I know the proposal you are referencing. I think we call it, in part, the proxy plumbing proposal.

And, I think it has a number of issues in it, including the proxy advisory firm issue that we were discussing, and I think the issues are important to investors and important to companies. And by that, I mean there is a range of issues, I mean, not just the period of time that should be applied in terms of purchases and so forth.

I think that that whole set of issues is one that certainly has my attention. We obviously are trying to prioritize a lot of rulemakings there, but it contains a number of important issues, I think.

Mr. YODER. One of the issues we raised last year and was subject of debate before this committee and has some strong bipartisan support is legislation moving through Congress called the Email Privacy Act. Myself and Mr. Graves, along with a bipartisan group of Congress men and women, have cosponsored this bill, I think most people on this subcommittee. And it responds to concerns that have been raised about the IRS, the SEC, and a number of our regulatory agencies, that they are engaging in a practice of reading electronic correspondence of Americans without the due process of achieving a warrant or showing probable cause for reviewing those emails.

The SEC has, I think, admitted to this practice. And I think it has come under some concern from a lot of Americans that the Federal Government would treat somehow electronic correspondence different than paper correspondence. The paper documents on our desk versus the, you know, file folders contained in our email accounts all seem to probably have Fourth Amendment protections.

This legislation is gaining a lot of steam in the House. And I guess my question for you is, is the SEC engaging in the practice of reading emails or other electronic correspondence of Americans without a warrant?

Ms. WHITE. And I think we had this conversation last year—

Mr. YODER. We did, yes.

Ms. WHITE [continuing]. As I recall. And we certainly aren't reading emails live, which I think was part of our discussion last year.

What the SEC has—and we are not a criminal law enforcement agency, so we don't have the authority to get a criminal warrant. So that is one point.

What we do have—and, essentially, there is a long line of established Supreme Court cases—we have the administrative subpoena power, as do most civil law enforcement agencies in one form or another, that can be used to ask a subscriber for their emails or ask a third party, who may have documents, emails, including an ISP, you know, for those emails.

So that is the authority the SEC has. A subpoena is very different than, seizing something as you might when you need to have a warrant in a typical case. The practice that the SEC has always followed with these is to, if they are subpoenaing the ISP, which I think is the area of interest, to give notice, to the subscriber, who then has the opportunity to contest that subpoena if they so desire.

I understand the privacy concerns. I think we talked about that last year, as well. I think there are a number of different accommodations that can be made to actually heighten the privacy protections.

What concerns me, as the head of a, in part, large part, I suppose, law enforcement agency, is that we not put out of reach of lawful process—and, again, it is a process that gives notice and opportunity to be heard—what is often sometimes the only or critical evidence of a serious securities fraud. I think you can balance the two. We are certainly, happy to discuss exactly how to do that. And we use that authority, I think, quite judiciously, but it is extremely important to law enforcement.

Mr. YODER. Which, clearly, your point is that you are not conducting law enforcement, you are conducting administrative review, you are conducting subpoena—I mean, if you are going to go forward with law enforcement, you are not looking at criminal sanctions on folks. And we believe just very strongly that that process needs to be one that protects the Fourth Amendment rights of every American.

And there is this sense that we get from not only statements of the IRS that has blatantly said Americans do not have an expectation of privacy when it comes to their email, there is a sense that these subpoenas that are being issued—so we are not even talking about warrants—administrative subpoenas that are being issued don't give due process, don't give notice, which you have described as protections for those, that these are being taken without notice to the subscriber. And that is one of the chief concerns that has driven the interest in fixing this.

And so I would love to see your comments or thoughts on, I think it is, House Resolution 1852 to know what the SEC would amend or change about that to allow you to continue to carry out your functions while protecting the Fourth Amendment rights of our constituents, who are, frankly, alarmed at just the intrusions of privacy that go on every day at this government, particularly when

it comes to electronic correspondence, that somehow, perceived to be in the bureaucracy of this vast town, that the Fourth Amendment doesn't apply there like it applies everywhere else.

I know you have stated here you believe it does and you are respecting that in your efforts, but I think we have some disagreements about how that is being administered. And I would love to see your thoughts on how our bill could go forward to protect Americans with your input.

Ms. WHITE. Happy to do that.

And, again, I would just say that I do think, you know, that civil law enforcement—and I do call it law enforcement, because I think that is what it is—is extraordinarily important. I also think the privacy interests that you are referencing are extraordinarily important, too.

And I think the way the SEC has done this, satisfies those requirements, or should. But, again, I think there are any number of ways to do this, and we are very open to, talking about other measures, as well.

Mr. YODER. Thank you, Madam Chair.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Graves.

Mr. GRAVES. Thank you, Madam Chair, again.

And appreciate the gentleman's leadership on that issue. Very important to everyone, not just one side of the aisle or the other. It is really for everyone. And I appreciate your interest in trying to work with us on that.

If I could quickly, just to go back to the previous comments and questions I had earlier in relation to the interagency working group and such, and you referenced, you said there were senior individuals of those five agencies, is it possible for us to get a list of those, I mean, to our office at some point? I know you said you couldn't recall off the top of your head who the individuals might be or the meetings times or places.

Ms. WHITE. I don't see any reason why those names couldn't be provided.

Mr. GRAVES. Good. Thank you. And—

Ms. WHITE. Someone may tell me there is a reason, but I don't know it as I sit here.

Mr. GRAVES. That happens to me oftentimes, too.

And then, next, just thinking about a lot of confusion with the different agencies being involved and a lot of concern in the marketplace, is it possible that one agency might have some input or send out a letter or request to work within the rulemaking process one way and another agency maybe have different correspondence otherwise?

If I could ask, is it safe for the marketplace to assume—or could you assure the marketplace that if they receive correspondence from any of those five that has a specific request on how to operate within the rulemaking process and such, that it is consistent amongst all of them and they shouldn't expect something different from another agency, as it relates to the Volcker Rule?

Ms. WHITE. I think—and I don't want to overstate the assurance, but let me say two things.

I mean, one, I think that the marketplace should know—I mean, they know who their primary regulator is, and so I think addressing questions to the primary regulator is the best way to go.

I can also say that all of the agencies are very focused on talking about and being as consistent as possible in terms of their, you know, approach on interpretations and other issues. And that is something that, again, I think, just as I think it was critically important to the rulemaking that it be jointly done, it is certainly critically important as we go forward on implementation that that happen.

I don't want to guarantee somebody can't get a letter from someone that, hasn't taken it before the group, but the objective of that group on any issues of significance is to discuss them first. It could be you could have—and this is what everybody is worried about—you could have ultimately a difference in point of view, and then that would create, the inconsistency you are concerned about.

Mr. GRAVES. Right. And I think, really, I am thinking about the reporting requirements, you know, that—

Ms. WHITE. The metrics, yes.

Mr. GRAVES [continuing]. Someone in the marketplace may have oversight with different agencies, and the OCC sends them one reporting requirement for the same rule and potentially the FDIC or another agency sends them another, that as much consistency and continuity is better for the marketplace during this development time and the new rule being implemented. So anything you could do to reassure us as a committee that that is occurring—

Ms. WHITE. Yes.

Mr. GRAVES [continuing]. Because, ultimately, we get the calls that say, hey, what am I doing, which—

Ms. WHITE. Yes.

Mr. GRAVES [continuing]. Letter do I go by?

And then, lastly, I would just like to get your thoughts on the future of the market with the collateralized loan obligations. What do you see the future there? Because there is a lot of concern with the Volcker Rule and the implications on that market.

Ms. WHITE. Yes. And that is an issue, on the CLOs, that really has been, in this interagency working group but has the attention of the principals of the agencies, as well. It is one of those that, as we speak, we are very focused on. So I can't tell you how it comes out, but it is something that we are, very focused on.

Mr. GRAVES. So it is safe to say that the interagency working group is looking at this, that it is—you don't see CLOs being banned in the future at all, in totality?

Ms. WHITE. You know, I think the question is, how do you interpret the provisions with respect to the CLOs. So I don't want to get ahead of the group on this.

Mr. GRAVES. I understand. And I guess you know a lot of industry really relies on that opportunity, so I appreciate how that working group is looking into this and understands that importance.

Thank you.

Mr. CRENSHAW. Thank you.

I don't think there are any more questions. We want to thank you for your testimony today.

I hope you can appreciate, that we are all concerned that we have the right kind of regulation. That is a tough job. And I think there is also a concern that we want to do everything we can to do those jobs efficiently and effectively.

Last year, when we fully funded the Division of Economics and Risk Analysis—I hope that that is helping to do more cost-benefit analysis of the rules that you are putting out. I know that all these Dodd-Frank rules are going to require more people, and then you have to ask yourself, what do you do with all the people after all the rules are written?

And that is where I think the IT that you talk about, upgrading those areas, hopefully can be leveraged into doing a lot—like when we talked initially about how only 9 percent of the investment advisors are being looked at. You would hope that somehow the IT, the money that is being spent there, would help doing that job.

So we recognize you have a tough job, and we appreciate the hard work that you are doing. And we thank you for being here today.

Ms. WHITE. Thank you.

Mr. Chairman, could I just say one—

Mr. CRENSHAW. Sure.

Ms. WHITE. In terms of the Dodd-Frank and the JOBS Act rulemakings, I mean, I think, in terms of resources going forward, that is really a matter of implementing those rules. It is not as if we are going to have lots of people, sort of, freed up from writing the rules. I mean, so that is factored into the request, though.

Mr. CRENSHAW. Gotcha.

Ms. WHITE. Okay.

Mr. CRENSHAW. Well, thank you so much.

Ms. WHITE. Thank you.

Mr. CRENSHAW. The meeting is adjourned.

**Financial Services and General Government Subcommittee**  
**Committee on Appropriations**  
**U.S. House of Representatives**  
**Hearing on the SEC's FY2015 Budget**  
**April 1, 2014**  
**Questions for the Record for Chair Mary Jo White of the Securities**  
**and Exchange Commission**

**Questions for the Record Submitted by Chairman Ander Crenshaw**

*Budget*

Chair White, the SEC is asking for a \$350 million, or 26 percent, increase over fiscal year 2014 funding levels. Last year you had been at the agency less than a month before testifying before this Committee on the Commission's fiscal year 2014 budget request. You were not responsible for proposing the agency's 27 percent requested increase. However, as Chair of the Commission for a little over a year now, you are asking for a 26 percent increase over the fiscal year 2014 funding level.

**Question:** Can you tell this Committee the cost savings you have implemented during your first year, specifically in leveraging technology and data analytical capabilities?

**Response:** The SEC has initiated a multiyear technology transformation plan centered around using a common platform for our IT systems, to ensure our business processes are streamlined, integrated, and use technology to reduce costs and increase efficiencies and effectiveness. Adopting a standard technology platform will eliminate the need to maintain different systems using different technologies. Through consolidation of all systems onto a common Oracle platform, we have been reducing costs, eliminating inefficient administration, and better integrating systems and data. The platform provides a solid infrastructure for all systems by housing core components that are common and reusable across all applications, regardless of the application's specific business purpose. It allows us to build related applications that easily plug into each other for optimal data sharing because they are leveraging the same technology. Under this initiative, the SEC is modernizing its systems, including its centralized system for handling tips, complaints and referrals, and systems for investigations and examinations, risk analysis, and financial management.

In addition, agency-wide technology initiatives – including visual data analysis and an increase in the speed with which the Office of Compliance Inspections and Examinations (OCIE) and the Division of Enforcement are able to analyze data and develop evidence – are advancing the SEC's mission. The SEC also has reformed its infrastructure, generating over \$18 million in cost avoidance in FY 2013 through a more efficient data center structure, renegotiated contracts, server virtualization, and other process

improvements. The SEC's Division of Economic and Risk Analysis (DERA) recently initiated the Quantitative Research and Analytic Data Support (QRADS) program, which should increase the quality and the speed of DERA's economic and risk analysis in support of examinations, enforcement actions, rulemaking, and other agency activities. The program will lay the quantitative foundation needed to support the growing workload of the DERA economists and analytic professionals. By increasing efficiency of analysis, the QRADS program will allow more to be done with our limited resources.

**Since 2001 the SEC's budget has increased by almost 220 percent, so you can see my apprehension with the enormous 26 percent single-year increase that you are asking for.**

**Question: Where, for instance, within the Trading and Markets or Enforcement Divisions could the Commission more efficiently leverage its resources?**

**Response:** The SEC is continuously looking for new and different ways to leverage its resources. Whether it is through the use of technology, more effective coordination and collaboration across the agency, or review processes to increase efficiency, the SEC has made significant progress in this area.

The Division of Trading and Markets has several ongoing projects aimed at more efficiently leveraging its limited resources, including projects that involve streamlining existing processes and automating workflow, tracking, and reporting of a number of routine workstreams by certain offices within the Division. Trading and Markets also has additional projects to expand these efforts to cover other processes across the Division. Together, these projects enhance the Division's ability to utilize resources in the most efficient and effective way possible in support of the agency's mission. As part of this ongoing effort, Trading and Markets also is participating in the agency-wide effort to increase data management and analytical capabilities that support rulemaking, market regulation, and market monitoring efforts. These initiatives include efforts to deliver better services to employees and to the public through modernization of outdated systems and tools.

The Division of Enforcement has already taken significant steps to leverage its resources. For example, Enforcement has restructured the Division (including creating specialized units) to increase our ability to identify misconduct as quickly as possible and has significantly revamped the agency's handling of tips and complaints. Enforcement is also seeking to more efficiently leverage its resources by further developing staff expertise in an array of fields; investing in additional technology – and leveraging technology investments made in other parts of the SEC – to enable staff to work more efficiently and effectively in its policing of the markets; and continuing to seek to streamline its investigations by enhancing its case management system and using tools, techniques and approaches that promote efficiency.

**The Commission has a particularly large amount of carryover funding from previous years. According to your last quarterly report the balance was \$112 million. In addition, the Commission has access to a mandatory reserve fund from which you can spend up to \$100 million per year without Congressional approval.**

**Question: While I have heard the Commission complain on multiple occasions about significant resource constraints, why do you have such a high carryover balance?**

**Response:** The FY 2013 balances were the result of two principal factors: very constrained spending from the beginning of FY 2013 until March 2013, when the SEC's funding level was enacted; and, our continued efforts to de-obligate unused amounts from completed contracts, an important part of strong financial management.

**Question: What are you planning on doing with the remaining carryover balance in fiscal year 2014; do you expect to have a high carryover balance going into fiscal year 2015?**

**Response:** The FY 2013 carryover balance, along with prior year de-obligations, supports year-to-year cost increases and has allowed the agency to lift hiring restrictions that had previously been in effect. We are also diligently working to use these funds to enhance our technology in the areas of data analytics and enforcement and examinations support, among other areas.

Consistent with prudent financial management and contracting, we are working to execute the full amount of the level appropriated by Congress. Whether or not there is a carryover balance for fiscal year 2015 will, however, depend on the timing of the hiring and procurement processes.

**Question: With this in mind, why should the Committee approve a \$350 million increase for FY15?**

**Response:** The markets have been growing rapidly in size and complexity. Over the last decade, both trading volume and the assets managed by investment advisers have more than doubled. The agency regulates more than 25,000 entities, which includes investment advisers, broker-dealers, mutual funds, exchange-traded funds, municipal advisors, credit rating agencies, securities exchanges, and more, and it also reviews the disclosures of an additional 9,000 reporting companies. In addition, the markets and their technology, trading strategies, and even methods of wrongdoing are all becoming much more complex.

Although the agency's budget and staffing levels have grown over the last decade, the rate of growth has not kept up with the growth of the industry and the number of market participants. The following illustration shows this disparity -- about a decade ago, the SEC had 19 examiners for every trillion dollars in investment adviser assets under management. Now, we have about eight examiners per trillion dollars.

This FY 2015 budget request is a key step to provide the funds and examiners necessary to address this disparity. This requested budget level would allow the SEC to accomplish several key priorities, including:

- bolstering examination coverage for investment advisers and other key aspects of the agency's jurisdiction;
- strengthening our enforcement program's ability to detect, investigate, and prosecute wrongdoing;
- continuing the agency's investments in the technologies needed to keep pace with today's high-tech, high-speed markets; and
- hiring additional staff experts to enhance the agency's oversight of the rapidly changing markets and its increased regulatory responsibilities.

#### *Money Market Fund (MMF) Reform*

**Chair White, it is my understanding that the SEC is close to promulgating rules on money market funds. I am very concerned that restricting the use of money market funds will significantly decrease liquidity, resulting in longer-term debt and increased costs, all while suppressing job and economic growth. I am interested to hear from you your thoughts on what reform for this financial product may look like.**

**In the 2014 Omnibus, the Committee directed the Commission to provide rigorous economic analysis, and to fully consider how any proposed changes would affect investor returns and the borrowing costs for businesses and governments that access money markets.**

**Question: Is the Commission working to incorporate the guidance given by Congress, to include a rigorous economic analysis, as part of your final rulemaking?**

**Response:** Yes. Any adopting release for a final rule, like the proposing release, will include rigorous economic analysis.

**Question: When can we expect to see this rule from the SEC?**

**Response:** I anticipate the Commission will be considering a final rule in the near term.

**In FY14 Omnibus, Congress included report language on Money Market Funds stating a concern that “impairing or restricting the use of money market funds could potentially result in a decrease in the ability of these products to provide liquidity, potentially resulting in hundreds of market participants issuing longer-term debt, significantly increasing their funding costs, slowing expansion rates, and depressing job and economic growth.”**

**In this same report language, Congress directed the SEC to provide rigorous economic analysis and that the Commission should fully consider how any proposed changes would affect: (1) investor returns and cash management efficiencies; (2) the borrowing costs for businesses and governments that access money markets for financing among other things.**

**Question: How has the Commission worked to incorporate the guidance given to the SEC in the report language will be made part of the process for developing its final rulemaking?**

**Response:** As discussed above, the process of developing a recommendation for the Commission on a final rule and in drafting an adopting rule release includes the preparation and consideration of a detailed and rigorous economic analysis addressing, among other things, the items set forth in the referenced report.

**The Commission has asked for feedback about implementing money market fund reforms. Commissioner Piwowar has offered what appears to be very constructive and responsible proposal by allowing investors to choose whether to invest in funds that float in value or those with stable share prices that can restrict redemptions during periods of market tumult.**

**Questions: Do you believe this “investor choice model” to be a reasonable way to solve the issue? If so, can you tell me why?**

**Response:** The proposal requested comment on the investor choice model, which would allow funds to choose which alternative to adopt, and we received comment on that model. The Commission is currently evaluating a number of reform options, including the investor choice model, and the final reform rule will take into account commenters’ thoughts on the approach, as well as the views of all of the Commissioners.

**I have heard that the Financial Stability Oversight Council is looking into rules on Money Market Funds. This seems to me like inappropriate jurisdiction creep. While FSOC has broad jurisdiction, the SEC is the U.S. securities regulator and it seems to me that FSOC should defer to the Commission as the appropriate regulator for these financial instruments.**

**Questions: Once the SEC promulgates these rules, do you believe the FSOC will stop looking into this issue? If so, how can you be sure?**

**Response:** While I cannot speak to the FSOC’s future actions, I would note that, like the FSOC’s proposed recommendations, the Commission’s proposal (and any final rule) is designed to address money market funds’ susceptibility to heavy redemptions. As the FSOC stated in its November 2012 proposed recommendations, and as reiterated recently in the FSOC’s 2014 Annual Report, the SEC, by virtue of its institutional expertise and statutory authority, is best positioned to implement reforms to address the risks of money market funds.

*Financial Stability Oversight Council (FSOC)*

**Chair White:** you are one of the ten voting members of the Financial Stability Oversight Council. To me, the other members of FSOC do not seem to have the kind of expertise in securities-related issues as the SEC does, and yet the FSOC is often looking at promulgating rules or producing staff guidance on securities-related matters.

**Question:** Do you believe the FSOC is overstepping its jurisdiction in looking at issues—such as money market fund reforms—that should be the sole purview of the SEC?

**Response:** As the principal regulator for the nation’s securities markets, the SEC has oversight of and regulatory responsibility for money market fund regulation and critical market participants, including broker-dealers, investment advisers, investment companies, securities exchanges, transfer agents, certain clearing agents, as well as certain participants in the derivatives market, private fund advisers, and municipal advisors. As it exercises its regulatory responsibilities, the SEC regularly coordinates with its federal and state regulatory partners and welcomes their expertise and perspective.

**Question:** How does the SEC coordinate rulemakings with FSOC, if at all?

**Response:** Under Section 805(a)(2)(A) of the Dodd-Frank Act, the SEC is required to consult with both the Board of Governors of the Federal Reserve (“Board”) and the FSOC on certain rulemaking activities related to risk management standards of financial market utilities designated systemically important by FSOC and prudential requirements for financial institutions engaged in activities designated to be systemically important and for which the SEC is the primary financial regulator. In accordance with that mandate, the SEC consulted with FSOC on the rules it proposed on March 12, 2014 to enhance the oversight of systemically important clearing agencies.

In other contexts, the SEC coordinates with individual FSOC members where required by statute. For example, the SEC coordinated with the Board, the OCC, the FDIC, and the CFTC in implementing the “Volcker” rule, which was jointly adopted on December 10, 2013, and with the Board, the OCC, the FDIC, FHFA, and HUD in the credit risk retention rule, which was jointly proposed on August 28, 2013.

**Question:** If the SEC promulgates a rule, does that preclude FSOC from also taking up a rulemaking on the same topic or the Office of Financial Research from producing “staff guidance” or a “study” on the issue?

**Response:** The SEC is the primary federal regulator of the securities industry and markets. As an independent agency, it promulgates rules under the statutory mandates and authority granted by Congress. FSOC and the Office of Financial Research (OFR) operate under different, more limited, mandates, and they may undertake rules, actions,

and studies appropriate to fulfill those mandates. While SEC action in an area does not necessarily preclude FSOC or OFR from studying the issue, as a matter of regulatory comity, I would not expect that FSOC and OFR would promulgate rules in areas where the SEC has acted directly.

**Question:** Do you believe the FSOC should be subject to the “Sunshine Act” which would require the FSOC to comply with public notice provisions?

**Response:** The SEC is committed to operating transparently, wherever feasible, for the public to see and understand its work. The FSOC has expressed a similar commitment in the transparency policy it adopted in 2010. In addition, the FSOC updated its transparency policy in May 2014 to, among other things, commit to providing public notice, at least seven days before all regularly scheduled meetings.

#### *Municipal Advisor Rule*

**In December I sent you a letter regarding the Commission’s Municipal Advisor rulemaking. My concern, as I said in my letter, is that the rule limits the ability of dealers to provide tailored ideas and analysis to state and local officials before they are formally engaged as underwriters.**

**I understand that in January the Commission released interpretive guidance on this rule. I am interested in hearing what the Commission has done to clarify this rule as I am still hearing from market participants that the definition is too broad. My concern is if you limit the ability for underwriters to communicate with issuers, this produces less competition in this area, and it looks to me a lot like overregulation.**

**Question:** Can you tell me if a dealer who declares their role as a bond underwriter when initiating communication with an issuer is prohibited from underwriting the offering if they give specific recommendations to the issuer?

**Response:** On January 10, 2014, the staff provided interpretive guidance, in the form of frequently asked questions (FAQs), to address certain interpretive questions that arose from market participants regarding the final municipal advisor rules, including engagement to serve as underwriter on a particular issuance of municipal securities. In the FAQs, the staff outlined a flexible process that could provide for issuers to “engage” a broker-dealer to serve as an underwriter for a particular transaction, including where that engagement occurs at an early stage of the transaction and on a preliminary basis (e.g., through a preliminary letter of intent), so that the broker-dealer would meet the underwriter exemption (and thereby provide unrestricted advice). In the FAQs, the staff further expressed its view that, to qualify for the underwriter exclusion, a municipal entity or obligated person needs to make an affirmative selection of a broker-dealer to serve in the underwriting role on a particular issuance of municipal securities and that a

broker-dealer's unilateral action to identify itself as an underwriter is insufficient for that purpose.

**Question:** What, do you believe, is the fiduciary duty of municipal board members who approve deals on behalf of cities?

**Response:** The municipal advisor registration provision of Exchange Act Section 15B, added by Section 975 of the Dodd-Frank Act, imposes a fiduciary duty on "municipal advisors" who provide advice to municipal entities regarding the issuance of municipal securities or municipal financial products. The SEC's final municipal advisor rules provide a broad exemption from the municipal advisor definition, including the fiduciary duty imposed by the municipal advisor registration provisions of Section 15B, for public officials and employees of municipal entities and obligated persons, including, among others, persons who are elected or appointed board members of municipal entities and obligated persons that act within the scope of their official capacity or employment. See Exchange Act Rule 15Ba1-1(d)(3)(ii).

#### *Reserve Fund / Information Technology Spending*

Since 2012, and the establishment of the SEC Reserve Fund under the Dodd-Frank Act, the Commission's spending on information technology has increased dramatically. Certainly some of the IT spending the Commission has embarked on is justifiable. More importantly, the funding supposedly has been used to fix the SEC's internal computer systems which were "siloed" from one another—part of the reason the Commission has given for missing the Madoff Ponzi scheme.

I am interested in how the Commission is leveraging its technology investments to cut costs across the agency.

**Question:** With the huge amount of money the agency has spent on IT, can you tell the Committee if the "siloed" systems are now "talking" to one another?

**Response:** Over the last three years, we have consolidated various systems (including our tips, complaints and referral system, the Enforcement Division's HUB case management system, OCIE's electronic platform for managing examination processes, and SEC.gov) onto a common Oracle platform. By using a common platform, we are able to reduce costs, eliminate inefficient administration, and better integrate systems and data. The platform provides a solid infrastructure for all systems by housing core components that are common and reusable across all applications, regardless of the application's specific business purpose. It allows us to build related applications that easily plug into each other for optimal data sharing because they are leveraging the same technology.

Despite this progress, there is still more to be done. It is vital that we have the resources necessary to continue to improve and automate our business processes. We plan to deploy the modernized EDGAR system, electronic filing of administrative proceedings, and improved financial and human capital management applications on the common Oracle platform.

**Question: Would you say that the average SEC employee – perhaps someone in Enforcement or the Office of Compliance, Inspections, and Examinations – has an easier time doing their job due to IT upgrades?**

**Response:** While I would not use the word “easier,” I certainly can say that we are developing the tools and the processes, leveraging technology, and streamlining operations to increase the efficiency and effectiveness of our staff and our programs. These IT enhancements and upgrades have provided quicker, more complete access to information across the agency. In addition, new technologies have enabled our staff to review and analyze information (such as phone, trading, and bank records) more quickly, and to more easily identify potentially suspicious activity. While the SEC has made significant progress over the past few years in modernizing its technological systems, it must continue to make additional investments in order to keep pace with the complex and rapidly changing markets it regulates.

**Questions: How is the Commission’s spending on IT leading to overall efficiencies within the agency? Do you have specific examples?**

**Response:** The SEC initiated a multiyear technology transformation plan centered on using a common platform for our IT systems to ensure our business processes are streamlined, integrated, and use technology to reduce costs and increase efficiencies and effectiveness. Under this initiative, the SEC is modernizing its systems, including its centralized system for handling tips, complaints and referrals, as well as systems for investigations and examinations, risk analysis, and financial management.

To be successful, these initiatives need a strong technology platform. Adopting a standard technology platform also eliminates the need to maintain different systems using different technologies. By consolidating all systems onto a common platform, we have been working to reduce costs, eliminate inefficient administration, and integrate systems and data. The platform provides a solid infrastructure for all systems by housing core components that are common and reusable across all applications, regardless of the application’s specific business purpose. It also allows us to build related applications that easily plug into each other for optimal data sharing because they are leveraging the same technology.

In addition, the SEC also has reformed its infrastructure, generating over \$18 million in cost avoidance in FY 2013 through a more efficient data center structure, renegotiated contracts, server virtualization, and other process improvements.

For triaging tips, complaints and referrals involving allegations of manipulative trading or quoting or Regulation NMS violations, the Market Information Data Analytics System (MIDAS) has enabled SEC staff to answer preliminary questions, narrow searches, and streamline its analyses. For example, by using MIDAS, staff was able to determine within a few hours of a recent market event that an exchange likely did not violate the SEC's "trade-through" rule, a determination that conserved many SEC work hours and allowed us to focus our staff resources elsewhere.

Cloud computing also will reduce costs and operational overhead, as well as provide greater flexibility through an on-demand, scalable model that fits the SEC's needs. For example, when the filing of a high profile initial public offering registration statement caused a 100% spike in the SEC's web utilization, our staff was able to quickly offload SEC website traffic to a cloud provider to avoid SEC.gov performance issues.

**Question: Are you looking for technological efficiencies so that your overall FTE numbers stay level over the long term?**

**Response:** Our overall budget request reflects the technological efficiencies we expect to gain from the technology development and modernization projects currently underway or planned through the budget year. Without these efficiencies, our FTE request would be significantly greater, but I believe the SEC is currently understaffed, particularly in the area of examination staff, and technology alone will not close that gap. We believe that the synergy generated by our technology investments will assist in the objective of bolstering examination coverage, strengthen enforcement, and continue to effectively adapt to the rapidly changing markets.

For example, technology will provide the SEC with additional capabilities to analyze and understand the huge volumes of market data in order to identify areas for potential follow-up. The staffing component will provide the additional examiners, attorneys, analysts, and critical support positions needed to allow us to discern potential patterns, conduct follow-up examinations, and pursue decisive enforcement actions as appropriate.

**Chair White: you have told me that one of your priorities is increasing the frequency of investment advisor examinations. I understand that the SEC is currently only examining 9 percent of these advisors annually.**

**Question: Can the SEC leverage some of its technology investments to help accelerate this process?**

**Response:** The National Exam Analytics Tool, which was launched earlier this year, is one example of the improvements in technology that will allow our examination staff to more swiftly and systematically analyze data provided by firms, thereby improving the breadth and quality of SEC examinations. The National Exam Analytics Tool is a trade blotter analytics tool that empowers SEC examiners to access and systematically analyze

years' worth of trading data in a fraction of the time it previously took staff to analyze a month's worth of data.

And while OCIE staff has improved the scope, quality, and speed of its examinations by leveraging new data and technology, this does not necessarily translate into an increased ability to conduct materially more investment adviser examinations. This is because, while we are moving faster and smarter, we also are collecting and analyzing much more data, which, in turn, means we are identifying more areas for additional inquiry and finding deficiencies that were previously not detected because of our smaller sample sizes and limited analytical capabilities.

As outlined in the agency's FY 2015 budget request, in my view the best way to increase investment adviser examination coverage would be to add additional examination staff. These new examiners would be able to leverage existing and new technologies, such as text analytics, visualization, search and predictive analytics. While new and existing technologies will continue to improve our ability to systematically review data, I do not believe that new technologies alone will allow in the near term for increased coverage absent a significant increase in the number of investment adviser examiners.

#### *Economists / Cost-Benefit Analysis*

**The House bill, and the fiscal year 2014 omnibus, included carve-out language to fully fund the Division of Economics and Risk Analysis. This Committee believes the Commission needs to do better in this important area.**

**Question: Is the Economics Division now hiring at a higher rate than before?**

**Response:** The Division of Economic and Risk Analysis (formerly the Division of Risk, Strategy and Financial Innovation) is the SEC's fastest growing division, and has experienced significant growth since its creation in 2009, growing more than 50% since that time. We expect an even higher rate of growth in FY 2014 than in previous years. The majority of the planned FY 2014 hiring actions correspond to the 45 new staff the Division was allotted in the most recent appropriations, while the balance will be from regular hiring due to attrition. This is a significant increase over past years - the Division in FY 2011, FY 2012, and FY 2013 made 10, 31, and 16 new hires, respectively.

The SEC's FY 2015 budget request seeks an additional 14 positions for DERA to bring the Division to a total of 163 permanent positions by the end of FY 2015. This represents an 83 percent increase from the number of staff on board as of the end of FY 2013, and slightly more than 9 percent increase from the expected level for FY 2014.

**Question: Does the SEC do a thorough cost-benefit analysis before promulgating rules?**

**Response:** Yes, as part of this ongoing commitment to robust and transparent economic analyses, in March 2012, the Division of Economic and Risk Analysis and the Office of the General Counsel circulated to the rulemaking divisions and offices a memorandum entitled *Current Guidance on Economic Analysis in SEC Rulemaking*, outlining best practices in analyzing rules' economic effects. I believe that the economic analyses contained in the SEC's proposed and final rules not only assist the Commission in considering the appropriate regulatory approach, but also ensure that the public is informed of the potential economic impacts of those approaches.

**Question:** Is the economics division used to the fullest extent possible? Is there a metric for the Commission to measure this?

**Response:** The Division of Economic and Risk Analysis has grown significantly since its establishment in 2009, and expects to grow considerably again this year. Since the Division contributes to a very broad range of Commission activities, working with nearly every division and office across the SEC, there is no one metric that can capture the breadth of the Division's contributions to the SEC's mission. For example, the Division directly participates in rulemaking and policy development; assists the Division of Enforcement and OCIE with enforcement and monitoring activities by developing risk metrics and models; and supports sophisticated data analytic programs that provide data across the Commission. As the Division grows, this already significant involvement will continue to expand.

#### *Outdated Regulations*

In 2011, the President issued Executive Order 13579 requiring independent agencies, such as the SEC, to comply with Executive Order 13563. Executive Order 13563 states that regulatory agencies should promote economic growth, innovation, competitiveness, job creation, and predictability, while reducing uncertainty; identify and use the least burdensome tools for achieving regulatory ends; and take into account benefits and costs, both quantitative and qualitative. It also mentions the importance of retrospective analysis of rules which may be outdated, ineffective, or excessively burdensome.

I see that the Commission put out a request for comment in 2011 soliciting advice on how the Commission should develop a plan to do this kind of a review.

**Questions:** How is the SEC currently complying with this order? Is the agency currently doing retrospective analysis of past rulemakings? If not, why has this not happened? Would you commit to including a comprehensive list of the Commission's progress on this Executive Order in the fiscal year 2016 budget justification or on the Commission's public website?

**Response:** The Commission and its staff currently have formal and informal processes for identifying existing rules for review and for conducting those reviews to assess the

rules' continued utility and effectiveness in light of the continuing evolution of the securities markets and changes in the securities laws and regulatory priorities. These include ten-year retrospective rule reviews under the Regulatory Flexibility Act and processes for responding to industry and public feedback on rules. For example, the Commission and staff frequently receive and consider suggestions to review existing rules through various types of communications, ranging from formal petitions for rulemaking to informal correspondence from investors, investor and industry groups, Congress, fellow regulators, the bar and the public. Likewise, the Commission and staff frequently discuss the need to revisit existing rules through formal and informal public engagement, including advisory committees, roundtables, town hall meetings, speeches, conferences and other meetings. In addition, a significant portion of the Commission's rulemaking activity involves the consideration of changes to existing rules. Commission staff, in preparing rulemaking proposals, routinely consider related existing rules and assess whether to recommend changes to, or the elimination of, those existing rules. I think it is important that we have these processes, so that our rules keep pace with developments in the securities industry.

I am not convinced, however, that a mandated review of every one of our rules on a set timetable would be a productive exercise or an effective use of our limited resources. The need to update any particular rule does not follow a set timetable, but can result from changes in our dynamic markets, changes in the securities laws, and changes in our regulatory priorities. In this regard, I do note that a 2007 GAO report identified statutorily mandated rule reviews as potentially duplicative and less productive than those prompted by industry and public feedback.

#### *Dodd-Frank Rulemakings*

**The Dodd-Frank Act requires the SEC to promulgate a large number of rulemakings. This is often cited by the Commission as justification for asking for funding for large staffing increases.**

**Questions: What does the Commission plan to do with these staff when the Dodd-Frank rulemakings are complete? When will that be?**

**Response:** The SEC's staffing needs related to the passage of the Dodd-Frank Act are related to implementing the rules we are putting in place, either through ongoing regulatory oversight, examinations, or enforcement. As a result, these needs will be ongoing, and will not end when the Dodd-Frank Act-related rulemaking is completed.

As I have stated, completing the rulemaking required by the Dodd-Frank Act as responsibly and quickly as practicable remains among my top priorities. It is important to note that between the Dodd-Frank and the JOBS Acts, the SEC was given nearly 100 new rulemaking responsibilities.

*Compliance Costs for Crowdfunding*

**As you know, the JOBS Act created a way for small entrepreneurs to raise capital through “crowdfunding”, instead of a traditional IPO. To me, this is an example of government getting out of the way of small businesses, which are the backbone of the U.S. economy.**

**I have heard concerns that the SEC’s proposed rules related to crowdfunding may impose prohibitive costs on either the issuer, or the funding portal. This is the exact problem that this JOBS Act provision was trying to address. Even the Small Business Association’s Office of Advocacy has expressed concerns about the SEC’s proposal.**

**Question: What is the SEC doing to make sure small businesses are not unfairly burdened by regulatory costs in raising capital through crowdfunding?**

**Response:** In proposing rules to implement the crowdfunding provisions of the JOBS Act, the Commission was mindful of both the potential costs that would be imposed on businesses, including small businesses, seeking to raise capital and the need for appropriate investor protections. The JOBS Act itself contained a number of mandatory requirements, including those aimed at investor protection, and many elements of the proposed rules are designed to implement those statutory requirements.

The Commission has received over 280 unique comment letters and 30 form letters on the proposed rules. A number of commenters expressed concerns about potential costs associated with the requirements in the proposed rules, some of which related to provisions mandated by the JOBS Act. I recognize the importance of implementing the crowdfunding provisions in a way that promotes capital formation and that provides for essential investor protections. The Commission will consider these goals and the comments it received in developing final rules that are consistent with the statutory mandate.

**Question: Is the SEC seriously taking into account the costs which may be incurred by small businesses?**

**Response:** In proposing rules to implement the crowdfunding provisions of the JOBS Act, the Commission considered the costs that may be incurred by companies, including small businesses, seeking to raise capital through crowdfunding, as well as the costs that could be incurred by broker-dealers and funding portals.

The proposed rules reflect input the Commission received prior to the proposal from the public, including the anticipated costs of the various requirements, and the Commission requested comment on these costs. Commission staff has been reviewing the comments received as they develop recommendations for the Commission for final rules. In addition, DERA staff has been reviewing and assessing economic studies of the costs associated with securities-based crowdfunding in countries where these transactions are occurring. The staff also continues to meet with interested parties and potential industry

participants to inform our rulemaking. The Commission will seek to adopt final rules, consistent with the statutory mandate, that promote capital formation while providing for necessary investor protections.

**Question:** Can you tell us if it is the Commission's priority to keep costs for small businesses down when promulgating these rules?

**Response:** As it does with all rulemakings, in proposing rules to implement the crowdfunding provisions of the JOBS Act, the Commission was mindful of the potential costs that could be imposed on parties seeking to engage in crowdfunding transactions. At the same time, the Commission recognized the importance of providing for investor protections in this new market. The Commission received many comments, including comments about costs, on the proposal, and the Commission and staff will consider them carefully in developing final rules.

#### Corporate Disclosures

**Chair White:** you mentioned to me your interest in reviewing corporate disclosure requirements for public companies. I agree with you that voluminous disclosure does not necessarily mean better or more meaningful disclosure.

**Question:** What are some of the options the SEC is looking at to reduce the amount of paperwork involved in these disclosures?

**Response:** I have directed SEC staff to develop specific recommendations for updating the rules that specify what a company must disclose in its filings, and this process is underway. The staff is reviewing specific sections of Regulations S-K and S-X, as well as the Industry Guides, to determine how the requirements can be updated and modernized to provide investors with the information they need to make informed investment and voting decisions while not imposing unnecessary costs on companies. We refer to this initiative as the "Disclosure Effectiveness Review." As part of its review, the staff will consider ways to eliminate duplicative or unnecessary disclosures. Initially, the staff will focus on the business and financial disclosures required by periodic and current reports, including Forms 10-K, 10-Q, and 8-K. The staff also will consider whether disclosure requirements should be scaled for certain categories of issuers, such as smaller reporting companies or emerging growth companies. Additionally, staff in the Commission's Office of the Chief Accountant and Division of Corporation Finance have begun coordinating with the Financial Accounting Standards Board to identify ways to improve the effectiveness of disclosures in corporate financial statements and to minimize duplication with other existing disclosure requirements. Finally, the staff will begin outreach to companies, investors and other parties to solicit input on this project and feedback on how companies can make disclosures more effective.

**Question:** How do you propose the SEC decrease the amount, but increase the substance of disclosures?

**Response:** In developing recommendations for updating the disclosure requirements, the staff will consider whether investors are receiving the information they need to make informed investment and voting decisions. This will include considering whether investors may be receiving unnecessary or duplicative information and whether there is information they are not receiving that they should be. One of the goals of the review is to identify whether there are potential gaps in disclosure or opportunities to increase the transparency provided to investors with respect to material information, so the staff may recommend that the Commission adopt new or different disclosure requirements.

In addition, the Division of Corporation Finance staff selectively reviews filings of new issuers and public companies reporting under the Securities Exchange Act of 1934 to both monitor and enhance compliance with disclosure and accounting requirements. The staff seeks to assure that investors receive full, fair and timely disclosure that enables them to make informed voting and investment decisions. As a general rule, when the staff is reviewing a filing, it issues comments to elicit better compliance with applicable disclosure requirements and when it believes information may not be included that would be material to an investor's investment or voting decisions. In response to those comments, a company may need to revise its financial statements or amend its disclosure to provide additional or enhanced information, or may undertake to revise its financial statements or other disclosures in future filings. As part of the disclosure review, the Division staff is also evaluating whether the comment process may unintentionally contribute to immaterial or repetitive disclosures.

**Question:** Will this review process look into how to keep the number of disclosures in check after the Commission's potential action on this issue?

**Response:** When considering whether to adopt new disclosure requirements or modify existing requirements, the staff and the Commission consider the existing requirements and thoroughly evaluate the potential effects of the new or modified requirements. Further, once the Effective Disclosure Review is complete, the staff in the Division of Corporation Finance, through the selective review process of company filings, will continue to focus on seeking to elicit better compliance with disclosure requirements.

#### *Funding for International Financial Reporting Standards*

**I have recently read in the press that FAF, the parent of FASB, has donated \$3 million to the International Accounting Standards Board (IASB). I understand that there is some concern about the lack of transparency at the IASB and questions about whether the donation was an appropriate use of accounting support fees paid by U.S. listed companies.**

**Questions: What is the SEC's view on the propriety of this contribution? Do you anticipate any future contributions? Do you plan to solicit public comment or hold any roundtables on this issue?**

**Response:** As I stated at the time of FAF's announcement, I am gratified that the FAF will provide a substantial contribution to the IFRS Foundation. The contribution is intended to support the IASB during the period that it is completing work on four joint accounting standards projects underway with the FASB. The joint projects involve accounting for revenue recognition, leasing, financial instruments, and insurance. Completing these joint projects should benefit those who invest in the U.S. capital markets. The decision as to whether the FAF would deem it appropriate to make any future contributions rests with the FAF.

**I also have read that that the IASB is pressing for adoption of International Financial Reporting Standards (IFRS) in the United States, or short of that, adoption of an IFRS option for U.S. public companies program.**

**Question: What are your views on using IFRS in the United States?**

**Response:** The FASB and IASB have been working together to more closely converge U.S. GAAP and IFRS since 2002. The FASB's ongoing work with the IASB on convergence projects demonstrates promotion of a single set of high-quality international accounting standards. The result of the projects has been the elimination of many significant differences between U.S. GAAP and IFRS. The SEC continues to monitor the progress of the remaining convergence projects.

As you may know, under the Commission's rules, foreign private issuers are permitted to file financial statements in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP. Today, over 500 companies, representing trillions of dollars of market capitalization, submit reports with us as foreign private issuers using IFRS, availing themselves of this method of reporting. Therefore, high-quality IFRS standards are critically important to the U.S. markets.

The Commission has not yet made any determinations as to whether there would be any further incorporation of IFRS into the U.S. financial reporting system. I believe it is important for the Commission to continue to consider the potential benefits and challenges of further incorporating IFRS into the U.S. financial reporting system.

**Question: Would this lead to harmful consequences for U.S. investors and capital markets, including confusion resulting from a "two-GAAP environment"?**

**Response:** As noted above, 500 foreign private issuers representing trillions dollars of market capitalization currently file with the Commission financial statements prepared in accordance with IFRS as issued by the IASB. Through its 2010 "Work Plan for the

Consideration of Incorporating IFRS into the Financial Reporting System for U.S. Issuers,” which is available at <http://www.sec.gov/spotlight/globalaccountingstandards/globalaccountingstandards.pdf>, the staff received feedback on an option to use IFRS for domestic issuers, including feedback on investor readiness. The feedback is summarized in the 2012 Final Staff Report on the Work Plan, which is available at <http://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-final-report.pdf>. In making a determination on whether there should be any further incorporation of IFRS into the U.S. financial reporting system, the Commission would need to consider investor readiness, among other things.

**Question:** Would adoption of IFRS in the U.S. result in accounting arbitrage that may ultimately weaken GAAP standards, as we saw in Europe during the financial crisis?

**Response:** In connection with the “Work Plan for the Consideration of Incorporating IFRS into the Financial Reporting System for U.S. Issuers,” which is available at <http://www.sec.gov/spotlight/globalaccountingstandards/globalaccountingstandards.pdf>, the staff received feedback on the potential impact of further incorporation of IFRS, and, among other things, analyzed the differences between IFRS and U.S. GAAP, the IASB’s standard-setting process, and the use of IFRS in practice. That information is summarized in the 2012 Final Staff Report on the Work Plan, which is available at <http://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-final-report.pdf>. In making a determination on whether there should be any further incorporation of IFRS into the U.S. financial reporting system, the Commission would need to consider this issue, among other things. It is critically important, in my view, that accounting standards be robust and serve the interests of investors by contributing to accurate and transparent financial reporting.

#### *Cross-Border Derivatives Coordination*

In the fiscal year 2014 Omnibus, Congress included report language providing direction that rules regarding cross border derivatives should be promulgated jointly by the SEC and CFTC.

**Question:** What steps have the SEC taken during the past year to ensure consistent application of Dodd-Frank’s rules to transnational swaps and security-based swaps?

**Response:** The SEC has been consulting with the CFTC on approaches to the application of Title VII in the cross-border context. We have discussed and compared our agencies’ respective approaches to the registration and regulation of foreign entities engaged in cross-border swap and security-based swap transactions involving U.S. persons to determine where those approaches converge and diverge, and we will continue to do so as we move toward adoption of final rules for cross-border activities.

I recognize the importance of consistency to the markets and market participants. I also recognize, however, that the Dodd-Frank Act gave the CFTC and the SEC different statutory authority for addressing activity that occurs outside the United States. In particular, Dodd-Frank included in the Commodity Exchange Act a focus on activities that “have a direct and significant connection with activities in, or effect on, commerce of the United States.” The Dodd-Frank Act did not include a similar focus in the Securities Exchange Act.

In addition, the SEC has taken a different approach from a procedural perspective than the CFTC – by proposing rules instead of interpretive guidance to address cross-border issues.

Notwithstanding these differences, the SEC is working toward consistency, where possible and appropriate, and where not possible or appropriate, toward a cross-border framework that is compatible with the CFTC’s framework and, importantly, that is workable for market participants.

In addition to consulting with the CFTC, the SEC continues to coordinate extensively with foreign regulatory counterparts on cross-border implementation of requirements across jurisdictions. We have done this through our participation in multiple international working groups focused on OTC derivatives reforms.

**Question: What differences, if any, still exist between the SEC’s proposed cross border regime and the one that has been implemented by the CFTC?**

**Response:** The principal differences between the SEC’s proposed cross-border approach and the CFTC’s final cross-border guidance are the U.S. person definition, the treatment of guaranteed affiliates, and the approach to substituted compliance for “true” cross-border transactions. In addition, among other areas, the approaches differ regarding the application of margin requirements and the application of the Dodd-Frank Act to conduct in the United States by counterparties booking transactions outside the United States.

We have been following closely subsequent actions taken by the CFTC and will continue to consult and coordinate with them as we move toward adoption of our cross-border rules. We have also carefully studied views of all commenters, including on the issue of consistency with the CFTC guidance, and will be taking their views into account as we proceed to the adoption of final rules.

**In the SEC’s 2012 guidance memorandum outlining a new approach to cost-benefit analysis, the SEC affirmed that “high-quality economic analysis is an essential part of SEC rulemaking” and that the SEC “has long recognized that a rule’s potential benefits and costs should be considered.” The fiscal year 2014 Omnibus included funding to expand the**

**SEC's Division of Economic and Risk Analysis and prioritize nonpartisan economic analysis as a fundamental part of the SEC's rulemaking process.**

**Question: How has the SEC applied the cost-benefit analysis to the SEC's proposal of rules governing cross-border security-based swap activities?**

**Response:** The SEC's cross-border proposal included an economic analysis of the proposed rules that is consistent with the framework outlined in the "*Current Guidance on Economic Analysis in SEC Rulemaking*" referenced in your question. The analysis contains a thorough qualitative and quantitative assessment of the potential economic impacts, including the costs and benefits, of applying the proposed rules on security-based swaps in the cross-border context. The analysis includes consideration of the rules' effects on competition, efficiency, and capital formation.

In connection with the SEC's cross-border proposal, we performed a qualitative analysis of the relationship between the scope of our proposed rules and the statutory goals of Title VII to confirm that the Title VII framework would encompass transactions or market participants that raise, within the United States, the types of concerns that Title VII was intended to address and would avoid applying the framework to transactions and market participants that do not raise such concerns. The SEC also conducted an analysis of the potential effects of its proposed rules on efficiency, competition, and capital formation, consistent with our statutory obligations under Section 3(f) of the Exchange Act. As part of this analysis, the SEC considered the effect of differences in scope and timing of OTC derivative regulation across jurisdictions, including the implications for competition between security-based swap dealers and other market participants, the potential for market fragmentation across jurisdictional lines, and the incentives for market participants to restructure their operations in order to operate outside the scope of Title VII. This analysis also included a discussion of the effect of pre- and post-trade transparency on competition between dealers and end-users, price efficiency, capital allocation, and real investment.

Importantly, the cross-border proposal also contains novel quantitative information on the current state of the security-based swaps market, particularly regarding cross-border activity. That analysis relies extensively on data regarding single-name credit default swaps on North American reference entities that are available to us from the DTCC Trade Information Warehouse. Based on these data, the SEC estimated the number of firms that would be required to register with the SEC as security-based swap dealers and major security-based swap participants, and used these estimates as a basis for quantifying assessment costs associated with determining dealer and major participant status under the proposed rules.

**These rules, in their proposed form, would apply to security-based swap activities transacted between two non-U.S. entities if such activities are conducted within the United States.**

**Question:** What are the benefits of applying the SEC's security-based swap regulatory regime in this context?

**Response:** The SEC proposed to apply certain Title VII requirements to transactions between two non-U.S. persons that involve conduct within the United States by one or both counterparties to the transaction to address particular regulatory concerns. For example, consistent with the statutory obligations to consider the effects of our rules on competition, efficiency, and capital formation, the SEC considered the potential impact of disparate regulatory treatment of dealing activity with non-U.S. person counterparties carried out through a dealer's operations in the United States depending on the U.S.-person status of the dealer. This disparity could result in fragmented markets by potentially making it more difficult for U.S. firms to access liquidity from non-U.S. counterparties. Moreover, this approach helps ensure that market participants engaging in security-based swap activity through operations in the United States are complying with relevant regulatory requirements under Title VII and otherwise. For example, the SEC's experience with the pre-Dodd-Frank antifraud and anti-manipulation authority under the Commodity Futures Modernization Act underscores the importance to an effective antifraud and anti-manipulation program of, among other things, having access to books and records maintained in accordance with regulatory requirements. The proposed conduct approach would assure that access in the new Dodd-Frank regulatory environment, thereby facilitating the SEC's ability to police U.S. markets for fraudulent and manipulative behavior.

We are actively considering the comments we received on this aspect of our proposal, and are considering possible alternatives that may allow us to achieve regulatory objectives in a more focused manner.

**Question:** Has the Commission considered the possibility that one potential outcome is that non-U.S. institutions would move high-paying US jobs abroad to stay outside of the SEC's conduct based security-based swap rules?

**Response:** In the cross-border proposal and in subsequent evaluation of comments and interactions with market participants, the SEC carefully considered the potential impact of the proposed regime, including the possibility that certain market participants may restructure their business operations, including by moving some or all of their operations (or agents that transact on their behalf) outside the United States, in response to the requirements of the Dodd-Frank Act and the rules and regulations thereunder. The SEC sought comment on a wide range of issues related specifically to the proposed conduct-based application of Title VII.

We are carefully considering the potential impact of our proposed approach on market participants, the expected benefits of that approach, and regulatory developments both within the United States and abroad. As noted above, we are considering possible alternatives that may allow us to achieve regulatory objectives in a more focused manner.

**Questions for the Record Submitted by Congresswoman Jaime Herrera Beutler**

*Commission Priorities*

**Chair White, recently you've given several speeches outlining your agenda for 2014 as it relates to implementing outstanding Dodd-Frank provisions.**

**Question: As we are here to examine the SEC's needs for FY15, I hope you could share your top four or five priorities for follow on in terms of specific items you see the Commission working on in 2015?**

**Response:** My priorities for fiscal year 2015 include continuing to:

- enhance the agency's oversight of and response to our rapidly changing markets, including enhancing our efforts to address market structure and technology developments;
- increase our capacity to examine and oversee the entities under the SEC's jurisdiction, in particular increasing our examination coverage of registered investment advisers, so as to better protect investors and our markets;
- further bolster our enforcement efforts to hold accountable those that harm investors through securities law violations;
- complete the Dodd-Frank and JOBS Act rulemakings and enhance the agency's ability to carry out its increased regulatory responsibilities; and
- augment our technology to enable us to meet our mission more efficiently and effectively and to keep pace with our complex and constantly changing markets.

*Title IV of the JOBS Act*

**I have a 14 page letter from Washington Securities Commissioner Bill Beatty, the top securities regulator in the state of Washington. Commissioner Beatty's letter states in part:**

**"It is imperative that the Commission revise the proposed [Reg. A+] rules prior to adoption to remove the blanket preemption of state registration requirements for offerings under Regulation A. In proposing the broad form of preemption included in the Proposed Rules, the Commission has exceeded the authority granted to it by Congress and ignored the clear Congressional intent behind the Jumpstart Our Business Startups Act ("JOBS" Act).... If adopted, the Proposed Rules would handicap the states from providing oversight of these offerings at a time when the Commission lacks the resources to police this area. To ensure that legitimate issuers do not have to compete with unscrupulous or even fraudulent offerings in this market and to provide the investor protection intended by Congress, the Commission must remove the form of preemption included in the Proposed Rules."**

**Questions:** Could you please characterize the scope of the preemptions the SEC proposed last December with respect to the authority of states to register and review “Regulation A Plus” offerings? Are the preemptions proposed by the SEC more or less broad than those the House overwhelming voted to reject on November 2, 2012?

**Response:** The Commission’s proposal to implement Title IV of the JOBS Act, often referred to as Regulation A+ seeks to fashion a workable rule and a rule that protects investors. It would impose certain limits on state authority to require the registration or qualification of the offering, which would be a requirement at the federal level, and to impose certain additional merit-based standards on the issuer or offering. Importantly, the Commission’s proposal would not limit the states’ ability to:

- investigate and bring enforcement actions with respect to fraudulent Regulation A securities offerings and unlawful conduct by broker-dealers in such offerings;
- require the filing of any document filed with the Commission pursuant to Regulation A, including the payment of filing fees; and
- enforce the filing and fee requirements by suspending the offer or sale of securities under Regulation A within a given state for the failure to file or pay the appropriate fee.

The Commission’s proposed preemption of state securities laws registration requirements in the context of offers or sales to “qualified purchasers” is consistent with the authority granted to the Commission pursuant to Section 18(b)(3), which was reaffirmed as part of the JOBS Act. In the proposal, the Commission explained that its proposed approach to preemption would address, among other things, a GAO study, mandated by the JOBS Act, that indicated that registration and qualification requirements under state securities laws were among several central factors that may have contributed to the lack of use of current Regulation A. In addition, the rule proposal referenced a coordinated review program that is being developed by state securities regulators and that the Commission would consider developments with this program.

As always, we are interested in the public’s views on our proposed approach, including those regarding our approach to balancing the roles of federal and state securities laws, and will carefully consider the comment letters we received on the proposal.

**Question:** In proposing to preempt the states in the manner it has, has Commission exceeded its authority under the JOBS Act or other laws?

**Response:** Section 18 of the Securities Act generally provides for preemption of state law registration and qualification requirements for certain categories of securities, defined as “covered securities.” The JOBS Act added a new section to the Securities Act that states that securities issued under the expanded Regulation A exemption are covered securities for purposes of Section 18 if, among other things, they are “offered or sold to a qualified purchaser, as defined by the Commission pursuant to [Section 18(b)(3)] with respect to that purchase or sale.” Section 18(b)(3) provides that “the Commission may

define the term 'qualified purchaser' differently with respect to different categories of securities, consistent with the public interest and the protection of investors." The Commission's proposal is consistent with this authority.

**Questions for the Record Submitted by Congressman Mark Amodei***Pyramid Scheme Investigations*

**In October, the Commission issued an investor alert warning investors to watch out for pyramid schemes posing as multi-level marketing programs. The alert consisted of several hallmarks. Separately, the Federal Trade Commission also has jurisdiction over pyramid schemes enforcement.**

**Questions: What informal and formal coordination occurs between the two agencies? Are there multidisciplinary working groups or task forces currently in existence to combat pyramid schemes that impact both investors and consumers? If so, what agencies are involved? How often do these working groups or task forces meet?**

**Response:** Although I am not aware of a specific inter-agency multidisciplinary working group or task force specializing in combatting pyramid schemes, the Commission has worked with other federal and state regulators, including the Federal Trade Commission (FTC), in its investigations related to such fraud. For example, in *SEC v. Rex Venture Group*, an enforcement action filed in August 2012, the Commission staff coordinated with several agencies, including the FTC, to shut down a \$600 million fraud that duped approximately one million Internet customers through a complex investment scam involving both a Ponzi and a pyramid scheme. More generally, as part of the SEC's work with regulators and other government authorities, the Commission routinely receives requests for information regarding current or prior SEC investigations, and, where appropriate, may grant access to investigative information in the SEC's possession to such requestors.

**Questions for the Record Submitted by Ranking Member José Serrano**

**Questions:** How does the SEC divide its responsibilities with the Department of Justice? Do you have a good relationship with your counterparts over at DOJ, and how do you each decide which cases to take on?

**Response:** As you know, the SEC is a civil law enforcement agency that does not have statutory authority to pursue criminal violations. Such authority at the federal level primarily resides with the Department of Justice. Because of the nature of the securities laws, however, many of our investigations involve potential violations of the criminal laws, as well as the civil laws. In those instances, SEC staff frequently refer matters to the Department of Justice, collaborate closely with DOJ staff, and often bring parallel enforcement actions.

**Your fiscal year 2015 budget request includes a total of \$276 M for information technology investments, including the \$75 million Reserve Fund, which will be used for large, multi-year IT projects.**

**Question:** How will an increase in information technology help the SEC perform oversight of increasingly complex markets?

**Response:** The SEC initiated a multiyear technology transformation plan to ensure its business processes are streamlined, integrated, and use technology to reduce costs and increase efficiencies and effectiveness. Under this initiative, the SEC is modernizing its systems, including those relating to its centralized system for handling tips, complaints and referrals and systems utilized in connection with investigations and examinations, risk analysis, and financial management.

Using innovative technology helps us to detect fraud and abuse earlier and provides valuable information to investors and companies with speed and accuracy.

These IT enhancements and upgrades have provided more complete, faster access to information across the agency. In addition, new technologies have enabled our staff to review and analyze information (such as phone, trading, and bank records) more quickly, and more easily identify potentially suspicious activity. While the SEC has made significant progress over the past few years in modernizing its technological systems, additional future investments are critical to permit us to keep pace with the complex and rapidly changing markets we regulate.

**Question:** Please explain how the Reserve Fund, created by Congress in Dodd-Frank, works and what the benefits of having it are.

**Response:** The Reserve Fund was created by Section 991 of the Dodd-Frank Act. Its funding comes from depositing registration fees collected by the Commission up to a

maximum of \$50 million per year. Any registration fees received in excess of \$50 million a year are deposited in the General Fund of the Treasury. The funding is available to carry out the functions of the Commission.

The Reserve Fund is a very important, stable source of funding for multi-year projects. For example, since its creation in FY 2012, the SEC has used the Fund to support large, multi-year, mission-critical technology projects such as EDGAR modernization, SEC.gov modernization, and enhancements to the Tips, Complaints, and Referrals (TCR) system.

**Question: How do the technological improvements you're making help your staff spot possible misconduct and trends that might be devastating for the economy?**

**Response:** The SEC's information technology investments are designed to provide staff with the tools necessary to efficiently and effectively protect investors and the markets. Our IT investments represent a broad effort that ranges from periodic software and hardware upgrades to developing and purchasing advanced analytical tools designed to prospectively detect fraud. By improving the entire spectrum of tools, our IT investments amplify the staff's ability to spot individual instances of misconduct and identify macro-level, systemic concerns.

For example, the Division of Enforcement has made significant investments in upgrading its IT Forensics Lab capabilities as well as moving its investigations to a modern, comprehensive e-Discovery platform. The Forensics Lab routinely assists the investigative staff in retrieving digital evidence and can help establish links between wrongdoers engaged in insider trading and other misconduct. Additionally, the Division recently upgraded its e-Discovery platform—providing staff with more comprehensive search capabilities and a quicker, more robust method to review documents and conduct investigations.

The Office of Compliance Inspections and Examinations (OCIE) also recently introduced the National Exam Analytics Tool, which empowers examiners across OCIE to access and systematically analyze large volumes of trading data through a series of standard reports and analytics. The ability to flag certain transactions and anomalies in trading data also could help identify potential misconduct and trends in the market. Moreover, OCIE's Risk Analysis Examination (RAE) team – which leverages technology to conduct cross-firm review involving large quantities of data from clearing firms – collected and analyzed hundreds of millions of trading records. Using this data, the RAE team identified a wide range of problematic behavior.

In addition, the SEC as a whole has initiated the implementation of a centralized data analysis platform to receive, house, transmit, and analyze the huge quantities of data we receive. The data analysis platform is a basic, but crucial, element of the IT improvements at the SEC that provides a state-of-the-art foundation for the new tools we have implemented to detect misconduct. The platform gives staff the ability to make

connections that are not otherwise apparent in the data and more easily identify market trends and aberrant behavior, which is often indicative of potential misconduct.

The SEC also has recently invested in innovative systemic risk detection technologies. These tools harness the breadth of data that the Commission receives and helps synthesize that data into actionable information. They also automate tasks that otherwise would be completed manually using slower methods and tools like spreadsheets, thereby making our limited staff more effective and efficient.

**Questions for the Record Submitted by Congressman Mike Quigley*****XBRL (Structured Data Formats for Public Company Disclosures)***

**Using XBRL for public companies' financial statements would allow investors to make better decisions, allow markets more quickly digest information, and let smaller public companies reach a broader range of investors. I believe it can also assist your enforcement efforts.**

**Question: Can you update me on your efforts to effectively enforce the quality of XBRL submissions for public companies submissions?**

**Response:** As background, when the Commission adopted rules to require companies to submit financial information in a structured format using XBRL in an exhibit to their filings, it provided a significant phase-in-period for companies to adjust to the requirement. Throughout the phase-in period, the staff provided guidance on how to comply with the rules to enhance the quality of the data and updated the taxonomies – or the dictionaries of financial terms with associated “data tags” – to enhance the comparability of it across companies and filings. That work continues today. I am aware, however, that some market participants have identified issues with the quality of structured data in company filings and the staff is looking at ways to address those issues. The staff has been working to address these issues. For example, staff have been working to assess structured data filings, including the over-use of custom tags that could decrease the usability of data, in an effort to identify ways to improve data quality. And staff will continue to identify recurring issues with structured data submissions and to communicate those issues through staff observations to companies, FAQs, and commentary at conferences.

The staff also is examining whether further enhancements to the filing requirements could improve the quality of the XBRL submissions and is considering how the use of an “inline” method might improve the quality of structured data. Under such a method, companies would submit structured XBRL data as part of their core filings – rather than in a separate exhibit – and that data would be available in the financial statement presentation in the filing displayed on the SEC website. This could potentially reduce errors in the structured data.

**Question: Can you talk about the importance of structured data to the SEC, and how you plan to embrace it?**

**Response:** Access to significant amounts and types of data, both structured and unstructured, is vital to the Commission's work of regulating the U.S. capital markets. Through the use of structured data, the staff can systematically and efficiently analyze, and draw conclusions from, large quantities of information. As an example, the filing of monthly data on money market fund portfolio holdings in eXtensible Markup Language (XML) on Form N-MFP, provides the staff with an enhanced understanding of fund

holdings, trends in those holdings, and possible outliers, which helps inform the Commission in its regulatory activities.

I believe it is important for the Commission to be mindful when incorporating requirements to provide structured data into its rules. The Commission and the staff should carefully identify not only what information should be disclosed on various forms, but also what elements of that information should be “tagged” so that they can be extracted in a structured data format. The Commission and staff will continue to consider the benefits and costs of structuring data when incorporating disclosure requirements into its rules.

**Question:** Can you give us an example of how the SEC uses data analysis to perform its mission, and, in contrast, how the SEC is an innovative data user?

**Response:** Much of the data analyses SEC staff performs in support of rulemaking and risk assessment activities depend on structured data because these activities require the staff to scrutinize and compare large amounts of information. For example, in 2012, based on the structured XML data in Form D filings, Division of Economic and Risk Analysis (DERA) economists released an analysis of capital raised through private offerings using the Regulation D exemption and published a follow-up study in 2013. These studies revealed that private offerings contribute nearly \$1 trillion in capital to issuers each year, levels not previously reported because the information was not collected in a structured format prior to 2008. The Commission cited these findings in its rulemaking to eliminate the ban on general solicitation in Rule 506 offerings.

DERA is also continuing to develop the Interactive Data Analytics Platform (IDAP), which will enable both the Commission and the public to more easily extract, aggregate, and analyze text and numerical data from the SEC registrant disclosures submitted in XBRL to the Commission.

**Question:** Will you direct the Division of Corporation Finance to treat errors in the XBRL version of financial statements the same as errors in the plain-text version, and ask filers, via comment letter, to correct them?

**Response:** As background, the Division of Corporation Finance staff selectively reviews annual and periodic filings to monitor and enhance compliance with applicable disclosure and accounting requirements, consistent with the review mandate of Section 408(c) of the Sarbanes-Oxley Act of 2002. One of those disclosure requirements is the requirement to include financial statements submitted in XBRL. The filing reviews are focused on a thoughtful evaluation of company disclosure rather than errors in the structured data in those filings. The staff does confirm that companies have filed the appropriate exhibits with the XBRL data. Staff in DERA and Corporation Finance also have been working to assess the quality of structured data filings made under our requirements and are

considering ways to provide further guidance to market participants to improve compliance with the rules and reduce errors.

**Question: Have you adopted any of the recommendations from the Dodd-Frank mandated Investor Advisory Committee?**

**Response:** With respect to the data tagging recommendations made by the Investor Advisory Committee, SEC staff has provided briefings to the Commission, and the Commission and the staff continue to look for ways to incorporate the use of structured data into its processes and rules when appropriate. For example, in the rule proposal to implement the crowdfunding provisions of the JOBS Act, the Commission proposed rules that would require filing of certain information in a structured format so that the Commission can collect key information about offerings and investors can compare investment opportunities. In addition, consistent with the Advisory Committee's recommendation that the SEC take steps designed to reduce the costs of providing tagged data, the staff is currently considering whether an "inline" method of filing XBRL data might improve the filing of structured data and reduce the costs associated with current filing requirements.

***Deceptive Business Practices***

**Chair White, we have recently heard concerns from constituents about "multi-level marketing" business models. Vulnerable communities, often low-income, non-English speakers, fall victim to false recruitment promises of big return on investment.**

**Question: How does the SEC make sure consumers are protected from deceptive business practices?**

**Response:** I share your concerns. In addition to our Enforcement program, the SEC proactively reaches out to investors to help them make better investment decisions, especially about how to spot and avoid fraud. For example, our Office of Investor Education and Advocacy (OIEA) regularly issues Investor Alerts to warn investors about investment fraud and other related issues. OIEA disseminates these alerts to the public through various channels, including through SEC.gov, Investor.gov (our website dedicated to retail investors), and social media. With respect to multi-level marketing, OIEA issued an [Investor Alert](http://www.sec.gov/investor/alerts/ia_pyramid.htm) in October 2013 (found at [http://www.sec.gov/investor/alerts/ia\\_pyramid.htm](http://www.sec.gov/investor/alerts/ia_pyramid.htm)) – in both English and Chinese – cautioning investors that some multi-level marketing programs are actually fraudulent pyramid schemes. The alert described several hallmarks of a pyramid scheme (including promises of high returns in a short time period and an emphasis on recruiting other participants) and urged investors to look for these warning signs of fraud when considering joining a multi-level marketing program. OIEA is translating the material into additional languages to broaden its reach to communities that may be targeted by such investment scams.

**Question: Should companies operate using fraudulent business practices, how does the SEC prosecute them?**

**Response:** SEC staff regularly investigates fraudulent business practices, to the extent they involve possible violations of the federal securities laws, and the SEC recently has instituted actions to halt several large-scale, fraudulent investment schemes that targeted minority communities. Last month, for example, the Commission charged and a court froze the assets of the operators of a worldwide pyramid scheme that targeted Asian and Latino communities in the United States and abroad (*SEC v. World Capital Market Inc., et al.*). As described above, in addition to filing charges, the Commission also issued an alert that warned investors about the dangers of potential investment scams involving pyramid schemes posing as multi-level marketing programs.

**Questions for the Record Submitted by Congresswoman Marcy Kaptur**

*Dodd-Frank Implementation*

**I'm concerned with the slow pace of Dodd-Frank implementation, and in particular with regard to rules that are directly related to the root causes of the financial crisis not being completed. But in stressing the importance of expediting the process of completing the required rules, speed alone is not enough. Instead, the Commission must issue strong, effective rules that protect investors and the financial system from abuse and excessive risk.**

**Question: When concerns are made about proposed rules being too weak and ineffective, what process have you put in place to ensure that rules are in fact addressing the problems they are intended to address?**

**Response:** As you know, the Dodd-Frank Act significantly expanded the SEC's regulatory responsibilities. Implementing these new responsibilities has required the SEC to undertake one of the largest and most complex rulemaking agendas in the history of the agency. The Dodd-Frank Act included more than 90 provisions that mandated SEC rulemaking and required the SEC complete more than 20 reports and studies.

Expediently and robustly completing the rulemakings and studies mandated by Congress in the Dodd-Frank Act remains among my top priorities. We must always take the time necessary to thoughtfully and carefully consider all of the issues raised by commenters in the course of our rulemaking process. The notice and comment process is extremely useful and helps inform the Commission's rulemaking decisions. The Commission's staff carefully reviews and considers all comments received on a rule proposal in making a recommendation to the Commission concerning a final rule, including those that may question the effectiveness of a proposed rule.

*Financial Crimes*

**I am worried that not enough resources are being put towards the investigation of financial crimes. Many of the large financial institutions that were the direct cause of the longest and deepest recession since the Great Recession are getting away with fines and penalties that are tantamount to a slap on the wrist.**

**Question: What are you doing to ensure that these financial crimes against the American people are rectified and what are you doing to ensure that these financial crimes don't happen in the future?**

**Response:** Although the SEC is a civil law enforcement agency that does not have statutory authority to pursue criminal violations, it has had great success pursuing misconduct that led to or arose from the 2008 financial crisis, including:

- charging 169 entities and individuals, of which 70 were CEOs, CFOs, or other senior corporate officers;
- barring or suspending 40 persons from the securities industry, from serving as officers or directors of public companies, or from practicing before the Commission; and
- obtaining orders for over \$3 billion in disgorgement, prejudgment interest, penalties, and other monetary relief.

More generally, the Commission has continued to protect investors and ensure the integrity of the markets by bringing significant enforcement cases across our regulatory spectrum, including actions against exchanges to ensure they operate fairly and in compliance with applicable rules, actions against auditors and others who serve as gatekeepers in our financial system, and landmark insider trading cases.

#### *Regulation Loop Holes*

**There is extensive evidence that investors are harmed when brokers take advantage of a regulatory loophole that allows them to rebrand themselves as financial advisers without meeting the appropriate standards, and make recommendations that put their own financial interests ahead of the interests of their customers. I appreciate your recent comments in which you indicated the SEC will make a decision to move forward on adopting a uniform fiduciary standard this year.**

**Question: How is the Commission responding to the Commission's non-partisan Investor Advisory Committee's unanimous approval of a recommendation calling for the agency to adopt a uniform fiduciary standard?**

**Response:** The question of whether and how to use the rulemaking authority provided by Section 913 of the Dodd-Frank Act is a very important one. In order to more fully inform the Commission's decision, I have directed the staff to evaluate the potential options available to the Commission, including the Investor Advisory Committee's recommendations. Serious consideration is also being given to recommendations made in the study required by Section 913; the views of investors and other interested market participants; potential economic and market impacts; and the information the SEC received in response to the Commission's March 2013 Request for Data and Other Information. I have asked the staff to make the evaluation of potential options an immediate and high priority so that the Commission has the information it needs to come to a decision on this important issue.

*Cost-Benefit Analysis*

**Regarding cost-benefit analysis, I am concerned that the agency is too focused on costs to industry, without proper consideration for costs to investors and benefits of strong and effective regulation.**

**Question: What are you doing to restore the balance so that it is in fact cost-benefit analysis and not merely industry-cost analysis?**

**Response:** Evaluation of the impacts on investors is routinely part of the SEC's rule development process. As explained in the March 2012 *Current Guidance on Economic Analysis in SEC Rulemaking*, it is important to qualitatively explain likely economic consequences of a rule, particularly those elements that cannot be quantified. Indeed, it has repeatedly been recognized that it is very difficult to quantify many benefits and costs of financial regulation, particularly benefits. The intent of this broad, qualitative analysis is to prevent a disproportionate focus on any one number simply because it can be estimated in dollar terms, thereby ensuring that indirect effects that are difficult to measure are also considered. Moreover, the *Current Guidance* provides several examples of the types of investor considerations that can be included when analyzing a rule, such as the ability of new or enhanced disclosure to lead to better informed investment decisions, or the reduction of principal-agent problems, such as excessive risk taking, to help protect investors from the actions of others that could be characterized by moral hazard.

WEDNESDAY, APRIL 9, 2014.

**OFFICE OF MANAGEMENT AND BUDGET**

**WITNESS**

**SYLVIA MATHEWS BURWELL, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

Mr. CRENSHAW. Okay, the hearing will come to order.

Director Burwell, we want to welcome you to our hearing today. OMB has a significant responsibility in assisting the President, and that is any President, Democrat or Republican, in the development and execution of their policies. In meeting with this responsibility, OMB develops the budget requests, coordinates management, legislative, regulatory, financial, procurement and other proposals to make sure that the Federal agencies' practices are good for the country and consistent with the Administration's objectives. OMB does this with fewer than 500 people.

The purpose of today's hearing is to discuss OMB's appropriation request. Since OMB is the Agency that prepares the budget request for the entire Federal Government, we will also want to discuss some of the important policies and assumptions in the President's overall request for fiscal year 2015.

I know you are pleased that the deficit dropped to 4.1 percent of GDP last year, but we have to remember the deficit is also higher than it has ever been under any other Administration, and last year, maybe the year before, it exceeded 100 percent of GDP, and it looks like it is going to continue to stay there for the rest of this Administration. So it would have been nice to do a little bit more to help reduce spending.

Now, the mandatory spending proposed in your budget is estimated to grow from \$2.5 trillion in 2014 to \$3.6 trillion in 2019. That includes over \$750 million in gross interest payments on the debt in fiscal year 2019, and that is more than the entire defense appropriations bill. I think it would be best if the Administration could propose some mandatory spending reforms that would rein in more of this spending. So I urge you to work with the Budget Committee and the authorizing committees to implement responsible mandatory reforms. As an appropriator who has implemented spending reductions since 2011, we want to encourage you to make progress on the mandatory side.

I was a little concerned that the budget request was submitted late. We are 6 years into the Obama Administration, and the budget request is still late. I know that the fiscal year 2014 appropriations process didn't finish until January, but the Ryan-Murray agreement provided fiscal year 2015 top line appropriations to use in December, and the request was still late. So I hope next year's budget is submitted on time.

Regarding your appropriations, I am a little concerned that you still are asking for an increase in your operating account. These are difficult fiscal times and most Americans want to see their Nation's leaders lead by example. Between 2010 and 2014, total discretionary spending has been reduced by 13 percent. During the same time period, the House Members' office budgets have been reduced by 16 percent, but OMB's operating budget has only been reduced by a little over 3 percent.

So I know that you have a lot to do and your staff have a lot to do, but, again, I would love to see more leadership, leadership by example. That is why we reduced the Members' budgets by 16 percent. Our constituents don't ask us to do 16 percent less work. We just have to find a way to do all our work, and we do it with existing resources.

Regarding your request for a \$12 million increase in the IT oversight and reform, I appreciate the fact that the Administration has made efforts to improve the use of IT resources. You are doing cloud computing and data entry consolidation and other efforts. But I would like to understand how the [healthcare.gov](http://healthcare.gov) failed to launch successfully and maybe how we can make sure those don't happen in the future.

We may not always agree on budget policies, and I have raised some concerns with your budget request. But I do recognize the challenge that you face, and the Committee appreciates your hard work and all the hard work that is done by OMB. So we look forward to hearing your testimony.

Now I would like to turn to Ranking Member, Mr. Serrano.

Mr. SERRANO. Thank you. And, by the way, I know why it didn't launch the way we wanted. They should have gone to a college dorm and gotten a couple of kids, and they would have done it right away with no problem.

Thank you, Mr. Chairman. I also would like to welcome our Director of OMB. OMB is the Agency in charge of ensuring that our government operates in an efficient, fair and responsive manner. Your role in developing the budget and managing Agency performance and coordinating regulatory action places you at the core of how our government operates. Because of this, your budget request, while somewhat small compared to other agencies under our jurisdiction, has a wide-ranging impact. Your request for this year includes a small increase to help ensure you have the personnel needed to meet these various responsibilities.

It should be noted that the President's fiscal year 2015 budget prepared with your counsel stands in stark contrast to Representative Ryan's Republican budget. The Republican budget fails to create jobs while slashing critical parts of the Nation's social safety net, such as Medicaid, which is cut \$732 billion over 10 years, and SNAP, otherwise known as food stamps, which is cut by \$125 billion. On the other hand, the Administration's budget request creates a strategic plan that makes investments in the American people, their livelihoods and their welfare. I commend OMB for your role in these efforts.

OMB also plays a vital role in coordinating our government's policies with regard to Federal employees, contracting and procurement. Because of the sequester over the past few years, the size of

the Federal workforce has shrunk. We must make sure that even in tough budget times, we are working to protect those people who do such important work on behalf of the American people. And when we use contract workers, it is important that we hold those contractors to the highest standards of fairness and equality. That is why I was heartened by the President's recent Executive Order to raise the minimum wage for all new contracts signed by the Federal Government and yesterday's Executive Orders to help eliminate gender-based pay disparities among government contractors.

I am also interested in your efforts to promote data-driven innovation, DDI, in fiscal year 2015. As the coordinator for DDI activities, OMB is partnering with leaders in States, localities, foundations and research organizations to help ensure good policy making through data-driven analysis. This is important work, and as with every Federal Agency, I want to encourage OMB to work with leaders, officials and entities in the Territories as part of these efforts as well as in the States, of course.

OMB's mission parallels the responsibilities of the Appropriations Committee, examining the effectiveness of Federal programs and creating a budget that reflects our Nation's priorities. I hope that we can have an honest conversation about OMB's challenges and what this Subcommittee can do to partner with your agency to ensure the successful completion of both of our missions.

Thank you for your service and for appearing in front of this Subcommittee today, and I look forward to a productive discussion.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Director Burwell, we will turn it over to you. We will make your written statement part of the record. If you could limit your oral testimony to about 5 minutes, that would be helpful. The floor is yours.

Ms. BURWELL. Will do. Thank you.

Mr. Chairman, Ranking Member Serrano and Members of the Subcommittee, I want to thank you for the opportunity to present the President's fiscal year 2015 budget for the Office of Management and Budget. I want to begin by thanking this Subcommittee for all the work on the Consolidated Appropriations Act of 2014, an important step to returning to the appropriations process and regular order. Today I will discuss the President's fiscal year 2015 budget request for OMB and our work in the management, budget and regulatory spheres, work that this Subcommittee is deeply familiar with.

First, through the budget development process, support of the appropriations process and ongoing management and oversight of Agency budgets, OMB drives high quality execution of the Nation's fiscal policy and management of critical government functions.

Secondly, by working with more than 100 Agencies throughout the Federal Government, OMB aims to improve overall management and deliver impact through improved efficiency, productivity and quality of critical government services. For example, we are encouraging and expanding strategic sourcing, our effort for the Federal Government's buying power to save on essential purposes. These efforts have saved over \$300 million since 2010.

In the regulatory space, OMB's work protects the health, safety and environment of Americans while promoting economic growth,

job creation and innovation. The regulations that OMB has reviewed over the past 5 years are expected to have an overall value of \$200 billion annually when implemented. And at the same time, the Administration has also focused on streamlining, modernizing or repealing regulations on the books that impose unnecessary burdens or costs.

This regulatory retrospective review, or look-back, has resulted in over 500 initiatives that the agencies are pursuing to reduce costs, simplify the system and eliminate redundancy and inconsistency with \$10 billion in savings already in the near term and more to come in the future.

OMB's budget request is designed to deliver against these core missions while supporting our expanding role in a number of key priority areas that the Congress has called on OMB to take on, including implementation of the Budget Control Act, supporting performance management through the Government Performance and Results Modernization Act, ensuring improved financial management and transparency and accountability under the Federal Funding Accountability and Transparency Act, and supporting new contracting spending and security requirements under the National Defense Authorization Act.

As this Committee knows well, even while OMB has taken on a number of new functions and responsibilities in recent years, our funding and staffing levels have been significantly constrained. As a result of sequestration, OMB employees were required to take 8 furlough days last year. That is the most of any agency in the Federal Government. The budget request would bring OMB back up to staffing levels comparable to 2009, though well below staffing levels of recent years. This is a critical investment with large returns in the form of improved program management, budgetary savings, smarter regulations, important outcomes that the administration, Congress and the American people look to OMB to deliver.

Thank you for the opportunity to testify today. I look forward to continuing to work closely with the Subcommittee on our shared priorities for OMB and supporting the Committee's efforts moving forward on the fiscal year 2015 appropriations. I would be pleased to answer any questions you have.

[The information follows:]

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**TESTIMONY OF  
SYLVIA M. BURWELL  
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET  
  
BEFORE THE  
APPROPRIATIONS SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
U.S. HOUSE OF REPRESENTATIVES**

**APRIL 9, 2014**

Mr. Chairman, Ranking Member Serrano, Members of the Subcommittee, thank you for the opportunity to present the President's FY 2015 Budget request for the Office of Management and Budget (OMB).

I want to first thank this Subcommittee for its work on the Consolidated Appropriations Act of 2014. The Act is the result of hard work by members and staff of this Subcommittee and others, and represents an important step towards returning the appropriations process in Washington back to regular order. I look forward to supporting the Subcommittee in its work moving forward on FY 2015 appropriations.

As many of you know, I focus my work at OMB around three major goals. The first is building relationships, particularly when it comes to our work with our partners in Congress and on this Subcommittee. This includes supporting regular order. The second is using both the management and budget sides of OMB to ensure that we are doing our best to build an economy that is healthy both in the short and long-term – and a government that contributes to that economic health. The third is strengthening the institution of OMB, which means investing in the organization and its people so we can deliver our very best for the American people every day.

In today's testimony, I will highlight OMB's work in the management, budget and regulatory spheres – work that this Subcommittee is deeply familiar with. Through the budget development process, support of the appropriations process, and ongoing management and oversight of agency budgets, OMB drives high-quality execution of the Administration's fiscal policy and other key priorities. By working with and across agencies throughout the Federal government, OMB aims to improve overall management and deliver impact through improved efficiency, productivity and quality of critical services. In the regulatory space, OMB's work protects our health, safety and environment while promoting economic growth, job creation, and innovation. And we work to be a trusted and respected source of information for our counterparts in the Administration and Congress as well as the public, thanks to the quality analysis and work conducted by OMB staff.

**OMB Request**

The President's FY 2015 Budget request for OMB is designed to deliver against this

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vision. OMB's request of \$93.5 million and 480 full-time equivalents addresses growing workloads while making targeted investments to enable OMB to more effectively oversee program management and funding across more than 100 agencies and departments throughout the Federal government. The Budget request would bring OMB back up to a staffing level comparable to 2009, though well below 2010, and support our expanded role in a number of key priority areas for this Subcommittee. This is a critical investment with large returns in the form of improved program management, budgetary savings, and smarter regulations – some of the many critical outcomes that the Administration, Congress, and the American people look to OMB to help ensure.

While OMB has taken on a number of new functions and responsibilities in recent years, our funding and staffing levels have been significantly constrained and have not kept pace with our counterparts at the Congressional Budget Office. Today, OMB is 11 percent smaller than as recent as FY 2010, with an FY 2014 estimated FTE level of 470. As a result of sequestration, OMB employees were required to take eight furlough days last year – the most of any agency in the Federal government. While the funding restored in FY 2014 appropriations was a step in the right direction, there is still work to be done.

**Additional Responsibilities for OMB**

At the same time that we continue to deliver on our core responsibilities, OMB has taken on an expanded role in recent years. Congress has called on OMB to take on work in a number of key priority areas, including: enforcing spending limits under the Statutory Pay as You Go Act and the Budget Control Act; supporting increased focus on disciplined performance management through the Government Performance and Results Modernization Act; ensuring improved financial management transparency and accountability under the Federal Funding Accountability and Transparency Act; and supporting new contracting, spending, and security requirements under the National Defense Authorization Act. As a result of the Budget Control Act, for example, OMB is required to issue 17 new reports annually. For sequestration, we were required to make legal determinations and budgetary calculations for nearly 2,300 budgetary resources and more than 1,000 Treasury accounts, and we will continue to do so annually for several hundred accounts.

These efforts are in addition to preparing the President's Budget and managing the development, execution and oversight of policies and programs across government. In formulating the President's Budget request, OMB assesses the effectiveness of agency programs, policies and procedures; weighs competing funding demands within and among agencies; and works with agencies and with Congress to set funding priorities. Once Congress enacts appropriations and authorizing legislation, together with the agencies, OMB is responsible for the sound execution of Federal programs and policies, and provides ongoing policy, program and management guidance and oversight to agencies.

This past year was an important case-study in the work our staff does every day to help ensure prudent planning and management in more than 100 agencies and departments. In

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the run-up to and aftermath of the Joint Committee sequestration that was ordered last March, OMB worked with agencies to ensure full compliance with legal requirements, as well as the execution of sequestration reductions. And when we faced a lapse in appropriations later that same year, it was OMB that helped agencies effectively prepare for the lapse, conduct an orderly shutdown of activities on and after October 1, manage programs and operations during the lapse, and conduct the orderly restart of activities after appropriations were restored.

**Delivering Impact for the Public**

Through all of our work, the Administration remains deeply focused on our commitment to deliver a smarter, more innovative, and more accountable government for the American people. At the President's direction, and building on successful efforts over the past five years, OMB has taken the lead in coordinating the President's Second-Term Management Agenda – a comprehensive and forward-looking plan to deliver better, smarter services; drive innovation and economic growth; and build the workforce we need for tomorrow.

We are making progress in a number of areas, including improving and streamlining the way the Federal Government delivers services. First, in the IT space, we are working to improve the management of IT spending and to shift the focus of Government IT projects from simply complying with requirements to truly meeting users' needs. Building on the support Congress provided in FY 2014, we are requesting \$20 million for Information Technology Oversight and Reform (ITOR), which will continue to drive additional savings across departments and agencies; strengthen the government's cybersecurity posture through targeted oversight; and support IT initiatives aimed at providing a world-class customer experience to citizens and businesses. Since the inception of this effort in FY 2012, agencies have reported \$2.16 billion in cost savings. And through additional key tools like PortfolioStats, OMB will continue to work towards improving government programs and operations and maximizing the government's return on investment in IT. For example, thanks in part to PortfolioStat, the Department of Homeland Security consolidated and eliminated excess wireless devices and associated services, saving \$48 million for American taxpayers.

At the same time, we are encouraging and expanding strategic sourcing – having saved over \$300 million since FY 2010 by using the Federal Government's buying power to save on essential purchases. We also are focused on increasing shared services across the Government by streamlining core administrative functions that nearly all agencies use, like human resources, IT, and finance. In FY 2015, for example, OMB will help the Department of Housing and Urban Development transition its core financial management functions to the Department of the Treasury in the largest financial management shared service arrangement established by the Federal Government to date. We are also strategically addressing the government's real property portfolio by freezing growth in the portfolio, measuring the cost and utilization of real property to support more efficient use, and identifying opportunities to reduce the portfolio through asset disposal.

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Together with Congress, the Administration has made it a top priority to reduce improper payments – payments made to the wrong entity, in the wrong amount, or for the wrong reason. When the President took office in 2009, the improper payment rate was 5.42 percent and rising. Since then, we have made substantial headway through yearly reviews by agency inspectors general and expanded audits for high priority programs – resulting in more than \$22 billion in recovered overpayments in 2013 and a decline in the improper payment rate to 3.53 percent in 2013 when factoring in Defense Department commercial payments.

We are making strides to modernize the Federal permitting process for infrastructure to help spur economic growth – a goal that we share with Congress. Building on the President’s executive order in 2012 and presidential memorandum in 2013, we are moving forward in implementing reforms to accelerate critical infrastructure projects and fix systemic challenges within the infrastructure permitting system. In Maine, agencies saved up to a year in the permitting and review of the Kennebec Bridge Replacement, which will replace an 80-year old movable bridge and vastly improve regional accessibility and mobility. The FY 2015 Budget includes a request for permanent funding for the new Interagency Infrastructure Permitting Improvement Center hosted at the Department of Transportation that will be accountable for driving progress on these major projects and key reforms.

On the regulatory side, OMB is responsible for reviewing significant new rulemaking and ensuring that our regulatory system is both cost-effective and evidence-based – a goal I know we share. The Administration’s approach to regulation is to protect the health and safety of Americans while promoting economic growth, job creation, and innovation. The regulations that OMB reviewed over the Administration’s first five years are expected to have an overall value to society worth about \$200 billion annually when implemented, even after considering potential costs.

As part of this work, OMB coordinates the Administration’s historic government-wide review of existing regulations in an effort to streamline, modernize, or repeal regulations on the books that impose unnecessary burdens or costs. This regulatory retrospective review, or “lookback,” has resulted so far in over 500 initiatives that agencies are pursuing to reduce costs, simplify the system, and eliminate redundancy and inconsistency. These lookback efforts have already created savings of more than \$10 billion dollars in the near term, with more savings to come in the future.

For example, the Department of Health and Human Services (HHS) removed unnecessary regulatory and reporting requirements on hospitals and other healthcare providers, saving more than \$5 billion over the next five years. And the Department of Labor (DOL) simplified and improved hazard warnings for workers, producing net benefits of more than \$2.5 billion over the next five years, while strengthening worker safety. The Department of Transportation (DOT) proposed a rule that would rescind the requirement that commercial motor vehicle drivers submit (and motor carriers retain) driver-vehicle inspection reports when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This rulemaking would save tens of millions of

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hours in paperwork burden per year, for approximately \$1.5 billion in annual paperwork time savings. Notably, many of the agency review efforts focus especially on benefitting small businesses, which are crucial engines of growth in our economy.

**Conclusion**

Thank you for the opportunity to testify on OMB's FY 2015 Budget request. The requested funding will allow OMB to continue to play a central role in supporting the development and execution of a wide range of crucial programs and policies and managing critical government functions. Today more than ever, OMB has a central role to play in our efforts to move our economy forward by creating jobs, growing the economy, and promoting opportunity for all.

Mr. Chairman and Members of the Subcommittee, thank you for holding this hearing and for inviting me to speak today. I look forward to continuing to work closely with this Subcommittee on our shared priorities for OMB and the Federal Government, and supporting the Committee's efforts to return the budget and appropriations process to regular order. I would be pleased to answer any questions you may have.

**Sylvia Mathews Burwell, Director of the Office of Management and Budget**

Sylvia Mathews Burwell is the Director of the Office of Management and Budget (OMB). She was confirmed by the Senate on April 24, 2013. Burwell previously served as President of the Walmart Foundation. Before joining the Foundation in 2012, she was President of the Global Development Program at the Bill & Melinda Gates Foundation, where she worked for 10 years and was also the first Chief Operating Officer. During the Clinton Administration she served as Deputy Director of OMB, Deputy Chief of Staff to the President, Chief of Staff to the Secretary of the Treasury, and Staff Director of the National Economic Council. Before her Federal government service, she worked for McKinsey & Company. Burwell served on the Board of the Council on Foreign Relations and MetLife. She received an A.B. from Harvard University and a B.A. from Oxford University, where she was a Rhodes Scholar. Burwell hails from Hinton, West Virginia. She and her husband Stephen live in Washington, DC with their two children.

Mr. CRENSHAW. Thank you very much.

We will have questions, and I think we will try and observe the 5-minute rule, so Members can keep that in mind. There is a little light that will help the Members to remember the 5-minute rule.

So let me just make sure you know one of the most important things you do is submit the budget for the Federal Government and when you submit it late, it makes everything else get behind, and we are all trying to get back to regular order, and we are doing a pretty good job this year. I just want to be sure you understand that it is due the first Monday in February, right?

Ms. BURWELL. Absolutely, and I respect those deadlines. The mid-session review since I became OMB Director we delivered a week earlier. In addition to meeting the top line, in order to do the work that an Appropriations Committee, we actually needed the appropriation level. Seven weeks and one day from the date on which we got those numbers, because we received the numbers the same day they were posted for Members to see in terms of the vote, we put out a budget.

So we take that very seriously. We wanted to get these numbers up as quickly as possible. We took what is a 3 and a half month process and did it in 7 weeks. I take deadlines extremely seriously and continue to work to meet them. I want to work as part of a team to return to regular order.

Mr. CRENSHAW. Great. And so, next year, we are going to work to have them right on time.

Ms. BURWELL. I am excited to see all appropriations bills delivered to us on October 1st, and we will be there.

Mr. CRENSHAW. Great.

Let me just ask you about your request this year. I know that last year, I think there was money to add 40 new staff members. I think this year you proposed another 25 in your budget. Maybe if that is not right, you can tell me. You are requesting a little bit over 4.5 percent increase this year, and I know you have lots of responsibilities. But other agencies that you oversee when you submit their budget, some of those programs are cut for different reasons.

So tell us how you go about, I know you have a lot to do, how do you decide what areas in the other parts of government aren't going to be funded as much as last year and how do you decide that you need just a little bit more each year?

Ms. BURWELL. So I know this Committee knows the constraints of the 2015 levels and you all understand that while we have some of the sequester buyback, it is still a very tight level, and as we went through the entire budget process, it was difficult to make the tradeoffs and decisions that we made. And I take very seriously your point in your opening statement about leading by example and want to do that.

In the case of OMB and the decision that we made in terms of the dollars and the amounts, you are correct, we have a \$4.2 million increase that is a 4.6 percent increase on our budget. From the period of 2010 to the present, OMB has had a 9 percent decrease in constant dollars in its budget. With regard to our FTEs, that translates to 11 percent, because OMB is only people. We don't really have anything else to cut. We don't do—there aren't grants.

We don't do a lot of mailings. We don't do anything. We are people. So that is a deeper cut.

At the same time, during that same time period, CBO has increased by 9 percent. And while the functions are different in terms of, as you articulated, we do execution, post-passage of legislation, our colleagues there have seen increases.

When we think about—I listed some of the things that Congress has asked us to do in addition. Since I was here before, take for instance GPRA, GPRA modernization. In GPRA, the first Government Performance Results Act, what we saw was 18 mentions of OMB. In the current one there were 40 mentions of OMB. Right now, we have taken the over 2,000 pages that were on different Web sites and brought that together in one forum. We have set cross-agency priorities. So across the board, the functions that OMB has been doing have been continuing to expand.

In addition as I look and make decisions, OMB went in some of the ratings of the Federal employee survey, which I take seriously as I try and manage an institution, we went from 3rd to 34th in a number of ratings. And I think that is a combination of things that have happened over a period of years. And what we want to do is make sure we are able to serve and deliver both for the Administration and the Congress and the American people.

Mr. CRENSHAW. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you so much, Mr. Chairman.

You have been here now almost a year, but you served as Deputy Director there during the Clinton administration. Can you give us an impression of the agency and its employees and what changes you have seen from the time you were there as Deputy Director and now in your new role?

Ms. BURWELL. A couple of changes that I have observed in the year, and probably one thing that I didn't completely recognize as I was coming back to take the job, and that is the strain that has been put on our career staff. And career staff, as you reflect, that is career staff for any administration, Democrat or Republican. And that strain in terms of what it has meant to have the hiring freezes, the pay freezes, the furloughs that occurred for the team. My first day at OMB last year was an alternative furlough day. And what all that means at the same time is the uncertainty.

We like regular order. We like to do the budget on a timetable. But if we don't have the numbers, we are trying to guess, trying to scramble. The implementation of sequester last year, all of these things have contributed to what I think is an additional strain on the organization.

The other thing that I have seen is, and I think this is a positive thing that we should do, and that has been a greater expansion of the management responsibilities that have been given by the Congress to OMB. That is an area, which I am sure we are going to talk about today, from information technology to the performance management, and the idea it is one of the first times in implementing the GPRA modernization that we have cross-agency priorities and Agency priorities that are printed as part of the budget. So we get that alignment of goals and money and we start bringing those things together.

Mr. SERRANO. Now, you have practically answered my second question, which was the effect of sequestration and the shutdown, and we have been asking all the agencies this and you told us really. But in your case, or in the case of your agency, our understanding is that morale is very low at OMB and that it has been for a while, and your agency has rated low in job satisfaction surveys. What do you think accounts for that, and what are you doing to fix it?

Ms. BURWELL. So a number of things—

Mr. SERRANO. We have so many different agencies that face so many difficulties, and then you wonder why this one is the one that gets rated lowest. What is the issue?

Ms. BURWELL. A couple of different things. One, I think because we are all people, any of the cuts, as other agencies have attempted to manage during fiscal constraints, they have been able to change other things. Other Departments actually have a larger ability, whether that is through their grant-making, their conference spending has been cut, travel has been cut. OMB does a very limited amount of that. So the only places we cut are people.

At the same time, the dramatic uncertainty that occurs. When I first started, we thought we would have 10 furlough days. We were able to manage it down to 8. But that dramatic uncertainty and people not being paid for those days.

The other thing is handling all of these things. Sequester is a very difficult thing to handle and manage Department by Department. It has never been done and done in this way, and I am sure I am going to get some questions and actually conversations about why sequester was applied. Applying something like that, doing all the work to help the agencies do it, helping all the agencies during shutdown. While they are making the decisions, they consult with us in terms of are they breaking the Antideficiency Act.

The other thing is we will have to weigh all training and development. And just like you all going back to your districts, that is how you learn what is going on. When we can't have an examiner go and visit at least some semblance of the work, the programmatic work they are doing, that inhibits their ability to do their job, and that is the type of thing that I think is affecting morale. And that is why we have the money for training and development in the budget. That is one of the increases you see in our numbers.

Mr. SERRANO. So the answer to what are you doing to fix it is you are trying to get us not to do those things again—

Ms. BURWELL. And our budget.

Mr. SERRANO. That added to it, and having a budget on time.

You are requesting money funding for a paid summer intern program. Could you explain why that is needed, and who those interns would be?

Ms. BURWELL. So the paid intern program is something that I think is actually very important to recruiting high quality people. In 1985, I was a Lyndon Baines Johnson intern here on the House side, Cannon 252, Congressman Nick Joe Rahall. I wouldn't have been able to do the program had I not had some type of pay. I worked at the beginning of the summer at another job and at the end to make it all work in terms of what I needed to do.

These paid internships I think are a very important part of making sure that the people that we get in the Federal Government are not just people who can afford to not work, be paid for a summer. So in my own personal case, I think it is extremely important to build the institution and to recruit in a high quality way that is actually cost-efficient. This is an important program.

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Director, good to see you. I know you and I have had some conversations. I think it would help the Committee here, the panel, to learn a little bit about the process you are working through, because I think many Members in the House have struggled with some of the decisions that have come forward. And for the panel's sake, in this case, I will be speaking about the Savannah Harbor Expansion Project, where it was authorized in 1999, has had bipartisan support in State for that entire period of time. And through the budget agreement of last year, it was provided for and then even in the Omnibus as well, and then OMB sort of made a decision to hold until we understand WRDA passes, gets through its final stages here.

So, Director, could you just explain to us your thinking and why a hold is in place at this point, why the Corps is not allowed to proceed until WRDA passes and how that impacts other projects, because I know there is a tremendous backlog? There is a lot you are dealing with, and I want to commend you on what you are trying to do to bring fiscal responsibility to this place. So if you don't mind, I would appreciate that.

Ms. BURWELL. I would be happy to. I would be happy to. I first want to say the Savannah project is a great one. It is an important one economically from a macroeconomic perspective for the Nation. It is important for the region itself. It is something that we support and are excited to see come to fruition.

The issue in terms of where we are in the process for this project actually has to do with the basics of fiscal responsibility, and it has to do with the fact that when projects have been a certain period of time and have certain cost increases, and often that occurs because it has been a while since the original authorization, that you see cost increases occur in these projects.

When that occurs, we believe that the Congress needs to speak again in terms of authorization, and that is why we believe this project needs to go to WRDA, go through and be passed as part of what you all choose. This is a place where we work with the Congress, both in terms of the priorities and the fiscal responsibility. And so I am clear about that.

The backlog in Army Corps projects is \$60 billion. That is how much we already have approved in starts and everything going. While this is a terrific project, if one makes the exception that this does not have to have the reauthorization, there are many other projects, and I think some of you may know them that have very, very high percentage increases in costs, and without some mechanism of control, the issues of fiscal responsibility.

So this is very tough because this is, as I have said, a very worthy effort. But in trying to maintain some control, this is why we have made the judgments we have made. We are excited to see WRDA passed. We are working hard, as you and I have discussed, to try and figure out, are there ways to speed once that happens? But we do believe we need to work with the Congress on the question of starts and controlling Army Corps spending. And it is a very, very difficult thing because these things are important in people's States and districts, and we recognize that.

Mr. GRAVES. Thank you.

And if you could maybe expand upon that, too, just to help us understand how we as a Congress, as a House, need to be thinking and processing. Assuming there is a project where expenses have gone up, no fault of their own, it has just been time, maybe it is various reports, requirements that Congress has imposed on it as well.

At what point should reauthorization be sought? And I am speaking for any project out there, should Members be mindful of. I think that would be helpful to know that so that we are all looking ahead and preparing. Because I imagine some of these that you mentioned in the backlog are probably quite old, probably date pre-1999, I would imagine.

Ms. BURWELL. So, with regard, I think the Army Corps has a set formula actually that determines when a project meets that standard and needs reauthorization.

I think one of the things that is also helpful is because the authorization process and the appropriations process of things are not always completely aligned, the question of the information that I just shared in terms of the backlog isn't always presented as you are doing authorizations. And I think it is important to connect the two as it will be very important and many great things are going to be done hopefully in WRDA. But making sure that everyone is actually clear that what you are actually voting on is a certain amount of spending is the other thing that I think is a helpful part of the process, because otherwise, it doesn't happen until the back end that it all gets added up. So I think that is important. And the Army Corps has a set number that when these projects need to be reauthorized.

Mr. GRAVES. Thank you for your support of the project. You have been very supportive. I know the President has been, the Vice President as well, and our Georgia delegation entirely. And you are right, it is regional. It is not about Georgia, quite frankly. It is regional. Assuming WRDA does pass, as it is written currently and from the House and the Senate perspective, what should the Corps expect next from OMB? A direction to move forward?

Ms. BURWELL. The Corps' processes are what happens is also related to the guidance we receive from the Congress with regard to new starts in fiscal year 2014. So at the next stage, what we will have to do is review how the new start language that we were given as part of the fiscal year 2014 appropriation process interacts with the approval and authorization in WRDA, and we will look to find ways to work with the Congress on that issue. But that will be a constraint that we may face.

Mr. GRAVES. Thank you.

Mr. CRENSHAW. Thank you.

Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Director, thank you for your service. I know OMB works very hard on transparency issues, but I want to talk about an aspect that perhaps we can all improve, that we can do better on, the lobbyist reporting with OIRA. GAO's recent testimony and some reports talked about how some of the lobbyists disclosure issues could be improved upon by OIRA. Have you contemplated this, or is there action taking place right now within OIRA to your knowledge?

Ms. BURWELL. With regard to the transparency issue, we always do believe we can do better. Right now in terms of what currently occurs is any time a rule is within OIRA and there is any meeting or contact, that meeting is publicly recorded, the attendees at that meeting are publicly recorded, and if there is any paper delivered as part of that process in terms of stating a position, that becomes a part of the public record. So in an effort to try to make those things public, that is our effort today.

Mr. QUIGLEY. But are you aware of the GAO testimony recently and some of their reports analyzing perhaps some shortcomings, as they describe them, of OIRA's reporting along the lobbyist reporting lines?

Ms. BURWELL. I have not seen the specifics of shortcomings with regard to lobbyist reporting, so I am not familiar with the specific issue that GAO has raised.

Mr. QUIGLEY. We will pass that along and if you could take a look at that and get back to the Committee, we would appreciate it.

Ms. BURWELL. I would be happy to.

Mr. QUIGLEY. The other aspects of transparency, you have a lot of data on the central Web site now and you have made extraordinary efforts making this all accessible. But some of the budget summaries and numbers, why we need this part of budgets, is still scattered across a number of government Web sites. These justifications are not always available in, as a term of art, searchable sortable formats. Many are in formats, such as PDF, that are hard for third parties to easily pull the data information out of that.

So are you aware of this issue, and what is OMB doing to try to make one location, one place, a usable format for all of this information?

Ms. BURWELL. So I think the question of CJas, or congressional justification to Appropriations Committees, has been an evolutionary process, and some of that transparency has increased in terms of even getting things up on the Agency Web sites in terms of how they do it. One of the things is that each Subcommittee, actually each Department works with their own Appropriations Committee, and part of the standardization has to do with different committees have different demands in terms of what they believe will help them do the job.

So as we think it through this process, I think what we need to do is understand, what are the needs of the committees, and how can we meet those? And are the committees in a place where they are willing to agree on a standardized process or approach, and

how we can think about doing some of that standardization to get to what you are suggesting in terms of something that could be overall?

So it is an issue that I think we need to work closely with the Congress, because in its initial form, the congressional justifications are about serving the Appropriations Committee. I think that should be something that is, you know, it is publicly posted on many of the agencies' Web sites, but we need to think through if there can be further standardization.

Mr. QUIGLEY. So how much of the issue is the disparate type of information you are getting, or the fact that you are working with different Subcommittees?

Ms. BURWELL. It would be both because we do not tell the agencies, here is how you do your—we would work the agencies on their congressional justification, but at the programmatic level, they are much closer to it and they do it. I think they tend to want to work very closely with their committees so that they are providing the accurate information. So it is a combination of both things, the need that different Departments are producing different information, but it is also that they are working with different committees.

Mr. QUIGLEY. Mr. Chairman, I look forward to working with the Committee on this and the full Committee as a whole with the Administration on this.

Thank you so much.

I yield back.

Mr. CRENSHAW. Thank you.

Mr. DIAZ-BALART.

Mr. DIAZ-BALART. Mr. Chairman, thank you very much.

First, again, thank you again for being here, and I must say on a personal level, Mr. Speaker—Mr. Chairman. I keep promoting you, which is a good thing.

Mr. SERRANO. Don't start a rumor here.

Mr. DIAZ-BALART. Right. Exactly.

Let me start this all over again. Mr. Speaker, President and Chairman.

Again, on a personal note, it is an Administration that even the press has dubbed as one of the most closed. I will tell you, you have been very accessible, and I think that is very important; it is helpful. So I want to first thank you for that. I think that leads to good working environments. So, again, I just want to bring that out here publicly.

Ms. BURWELL. Thank you.

Mr. DIAZ-BALART. Thank you for that. I don't want to—the Chairman has already talked about some specific issues. Let me talk about more of the budget recommendation. At a time when, according to the CBO, revenue collection will exceed its 40-year average level, which is a good thing obviously—that is a good sign—but yet the Administration is still proposing some revenue increases, i.e., you know, revenue, tax, whatever you want to call it, revenue increases.

And the question is—and in the conversation that you and I had, we talked about a little bit I think one of the disappointments, and I think we had a very positive conversation, is the fact that we don't see the Administration really tackling, leading on tackling

really the driver of our debt, which is the mandatory portion of the budget. So even though the revenues are going to be at a record level and even though you have revenue increases in the President's—the President has revenue increases, my understanding is that it doesn't balance for at least a long, long time, and I don't know if it ever balances.

So the question is this: After 10 years, if we were to embark on that budget, what would be the actual debt held by the public and also how about the unfunded liabilities? When you look at mandatory, actually, do you have those numbers? If you don't have them now, I would suspect you have those on the top of your head.

Ms. BURWELL. Some of those. Let's start with the publicly held debt to GDP ratio. Currently, the number is about 74 percent, and in our budgets, by the end of the cycle, you get a decline, a stabilizing and declining debt to GDP ratio, and our numbers show it to be 69. So you do see what is a declining debt to GDP ratio. And I do think that is a very important point because I am fortunate to have had the opportunity to actually work on balanced budgets.

When I was at OMB before, I have worked on three of the four balanced budgets that we as a country have had in decades, so it is something, obviously, I think can be important. But I think the broader fiscal picture, a balanced budget is one piece of the picture and can be a measure and a tool, but I think what is more what I focus on more is the debt to GDP. But what is most important is economic growth and jobs and opportunity. And I think what we hope is that the budget that we have created is a budget that puts us on the right trajectory for now.

So, right now, and I think even in the Chairman's remarks, the idea of further discretionary change right now is contractionary and can harm our growth, both in the short and the long term, with things like investments and infrastructure.

Then the question is how one goes about handling those long-term entitlement issues that you just raised. And when you look at the drivers of those long-term entitlement issues, they are basically twofold. The first one is the issue of health care costs, and the second one is our demographics as a Nation.

And then you come to how you address. And in our budget, what we try to do is build on what is already built in, which is the Congressional Budget Office, since the Affordable Care Act was passed in 2010, its 2014 through 2020 numbers, which was the window they had at that time, has a \$900 billion decrease in health care costs. And while all that is not attributable to the Affordable Care Act, there are other structural changes that cause that, we start to see that declining. We see controlling health care cost numbers. And then we have an additional \$400 billion in health care savings that is in our budget.

In addition, we believe that the issue, when you start thinking about those demographic issues, that is part of why immigration is so important, because when the Congressional Budget Office went to look at that, the questions of increasing the labor force was a very important part of what contributed to the economic health.

So that is how we put together the pieces. The issue of revenue, we believe that even with the cuts, and it is \$5.3 trillion over the period, that is how much there is in cuts and spending and deficit

reduction if you look at our budget from the 2011 period. But two-to-one is the ratio of cuts to revenue in that, and we just believe you can't get the numbers to work without some of these revenue changes.

Mr. DIAZ-BALART. I am out of time.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. WOMACK.

Mr. WOMACK. Thank you, Mr. Chairman.

And Ms. Burwell, it is great to see you again. I want to associate myself with the remarks of my colleague Mr. Diaz-Balart, who talked about your openness and your willingness to be a dance partner with us. We have been going stag to this dance for quite some time now, and it is really, really good to have the relationship that we have with you.

But as a matter of disclosure, it should be noted that she was once a constituent of mine, so I would expect that out of her.

I have said this in a number of hearings, that when you look at the Federal Government in the totality of the Federal Government, there are a lot of inefficiencies. I mean, we just see them all the time. This government just is terribly inefficient in a lot of ways and has been under lots of different Presidents, in my strong opinion.

Before you came to OMB, you were the president of the Wal-Mart Foundation. Now, there is a difference between the foundation and the company itself, but the cultures are very similar. And you know what the culture is there. It is very efficient, among the most efficient, which would explain why it is the biggest company in revenues in the world between, well, one day to the next, but with another big company.

Is there not a way that this Federal Government can do a better job of asking the private sector, the Wal-Marts of the world, who are experts at creating efficiency, how could we do a better job of asking our private sector companies to help us through these processes?

Ms. BURWELL. So I think in the management efforts and the management agenda that I mention in my written testimony, turning to some of these private sector practices is exactly what we should and need to do. For instance, in the area of shared services and the idea that what we should do is you find a place that does it best in the government and most efficiently, and then you have them do it. So certain financial functions, HUD is actually going to turn to Treasury because they are more efficient and more effective.

So that is one of the things that the private sector does and that I had the opportunity to see when I worked at a place that believed in EDLP and EDLC, every day low cost and every day low price, and those two things come together as you think about it.

Another specific example that I believe we can do more and more of is strategic sourcing. So the question of making sure that the pencil that is bought or the pen that is bought at the Department of Agriculture, if that is the lowest cost value, then at the Department of Veterans Affairs, they should be getting that deal, too. So strategic sourcing, where you look across the Federal Government.

And we have already started saving money by doing that. But those are two very specific examples. And I think there are any number of others. And what we need to do is take those practices and move them as much as we can into the Federal Government.

Mr. WOMACK. You have already mentioned in your testimony that you were a Deputy Director of OMB when there were balanced budgets under the Clinton Administration, and I give you credit for that. I am sure there were times that you thought, you know what, I am just the Deputy Director. If I was Director, by golly, this is what I would do.

So here is your softball question. Now that you are the Director, having experience in balancing the budget, how can you take that experience now as Director and help this Administration get to balance again?

Ms. BURWELL. I think there are a couple of things, and they have been touched on in a number of different places. I think one point actually is relationship, and that is getting us to the point where we all have enough relationships, and I think that is what got us to the place where we have deals and pieces of things. We are not all going to get everything we want, but if we can, build that. So that is one of the reasons in the role and the outreach that I do is because I think that is an important part.

The other thing that I think is an important thing now that I am Director and want to do and think is important is focusing on the M, the management. And while as Director of OMB I think, you know, I love the budget side, I love the appropriations process, I think it is extremely important; I also think it has to be integrated with the management. As you can hear through these specific examples, I spend a lot of time on the M because I think that is a place where we make government more efficient and effective in terms of what we deliver for the American people.

The last thing, in terms of what I believe, is building a strong institution. Because as you can hear in the question we just discussed, it is a very tough policy issue on a thing like Savannah, which I think is terrific, but trying to keep some semblance of fiscal responsibility. So building strong teams, teams that are great analytically and that can support you in kind of showing you the issues to help you make decisions that are tough.

Mr. WOMACK. I want to thank you again for the openness you bring to the table, the fact that you are willing to have a dialogue with us. I congratulate you for that and look forward to our future dialogues. Thank you so much.

Mr. CRENSHAW. Thank you.

Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman.

And thank you, Ms. Burwell, for reaching out. I know we weren't able to connect, but I really appreciate your efforts.

I wanted to bring up the Army Corps in a little different angle than was previously brought up. The Administration did voice their support for infrastructure in boosting U.S. Exports, Washington State being a very trade dependent State and we have a lot of ports and aging infrastructure in our region. But the President's fiscal year 2015 request didn't actually—it actually reduced funding for the Corps by about a billion under the 2014 enacted levels. And

when I think about our jetties and other things, it is the equivalent of seven Katrinas a year hit the jetties at the mouth of the Columbia River. That is quite a beating they take. As you can imagine, they are crumbling, and it is incredibly important to the fourth largest inland waterway system that transports \$1 billion worth of agricultural products down and out.

One way we can address this is Congress needs to step up and put money here. I believe in that. Another way we can address this is we can fully spend the Harbor Maintenance Trust Fund, and that is something that you all have more input into. And I wanted to see if you could explain why the Administration hasn't necessarily addressed some of the local and critical infrastructure needs for our ports and our waterways.

I am mostly interested in small ports and maintenance. We have spent a lot of money in deepening the Columbia River channel. Now the silt is pouring into the ports along the way. So we don't want those last 20 years of work to be for naught. I was hoping you could speak to that.

Ms. BURWELL. So a couple of things. One is in the infrastructure space, and I think infrastructure is broadly defined, and that is from ports to our roads to our critical infrastructure with regard to airports, next generation airports, to making sure that there is funding actually for veterans hospitals in terms of that core infrastructure. Across the board, in the budget, we have put funding in for those things. In addition, with regard to the roads and that part of infrastructure that is more Department of Transportation related, we have said we would use the one time revenues from changes in corporate taxation to do that, to see if we can find a place where we can come together.

Ms. HERRERA BEUTLER. I apologize. I am specifically speaking of the Harbor Maintenance Trust Fund, fully utilizing the trust fund.

Ms. BURWELL. With regard to the question of how exactly the ports and those decisions on a port-by-port basis are made, those are made by the Army Corps, generally speaking, and they use a set of criteria. So the Army Corps generally makes the decisions with regard to which ports are funded, and they do that on a basis that has to do with tonnage coming through and a number of other criteria.

Ms. HERRERA BEUTLER. Absolutely. I guess from your perspective, maybe speak to the difference between the billion dollar cut in the President's budget for the Corps.

Ms. BURWELL. With regard to that, there were difficult choices, as was reflected in the opening statement of the Chairman, and we did have to make difficult choices. And in making those choices, that was a place where we had to make the choices that we made. What we have done though is emphasized the importance of ports within that context, though. So there is the question of the overall Army Corps funding.

Ms. HERRERA BEUTLER. And you are familiar with the Harbor Maintenance Trust Fund and how it is not getting fully spent?

Ms. BURWELL. The question of it not getting fully spent is the part that I am happy to get back to you on. In terms of the question of it not getting fully spent is something that would be an issue.

Ms. HERRERA BEUTLER. Perhaps it would be an area where we can look at, and I urge you to see if there are more ways to fully spend the money. It is taxed basically for people who use the ports, and they are begging us to use that money then for maintenance, recognizing the backlog we have everywhere else. And that is something that perhaps you can be helpful with.

Ms. BURWELL. I would be happy to. I think probably because of the inflow doesn't occur through the process. So I will follow up.

Ms. HERRERA BEUTLER. Can I bring up another? So flooding and flood risk management specifically in Lewis County in my district, they have had an authorization and years of Army Corps look and study and so on and so forth. It is I-5. It is this area around I-5 in Lewis, so it is between Vancouver and Seattle. Did you live on the west side of the State? You probably did.

Ms. BURWELL. Yes, I lived—I was in Seattle, so, yes. I have driven down to go to Portland, so I think I am on the road right now that you are talking about in my mind.

Ms. HERRERA BEUTLER. Exactly. We are hoping moving forward, and we will provide you with more information, we are working with the Corps, that OMB and the President will provide a nod to this in his budget next go-around. It is an issue that the Corps has committed to helping with, but we have had a lot of bumps along the road.

The budget—the Governor has convened a group in that area to put together the proposals that they want and need that will both protect I-5 and protect the region from flooding risk, and it is something we are going to need help from your office in promoting in the fiscal year 2016 budget. So I guess I will just leave you with that.

Ms. BURWELL. Thank you. And I look forward to getting some more information about that specific that would be helpful.

Mr. CRENSHAW. Thank you.

Ms. KAPTUR.

Ms. KAPTUR. Yes. Thank you, so much, Mr. Chairman.

I am sorry I had conflicts and couldn't be here for the formal testimony. But I welcome Director Burwell here today. Thank you for your service to our country now and in former years as well.

In that regard, I wanted to ask you in terms of your budget request this year, if you were to compare the size of the Federal budget today and our population as a country to the earlier period in which you served and you look at the staffing levels of OMB today, what observation did you make when you arrived back?

Ms. BURWELL. So we talked a little bit about it, but in specific terms, when I was at OMB before we had 516 people, and that was with the fewer responsibilities. And we have discussed some of those that the Congress has asked that I think are important, because many of them are about management, program management, actually direct management of the government and that sort of thing, I think they are important responsibilities. But the number has gone from 516 down to we have been in the 450–460 range. And both in 2014 and why we are asking for the request in 2015 is to try and bring us back part of the way, certainly not to the numbers that we saw in that time.

But in terms of this question of the size of the government and the size of different things, as one thinks about the percentage of GDP that our discretionary spending represents, if we are at the 2016 sequester levels, it will be the lowest that we have seen since basically it was recorded, which is the end of the Eisenhower Administration in terms of that spending as a percentage of GDP, to give you some levels of comparison.

Ms. KAPTUR. Thank you. Thank you for placing that on the record.

Let me ask you, one of the biggest issues that we have been facing with the Department of Defense and the Department of Veterans Affairs is the electronic records sharing issue. Whatever you can do to dislodge the stalemate will be most appreciated. OMB seems to have a way, an ability, an uncanny ability to make things happen.

This has been—everyone on the DOD committees, everybody on the VA committees up here, is completely frustrated, especially with the Department of Defense. I say why don't we just hire the Department of Veterans Affairs? Let them take care of it. But somehow we have got to get these records seamless, and we are having real difficulty doing that. So for the electronic medical records and their symmetry, we would hope that OMB might be able to help us out.

Ms. BURWELL. Information technology is a space that I think you see in our budget that we are asking for additional funds. To give you a sense of the numbers, the Federal Government spends \$78 billion on IT on an annual basis, and we are asking, it would be \$20 million for us to do that oversight and management. I hear the frustration with this issue. It is something that we will engage with and are engaged with.

Ms. KAPTUR. Thank you.

We notice that the agencies seem to be spending less on IT now than at the beginning of the Administration. Can you tell us more about how OMB is working to improve government programs and operations to maximize the government's return on its technology investments?

Ms. BURWELL. Yes. Thanks to this Committee and the Congress, there were funds that were put in to do IT oversight. As part of that effort, in terms of that IT work, much of that work at this point has saved \$2.1 billion, and it comes in a number of different forms. It comes in data consolidation—consolidation of data centers so we have fewer of those. It comes in the form of reviewing projects that go and have problems and that we get in and try and create further savings.

So that is a report we do on a regular basis to the Congress, and we have seen that savings and we are appreciative, and that is part of why we are asking for funding. Because while we have been able to do very well on efficiency, better costs, clearly, October shows us we weren't very good on effectiveness, and that is the next frontier that we think we want to work on at OMB.

Ms. KAPTUR. Thank you.

Finally, I just wanted to make the observation and recommendation that some of your budget examiners take a look at, especially the policy examiners, take a look at the different Federal Depart-

ments and ways in which revenue that they recover, whether it is asset recovery on the drug side, whether it is IRS agents working very hard to collect taxes, whether it is the FBI or an Inspector General doing something that brings revenue back. Right now what happens is they don't get any reward. It all goes back to the general fund. The Agency, the Department doesn't get rewarded, and the individual doesn't get rewarded. I am saying, what is the incentive?

So if there is anyway through the channels that you operate in you can offer performance credit to those who are actually doing an exceptional job of recovery, I think that would be a very constructive way in which to move. You probably have your own organizations you have to work with that are out there on the executive side. But it just seems to me that we are missing the boat here in not rewarding outstanding performance. If a team does something really extraordinary, it seems to me we can't knock at Wall Street's door hard enough. And if there is a team over at FBI that does a really good job, by golly, we ought to incentivize them to do more. Thank you very much for your testimony.

Ms. BURWELL. Thank you.

Mr. CRENSHAW. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Director Burwell, thank you for joining us today. I appreciate your dialogue and openness, as others have remarked. I want to discuss some of the comments that my colleague Mr. Diaz-Balart brought up regarding the deficit and the national debt. It is \$17 trillion. It has gotten to a point where many Americans, it is even hard to understand what that means to our future, what compounding debt and interest means going forward as we continue to pay off the excess of previous Congresses, and then we continue to overspend every Congress following.

Budgets are submitted from the Administration. They don't really have an end point where the budget would balance, much less ever pay off the debt. So I think a lot of Americans just ask us if we are going to borrow money that we have to have a plan on how we are going to pay it back. It seems pretty simple. We have to do that in our personal lives. Government should have to do that.

It seems to set a really bad precedent for our country that this town and this culture has sort of become indifferent to this. Since it has always been it, it is sort of part of the culture. And I know you have experience working when we had some balanced budgets. I think in the last 50 years, the budget has been balanced maybe six times.

So both parties got us in this mess. So rather than maybe point the finger at one party, let's say that this town, both parties have been irresponsible with tax dollars in at least balancing our budgets.

But there is precedent for the two parties working together to solve these problems, and you were part of several years in a row where you had a Republican House and Senate and a Democratic Administration and they found a way to put together a balanced budget. And we had some good revenue coming in; there were some unique circumstances. But at least it is a shining light in the dark-

ness maybe of how we can get to some solutions in this town. So I am eager to work with you on how we get there.

Mr. Diaz-Balart sort of questioned what our debt looks like going forward. I have seen estimates by the CBO that we may borrow another \$8 trillion over the next decade. I can't find a constituent that wants to see us do that. So when we have an entire set of constituents in every one of our districts that says that is an unacceptable outcome, yet that is the path we are headed down. We have \$3 trillion in new tax revenue coming into this Congress, to this town over the next 10 years from a variety of tax increases that have occurred, yet we always get back to more revenue, more revenue, more tax increases, more tax increases. And Mr. Diaz-Balart was heading down this path.

You talked about growth as being a key part of this solution, and I think we would all agree that a rising tide that lifts all boats helps this country, brings in revenue. But we can't increase spending with that. So we need lids on spending so that when revenue comes in, we know that we can reduce the debt as part of that.

But I guess I am more interested in your long-term solutions. I think we can debate about what to do this year. But as we ignore the long-term problems, they get worse and worse. And I noted that the Social Security trustees, the Treasury Secretary, Kathleen Sebelius and others who are on this say lawmakers should address the financial challenges facing Social Security and Medicare as soon as possible. Taking action sooner than later will leave more options and more time available to phase in changes so the public has adequate time to prepare.

I note that in 1962, we spent 14 percent of our budget on entitlements. Today we spend 47 percent of our budget on entitlements. In 2030, we are expected to spend 61 percent on entitlements. So not only is that an unsustainable amount of revenue, we couldn't bring in enough tax dollars to sustain that, it also crowds out education spending, research spending cancer research, transportation spending, things that are important to both sides of the aisle.

I note the President has a responsibility and I think the statute says if there is a Medicare funding warning made in a year, the President shall submit to Congress within the 15-day period, beginning on the date of the budget submission to Congress under subsection A for the preceding year, proposed legislation to respond to such warning.

Has there been a warning? Has the President responded to that? And if you agree that short-term—that there is sort of an understanding that short-term reductions is one topic, what are our long-term solutions? How do we fix this problem, particularly when it comes to entitlements?

Ms. BURWELL. So the entitlement issue, I think, is the one that we need to focus on and we have discussed a bit. I think the real question, though, is how one goes about addressing that entitlement problem. It is a problem. We want the deficits to come down, but what are the alternative choices, and what paths do you put things on? You are absolutely right.

I have had the opportunity to actually work. We created a Social Security lockbox so that those moneys would not be spent. That was in the last forum when we got to balance so that that money

actually went to deficit reduction, but it extended the life of the trusts, you know, to your point about those things.

So I think the real question is what path we agree on that downward trajectory of spending in the entitlement space, and I know there have been many criticisms of the Administration with regard to our Medicare Advantage changes in terms of Medicare changes. When we look at what we see in the proposal of the Ryan budget, it is about the specifics in the space, and what we believe is we put forward specifics that take us on that right trajectory.

We need to also continue to do the steps that promote overall cost containment. We have seen healthcare costs slow. That is important for the Federal Government and the deficit, but it is also important for the private sector.

So I think the question is, what do you want as the slope of that line of decline on entitlements, and what are you willing to do to do it? And I think we were hopeful last year the Administration put forward in its budget actually a deal, which was a very unusual budget construct. It embedded what people refer to as the Boehner deal. That isn't what got us there. Clearly we weren't able to do that in terms of all of us coming together in a bipartisan fashion.

What we are hopeful this year is that our expression of the vision of what we think is the right way, that we can end up this is how we believe we should do it, and here are the specifics of how we do it. If there are conversations that others want to have, we welcome them about better ways than we have and what we have proposed. But we believe we have the right slope and the right slope for economic growth, because while I think that many Americans are definitely interested in these issues of can you balance, how do you spend, I have had to tighten my belt over the last years in terms of the difficult economic situation, I think they are also interested in jobs and growth, and figuring out what tools we use to make sure that we are continuing on that trajectory is an important part of fitting all the pieces together.

Mr. CRENSHAW. Thank you.

We have got time for a couple more questions. I would like to start that by asking two questions. One is about we talked about IT, information technology, and as you know, in 2012 this Subcommittee started appropriating money to OMB to oversee and reform some of the information technology, and I think most people would say there have been a lot of good things that have happened. And when you mentioned \$78 billion spent on IT, I think at one time it might have been 80 billion—

Ms. BURWELL. Eighty.

Mr. CRENSHAW [continuing]. So there has been some savings, and that is all well and good.

I guess the question becomes when you look at the rollout of the healthcare.gov that you hopefully were overseeing, and you would have to say it didn't work out all that well, was that something that you were kind of trying to oversee, because it was trying to coordinate a lot of different agencies, together? Do you know what happened, learn any lessons about—as you look ahead to see how you can coordinate all the IT, were there some lessons learned there?

Ms. BURWELL. So one of the things that I think did work is the portfolio stat process is a process that came of this funding, and it was a part of the IT process, which is a process of when you see a problem, how you put in a SWAT team to solve, and that part in terms of the problem occurred, the team goes in, a team of highly specialized individuals, to work in a focused and concentrated way to get the site to the place where it is functioning.

In terms of some of the things that we have learned and that we are going to act upon——

Mr. CRENSHAW. Did the SWAT team step in on this one or step in too late?

Ms. BURWELL. At the point at which we knew something was wrong, and that obviously is after October 1 when we all knew something was wrong.

With regard to some of the lessons learned as you review this, and these are things that we are focused on, and that is what the money in the budget is about, one of the things that wasn't working well is the business owner and the IT owner. And this happens in the private sector as well. People go—IT people fix it, and the business owner doesn't engage. The two have to engage together. So it is not just usually an IT problem, it is also about, how is it going to work? How should it work for the customer and that the business owner understands better? So getting a closer connection between the IT people and the business ownership, issue one.

Issue two——

Mr. CRENSHAW. But that is not a money issue, is it?

Ms. BURWELL. No. Some of these are management issues. But the way in which you get it to happen, and that is what this money is for, is to create a team of best practices. We don't want to create this all over the government. We believe there should be a centralized place with the skills and best practices that then apply to different places in the government. So you don't create it all over the government, but these people are the people that help you do three things.

The other thing is historically, and this has to do with procurement in the Federal Government, we have kind of done a waterfall approach instead of a more iterative approach, which is important to IT, because in IT you need to take shorter bites. Things change. You need to test and try, test and try and redo. We weren't doing enough of that.

The last thing is end-to-end accountability, from point A to point B.

And those are three things that we want to work on, and the ways we want to do it are we want to focus on best people working on IT, best partners, because sometimes it is about the partner, and that is often, not always, but sometimes private sector. And then the third element is best procedures.

There are complexities in the system that sometimes make it hard to get number two and number one, because some people don't want to come and work because they are like you don't do this in an iterative fashion, you do it in a waterfall, and I as an IT person am not used to doing that. Or trying to get the best companies, it is too hard.

And so just a week ago, GSA started something called FBO Open. What it is is a process where we can better source, and people can gain information. They can open the PDFs—to Mr. Quigley's conversation about search, you can open the PDFs, and so people who are high-tech firms who want to see if there are contracts they might want to do, they are able to search that better, so we may be able to track better players.

And so there are a number of things that we need to do across the board to do that in terms of the problems identified and the key goals we are going to work against.

Mr. CRENSHAW. Sounds like a lot of those are management, and I know you have asked for an extra \$12 million to be added to the \$8 million. That is \$20 million. That is a pretty big increase.

Ms. BURWELL. It is people.

Mr. CRENSHAW. A lot of times when you talk about IT, when you say \$80 billion or \$78 billion, people go crazy, because every agency says, if you just give me some more money for IT, then everything will be working right, and it doesn't always seem to do that. So we will look at that funding request, but I appreciate the fact that you are looking at the way people operate, and their efficiencies, and the way they manage their time and energy and things like that, because I think that is part of the problem as well.

Ms. BURWELL. Right. And part of that is, I think, having the people to go in and do the examinations at the front end. What has happened with the IT money we have gotten, it is, you know, about consolidations, data center consolidations, a number of things that are important, or coming in at the problem like we did in October, and in portfolios we tended to do that. You can save a lot of money that way, and we do that, but I think we can do a much better job both with efficiency, better spending of the taxpayer dollars, but also effectiveness. One of the things we need to do is make sure that these technologies deliver for the customer. That customer-facing element, whether it is a private-sector business or an individual who wants to get their veterans benefits, we need to work to make that work better.

Mr. CRENSHAW. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

You know, just a little while ago I said to myself, in the final round I will speak about IT, and it seems that everybody had the same thing in mind because that is where we went.

And then it dawned on me something, and I say this with all due respect to the majority party. There are Members of the majority party who have been in a cost-cutting mood for the last couple of years, and all you hear from them is cut, cut, cut the budget. But IT presents a unique challenge. We could give you a bundle of money now, and in a year and a half from now, half of that equipment you bought is obsolete, or the programs are obsolete.

And so we talk about entitlements, for instance, and how they keep growing, or how they are going to be around for a while no matter how much you cut them. I don't think we factored in yet in our mentality in the House, or in the Senate for that matter, the fact that IT costs are here to stay.

When I first came to Congress, it was all about paper records somewhere in Tennessee or in Iowa, somewhere. That is not true any longer. Everything now is somewhere on a computer, whether that is good or bad.

Then after 9/11 you got into the issue of cyber attacks and the fear of people doing a number on you and getting information that they shouldn't have, and then your personal privacy came in, although that is another issue not necessarily tied to you.

So my question to you is can we ever reach, again, to satisfy folks who want to cut the budget, a neutral point in the IT area, when it seems that anything we do for you changes in a couple of years? I mean, you even see it in what we have at home. With all due respect to Apple, which is great, you notice every time they turn out a new gadget, the charger is different, and you have to go buy a new charger. So breaking that down, that is breaking it down to its lowest denominator. But at your level there are chargers that are different. There are programs that are different. Will you be able to say, for instance, to Mr. Yoder and Mr. Graves or the Chairman, we are at a level field now and we don't need any more money for IT for a while, we are all set? I don't think that will happen.

Ms. BURWELL. I think embedded is actually an important concept. Being at OMB, I think about what is fundamental that has changed that 5, 10 years from now that we need to be thinking about, and it is in the space of information technology. Information technology is going to continue to be something that both provides opportunity for cost savings in times, but also provides exposure as well. And the cyber security, I think, is extremely important in the space.

Whether or not we will ever get to a level where we don't need more—I think IT spending in the Federal Government has gone down. It was 80 down to 78, and that is through better management. There probably are diminishing returns and investments that we should be doing that we are not doing in terms of certain types of things we need to advance.

But to your point of how we think about that, that concept of capturing flexibility is a little bit of the waterfall versus the iterative. And another example I would give is this year one of the things that was done, cloud computing is something that is important to use, but I am sure you can understand, to your point about cyber security, we have to be very careful. And for any department, they would go to a cloud computer, and they would have to go through a bunch of different certifications because we need to make sure the Federal Government is safe.

Having said that, what we did was we basically created a situation if a company goes and meets certain standards, and you are the Department of Agriculture, and they met the standards overall, then if the Department of Veterans Affairs wants to use it and they have been certified, we create that efficiency.

Cloud computing is also a way that we don't take on a ton of that capital expenditure in the case that you are saying, the charger, and we try and create flexibility that we can use. I think this is going to be a place that, you are right, we are going to focus on

for a long time. I am hopeful we can continue to find cost savings, but we also have to increase effectiveness.

Mr. SERRANO. I have been around here long enough to remember, for instance, Y2K, and how we felt the world was going to come to an end at midnight, strictly at midnight. Of course, people forgot that midnight is not in the same place at the same time everywhere in the world, but that was the fear. And nobody will really know, unless someone writes a book about it someday, whether it was Congress' involvement that drove that—I mean, that is all we spoke about. I remember in those days we would have a hearing, Mr. Chairman, and the first person would ask, what is going to happen with Y2K? Are you ready for it?

Ms. BURWELL. Are you compliant?

Mr. SERRANO. Everybody was terrified of it, and that was the question, right? That was the only question of a hearing to start off. And we got through that.

But this is not going away. This is the way of the present; it is not the way of the future. So I suspect that at as we look towards expenditures, government expenditures, in our desire to bring about balanced budgets and so on, that this particular area will continue to cost us loads of money for a long, long time, especially as we get into the area of other countries that can never match up to us militarily or otherwise, but can with a computer and a cyber attack.

So I just put that out for a thought because it is a whole new world, and maybe we can find a charger that fits all.

Thank you so much, and thank you for your service.

Mr. CRENSHAW. Like every other aspect of government, I think it is not so much how much you spend, but how you spend the money you spend, so we have to keep that in mind.

Mr. GRAVES.

Mr. GRAVES. Thank you, Mr. Chairman.

And I always enjoy Mr. Serrano's comments. I try to never take your questions—I didn't mention IT or cuts for that matter. But we do have a role—

Mr. SERRANO. It was on your mind.

Mr. GRAVES. It was on my mind, yeah.

But I will say for the Director's credit, they have operated with a lot less personnel than previously. You have mentioned, what, 2009 levels in essence, a lot of furloughs, and so, you know, we have to somewhat commend agencies and departments when they embrace the cuts or reductions and operate as well as they can, and they have certainly done a good job here, and I want to thank you for that.

It is not easy for anyone to have to go through what we have been through, and I think back on the State of Georgia, and, you know, teachers have been—the education system has been through the same strains, and furloughs have been there, and everyone working together is always the best way forward.

In thinking in that vein just a little bit, you have referenced regular order and getting back to that, and that is something we all embrace here in this Committee. Do you have any recommendations, just looking ahead from a budget process perspective, because it seems like we are—we are pushed as appropriators into

a window that you can't quite accomplish what you are tasked to do because of where we might receive the budget request from the Administration or even for that part our own budget passing the House or the Senate, and the window seems to be narrowing over time. Do you have recommendations? You have an extensive resume of being part of a lot of successful areas and such. What would you suggest from a process perspective that we can make it through?

Ms. BURWELL. So I thought a little bit about it, but it is interesting, because at the core it is about forcing the decisionmaking. And so I think the most fundamental question is how we get to a place where the decisionmaking and the choices and the tradeoffs can be made, and the committee process is actually a very important part of that.

And so the question is would a process change or a structural change in the process change that empowerment of the committee process, because, to your point, to get the work done and to get the choices, your colleagues depend on you all to know more than anybody else about this topic.

What has been missing in the past year is when you do continuing resolutions, and that you don't have a budget process actually where we have a hearing and we actually have a conversation, as we are today, about—you know, we can differ on different points, but we don't have the opportunity to talk about the issues or the importance of something big that is coming down, like IT.

And so on the process front, I don't know that a process change will fix that, and it is a little more—it is interesting, because I have thought about it, and I actually think it is actually more a question that you all will be able to answer than I would be able to answer because I think you have a better sense of what is preventing the process from getting to the point where the Committee makes choices, because these are tradeoffs. We can all talk about our single issues, but when you, the Committee, have to review, and you have a number of different pieces in your bill that are complicated, and you have an allocation, that is when the choices get made, and that is how it happens, and that has not been working. So the question I have is what would help and support that process? That is on the nondefense discretionary and defense discretionary side. The mandatory is another issue.

Mr. GRAVES. Yeah, I think that is a question for all of us, and Mr. Yoder has been putting together some working groups to sort of think through this, because our goal is to work through each bill in a very deliberative manner, to debate what our preferences and priorities as minority and majority parties, and try to avoid the continuing resolution scenario or the large bill all packed together.

And we see what happened ultimately was while it is good that we have a 2-year budget agreement and such, when it happened in the omnibus, then your budget is a little bit later than normal, which shortens our window to accomplish for the fiscal year. So it is how can we get the gyration correct. Right now we just seem to be out of whack a little bit. But thank you for your thoughts on that.

Mr. CRENSHAW. Thank you.

Ms. Kaptur.

Ms. KAPTUR. Thank you, Mr. Chairman.

I have a question about the management side of your operation. In trying to make the best use of the precious taxpayer dollars, to pay the costs of war that we have borne now for over a decade, and the gigantic Wall Street-induced recession which caused a level of employment not seen since the Great Recession, the costs of digging out of all of that and the total collapse of this economy have been extraordinary, and we have to pay those bills.

Meanwhile there are those who suggest, well, the way—you know, you cut it out of seniors or you cut it out of hungry children, and some of us choose not to make those choices.

So really my question goes to, on the management side, do you have a mechanism to look at certain cost drivers of programs and suggest alternatives to them? For example, at the U.S. Department of Agriculture in the invasive species account, in the last 15 years, if you were to look at those carefully, you would be amazed at what has happened. The American people are paying for the unaccounted costs of free trade. Emerald ash borer has eaten through ash trees all across the Midwest, to name just one species and one tree. It is costing a boatload to try to replant, to get our Forest Service involved in some of that, to try to remediate all the problems associated with just that particular creature.

Right here in Virginia, the stink bug. People are selling their homes. Came in on Chinese packing crates. The perpetrators came in on cardboard. Who is paying the cost for remediation? Local governments, State governments, and the Federal Government, research projects, try to get rid of these things. That account has just ballooned and from a few million dollars to in the billions.

That is a cost driver. What are we going to do about it? The answer isn't to have uninspected material that comes over the border or to place a fee on those places that have shipped in product that has truly caused great harm here. That's one account.

One can look at areas of our country that have had repeated disasters, coastal areas for example, areas that have been flooded. And, you know, we pass flood insurance, or we do this and that, and then the communities go back and rebuild in a place that climate change—forget climate change if you don't believe in it; look at the record—where homes simply can't withstand the weather, and yet we are asked to pay to rebuild. HUD has asked for money, and EDA has asked for money. So this repeated disaster-prone account, whatever we want to call it, if you put it all together, the increasing costs because of people behaving in very irrational ways.

Another arena deals with intelligence. For many years we had the CIA. Some people liked it; some people didn't like it. It performed an important function, but now we have the DIA and we have JSOC. And if you look at some of these accounts and what is happening to them, you will go, why do they each have duplicative systems in a given area?

So my question really is you can look across the government and look at what I call cost drivers that have a solution, but we can't seem to get clarity on how to get there. I think we could save a lot of money, and I would only encourage you to perhaps ask your examiners to pinpoint some of those accounts and to look at them very carefully.

Ms. BURWELL. I do think that there are a number of areas where we can think through how do we get to a better place with regard to these issues, and the examiners do watch them and bring them up as part of our review process is when you start to see them. One specifically that actually is in the budget that this Committee would probably be very interested in is the Civilian Real Property Committee that would—there is property that is in excess and not used in the Federal Government and, you know, as an example of what you are talking about, but one's ability to get rid of that property, you know, because it, to be honest, is district by district, is very difficult. And so you need a process where everyone buys in, and that there is an up-or-down vote so that it is owned by all, and people don't have to. So we look for these places and then try to move them forward.

Yesterday the GAO testified on the cuts and consolidations, the cuts report that is a duplication report, and the good news is that actually in the last few years, we have found a couple areas where we actually have made progress. And so the list has gone from 200 down, and that is actually because we have gotten some of those savings.

And so I think it is a matter of identifying them and then finding the way that we can work together, because almost any of the issues, and even the ones that you mentioned—I am sure you all are very familiar with the flood bill that was recently voted on, and so there are obviously different points of view about some of the issues you raised. But I think if we can identify them and then start to work them, but I agree with you. I think there are a number of places, and we do need to keep track. And some of the things that increase, you have to get to the bottom of why. And some of the things in terms of why there are things in two places, ask the question. Sometimes it is a legitimate answer, and sometimes it is not.

Ms. KAPTUR. Thank you very much.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

Mr. YODER. Director Burwell, I actually want to dovetail a little bit off of my colleague Ms. Kaptur's comments in that I think one of the challenges we face is that—and correct me if I'm wrong—but we don't have the type of ability to know what real property the Federal Government owns, where it is, what it is costing the taxpayers in a centralized spot where a constituent could go and search areas of the country and know what the Federal Government owns.

I mentioned this to the GSA when they came before a Committee. They are actually working on a database in response to some of our concerns, and that is just such a small sliver of our property. If we can't account for what we own, how could we ever properly manage our assets? And so I think that is an area where we are going to have to—and if you have proposals, we need to fix that problem to keep the Federal Government accountable to taxpayers.

I want to go back to the conversation we were having about the national debt, and long term versus short term. We are looking out not only 5, 10 years, but 30, 40 years because of the demographics

you raised as well, challenges that our country is going to be facing. And I guess the House is going to consider budgets this week. They are going to consider the President's budget, I believe. They are going to consider the House budget. They are going to consider other options, the different coalitions and caucuses.

In terms of the President's budget, the House budget, I think, that is going to go forward balances within a 10-year window. When does the President's budget balance?

Ms. BURWELL. The President's budget balances in the outyears. And as I said earlier, it is not because we at this point in time believe in the 10-year window. That is not the objective or goal.

Mr. YODER. I understand that. You say in the outyears. Does the President's budget ever balance?

Ms. BURWELL. Yes, it does.

Mr. YODER. What year?

Ms. BURWELL. I would have to go, but as I said, because we don't focus on it as the budget number. I am happy to get the year.

Mr. YODER. I understand, but we are focusing on longer term. I am trying to get away from the short term. I think this Congress and this city spends too much time focused on 1, 2, 3, even the 10-year window. I mean, we are looking at where are we going with the entitlement programs over the next decade, the next two decades, the next three decades. And so if the policies we are pursuing don't balance within 10 years, I am assuming the President's budget doesn't balance within the next decade?

Ms. BURWELL. That is correct.

Mr. YODER. Okay. So it doesn't balance within the next decade. The House budget does. I guess we need some certainty if we carry these policies out, does this budget ever balance? Because my theory is since we have never run balanced budgets in this town, that that culture has gotten to the point where the Administration—and Republican Administrations may do this as well—that we are not even submitting budgets that ever balance. And so I would love for you to let us know when we could expect the President's proposal to balance.

There was another question I asked in an earlier dialogue regarding the Medicare warning. And my question was regarding the Federal statute that says if there is a Medicare funding warning made in a year, the President shall submit to Congress, within the 15-day period beginning on the date of the budget submission to Congress under subsection A for the succeeding year, proposed legislation to respond to such warning. Has a Medicare funding warning been issued, and has the President issued proposed legislation to respond to such warning in accordance with Federal statutes?

Ms. BURWELL. I would leave the first question in detail to my colleagues that are the Medicare trustees, Secretary Sebelius and Secretary Lew. But, yes, warning. And we consider our budget our proposal for how to handle the Medicare issues. That is what we believe is our proposal, in terms of responding to the second part of your question.

Mr. YODER. You think that meets the statutory requirement?

Ms. BURWELL. Yes, we do, and we believe we follow the Bush Administration's interpretation of that statutory requirement.

Mr. YODER. Which could also be incorrect.

I think the idea is that the way the statute reads is that after a budget submission, there is a separate proposal related to the Medicare funding warning.

We can argue, I guess, if it is within the budget or not, but it gets back to my fundamental point we were having in our last dialogue. My question really was what are the long-term entitlement solutions, Medicare, Social Security solutions? And your response was, I think, one of which we hear a lot from the Administration, which is we have got to find balance, we have got to figure out the slope we are on.

The House has put together a proposal. They call it premium support. It really came out of the Clinton White House in some form or another. Alice Rivlin and others who were part of the Administration you were in talked about the idea of Medicare Advantage for all. It had bipartisan support. It may not be the answer. It is something the House is going to consider again.

What is the approach of the Administration; what are specific proposals related to response of that Medicare warning? So if they are in the budget, what are the specific Medicare fixes that the Administration has put forward in response to that statutory obligation?

Ms. BURWELL. So we have a number of proposals that add up to about \$400 billion, and those proposals include things from making sure that we address what we believe are excessive and overpayments that—actually things that have even been written about as recently as yesterday with regard to things that have been recommended by issues by the GAO and MedPAC as well. They address those kinds of issues. They try and put in structural reforms that create the incentives for types of delivery that will then result in further savings when people are incented to deliver impact, and so putting certain constraints on funding. So there are a number of different proposals that add up to \$400 billion in our budget.

I guess I would also say I think it is about the choices that we make. With regard to the premium support issues and the proposal that is part of the Ryan budget, when one looks at that, one sees that for traditional Medicare, that you will increase premiums between \$800 and \$1,500. In the CBO report, it is pretty clear. You are going to make a choice between increasing premiums or savings. You can't actually do both.

And so I think the question then becomes what specifics. And so if the choices are about those kinds of premium increases—and there are numbers that say you could do this possibly without increasing premiums, but when do you that, you don't get the savings. And then the question is is so what actually is the plan in terms of Medicare, specific Medicare proposals, that will result in those kinds of savings?

Mr. YODER. I guess I would just submit that the response of the Administration, albeit maybe well intentioned, does not respond to the Medicare funding warning in a way that would actually fix the problem. And I know there is a lot of risk that goes in with the courage to address these issues, and I understand that, and people in both parties get beaten up in the House and Senate for taking that sort of courageous stand. Both parties have done it, and both parties don't do it. So it is not a partisan attack other than to say

in order to solve this problem, we are going to need strong leadership from the President to be able to respond to these warnings in a way that actually fixes the problem.

And I understand you are saying overpayments, and everyone is going to agree on that and certain things, but the warnings and the statement from the trustees that say lawmakers should address the financial challenges facing Social Security and Medicare as soon as possible, taking action sooner than later will leave more options on the table and more time available to phase in changes so the public has adequate time to prepare. I just wish the Administration would be willing to do that and provide the leadership.

And with that, Mr. Chairman, I will yield back.

Mr. CRENSHAW. Thank you. And I think we want to all work together.

Let me ask one last question. We worked together when we passed the omnibus spending bill in January, and it shows you that when we get together, we can work together.

But I want to ask you a question about executive authority, because it is concerning sometimes that when we do work together, and then if you hear the President say, well, if it doesn't work out exactly the way I would like it to work out, then I can issue an Executive Order. Some people say where does he get that authority? And you are kind of working in the White House every day. Does the OMB get involved in deciding what laws to enforce or not enforce; like with some of the affordable health care, the decision to delay things, is that something OMB gets involved in?

Ms. BURWELL. Our role is in our statutory areas, and so in the space of regulation or in the spaces when—IRS regulations don't come through OMB. That was something that was a decision, and a memorandum was written during the Reagan years, and so we follow what has been protocol since then.

Mr. CRENSHAW. Do you know who in the Administration makes those decisions? The reason I ask that is because that impacts spending and revenue, and I want to—sometimes when those changes get made, whether it is an Executive Order, an extension, whatever you want to call it, that has to impact in some way, shape or form the revenues and expenditures that are taking place. So that is part of what your job is to keep track of that. I wonder, that is why I ask that question, who makes that decision?

Ms. BURWELL. I think it varies in terms of which thing one is talking about. In terms of the issues of data collection, in terms of some of the things that were announced this week, and in terms of the issue of what data a Federal contractor will keep and show, data transparency, you know, that is something that the Department of Labor will implement, because if anything is going to relate to Federal contractors, because contracting is a part of what OMB does, those things do come through. So it depends on which area or—

Mr. CRENSHAW. But when it does impact either the revenue or spending side, is that something somebody tries—I guess like some of the health care changes, when you change some of the mandates that are going to impact somehow overall spending, somebody keeps track of that?

Ms. BURWELL. Yes, and in those spaces we are consulted. OMB is consulted, and our health team is consulted in spaces that impact in that space, sort of the Executive Orders or those sorts of things, and that is why I think it depends on an issue-by-issue basis where it will come in and have contact with OMB. When the Department of Labor is asked to do a rulemaking, that will come in through OIRA. With regard to some of the kinds of changes you are talking about, that is sometimes done in consultation with the health team depending on what it is and where it is coming from. The IRS makes its decisions on—

Mr. CRENSHAW. I just wanted to be sure somebody's keeping track.

Ms. BURWELL. The puts and takes with regard to the dollar shift.

Mr. CRENSHAW. Got you.

Mr. Serrano.

Mr. SERRANO. Thank you.

I just have one last question that came to mind. The more I hear about what problems we face in the future, the more I am convinced that we have to do something about immigration reform and put everybody out of the shadows and get them paying taxes and so on. We talk about what is going to happen in the next decades. Well, we would know under immigration reform that at least, at least 11 million people, not to mention the children, would be forced to do the right thing, which now they may not be doing not only because some of them want to get away with something, but because they can't openly or publicly say, I am here, and I am working, and I am paying taxes.

So my question to you is, how far off do you think all the estimates are—you know, everybody has an estimate on how much it would bring into the economy if we did immigration reform? I have even seen, you know, \$160 billion over a couple of years mentioned. Does OMB get into that, into trying to find out what the real numbers could be if we were able to do immigration reform?

Ms. BURWELL. As part of our budget, we have used CBO's estimates. So we have used the CBO estimates that exist, and that is where we—you know, we have based our numbers on CBO's.

Mr. SERRANO. And CBO believes that the numbers are huge, right?

Ms. BURWELL. Yes. And CBO analyzed the particular title, and I think this is what you are referring to, is when you have that increase in the labor force, that is something that positively impacts our GDP and a number of things in our Nation. And so that is a specific title in the bill, and so when CBO scored it, that is what it was, and so we use that as the basis for what is in our budget.

Mr. SERRANO. This is just sort of an aside immigration comment. I have found out that there are Members of Congress, in some cases on both sides of the aisle, who have two concerns with what we, some of us, propose. One is you broke the law coming into the country; we shouldn't reward you for that. And then there is the unfortunate political issue of, well, in the case of Latinos, for instance, they will all be Democrats.

Well, this will probably cause me a lot of trouble, but once you get immigration off the table, you will be surprised how some people are more conservative than you think they are, but as long as

immigration is on the table, they will lean one way only because they see one group supporting them on immigration.

I can't predict what Latinos will be like as voters once this issue is off the table. I suspect they will be like all other Americans. I mean, didn't Hawaii and Alaska come in at the same time, because we were certain Hawaii was going to be Republican, Alaska Democrat? Tell that to Don Young. It didn't work that way.

But anyway, thank you for your service, and thank you, Mr. Chairman, for the time allotted, the extra time.

Mr. CRENSHAW. Thank you.

Mr. Yoder, do you have any further questions?

Mr. YODER. We will stay at rest there. Thank you, Mr. Chairman.

Mr. CRENSHAW. Ms. Kaptur.

Ms. KAPTUR. Thank you, Mr. Chairman.

Mr. CRENSHAW. Well, once again, thank you so much for being here today. I know you have got a big job and a tough job, and we want to work together with you any way we can to help keep things on the right track. Thank you very much.

Ms. BURWELL. Thank you, Mr. Chairman.

**Financial Services and General Government Subcommittee Hearing  
on the OMB FY2015 Budget for Director Sylvia M. Burwell**

**Questions for the Record Submitted by Chairman Ander Crenshaw**

*Improper Payments*

According to Government Accountability Office, the Federal government made an estimated \$106 billion in improper payments in fiscal year 2013. While this is a staggering amount of money, I fear that improper payments may grow in the future. The President's budget proposes to increase both eligibility and payments for the Earned Income Tax Credit which already has a 25 percent improper payment rate. Beginning this year, the Internal Revenue Service will also be administering a very complicated health care tax credit as part of Obamacare. This credit will be a challenge to administer because it goes to insurance companies but is based on estimated household income. This sounds like it will be difficult for many Americans to reconcile next April when they are doing their taxes.

**Question:** What is OMB doing throughout the Federal government to reduce improper payments?

**Answer:**

Through this Administration's efforts, the government-wide improper payment rate dropped steadily for four consecutive years, from 5.42 percent in FY 2009 to 3.53 percent in FY 2013. Working together with Congress, we reduced improper payments by strengthening accountability and transparency through (1) annual reviews by agency inspectors general, (2) expanded requirements for high-priority programs, and (3) cutting-edge technology to identify and prevent improper payments.

Moving forward, OMB is conducting an analysis of agency corrective actions to identify programs with the highest return-on-investment or potential for substantially reducing improper payments. We will also continue to advance data analytics and improved technology to prevent improper payments through the Improper Payments Elimination and Recovery Improvement Act, which reinforces and accelerates the Administration's "Do Not Pay" efforts.

The Budget also seeks to reduce fraud and waste in our health programs through proposals to reduce improper payments and improve program integrity monitoring and compliance. For example, the Budget proposes to direct States to track high prescribers and utilizers of prescription drugs in Medicaid to identify aberrant billing and prescribing patterns.

**Question:** What is OMB doing to help the IRS improve its improper payment rates on the Earned Income Tax Credit?

**Answer:**

OMB works closely with the IRS to monitor Earned Income Tax Credit (EITC) improper payments and to bring down the error rate through a number of different approaches. The IRS currently engages in aggressive EITC enforcement, including conducting 500,000 EITC audits and is constantly improving its data analytics to target likely errors and problematic tax preparers. These measures are steadily reducing the error rate in recent years.

The Bipartisan Budget Act of 2013 included the Administration's death master file and prisoner data proposals to help combat fraud and identity theft in refundable credits and elsewhere in the tax system.

The 2015 Budget proposes a number of additional measures that would help ensure the integrity of the EITC, as well as the rest of the tax code. Most importantly, the 2015 Budget provides adequate funding for the IRS to fulfill its enforcement responsibilities, including through a proposed program integrity cap adjustment for IRS enforcement activities. The Budget also proposes explicit authority for the IRS to regulate paid preparers, who prepare about 60 percent of EITC returns; to change the timing of information returns so that the IRS can do more data matching in real time, resulting in savings, including for the EITC; to extend existing EITC due diligence requirements for tax preparers to the Child Tax Credit; and to provide IRS with additional math error authority.

The Administration takes EITC improper payments very seriously and is committed to reducing them. At the same time, the Administration believes that the EITC has been very effective at both reducing poverty and encouraging work for families with children. This success is directly connected to the fact that the EITC is administered through the tax system, which results in high take-up relative to many other programs – as well as exceptionally low administrative costs (less than 1 percent of program dollars).

**Question:** What is OMB doing to ensure that the health tax credit does not become a new source of improper payments?

**Answer:**

OMB is working closely with the Department of Health and Human Services and the Department of the Treasury to ensure oversight and prudent use of Federal funds in programs established under the Affordable Care Act. Agencies must follow a number of statutory requirements for improper payments, including risk assessments and, when applicable, reporting an improper payment rate and implementing corrective actions. In addition, agencies are responsible for establishing internal controls to provide assurance for effective program operations, reliable financial reporting, and compliance with laws and regulations.

***Regulations***

OMB's Office of Information and Regulatory Affairs (OIRA) plays an important role in the regulatory approval process including analyzing the costs and benefits of regulations.

**Question:** What is your process for determining if the benefits of a new regulation out-weigh the costs of the regulation?

**Answer:**

OMB reviews regulations to determine whether, among other things, the benefits of rules justify their costs; the rules are consistent with, and non-duplicative of the regulations and activities of other Federal agencies; the rules explore reasonable alternatives and examine flexibility for small businesses; the agency is using the most up-to-date scientific, technical, and other information; and the rule accomplishes its goals in the least burdensome way possible. OMB also runs an interagency review process on rules it reviews so that other relevant agencies in the Federal government can provide their views.

OMB looks at a number of factors when it reviews an agency's economic impact analysis. Among other things, OMB reviews whether the agency has used the most up-to-date economic information and the best available techniques for determining the estimated costs and benefits of a rule. OMB also reviews rules to see if they are tailored in such a way so as to impose the least burden on society while still accomplishing their goals. And we look at the cumulative costs of regulations and whether there are alternatives that would better maximize net benefits.

In addition, OMB provides general guidance to agencies on how best to evaluate and present the economic impacts and benefits of rules. These factors and our guidance to agencies are set out in more detail in Executive Orders 12866 and 13563, and OMB Circular A-4, which is a guidance document to all agencies on how to conduct regulatory analysis.

**Question:** How often does OIRA reject regulations proposed by the agencies because they are too burdensome?

**Answer:**

OIRA works with agencies to review draft proposed and final regulations under Executive Orders 12866 and 13563. Executive Order 13563 asks agencies to adopt regulations only if the benefits justify the costs; to choose the least burdensome alternative; to expand opportunities for public participation and public comment; to reduce costs by coordinating and harmonizing rules; to adopt flexible, burden-reducing approaches to regulation; and to ensure that regulations are driven by real science. Executive Order 13563 also called for a historic government-wide review of regulations on the books – the "regulatory lookback" – to streamline, modify, or repeal regulations and reduce unnecessary burdens and costs. To date, this effort already includes actions that will save more than \$13 billion in the near term, with more savings on the way. The Administration's regulatory strategy maintains a balance between our obligation to protect the health, welfare, and safety of Americans and our commitment to promoting economic growth, job creation, competitiveness, and innovation.

***Sequestration***

The Office of Management and Budget has determined that sequestration should apply to the Financial Accounting Standards Board (FASB). FASB does not receive appropriated funds.

**Question:** Can you explain why sequestration applies to FASB?

**Answer:**

The sequestration law requires reductions to all non-exempt resources reflected in the President's Budget. CBO and OMB include the Federal Accounting Standards Board (FASB) in the budget because it has statutory authority to assess fees. There is no express exemption of FASB in the sequestration law, so it is subject to the reductions.

**Question:** Does OMB have discretion in the application of sequestration?

**Answer:**

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended (BBEDCA) directs OMB to calculate reductions for each account, and requires that these cuts be applied uniformly across programs, projects, and activities (PPA) within each account. Accounts are subject to sequestration unless there is an express statutory exemption or applicable special rule.

**Questions for the Record Submitted by Congressman Kevin Yoder**

Director Burwell, I wanted to highlight language that was included in the FY14 omnibus related to alternative contract models that this subcommittee worked to include in the bill. This language encourages OMB to expand the use of alternative contract models such as transaction-based and no cost funding models because these approaches could save the federal government a significant amount in annual contracting costs. In addition to saving money, experience has shown that these models work well for consumers, offering more options and greater convenience in completing routine, everyday government transactions online.

**Question:** Please update us on this program.

**Answer:**

OMB fully supports the use of innovative tools that can reduce costs to agencies, while improving efficiencies. We continue to work with agencies to adopt and expand the use of proven acquisition practices, such as strategic sourcing, where agencies leverage their buying power, as well as agile and other performance based contracting methods, where agencies allow contractors to offer their most effective solutions and then pay for results. As part of our broader initiative to improve IT service delivery, OMB is exploring potential uses of no-cost and transaction based funding models for procuring IT. OMB is currently surveying agency acquisition leaders to determine where these types of alternative contracting models have been used in the past and where guidance can assist agencies in considering the application of these

tools to future projects. OMB will outline some of the policy considerations in its report, which we expect to provide in June.

**Questions for the Record Submitted by Congresswoman Jaime Herrera-Beutler**

*Army Corps*

The Administration has voiced their support for infrastructure and for boosting US exports. Still, the President's FY 15 budget request reduced funding for the Corps of Engineers by nearly \$1 billion dollars under FY 14 enacted levels. This gross underfunding of our navigation infrastructure leads to inaccessible channels and crumbling jetties, ultimately delaying goods movement and inhibiting our nation's global competitiveness.

One way to help solve this issue is to fully spend annual Harbor Maintenance Trust Fund receipts to support efficient and effective navigation infrastructure, and to allow both large and small coastal ports to continue providing family wage jobs and economic development opportunities for their local communities and for the nation.

**Question:** Can you please explain why the Administration has neglected addressing this critical funding for our ports and waterways?

**Answer:**

The Administration understands that our ports are an important part of our Nation's infrastructure and play an essential role in our economy and economic growth.

The Budget includes \$1.825 billion for the Army Corps of Engineers civil works program (Corps) in support of global and domestic waterborne commerce, 40 percent of the total Corps request. This funding supports the movement of commercial goods by water, including exports. In allocating this funding, the Corps gives priority to maintaining the major navigation channels of our largest coastal ports. It also gives priority to maintaining the inland waterways with the most commercial use, constructing navigation improvements with high economic returns, and studies and design work on proposals to deepen, widen, or otherwise improve the Federal channels of our coastal ports.

The Budget requests \$915 million to support the maintenance of our coastal ports and related work. This is, for the third consecutive year, the highest amount ever proposed in a President's Budget for work financed from the harbor maintenance trust fund.

The Administration believes that Federal funding for maintenance dredging and related work at our coastal ports should reflect consideration for the economic and safety return of each investment, as well as a comparison with other potential uses of the available funds.

***Small Ports***

Washington coastal ports, home to fishing fleets, marinas and recreational facilities, are critical to the economic survival of their communities. International trade, recreational boating and commercial fishing are more important to the economic health of our coastal port communities now than ever before.

Since FY 12, small coastal ports throughout the country have been zeroed out in the President's budget. Congress included \$30 million in additional O&M for small ports in FY 12 and \$40 million for these projects in the FY 14 omnibus bill. The Corps then created a workplan, which directed funding to many of our small northwest coastal ports for dredging to maintain their access to the ocean. This programmatic funding is vital to ensuring these communities survive, and is the only way to help make these projects whole in the current political climate.

***Deep Draft Navigation***

FY 14 includes \$128 million in additional O&M funding for deep draft projects. Projects like Columbia River at Baker Bay, Columbia & Lower Willamette, and Columbia River at the Mouth greatly benefited. This additional O&M is critical to maintaining our navigation channels and repairing our jetties, ultimately ensuring that the SW Washington and the entire Northwest remain competitive in the global marketplace.

***Centralia Flood Risk Management Project***

Another important issue for my district concerns flooding in the Chehalis Basin. Currently the Army Corps of Engineers has an authorization for flood damage reduction in Lewis County. The Governor's Chehalis Work Group is working to identify a solution to that protects Interstate 5 and the surrounding community from catastrophic flooding. By the end of the year the Governor will have a recommendation to approve.

Looking ahead to FY 16, I hope the Corps and OMB will include this authorization in the Budget request to be funded.

The Centralia Flood Risk Management Project was authorized in Section 1001(46) of the Water Resources Development Act of 2007 (Public Law 110-114). The authorization reads as follows:

*"The project for flood damage reduction, Centralia, Chehalis River, Lewis County, Washington: Report of the Chief of Engineers dated September 27, 2004, at a total cost of \$123,770,000, with an estimated Federal cost of \$74,740,000 and an estimated non-Federal cost of \$49,030,000."*

***NOAA Funding***

Last November, I joined a few colleagues on a letter to you highlighting the vital programs housed within NOAA's budget regarding ocean science, fisheries data, and healthy oceans and coasts. Over the last few years, the President's budget for NOAA's "wet side" programs received an increase of 6%; however, the "dry side" increased dramatically by 31% since FY 2010.

The biggest concern I hear from folks back home is that the less money NMFS has for stock assessments, the more likely this will cause NMFS to manage the fishery even more conservatively because of the ensuing uncertainty. Critical funds for fishery data, like stock assessments keeps our recreational and commercial fishermen fishing ultimately, benefitting our coastal communities.

I appreciate the additional funding the wet side received this year in the President's Budget, but continue to urge the Administration to look at the balance of program funding and ensure that wet side programs will receive a more equitable proportion of the Agency's funding in the future.

The President's Budget for "Fisheries Research and Management Programs" calls for a \$4M increase for "electronic monitoring...across the country".

**Question:** Please provide additional information how this money will be allocated and spent. (Page 12 of BlueBook).

**Answer:**

With this increase, electronic technologies will be developed, tested, and implemented to record and transmit data on fishing vessel operations. Additionally, NOAA will support further development and implementation of electronic monitoring (EM) and reporting (ER) across the country, with initial efforts focused on the major EM pilot projects that are currently underway in the Northwest and Alaska. NOAA will also use these funds to explore development of additional ER technologies and expand the use of ER tools that have been proven effective.

Additional detail is available in NOAA's FY2015 Congressional Justification.

The President's Budget calls for a \$2M increase for the "National Catch Share Program" to a total of \$27.2M.

**Question:** Please provide additional information how this money will be allocated and spent. (Page 12 of BlueBook).

**Answer:**

With this increase, NOAA will be able to support 15 programs under catch share management and one pilot program (the Gulf of Mexico headboat pilot program). Activities of the National Catch Share Program (NCSP) include program management at the national and regional levels, social and economic data collection or analysis, as well as establishment of catch share accounting databases and reporting systems, program administration, at-sea and dockside monitoring, and evaluation of scientific studies. Over time, such programs can eliminate overfishing while creating safer and more profitable fisheries.

Additional detail is available in NOAA's FY2015 Congressional Justification.

The President's Budget calls for flat-level funding for "Observers/Training" at \$43.5M (Page 41 Table of BlueBook). Please provide a breakdown of how much of this is going to New England versus the diminishing support for West Coast groundfish.

**Question:** Can you also confirm that this is the line item from which our observer support is coming from, or is it coming from the National Catch Share Program?

**Answer:**

Of the "Observers/Training" funding requested, the Northeast would receive about \$8.9 million from the Northeast Fisheries Observers sub-PPA while \$5.2 million is provided for the West Coast Observers sub-PPA. Both of these regions are eligible to receive additional funding from the National Observer Program sub-PPA.

In addition to funding from the Observers/Training budget line, the National Catch Share Program budget line provides funding for observers of the Pacific trawl rationalization program in FY 2014. In FY 2015, NMFS proposes to fully transition the catch share observer costs to industry for this program.

For additional information on the Observers/Training program, please see NOAA's FY 2015 Congressional Justification.

The President's Budget makes NO mention of the revenue stream TO the agency from cost recovery.

**Question:** Please provide additional information how cost recovery flows into the NOAA budget.

**Answer:**

NOAA estimates it will receive less than \$1 million in offsetting collections through cost recoveries in FY 2015. The FY 2015 Budget clarifies NOAA's ability to receive and expend funds from, and to engage in agreements with, external entities--including private ones-- to carry out its responsibilities related to permitting and other regulatory activities. These activities include, but are not limited to, scientific data collection and research that informs NOAA's decisions on permits and regulatory actions within its mission, and that informs the regulatory decisions of other agencies. Examples include agreements and funding arrangements to perform research on stock assessment and ecosystem processes for conservation and management purposes; perform research and development on oil spill response; and perform research on endangered species for purposes of Endangered Species Act consultation to inform permitting of infrastructure projects, oil and gas drilling or other regulated activities.

Additionally, NOAA manages a number of fisheries-related mandatory cost recovery programs such as the Limited Access Privilege Program.

Additional detail is available in NOAA's FY2015 Congressional Justification.

**Questions for the Record Submitted by Congressman Mike Quigley**

*Advanced Notice of Proposed Rulemaking*

In 2011 Earthjustice filed a petition on behalf of 120 environmental and public health organizations with EPA asking for disclosure of the health and safety data related to chemicals used in fracking fluids. Also in 2011, EPA partially granted this petition. On March 11, 2014, EPA sent the Advanced Notice of Proposed Rulemaking to OMB for regulatory review.

**Question:** Are there any updates on the progress of publishing ANPRM?

**Answer:**

OMB concluded its review of this ANPRM on May 8, 2014.

*Streamlining Regulatory Issues*

Director Burwell, in your testimony, you gave a few examples of streamlining agencies processes to remove red tape, paperwork, and bureaucracy for industry and business- when appropriate. Your testimony mentioned saving \$5 billion in costs from a streamlining of a Health and Human Services process, and \$2.5 billion saved for a Department of Transportation process.

**Question:** Given these types of successes, can you tell give the committee a few other examples of red tape and other items that you are reviewing?

**Answer:**

In Executive Order 13563, the President called on the agencies to streamline, modify, or repeal regulations already on the books and reduce unnecessary burdens and costs. This process has already produced significant results. A few additional examples include:

- DOL has finalized a rule to simplify and to improve hazard warnings for workers, producing net benefits over \$2.5 billion over five years.
- HHS has finalized a rule to allow greater flexibility for telemedicine providers, making medical advice more available at remote rural areas and saving millions of dollars in the process.
- HHS earlier this month finalized an additional rule to reform regulations that the agency found to be unnecessary, obsolete, or excessively burdensome on hospitals and other health care providers. This final rule streamlines health and safety standards that health care providers must meet in order to participate in Medicare and Medicaid, and it will save more than \$3 billion over the next five years for the American health care system
- EPA has finalized a rule to eliminate the obligation for many states to require air pollution vapor recovery systems at local gas stations since modern vehicles already have effective air pollution control technologies. The anticipated five-year savings are hundreds of millions of dollars, taking into account the costs associated with the removal of vapor recovery equipment and the use of less expensive conventional equipment on

the gasoline dispensers, as well as reductions in record-keeping requirements and other operating costs.

**Question:** And with so many of these types of issues across the federal government, how does OMB prioritize what processes to review first?

**Answer:**

Executive Order 13610 establishes guidelines for how agencies should develop their regulatory look-back priorities. Specifically, it states that:

In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

***Lobbyist Disclosure***

Director Burwell, I have been pushing transparency standards since my first day here in Congress. I know OMB goes to great lengths to be transparent, but there are a few items in which I would urge you to work with the Committee to be a little better at. The Office of Information and Regulatory Affairs (OIRA's) is currently required by executive order to report meetings with lobbyists regarding changes in agency-proposed rules. However, multiple recent GAO reports and some recent testimony by GAO have found OIRA's disclosures to not quite be up to par.

**Question:** Can you tell me how OIRA is working towards complying with the executive order and if you know if they are implementing any of the 11 recommendation GAO has made?

**Answer:**

While OMB has not implemented many of GAO's specific recommendations, we have taken a number of steps in recent years to increase transparency. For example, just recently, OMB updated its public disclosure of meetings with outside parties that we hold under Executive Order 12866. Specifically, we have now integrated the notice of those meetings with [www.reginfo.gov](http://www.reginfo.gov), and have provided a method to search for meeting notices by individual regulation, the rule-making stage of that regulation, department or agency, and by date. We have also provided a calendar function in order to provide a monthly view of all the meetings we have held.

In addition, the Administration's Open Government efforts have focused on increasing the openness of the rulemaking process. For example, the Administration launched a regulatory review dashboard at [www.reginfo.gov](http://www.reginfo.gov) and OIRA has issued memorandums in recent years, such as *Increasing Openness in the Rulemaking Process – Improving Electronic Dockets* and *Increasing Openness in the Rulemaking Process – Use of Regulation Identification Number*.

OMB is committed to continuing to explore ways to enhance the transparency of our regulatory review process.

#### ***Searchable, Sortable Budgets***

Director Burwell, I have been pushing transparency standards since my first day here in Congress. I have a larger Transparency in Government bill, but one section is focused on centralizing departmental budget requests. Right now, you require that agencies post their budget requests and justifications to their own websites within two weeks of submission. OMB has lots of data on a central website right now, and I can tell you have made great strides to make all of this accessible. Budget summaries and numbers are available in a central location, but budget justifications, the critical "why we need this money" portion of budgets, is still scattered across hundreds of government websites. These justifications often not available in any sort of "searchable, sortable" format. Many are in formats such as .pdf that are hard for third parties to easily pull data and information from. I think it is important that we have a central repository that places all agency budgets, and their justifications in "searchable, sortable, and machine readable" format.

**Question:** Can you tell me a little bit about your efforts to get all of this data in one place, in one accessible, usable format?

#### **Answer:**

As you noted, OMB currently requires agencies to make their full congressional budget justification materials, including their performance plan submissions, available online to the public within two weeks after transmittal of those materials to the Congress.

In addition, OMB is working closely with agencies through the Budget Formulation and Execution Line of Business to develop automated tools that facilitate collecting and publishing budget materials, and we believe these tools could be leveraged to help agencies produce budget requests and justification materials in a more searchable and sortable format. We are happy to pass along this request and your other concerns back to agencies and work with them to promote agency budget requests that are easier to find and in a more usable format.

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