

AGRICULTURE, RURAL DEVELOPMENT, FOOD
AND DRUG ADMINISTRATION, AND RELATED
AGENCIES APPROPRIATIONS FOR 2016

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

SUBCOMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT, FOOD AND
DRUG ADMINISTRATION, AND RELATED AGENCIES

ROBERT B. ADERHOLT, Alabama, *Chairman*

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ANDY HARRIS, Maryland	CHELLIE PINGREE, Maine
DAVID YOUNG, Iowa	
STEVEN M. PALAZZO, Mississippi	

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.

TOM O'BRIEN, PAM MILLER, ANDREW COOPER,
and ELIZABETH KING,
Staff Assistants

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**PART 3—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION,
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**AGRICULTURE, RURAL DEVELOPMENT, FOOD
AND DRUG ADMINISTRATION, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
2016**

FRIDAY, FEBRUARY 13, 2015.

**BUDGET HEARING—DEPARTMENT OF AGRICULTURE,
OFFICE OF THE INSPECTOR GENERAL**

WITNESSES

**HON. PHYLLIS FONG, INSPECTOR GENERAL, U.S. DEPARTMENT OF AG-
RICULTURE**

**GIL HARDEN, ASSISTANT INSPECTOR GENERAL FOR AUDITS, U.S. DE-
PARTMENT OF AGRICULTURE**

**ANN COFFEY, ACTING ASSISTANT INSPECTOR GENERAL, INVESTIGA-
TIONS, U.S. DEPARTMENT OF AGRICULTURE**

Mr. ADERHOLT. Well, good morning. Subcommittee will come to order. And I want to welcome to this second hearing of the Agriculture Appropriations Subcommittee. And we are off to a quick and good start this year, and it is good to welcome the Office of the Inspector General to the hearing this morning.

On Wednesday, I shared some details at our first hearing about the themes that we have set to guide the subcommittee's work for fiscal year 2016. And just to briefly mention those, number one, improving the management of our agencies and programs; number two, targeting funds to the most important programs and functions; and number three, promoting U.S. agriculture, free and fair markets, and safe food and medicines. So summary: management, targeting, and promotion.

Today, we will focus on theme number one, improving the management of our agencies and programs. This builds off our oversight activities over the past several years, and it corresponds with Inspector General's office on these efforts as well.

We want to welcome you, Ms. Fong, and also Ms. Coffey, Mr. Harden, to our Subcommittee today. We look forward to learning more about your work to encourage USDA to improve its governance processes and internal controls and be more disciplined and transparent in its decisionmaking. This Subcommittee respects the work that you do, and we appreciate your recommendations on the ways that you continually try to improve and to manage a large, very complex, and important part of the Federal Government.

In closing, I do want to thank you for agreeing to review the *New York Times* allegation about the U.S. Meat Animal Research Center in Clay Center, Nebraska. The article described research and

attitudes that seem to be pretty inconsistent with the conscientious, the hardworking scientists, and the staff that work there and that we have at the Agricultural Research Service. Your assistance in auditing the claims included in the article and reviewing the current conditions, practices, and policies would be very helpful to us.

Before I recognize our Ranking Member, the Honorable Sam Farr, for his opening statement, I would like to thank him for his cooperation, and I want to thank him for the working relationship we have on this subcommittee.

Sometimes we have different priorities, but I think we both want USDA to be effective and efficient in implementing the laws and programs that Congress gives it to benefit the American people. So I do want to point out, Mr. Farr, for your cooperation with the Subcommittee and for your work.

So at this time, let me turn the mic over to you for any opening statements that you may have.

Mr. FARR. Thank you very much, Mr. Chairman. I think the only difference that we have is the accent. You all have to come back now. But thank you very much. I don't have any opening statement. It is always interesting in the IG. And I don't know why, I always thought that every agency had an IG, but I am now in the Leg Branch Subcommittee on Appropriations, and we don't have any IG that I know of. I would be appreciative in sort of sidebar comments about how many agencies don't have IG review. Maybe Congress ought to have it.

Anyway, I look forward, and I want to echo what the chairman said on the animal treatment center. I am sure it is going to open up a lot of issues with a lot of university research areas, but it is worth looking into. I know California has required all the research institutions in the State universities to change all their caging and animal husbandry practices to bring in humane practices, state-of-the-art humane—it is very expensive to bring it all up, but they did it. And I think that is probably something that we in Congress ought to look at.

So thank you for coming today, and I look forward to your comments.

Mr. ADERHOLT. Okay. Ms. Fong, thank you. You may proceed.

Ms. FONG. Thank you, Mr. Chairman, Ranking Member Farr, and members of the subcommittee. We appreciate the opportunity to appear today to talk about our oversight of USDA activities, and our fiscal year 2016 budget request.

As you know, our office provides audit and investigative services to help the Department deliver its programs effectively and with integrity. Effective management of USDA programs continues to be a challenge for all of us. In an era of limited resources, it is critical that benefits be delivered effectively, to the right recipients, in the right amounts, using the right procedures. While we are seeing progress at USDA, a sustained focus on excellent management is key, and we appreciate this subcommittee's keen interest in these issues.

Since you have my full written statement for the record, let me just highlight some of our recent accomplishments as well as some of the work that we have in progress. In the area of food safety,

as you know, we completed an investigation of a California meat processing plant that was processing diseased cattle for human consumption and avoiding FSIS inspection. The owner and two of the employees have pled guilty to violating the law, and FSIS suspended operations at that plant, which was eventually sold to a new owner.

We currently have significant audits ongoing on FSIS' sampling and testing of ground turkey and the new information system that FSIS is developing for its inspection data.

We also focus a lot of our effort helping USDA strengthen the delivery of its benefit programs. As you all know, the SNAP program alone is the largest part of USDA's portfolio, with \$84 billion last year, so we have devoted over half of our investigative resources to cases involving SNAP trafficking, and we have gotten tremendous results out of that, over 484 convictions, and \$77 million in dollar results. We currently have an audit going on on the accuracy of SNAP error rates, which we will be happy to talk about in more detail.

In the area of farm and conservation programs, which totaled about \$23 billion last year in USDA's portfolio, we reviewed RMA's crop insurance plan for pasture, rangeland, and forage. We found that there were some challenges to how insurance rates are set for various producers there, and we made some initial recommendations to the Department. We are working to more fully evaluate that program, and we expect to have an audit on that coming out this year. We are also looking at NRCS' controls over land valuations for conservation easements.

And finally, as you know, we focus quite a bit of our attention on the Department's management systems. We have issued numerous reports this year on the financial statements, IT systems, improper payments, civil rights programs, and financial management at the Department. While we have seen progress in several areas, we believe that concerted attention needs to be paid to all of these issues. We have a number of upcoming audits coming out on the use of purchase cards, the claims resolution process for black, Hispanic, and women farmers, and FSA's initiative to modernize its IT systems.

In conclusion, let me briefly address our budget request for fiscal year 2016. I want to thank the Chairman and the Subcommittee for your ongoing support of our work. We truly appreciate the resources that you have made available to us. In our 2016 request, we are asking for funds for two new initiatives to help us address some of the most critical management challenges facing USDA, namely improper payments and IT security. With the increase in funds, we will be able to do additional data analytics work and review all of the Department's agencies with respect to IT controls.

So with that, I would like to conclude my statement and just thank you again for inviting us, and we are happy to answer any questions you may have.

[The information follows:]

*For release only by the
House Committee
on Appropriations*

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG
INSPECTOR GENERAL

Submitted to
The Subcommittee on Agriculture, Rural Development, Food and Drug
Administration, and Related Agencies

Committee on Appropriations

U.S. House of Representatives

February 13, 2015



Good morning, Chairman Aderholt, Ranking Member Farr, and Members of the Subcommittee. Thank you for the opportunity to speak to you regarding the Office of Inspector General's (OIG) fiscal year (FY) 2016 budget request. My statement will provide the Subcommittee with the highlights of OIG's recent audit and investigative work, as well as touch on oversight initiatives we should complete in the near future.

In FY 2014, OIG concluded significant audits and investigations that have helped improve how the Department administers its annual budget of \$146 billion. As you know, our work is designed not only to find instances of fraud, waste, and abuse, but also to make recommendations that improve how programs will function in the future. Our audit and investigative work last year obtained potential monetary results totaling over \$700 million.¹ We issued 36 audit reports and made 247 recommendations to strengthen USDA programs and operations, which produced about \$325.4 million in potential results. OIG investigations led to 609 convictions with potential results totaling almost \$374.6 million.

Last year, as one of the broader concerns facing the Department, we discussed the need for USDA agencies to focus on how they monitor their programs and ensure that participants comply with requirements. Many USDA agencies place their primary focus on administering programs and providing benefits—often at the cost of ensuring that program funds serve their intended purposes. While improving management controls remains a challenge, we are pleased that the Department is receptive to our message. Whether it has been restoring integrity to the StrikeForce Initiative Program or ensuring that USDA agencies transfer money between programs in accordance with the Economy Act,² Department leadership has taken swift and decisive action to correct problems OIG has identified.

In my statement, I will discuss the outcomes of our audit and investigative efforts, organized under our major strategic goals. My statement concludes with a discussion of the return on investment Congress receives from our work, as well as details about future initiatives to improve our oversight of the Department.

¹ As established by Congress in the Inspector General Act of 1978, audit monetary impacts derive from funds put to better use and questioned/unsupported costs. Investigation monetary impacts come from recoveries, court-ordered fines, restitutions, administrative penalties, as well as other judgments.

² 31 U.S.C. §1535.

Goal 1—Safety and Security

One of OIG’s most important oversight responsibilities is helping USDA ensure the safety and security of the U.S. food supply, and we continue to conduct audits and investigations designed to accomplish this goal.

Inspections Circumvented for Condemned Cows

OIG has completed an investigation into a California meat processing plant that was processing diseased cattle for human consumption and avoiding regulatory inspections by the Food Safety and Inspection Service (FSIS). One of the plant’s owners indicated to the plant foreman which condemned cattle should be processed; the foreman in turn directed kill floor employees to carve “USDA Condemned” stamps out of the cattle carcasses. The owner further instructed the foreman to circumvent inspection procedures for certain cows with “cancer eye,” an illness that results in unsightly tumors on cows’ eyes and eyelids. The foreman, or another employee at his instruction, placed the heads from apparently healthy cows next to the bodies of cows with cancer eye. This switch and slaughter of uninspected cows with cancer eye occurred during the FSIS inspector’s lunch breaks, a time during which plant operations were supposed to cease.

As a result of this case, the owner and two employees were charged with numerous criminal acts. They have pled guilty to conspiracy under the Federal Meat Inspection Act³ and to distribution of adulterated, misbranded, and uninspected meat. FSIS suspended operations at the plant, which was subsequently sold to a new owner.

New York Company Forged Phytosanitary Certificates

The International Plant Protection Convention requires that wood pallets and all solid wood packing material be heat-treated to prevent pests from spreading via international commerce, but OIG found that a Long Island company sold pallets bearing false stamps certifying that its pallets were treated, when they were not. The company owner defrauded U.S. companies by transmitting fraudulent phytosanitary certificates with the forged signature of an Animal and Plant Health Inspection Service (APHIS) inspector. In some instances, he sent uninspected wood products to foreign victims. Fraudulent transactions in the United States and abroad exceeded \$1 million. Our investigation also revealed that the defendant was a fugitive sought in five States on a total of eight open warrants.

³ 21 U.S.C. §§ 601, *et seq.*

The owner and three additional co-defendants were charged with conspiracy to commit wire fraud and wire fraud. In 2014, the owner was sentenced to 116 months in prison, followed by 36 months of supervised release. The defendants were ordered to pay restitution in the amount of \$1.4 million.

Quarantine of Plant Pests Entering the United States

Although OIG did not find instances of harmful pests entering the United States, we found that APHIS' Plant Protection and Quarantine (PPQ) program did not have sufficient management controls to ensure that the Preclearance Offshore Program was able to effectively protect U.S. agriculture from foreign pests and diseases. This occurred because PPQ did not define clear reporting requirements, roles, and processes when the program came under PPQ's control in FY 2011. The lack of oversight from the agency's top levels affected all aspects of the Preclearance Program's administration. We found that program managers did not read reports from the inspectors they oversee, despite the fact that these reports showed work plan violations. We also found that all 12 of the work plans we reviewed did not have criteria showing consequences for repeated noncompliance; 7 of the 12 plans we reviewed did not include an effective sampling methodology. These issues could potentially put the United States at risk for the introduction of foreign pests and diseases. APHIS officials stated that they are developing policies and procedures to address these issues.

OIG has significant upcoming work related to food safety, including how FSIS samples and tests ground turkey, as well as the new information system FSIS has developed to record, track, and analyze its inspection data.

Goal 2—Integrity of Benefits

Another of OIG's most important goals is helping USDA reduce vulnerabilities and strengthen integrity in the delivery of program assistance. Over the past several years, OIG has aided the Department in improving the integrity of the Supplemental Nutrition Assistance Program (SNAP), as well as other food assistance programs. Accounting for \$82 billion in FY 2014 benefits, or 54 percent of USDA's budget, SNAP is among the Government's largest programs.

Food Assistance

In FY 2014, about 57 percent of OIG's investigative resources were devoted to SNAP-related criminal investigations; these OIG investigations resulted in 484 convictions and monetary results totaling \$77.7 million.

In a recent case, OIG investigators found that a man ran a large-scale SNAP trafficking ring involving multiple vendors in a flea market. He was charged with food stamp fraud and wire fraud in November 2013 and pled guilty to the charges in April 2014. In July 2014, in U.S. District Court, Southern District of Florida, he was sentenced to 33 months in prison, followed by 36 months of supervised release, and was ordered to pay restitution totaling \$2.5 million. The store was removed from SNAP.

Another investigation determined that a criminal ring opened multiple stores in Georgia to defraud the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), depositing over \$18 million in WIC vouchers into their bank accounts. This ring canvassed neighborhoods for WIC recipients, and then bought their benefits for pennies on the dollar. In December 2012, agents served 12 search warrants across Georgia. To date, 14 co-defendants have pled guilty and been sentenced to prison terms ranging from 30 to 60 months. In total, approximately \$31 million in restitution has been ordered by the U.S. District Court in the Southern District of Georgia. In addition, 32 WIC program recipients have pled guilty to theft of government funds and have been ordered to pay restitution in amounts ranging from between \$1,200 and \$14,000. This case was especially noteworthy because, unlike most food assistance cases, which tend to involve white-collar criminals, this Georgia criminal ring was operated by drug dealers who had turned to WIC fraud as a safer and more profitable activity.

OIG also is working to minimize waste and abuse by performing audits designed to improve controls over the Food and Nutrition Service's (FNS) food and nutrition programs. For example, we reviewed the FNS strategy for monitoring State agencies' food costs and found that it does not ensure Federal resources are being used efficiently for WIC. Although FNS reports that management evaluations of State operations are WIC's main oversight tool, we found that the management evaluations have several weaknesses. Evaluations did not always identify significant issues that may affect a State agency's food costs; when FNS did identify deficiencies at State agencies, it did not always ensure that those agencies took appropriate and timely corrective actions. Finally, although FNS is aware of individual State agency policies to reduce food costs, it has not evaluated those policies for program-wide implementation and has thus missed potential cost-saving opportunities in excess of \$19.7 million. The agency generally accepted our recommendations.

In our upcoming work, OIG will determine if FNS has adequate controls to ensure that SNAP error rates are accurate and if the agency is taking adequate action to reduce these rates.

Farm and Conservation Programs

OIG also provides oversight of USDA's farm and conservation programs, which totaled approximately \$23 billion in FY 2014. We produced audit reports with significant findings involving the Risk Management Agency (RMA), the Natural Resources Conservation Service (NRCS), and the Farm Service Agency (FSA).

RMA administers the Federal crop insurance program and helps insure producers against crop failures due to diseases, hurricanes, and other risks. Beginning in crop year 2007, RMA offered a rainfall and vegetative index plan of insurance for pasture, rangeland, and forage (PRF) as a pilot program for forage produced for grazing or harvested for hay. OIG found that, in Colorado and New Mexico, RMA insures non-irrigated hay producers at the same rate as irrigated hay producers, even though irrigated land is capable of producing much more hay. Our initial sample of seven producers found that they received over \$8.2 million in indemnity payments for non-irrigated forage acres, based on average yields they could not feasibly produce. In one case, a producer was indemnified \$336 per acre when his land could only produce hay worth about \$28 per acre. We issued an interim report so that RMA could correct this problem before offering PRF coverage for crop year 2015. RMA generally agreed.

Similarly, we found that NRCS' controls over the Environmental Quality Incentives Program (EQIP)—the agency's largest program for FYs 2009 through 2011, receiving nearly \$3.5 billion in appropriations, cumulatively—need to be strengthened so that the program can effectively assist participants in addressing environmental concerns. While the agency's allocation method adequately considered environmental concerns at the national level, the State-level allocation processes did not. Of the six State offices we reviewed, three based their allocations on data such as number of acres, prior year obligations, or geographic location, but not environmental outcomes. We also found that NRCS did not require followup visits to ensure practices were in working order for their intended lifespan, which resulted in several practices not being maintained. Without effective monitoring controls to address these deficiencies, these conservation practices may not be resulting in the intended environmental benefits. OIG recommended that NRCS implement controls and perform an analysis to ensure State allocation formulas are tied to environmental concerns. Also, NRCS should implement controls to ensure that participants not meeting contractual timelines are identified as noncompliant. The agency generally agreed.

FSA's Economic Adjustment Assistance to Users of Upland Cotton Program (EAAP) assists domestic users of upland cotton, such as textile mills, in order to maintain a globally competitive U.S. textile industry. OIG found that, even though FSA anticipated that EAAP payments would limit market losses, plant closures, and job losses, FSA has not developed a way to measure this impact. We also found that management controls were insufficient to prevent one upland cotton user from improperly transferring \$1.5 million of \$12.1 million in payments to another user. Altogether, we questioned 75 expenditures, totaling over \$2.4 million. Without necessary controls in place, FSA cannot ensure that EAAP stimulates investments that make the U.S. textile industry more competitive. FSA generally agreed with our recommendations.

OIG has upcoming work that will more fully evaluate RMA's methodology for setting crop values for pasture, rangeland, and forage production, as well as an audit evaluating the adequacy of NRCS' controls over land valuations for conservation easements.

Rural Development

OIG reviewed how the Rural Housing Service's (RHS) Single Family Housing Program administers direct loans to determine if borrowers are repaying the required portion of their housing subsidy. We found that RHS could improve how it services these accounts. Specifically, the agency inaccurately calculated the final recapture receivables for 13 of the 100 borrower accounts in our sample. Based on statistical projections, we estimate that 8,103 borrower recapture receivable accounts may not have been accurately established, with a total value of \$33 million. Additionally, our review of the payment subsidy renewal process found that, for 7 of the 100 borrower accounts, RHS inaccurately calculated the borrowers' payment subsidy. We estimate that the payment subsidy for 7,784 borrower accounts—with a projected total value of \$4.9 million over the term of the payment subsidy agreement—may also be inaccurately calculated. OIG recommended that RHS strengthen its oversight controls, and the agency generally concurred.

OIG investigators have also worked to ensure that USDA funds are being used properly to spur rural development. In one instance, we found that the president of a bank and the corporate officer of a company colluded to submit a fraudulent Business and Industry loan application for \$8.3 million. This loan was intended to refinance construction debt and build a truck stop in Oklahoma. The defendants engaged in a scheme to hide \$9 million of losses from bank examiners. Ultimately, the bank and its shareholders lost \$26 million, and the bank failed. The former bank president was sentenced to

24 months imprisonment and restitution totaling \$14.7 million, while the company's corporate officer was ordered to forfeit \$3.2 million.

Goal 3—Management Improvement Initiatives

OIG works to improve the systems the Department needs to function effectively, ranging from management controls to information technology (IT) systems. As you are aware, USDA has faced an ongoing challenge in modernizing its IT infrastructure, which must manage vast amounts of data associated with its many programs and operations.

Information Technology

A number of OIG's recent audits have emphasized the continuing challenges USDA faces in updating this technology. For example, in 2010, USDA signed a multi-year task order with AT&T to operate the Department's Universal Telecommunications Network (UTN), the data network backbone for USDA's customers and agencies. We found that USDA is not adequately overseeing UTN security and performance, and that AT&T had not yet installed required network security features or performed an adequate reconciliation of UTN charges. As a result, AT&T had both overbilled and underbilled USDA for an aggregate total of more than \$1.9 million. USDA has agreed to strengthen its internal controls over task order administration and correct the amounts AT&T mischarged.

Likewise, USDA needs to better oversee its cloud computing environment. This technology has been integrated into the Department's overall IT environment, but OIG found that the Department does not have a complete inventory of its cloud systems—17 of the 31 cloud systems were not included in the inventory, while 8 additional systems were in the inventory, but not identified as cloud systems.

Additionally, the level of detail included within the contracts for procuring the systems varied across our sample, with all six reviewed contracts lacking provisions required by Federal guidelines. Five of the six contracts, totaling approximately \$66.9 million, did not specify how the provider's performance would be measured, reported, or monitored. As a result, USDA's data are exposed to risk of loss or unauthorized disclosure, which could compromise the Department's programs and producer data. Again, USDA generally agreed with our findings.

In compliance with the Federal Information Security Management Act of 2002,⁴ OIG continues to report many longstanding weaknesses in USDA's IT security. In FYs 2009 through 2013, OIG made 55 recommendations for improving the overall security of USDA's systems, but the agreed upon

⁴ 44 U.S.C. §§ 3541-3549.

corrective actions have been implemented for only 21 of the recommendations. Nevertheless, the Office of the Chief Information Officer (OCIO) is taking positive steps which should improve the Department's security posture. For example, OCIO released five key Departmentwide policies in the latter parts of FYs 2013 and 2014.

In upcoming work, we plan to release a report on whether FSA's efforts to modernize its IT systems have met the expectations of Congress, and if the project is being implemented effectively, efficiently, and timely.

Financial Management

OIG has also made significant recommendations aimed at helping the Department improve its financial management. For a third consecutive year, OIG found that USDA did not comply with the Improper Payment Information Act (IPIA), as amended.⁵ Although USDA has made progress, the Department was not compliant with three of the seven IPIA requirements, including reporting comprehensive estimates, reporting error rates below 10 percent, and meeting annual reduction targets. These noncompliances continue to illustrate the risks of improper payments affecting taxpayers, as USDA could have avoided approximately \$416 million in improper payments by meeting reduction targets. The Department generally agreed with our recommendations.

USDA can also improve its compliance with the President's Executive Order on Reducing Improper Payments and Eliminating Waste in Federal Programs.⁶ For FY 2013, USDA reported 569 high-dollar overpayments totaling over \$47.1 million. This represents an increase of 42 percent from overpayments reported the previous year. In our fourth year of reporting, we found that USDA implemented actions to adhere to the high-dollar reporting requirements. However, USDA quarterly reports included errors, inadvertently omitted data, and were published up to 222 days after the due date. Without accurate and timely reporting, the results of USDA's actions or strategies to reduce high-dollar overpayments are not fully known. USDA agreed with our recommendations.

Recently, OIG has completed important work intended to ensure that USDA transfers money between its agencies according to the Economy Act.⁷ Although Congress reduced funding for USDA's Departmental Administration and Office of Tribal Relations for FYs 2011 and 2012, the Department used its authority, as well as its Working Capital Fund, to support staff that likely would have been

⁵ 107 Pub. L. No. 300.

⁶ Exec. Order No. 13520 (2009).

⁷ 31 U.S.C. § 1535.

affected by the reductions. As a result, USDA spent at least \$3.7 million that was not directly appropriated to those accounts. We also found that USDA exceeded its authority to pay for the Intertribal Technical Assistance Network, since it improperly transferred \$2.1 million from agencies that did not have the authority to fund the network's activities directly. Finally, we questioned \$43 million in transfers because we found them not properly supported.

OIG has upcoming work that will determine whether USDA employees are using their purchase cards correctly and will analyze purchase card data for signs of potential fraud, waste, and abuse.

Civil Rights

As part of a series of reviews of the Office of Advocacy and Outreach (OAO), OIG found that OAO did not effectively implement the StrikeForce Initiative Pilot Program, a program whose goals include assisting agricultural producers and communities in poverty-stricken and predominantly minority areas to gain access to USDA programs. Instead, OAO bypassed Federal regulations and hand-picked four community-based organizations to receive grants. Generally, these organizations' qualifications to achieve the goals of the initiative were questionable. OIG also found problems with how the Office of Small and Disadvantaged Business Utilization and other USDA agencies transferred almost \$2.7 million for FYs 2010 and 2011 to OAO to fund the StrikeForce Initiative pilot program. Ultimately, OAO did not fully ensure that the transferred funds met the specific purpose for which they were originally appropriated, or that they were used in the best interest of the Government. USDA generally agreed with our recommendations.

OIG has ongoing audit work relating to civil rights, including a review of the completed *In re* Black Farmers Discrimination Litigation and the claims resolution process for Hispanic and women farmers. Both reviews will determine whether the funds were paid to eligible claimants.

OIG's FY 2016 Budget Request

We appreciate the Subcommittee's interest in using the results of our work to identify potential improvements in the wide array of USDA's programs and operations, and for your support of our FY 2016 budget request.

The total appropriation for OIG, over the last five fiscal years, was approximately \$435.1 million. For that period, the potential dollar impact of OIG's audits and investigations was \$7.9 billion, resulting in cost savings and recoveries of approximately \$18.15 for every dollar invested in our work.

This metric does not capture, however, the value of our audit recommendations that carry no monetary value, per se, but can significantly improve safety, security, and public health. Such recommendations can also contribute considerably toward economy, efficiency, and effectiveness in USDA's programs and operations. During that same five year period, OIG made 1,603 recommendations for needed program improvements. OIG investigations resulted in 2,606 successful convictions.

In the last several years, OIG has responded to budgetary realities by streamlining our organization, reducing costs in the areas of office space and travel, as well as looking for innovative new ways to accomplish our mission. One of these innovations is a pilot program to assist our investigators in using data analytics to identify potential criminal fraud in FSA and RMA programs. We are currently setting up and staffing this unit and will be analyzing the results of the pilot at the end of FY 2015.

The President's \$98.9 million budget request for OIG would support our current level of effort as well as fund two high impact enhancements to our capabilities. With \$1.6 million, OIG would create a Center of Excellence to review agency program vulnerabilities that will enhance the Department's oversight of improper payments. The Center would have a data analysis component which would determine if there were any data anomalies within the USDA high-risk programs' payments. This would complement Audit's planning and execution of reviews to evaluate the methodology of an agency's improper payment error rate. With \$700,000, we plan to perform additional audit work to help address the Department's material weakness in IT security. Given the continuing threats posed to the USDA IT infrastructure, additional resources are needed to ensure that appropriate reviews are being conducted to test the security controls for the Department. The requested funding would enable OIG to conduct simultaneous reviews on the most critical and vulnerable controls for Federal systems, such as access control, business continuity, and disaster recovery.

This concludes my testimony. I would be pleased to address any questions you may have.

Mr. ADERHOLT. Thank you for your testimony. And, again, as I mentioned earlier, we do respect your work that all of you do at the Office of the Inspector General, so I look forward to having some Q&A and just have a chance to ask about a few areas in particular.

In prior years, we have discussed that the Office of the Inspector General has a unique position within the U.S. Department of Agriculture and is able to see its challenges and its successes. Secretary Vilsack will be before this Subcommittee in a couple weeks. And just let me throw out just challenges that we should ask him about that you may want that you think might be important for us to note. So let me just open the floor in general, if there is anything that you can think of that, you know, are challenges for the Department that, you know, would be a good topic of conversation during his time here.

Ms. FONG. Okay. That is a terrific question. And in thinking, in preparation for this hearing, I would like to offer three thoughts: Overall, I think the Department has stated that management is one of its top priorities. What we are seeing is that every agency has challenges in making sure that, as it delivers its programs, it remembers that it is important to deliver those programs according to good and fair and transparent procedures, and to make sure that the right people are getting the right funds. And we have seen challenges in internal controls, as you mentioned in your opening statement. That just needs a lot of attention at the agency level, each agency.

The second thought I would offer is that improper payments needs to be a continued focus for the Department. The rate of improper payments, as reported by the Department, is not declining, especially in the high-risk programs. And the methodology for identifying those payments and reducing them is something that requires a lot of focus and attention.

And the third thought that I would offer is that we are doing a lot of work on IT systems, both in terms of IT security across the Department, as well as in the ramping up of new IT systems to manage program activities. And as you know, with the increased automation of all of the Federal Government's activities, it is imperative that we have systems that are effective, that are not susceptible to control issues, and that actually help farmers and recipients and clients of the Department.

So those are three themes that I would emphasize.

Mr. ADERHOLT. Thank you. You mentioned in your answer there; you talked about the improper payments. And that is an area that I think you are saying that the Department could do a better job in. Any other areas? And, of course, IT you mentioned. The three things that you mentioned, would that be the areas that you think the Department could do a better job in? And is there anything else you would like to add to that, or that pretty much sums it up pretty well?

Ms. FONG. Well, I think, those are three very good challenges, and overall management controls. As you know, we also do a report every year that lays out our top 10 management challenges for the Department. And, you know, we go through those issues. I think those are all good issues as well for the Department to focus on.

We talk about coordination with other agencies, for example, in food safety, the need to have open dialogue with FDA.

Mr. HARDEN. Other areas that we cover in the management challenges report deal with the outreach, which gets into the civil rights arena and how we are getting delivery to the intended recipients. Trade is an issue, and making sure you have, you know, good performance measures and knowing where you are going there and working transparently. We also talk in terms of, you know, thinking of succession planning type things, the human resource element, and having people in place to know how to deliver the programs in the right ways so that you are delivering them as intended. And food safety is also another area that we have hit on, and also GAO hits on, in terms of it being a very critical weakness as well.

Mr. ADERHOLT. Okay. My time is running short. Let me just—I will tell you what, I will come back so let me go on to Mr. Farr.

Mr. FARR. Thank you very much, Mr. Chairman.

I am always curious in your recommendations because what I am curious about is how many of those recommendations that you make can be fixed administratively just by administrative rule-making or management changes, and when it becomes necessary to recommend statutory changes, how do they get to us?

I mean, my first job, when I got in government after getting out of the Peace Corps, was working for the legislative analyst office in California. And our job was not only to analyze the impact of all proposed legislation and to analyze the Governor's budget, but it was also to add sort of value added, and what do you think government ought to be doing to do it better? And we could actually make recommendations as to changes that ought to be made. And it seems to me, that is the wonderful role that you have, is not only to inspect and see whether the agencies are following the law, but sometimes we have created over years, and you have obviously—a lot of dumb law. I mean, we don't eliminate old law; we just pile new law on top of it, and there is a lot of confusion. And when you see sort of what I call "dumb dumb," because I am always asking Federal employees to tell me dumb-dumb things because we would like to fix those, is there a process in the IG's role to get that brought to whatever attention, the Congressional attention, the proper Committees or to Secretaries who can administratively change it? So you have some ability to be creative.

I mean, you talked about the Rural Housing Service (RHS) here, how the RHS could improve, how it can service its accounts. You also worked to ensure that USDA funds are being properly used to spur rural development. I find that one of our problems is that we think of rural development in silos. We don't think of it as really economic development in the whole community sense. And you did, in the Colorado and New Mexico on the hay producers between the non-irrigated and the irrigated come up that there is insurance that you had one-size-fitting-all, which they aren't the same size. They aren't the same thing. So how do those recommendations get into being effectively implemented or changed? How do we implement change?

Ms. FONG. Well, I think that is a very good question, and we should discuss how our recommendations are handled. As you

know, we issue hundreds of recommendations a year. Many of them are focused on administrative action, because many changes don't require the level of involvement to have a congressional or legislative solution. And to the extent that we can get agency agreement on that, in terms of collecting money or changing a procedure or doing better training or doing a better implementation of its IT system, that is the kind of recommendation that should be made.

There are other situations, as you point out, where really the issues become a little more policy oriented or may require a closer look at the current statute. And we have, over the years, noticed a number of those situations. What we tend to do is to talk to the agency, because the agency generally has some thoughts about it as well. Many of these issues are complex. The bottom line is that we do make recommendations that might require or that will call for legislative change.

We have, on occasion, surfaced those—

Mr. FARR. Excuse me, but then that would have to go through the Secretary, for example, to get to us, or is that something we would know of? We recommended legislative change?

Ms. FONG. Yes, we surface them in our audits as audit recommendations. Traditionally, what we have done is recommended to the agency and to the Secretary that they pursue a legislative change to a statute. We don't always get agreement on that, but those recommendations are in our audit reports, and we make those reports available to all of you.

Gil, did you want to add some comments to that?

Mr. FARR. And you also have a de minimis rule? I mean, there may be some money that was misused but it is—I think, in these food stamps you pointed out, I mean it was interesting, I thought it was kind of a de minimis amount of \$1,200, but then you pointed out that it was linked to a drug cartel, and that way you were able to see how the food stamps were being distributed. I mean, obviously that was a good deal to go after the drug cartel. I am not sure how much, you know, when you have de minimis sort of whatever that de minimis is, has that gone into consideration?

Ms. FONG. I think we are talking about an investigation matter. And what frequently happens is that we work many investigations matters jointly with other law enforcement entities. Frequently, if an entity, another agency, law enforcement agency has a case going on and they note that in the list of violations, potential violations, there may be a food stamp connection, they will reach out to us to ask us to help them prosecute that. And that will—

Mr. FARR. I see.

Ms. FONG [continuing]. Enable a joint effort.

Mr. FARR. Okay. Thank you. Thank you, Mr. Chairman.

Mr. ADERHOLT. Mr. Rooney.

Mr. ROONEY. Thank you, Mr. Chairman.

I want to talk about the APHIS plant protection and quarantine preclearance report. In reviewing your report from last year, I was surprised to discover all of the shortcomings uncovered by the IG. Invasive species are a significant problem, as you know, in my State of Florida. And I am happy that the recommendation presented as a result of your audit has mostly been accepted by

APHIS. I do remain concerned about the effectiveness of these programs as a means to prevent future invasives from entering our country.

So my question is, in light of the whole greening phenomenon that we have in the State of Florida with our citrus industry, which I represent a large portion of in the center of the State, what are the follow-up procedures your organization will conduct on this audit? What is the timeline, if any? And if the agency is delinquent in implementing your recommendations, what recourse is there, if any? Thank you.

Mr. HARDEN. I will take that. In terms of the recommendations that we made, just some follow-up, we have reached agreement with the agency. So all the recommendations are agreed to and so they are in the process of implementing them now. What our normal course with this, as well as other audit-related matters, would be in the future is we would monitor to see are they meeting, you know, what they are saying they are going to do in terms of implementing it, and then possibly going back in and following up on the recommendations in the future to see that the actions were taken.

Mr. ROONEY. Is there a punishment if they don't complete it in the way that, you know, you are recommending? Or what is their incentive to do what should be done?

Mr. HARDEN. I guess the way that I would answer that, I don't have a hammer that I can go and hit them with, if that is kind of the question.

Mr. ROONEY. Yeah.

Mr. HARDEN. I don't have that, but it would be following up, you know, and raising it to the attention of management officials above them if it still hasn't been met. You know, one of the things about this Secretary and this Administration is they have been very open to what we have been saying. So, you know, as we have surfaced things and keep raising them, they make sure they are paying attention to them.

Ms. FONG. I would also note that, under the law, agencies have a certain amount of time in which to resolve recommendations and to implement actions. And if these things don't happen at the appropriate time, we are required as an IG office to report those. We can make sure that, you know, we have you on our distribution list for our semiannual reports, which will track all of these recommendations.

Mr. ROONEY. Well, again, I don't mean to state the obvious, because you all know this, but we were very successful on this Committee in appropriating funds to try to combat the things that we are talking about here. But it would be much more preferable, I mean—and that is a great victory—but if we could just not have these things, you know, reach our plants to begin with. Obviously, we all know that that is the most preferable. So this is as important, in my opinion, as that funding, so thank you very much.

I yield back, Mr. Chairman.

Mr. ADERHOLT. Ms. Pingree.

Ms. PINGREE. Thank you, Mr. Chair. Thank you very much for being here today, and thank you for your work. I want to just add my voice to the chorus of concern around the very troubling *New York Times* story that was mentioned about animal research. So I

am hopeful that we are going to do some more investigating into that, and obviously many of the concerns that were raised in that story are about the spending of taxpayer dollars and humane treatment. Basically, bordering on the bizarre in some of the things that were being researched, in my opinion, and even more importantly completely counter to what the consumer is looking for today. The market is growing for humanely raised and different levels of treatment for animals, so why these taxpayer dollars are being spent on something that is clearly an inappropriate practice I think raises a lot of questions. So I just want to add my concerns along with the chair and the ranking member.

But one other thing I want to bring up is also something that I read in the newspaper. At least I didn't find it on the Internet. There was another New York Times opinion piece about some of the issues around the USDA pilot plants in the pork processing. I know there are some Hormel plants that are under a pilot program, and there has been an OIG report, which was entitled "Food Safety and Inspection Service: Inspection and Enforcement Activities at Swine Slaughter Processing Plants," and it appears that there are some real concerns being raised with the speed, with the quality of meat, and with questionable meat being put on the market.

And I would like to hear you talk a little bit more about that. I mean, obviously we do pilot projects because we want to test and see if a method is going to work. But what would you say today to somebody who wants to know if it is safe to feed their kids pork that has come out of those Hormel experimental sites? And I just want to hear you talk about the report a little bit.

Ms. FONG. Okay. Well, thank you. We also are aware of some of the news reports on that situation. And as you mentioned, we did issue an audit report about a year or so ago on pork processing plants. My recollection of our basic findings there was, as you point out, it is a pilot program, the HIMP program. And one of our main findings was that USDA needs to take a better look at that pilot program to see if it is actually working, if it is getting the results that they had anticipated and expected; and if it is, terrific; and if not, then they need to address that.

I think those are some of the main themes coming out of those inspectors' concerns. Some of the other concerns that were articulated were not part of our review, so we don't really have anything to comment on in that sense. But the basic point, I think, is good, that it is time to assess that HIMP project to see whether or not it needs to continue.

Ms. PINGREE. Great.

Mr. HARDEN. And I will add to it that in response to our recommendation about doing an evaluation, Food Safety did do an evaluation. I haven't looked at the results of that yet, but the whole HIMP pilot project is also coming up in other lines of food safety work that we are doing. The ground turkey inspection that Phyllis referred to in the opening statement has a HIMP angle to it. We also have on our plan to look at HIMP with the new chicken processing standards that are going in place as well.

Ms. PINGREE. Great. Well, thank you very much. Thank you, Mr. Chair.

Mr. ADERHOLT. Dr. Harris.

Dr. HARRIS. Thank you very much. Let me just follow up a little bit about the improper payments, which I think you have mentioned. The USDA, I guess, is still not in compliance with implementing the Improper Payments Information Act. Do you have any idea when you think they will be in compliance or how the USDA compares to other departments in terms of their ability to handle improper payments?

Ms. FONG. The Department is very much aware of what it needs to do to come into compliance, because we are engaged in constant discussions with the CFO's office. They have, I think, made some progress over the years in terms of meeting those seven required steps to identify and set reduction targets. They are still behind on three of those steps.

Some of the difficulties, I think, lie in how you set those targets and how you assess the level of improper payments. And some of the agencies are facing challenges in that regard. RMA in particular is facing those challenges, which is going to be a longer-term process for them. The school lunch program, which is another one of the high-risk programs, also faces challenges in setting their improper payment targets. And we have some audit work coming out on that later this year.

In terms of where USDA fits in the panoply of Federal Government agencies with high-risk programs, I would say we are probably in the middle. I don't think we are the best by any means, but I don't believe we are the worst either.

Dr. HARRIS. Okay. Let me just follow up with some of the management challenges you talk about, but particularly with the Food and Nutrition Service. I am just going to ask, that is one of the areas where, your testimony says, "The agency generally accepted our recommendations." I mean, does that mean they didn't accept some of them? I mean, how is that communicated, what they are going to accept, what they are not going to accept? Just out of curiosity.

Ms. FONG. Okay. This goes to how we issue our audit reports. When we issue an audit report in final, we will list each of our recommendations, and then we will summarize the agency's response to our recommendation by recommendation and our position on that. In the best of all possible worlds, we would reach agreement or management decision with the agency at the time we issue our report, which means that if we recommend something, the agency will say, yes, we agree, and we are going to take corrective action. It doesn't always happen, especially on recommendations that may have a little more policy complexity to them. Sometimes the agency will say we need to think about this a little bit more, or they may not be able to commit to specific targets for action. And that means that that recommendation will be open until they commit to a specific date for action.

Dr. HARRIS. Okay. Now, I understand that USDA does have a reporting process that is used to follow up on whether your recommendations are implemented. I mean, is it effective? If it is not, do you have any recommendations on how to strengthen that process?

Mr. HARDEN. I think the process the Department has right now is working pretty well. I mean, we make our recommendations. And going back to the FNS report you referred to, following that report we had follow-up conversations with the agency. We have now reached agreement on all six of the recommendations in that report. So the process then kicks over to where they report to OCFO what they have agreed to do with us, and we can follow up with OCFO, you know, at different points in time to see if they have done it; if they haven't, we can go back to the agency and find out why.

Dr. HARRIS. Now, just to finish up with the FNS, I mean in your testimony it says, "In our upcoming work, OIG will determine if FNS has adequate controls to ensure that SNAP error rates are accurate, and if the agency is taking adequate action to reduce these rates."

I take it SNAP is high-risk, I mean, we had a case in Baltimore, where \$1.2 million in fraud was going on there. What do you think? Do you think FNS has adequate controls right now? I mean, it suggests that, you are going to determine if they have controls. How can you not have determined that up until now in a high-risk program? It is strange that it says you are going to look at this in the future. I mean this is a huge program with the largest, fastest-growing entitlement in the United States right now, and you are not certain that they have adequate controls?

Mr. HARDEN. The work we undertook was—and it is the first time we have looked at it in a period of time—to look at their process and how their process works. And so we are looking to see—they have other process where States do a certain amount of sampling, and then FNS overlays some sampling on that. We are looking to see if the States are doing what they have committed to do, and if FNS is following up and doing what they are supposed to do, which produces the error rate that they put out every year.

Dr. HARRIS. Let me ask you a question out of curiosity: What is the States' incentive to be frugal with the Federal taxpayer dollar? I mean, this is 100 percent Federal dollars. Why would a State not spend more time looking for fraud in an area where they actually can affect their State budget dollars rather than a pass-through dollar?

Mr. HARDEN. I am going to separate that out just a little bit.

Dr. HARRIS. Okay.

Mr. HARDEN. All right. On the quality control side, they are looking to see did they make the right payment in the right amount over or under. There are incentives that they have that they provide to States for getting that amount right. There are also sanctions that they place on States if their error rates are too high, generally.

On the fraud side—

Dr. HARRIS. You can follow up. I think my time is up. You might want to just follow up in writing.

Mr. ADERHOLT. If you could. We just got notice we are going to have votes in a few minutes. I want to try to go ahead and get a full round. So I am going to try to stay as close on time as possible. So Mr. Bishop.

Mr. BISHOP. Thank you very much. I know that there are incentives—just to follow up with the gentleman’s question—as to why States would want to pay attention. Georgia has had a very, very tired experience with the Department because of some inappropriate payments, and it took quite a while to try to get that resolved. There are sanctions, and they have a fiscal impact, which certainly affects a lot of our constituents, both on the government side and the recipient side.

Let me turn to what your budget justification indicated, that you continue to see individuals providing false information to obtain FSA moneys through several programs, and that you will allocate resources as needed to investigate potential fraud in FSA programs. I think it was reported that some of the farm subsidy payments went to 28,613 deceased farmers between 2011 and 2012, of which 1,799 were deemed improper, according to the GAO report that was issued in June of 2013.

Additionally, GAO determined that about 6 percent of the total subsidy payments should not have been sent due to clerical error or outright fraud. Can you tell us what the current level of OIG resources are that are dedicated to the FSA, what is planned for 2016, if any investigations of fraud-related activity have been conducted with respect to FSA programs over the past couple of years?

I am a very strong supporter of our FSA programs, as I am for SNAP and WIC, but I think all of us agree that fraud should be rooted out no matter where it is. And I believe that we need to be concerned with the level of attention which has been reaped on SNAP versus the other programs, such as risk management, the conservation programs. And so can you tell me what the fraud rate, the error rate is? I know that SNAP and WIC are large programs, but what is the percentage of error rate there compared to the other programs?

Ms. FONG. Okay.

Mr. BISHOP. Because I think I was under the understanding that really that percentage of the total claims was small compared to some of the other programs that don’t get as much attention.

Ms. FONG. Yeah. Let me just offer a few comments, and then I will ask Gil and Ann. We also share your view that we need to address fraud wherever it occurs in USDA’s portfolio. And we are paying attention to allegations and issues in the farm programs and crop insurance programs. And I know we have some good examples of that.

In terms of the improper payment rates, I think you are correct that in terms of what the Department reports as improper payment rates in the food stamp program, it tends to be in the 3 to 4 percent range. In some of the other programs, say the RMA and NRCS programs, the improper payment rate is much higher, in the teens, maybe near 20 percent. There are probably a number of reasons for that. We are paying very close attention to that.

And let me just offer the chance to comment to Gil and Ann.

Mr. HARDEN. The thing that I would add to that, too, I mean, we are mindful of it, but the FSA percentages for their high-risk programs for FSA are lower, some of the lower percentages. But we do keep them on the radar screen.

Ms. COFFEY. And I would like to just address the question you raised about what sorts of resources we are allocating towards FSA investigative work. Historically, we have focused quite a bit of our resources on the SNAP program. But FSA is an area that we are definitely looking for an increase and expecting to increase our investigative work in those areas. We have had some very good cases within the last recent year with high-dollar amounts, and so we do anticipate that within fiscal year 2016 we will be increasing our work in FSA.

Mr. BISHOP. Thank you.

Let me get on to another question quickly, that is the 2501 program. Of course, it has been criticized—I should say it has been effective, and it has been critical to the provision of our system to support disadvantaged farmers. Two years ago, OIG released an article in recommendations with regard to the implementation of the 2501 technical assistance program for disadvantaged farmers. It is my understanding that those recommendations were accepted and that they have been implemented successfully. Can you comment on that, please?

Ms. FONG. Yes, you are right. We have looked at that program, and the Department, the Secretary, they have made the changes that were necessary to address our recommendations and to get those programs back on a good footing.

Mr. BISHOP. Thank you.

Mr. ADERHOLT. I just want to mention we have got a call for votes. This is a 15-minute vote, so we are going to go as long as we can and try to go ahead and wrap-up in this first session, because I know a lot of folks have flights that are out this afternoon.

So go ahead, Mr. Yoder. The mic is yours.

Mr. YODER. Thank you, Mr. Chairman. We will see if we can leave a little bit of time for Mr. Valadao and Mr. Young. I appreciate you coming to the hearing today. It has been a very fascinating discussion. I appreciate your eye towards rooting out fraud and improper payments and waste, and that is one of our key roles here in oversight, and you are a key part of that.

I wanted to continue that line of conversation and dialogue and ask you a little bit about some of the changes that occurred in the passage of the farm bill last year and the implementation of those changes and some previous GAO recommendations. Now, I noted during the Farm Bill debate, there were about \$23 billion in savings that were to occur. And I think in particular I want to hone in on the fact that there were \$8 billion in savings that related to the Food Stamp Program, which is about 80 percent of the Farm Bill. The rest of the savings were coming from removing direct payments to farmers and cutting farm aid.

But there was a portion of that bill and some sort of bipartisan agreement that was to find savings in the Food Stamp program, and not by cutting benefits, but by trying to reduce the fraud or improper payments or any abusive practices that occur. And I note that there was a *Politico* article that said the single biggest savings in that portion of the \$8 billion comes from cracking down on what many see as an abusive scheme employed by about 16 States that distribute token amounts of low-income fuel assistance to households that help them gain higher benefits.

And we want to make sure the people who are eligible for benefits get the benefits they receive; and we want to make sure that those that aren't eligible don't receive benefits. That way we can help those who need it the most. So I would be interested to know if you believe in your review that that is being implemented and will be effective, or if there have been problems in that implementation.

And then I also note there was a GAO report in 2013 that we have discussed in this committee before that was entitled "Improved Oversight of Income Eligibility Determination Needed in the WIC Program." And in particular, it highlighted inconsistent criteria, lack of income data, inability from some States to define annual income, family or household most recent income in a consistent way that has led to that report saying improved oversight of income eligibility is needed.

So I guess could you comment on where the Department of Agriculture is on responding to those savings that are needed in each program in order to make sure that they get the payments that are needed to the people who deserve them?

Ms. FONG. Let me start out, and then, Gil, you can jump in. Those obviously are very sensitive and current issues. With respect to the LIHEAP issue, we are currently doing an audit on, as Gil has discussed, eligibility determinations for SNAP. I believe that that is one of the issues that we are evaluating in that audit. So right now we are not able to really talk about it, but we expect that report to come out in the next several months. I mean, it is very close. So we will certainly be happy to brief you on it at the time that it comes out and talk with you about those issues.

With respect to the WIC eligibility issue for recipients, I don't believe our currently-issued audit on WIC got to that issue. We were looking more at controls over State food costs at the State level and the vendor level. So we did not specifically address that issue. And because GAO did such a good job of it—that is not unusual—we try not to overlap our work.

Gil?

Mr. HARDEN. Yeah, I would just add generally from the eligibility standpoint, that is a theme or that type of theme that you mentioned from GAO comes up as we look at the other programs too, that, you know, they need to more closely look at, you know, making sure everybody is eligible, they meet the requirements, those type of things.

Mr. YODER. I would just encourage you in your efforts to really investigate whether the Department of Agriculture is carrying out the Farm Bill in a way that is consistent with the savings that were expected by Congress. And that is going to be somewhat subjective to whether they are actually carrying it out and enforcing it, or whether these 16 States and others continue to game the system and utilize this program in what Congress has determined is an improper way.

These GAO reports are only good if they are followed through on. And so we really need to make sure that the Department of Agriculture is following through on these recommendations about income oversight to really root out the improper payments or fraud or waste that are occurring. Thank you for your testimony.

Yield back, Mr. Chairman.

Mr. ADERHOLT. Mr. Young.

Mr. YOUNG. I have a lot of questions here, but for the sake of my friend, Mr. Valadao, I am going to cut it down to one.

Thank you for coming today. You know, I was at the beef expo in Iowa over the weekend. We eat a lot of pork and produce a lot of pork as well in Iowa, as you know. I understand in your budget you have asked for \$57 million for an antibiotic resistance study on livestock, and that it is a new USDA initiative. Maybe you have studied it a little bit in the past, but you are going to go forward and do something broader. This causes farmers and ranchers in my State, and other States, some uncertainty and some cause for pause right there. I want to make sure that—the concerns are that sometimes this is viewed by ranchers and producers in a political science context instead of sound science, and there may be outside pressures. I reflect back to the GMO debate. I want to know, can you provide an overview of your work so far on any of this and where you want to go on this? How do you involve the agriculture community, from the producers, the farmers, to veterinarians? Will you be keeping us updated on this, and how will you do that?

Ms. FONG. I believe we have an ongoing audit on that. We started it last summer. We are probably in the middle of field work at this point. And I am going to ask Gil to comment on specifically what our scope is on that.

Mr. HARDEN. Yeah, I can kind of speak to our objective and scope. We are basically looking at how the Department is going about, you know, responding to the antibiotic resistance, you know, how they are going about surveillance, you know, what they are doing to match it with the science and stuff. It is that line of questioning. But we are in the middle of field work. And I would be more than happy to brief you further once we are further along in the process.

Mr. YOUNG. I would appreciate that. Thank you.

I yield back.

Mr. ADERHOLT. Mr. Valadao.

Mr. VALADAO. Thank you, Chairman.

Thank you, Mr. Yoder and Mr. Young.

Last night, reading through the testimony, I did notice the Cloud systems that the USDA has purchased and the lack of information on how they are cataloged. Only 17 of the 31 were actually showing up in the inventory, and some of them were actually classified under different categories, confused me a little bit, on what type of Cloud systems they were, or what they were.

But what really bothered me about this is, obviously, it does store producer data. What is the USDA doing, and what kind of oversight can we provide to make sure that what they are using these Cloud systems for is secure? Obviously, we all know that there are groups out there that do not like agriculture and do not like especially animal agriculture. How safe is this data from breaches like what we have seen going on in so many different industries across the U.S. right now?

Mr. HARDEN. Well, that security aspect is something that we run into not only in the Cloud computing, but we see in many of the audits that we do in the IT arena. I will say, the Department has

been receptive to our findings and our recommendations, and they are working on it. It is one of the main reasons that we want to put forth an IT initiative with our budget so that we can focus more on the security, because some of the fundamental controls that they need to have is knowing their inventory of hardware and software, so they know what they need to monitor and what they need to look at.

Mr. VALADAO. That is a very scary situation, where they are not even sure how many of these they have. It shows they have purchased 31, but they are not even sure where they are. And it is just a really dangerous situation for a lot of agriculture, a lot of farmers around the U.S. So I appreciate that, and I yield back.

Mr. ADERHOLT. As I mentioned, we have votes on the floor. Let me just yield to Mr. Farr and see if he has anything that he wanted to add.

Mr. FARR. No. I am sorry. Everybody is voting and kind of getting out of here, so I just appreciate the leadership you bring to this as we prepare for our hearings. Your report was very informative. Thank you.

Mr. ADERHOLT. And one thing that I do, and I will do it more for the record and since we are limited here on time, but I did want to mention the Farm Service Agency's Modernize and Innovate the Delivery of Agricultural Systems (MIDAS). And of course, Congress and the taxpayers invested more than \$400 million in that information system. It was intended to improve the management of the antiquated IT systems for foreign programs. Your agency and the GAO are still investigating what went wrong with that. But it appears that USDA mismanaged this project and the funding for this critical investment.

So just in closing, when is the estimated date for completing the audit? And then I may have some questions for the record as well.

Ms. FONG. We are hoping to issue a report in the next several months, probably May, I believe. And we will have recommendations, I believe.

Mr. ADERHOLT. Okay. And like I said, I will probably have some follow-up for the record on that that we want to ask some more questions on that. But, again, we thank you for all for being here today.

We especially thank you, Ms. Fong, for your leadership and all your distinguished awards that you have received during your time as Inspector General, but of course your whole team is great. We respect all of you for the work that you do, and we thank you for the work that you do on a day-to-day basis.

So with that, we appreciate you being here, and the hearing is adjourned.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE INSPECTOR GENERAL
QUESTIONS FOR THE RECORD
HOUSE AGRICULTURE APPROPRIATIONS SUBCOMMITTEE HEARING
FEBRUARY 13, 2015

QUESTIONS SUBMITTED BY CHAIRMAN ROBERT ADERHOLT

OIG Priorities, Concerns and Recommendations

1) What are USDA's top management and programmatic challenges?

Response: Each year, OIG identifies the top management and programmatic challenges facing the Department in its USDA Management Challenges report. This information is also reflected in USDA's annual Agency Financial Report.¹ OIG's August 2014 USDA Management Challenges Report identified the eleven top management challenges facing USDA. Of those challenges listed, OIG continues to consider the following four to be the most significant:

- Effective management and internal controls;
- Strengthening efforts to identify, report, and reduce improper payments;
- Improving controls for food safety inspection systems; and
- Implementing a secure information technology environment.

2) What USDA programs, functions or agencies are of most concern to you? Why?

Response: Because OIG's mission is to identify and eliminate fraud, waste, and abuse, any USDA program with identified weaknesses and vulnerabilities is of significant concern to us. However, as referenced in OIG's past semiannual reports to Congress and annual reports on management challenges facing USDA, the programs and functions of most concern are those relating to food safety and security, information technology security, and improper payments in agency programs. Our work has also shown that these programs would benefit from the implementation of strong, integrated internal control systems. USDA managers need to make use of available tools to ensure high program performance and integrity.

Below are some examples of programs, functions, or agencies that are of most concern:

- Food Safety and Security: We view food safety inspection to be a continuing concern because food-borne pathogens and food contamination can put consumer health in jeopardy. We currently have three audits underway of Food Safety and

¹ The most current version of these reports may be viewed on USDA's Web site at http://www.ocfo.usda.gov/docs/USDA%20AFR%202014-12_30_2014.pdf (USDA Agency Financial Report, FY 2014, starting on page 173) and <http://www.usda.gov/oig/webdocs/MgmtChallenges2014.pdf> (USDA Management Challenges, dated August 2014).

Inspection Service (FSIS) programs and activities. As part of our audit of ground turkey inspection and safety protocols, we are evaluating the inspection of ground turkey, including sampling and testing protocols, to evaluate the effectiveness of the program. We are also evaluating FSIS' implementation and oversight of the domestic module of the Public Health Information System. Finally, as a follow-up on 2007 and 2008 audit initiatives, we are evaluating the corrective actions taken by FSIS to implement prior OIG audit recommendations regarding pre-slaughter activities and risk-based inspection in processing establishments.

- **Information Technology (IT) Management and Security:** IT management and security has been a longstanding concern for USDA. We have consistently recommended that the Office of the Chief Information Officer (OCIO) work in collaboration with USDA agencies to achieve an improved security posture. OCIO needs to continue issuing Departmentwide policies; it also needs to prioritize one or two areas and begin a process to ensure that agencies are creating and implementing procedures based on these policies. In order for USDA to attain a security posture that is secure and sustainable, all 34 of its agencies and offices must consistently implement Departmental policy based on a standard methodology. Once all of the Department's agencies and offices reach this level of compliance with security policies, USDA's security posture will have enhanced consistency, effectiveness, and sustainability. The degree to which USDA complies with the Federal Information Security Management Act (FISMA) and other security guidance is based on the security posture of each of its agencies and offices. If each agency is in compliance with the Department's policies, then USDA will be FISMA compliant and, more importantly, more secure. It is critical that the Department manage and protect the security, confidentiality, and integrity of its IT infrastructure and the information residing in its IT systems.
- **Improper Payments:** For FY 2013, USDA reported 569 high-dollar overpayments totaling over \$47.1 million. This represents an increase of 42 percent over the number of overpayments reported the previous year. In our fourth year of reporting, we found that USDA implemented actions to adhere to the high-dollar reporting requirements. However, USDA's quarterly reports included errors, inadvertently omitted data, and were published up to 222 days after the due date. This occurred because of budget constraints and resource limitations that affected the reporting of high-dollar overpayments. USDA needs to take further steps to ensure it reports the information accurately, completely, and timely. Without accurate, timely, and complete reporting, the results of USDA's actions or strategies to reduce high-dollar overpayments are not fully known. We are currently reviewing USDA's FY 2014 reporting of high-dollar overpayments.

We also continue to identify improper payments and the improper use of program funds through our audits of specific programs. Our recent National School Lunch Program and School Breakfast Program audit determined that during school year 2012-2013, as a result of the annual verification process, school food authorities (SFAs) reduced or eliminated benefits for 107,974 of the 199,464 sampled

households (about 54 percent) because the income claimed on the applications was unsupported or excessive. We estimated that the Food and Nutrition Service (FNS) may have spent nearly \$12.5 million on lunches for students who later had benefits reduced or denied after being selected for verification. In addition, we found that SFAs accumulated excess cash, totaling \$4.8 million; expensed nearly \$6 million in capital expenditures in the year of purchase without obtaining prior approval from the State agencies; and charged unallowable costs totaling \$166,933 to cafeteria funds.

- **Program Performance and Integrity:** USDA managers oversee critical elements of our Nation's agriculture, nutrition, and natural resources policy. In order to bring about desired results, they must design effective internal controls and systems for program implementation. USDA managers need to make use of available tools to ensure high program performance and integrity. Examples of tools that can be better used to enhance program performance and integrity are as follows:

Suspension and Debarment (S&D): S&D protects not just USDA, but the Government as a whole. Suspending and/or debaring entities who have been convicted of criminal misconduct helps to ensure these nonresponsible entities can no longer participate in most Federal programs and do business with the Federal government.

OIG's Office of Investigations (Investigations) provides a quarterly report to the Office of the Chief Financial Officer (OCFO) identifying indictments and convictions that have occurred during the quarter to assist agencies in identifying individuals or companies who should be suspended or debarred from government programs. Investigations is initiating a pilot project beginning with FSA and RMA, in which agencies will receive direct referrals for suspension or debarment from Investigations. The referrals will contain information on the investigation which will allow the respective agency to move forward with suspension or debarment, as appropriate, in a more expeditious manner, and sooner than on a quarterly basis.

Electronic Benefits Transfer (EBT) Technology to Strengthen Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Integrity: In FY 2013, our investigative work involving WIC yielded 11 indictments, 20 convictions, and approximately \$2.4 million in monetary results. In FY 2014, our work produced 130 indictments, 2 convictions and approximately \$860,000 in monetary results. In FY 2015, thus far, our work has yielded 5 indictments, 82 convictions and \$61.5 million in monetary results. As of April 2015, of the 90 WIC state agencies, currently 14 have implemented State-wide EBT systems; 27 are in the implementation stage; 41 are in the planning state; and, 8 currently have no EBT activity. OIG will work closely with FNS and those States to identify ways EBT technology can assist in our investigations to promote the integrity of the WIC Program.

Controls to Prevent and Detect Fraud in the Supplemental Nutrition

Assistance Program (SNAP): The cost of SNAP has risen 123 percent since FY 2007. Benefits issued in FY 2014 were over \$74 billion. FNS reports a 3.2 percent error rate in eligibility and benefit determinations and a 1.3 percent fraud rate after benefits are issued; both rates are historic lows. Our audit work has found that while FNS and States do have tools for ensuring applicant eligibility and detecting fraud, States either do not make full use of the tools, or cannot rely on the data provided by the tools to take actions related to benefits. Research is often conducted by the States' fraud detection and prevention units; however, in the 10 States we visited, we found that despite significant increases in SNAP participation none of the States had increased the resources in these units. We also continue to work with the Department to resolve five recommendations from our audit of SNAP retailers.²

SNAP Fraud Detection

The Committee has repeatedly directed FNS to permanently debar retailers and participants from the program if found guilty of fraud and abuse. Your office previously issued a report identifying hundreds of store owners that had been permanently disqualified from the program, yet they were still participating in SNAP and redeeming millions of dollars in benefits.

- 3) Has FNS sufficiently addressed the deficiencies found in the July 2013 audit report?

Response: We have reached agreement with FNS on the corrective actions to be taken for 15 of the report's 20 recommendations. In order to close the recommendations, FNS must report to OCFO the actions that it has taken to implement the recommendations. FNS has not done this for any of these recommendations. As such, we could not identify if any of the 15 recommendations have been implemented or if FNS' action sufficiently addressed the deficiencies we reported. For the remaining five recommendations, we are working with the Department to reach agreed upon corrective actions. This subject area will be part of our plans for future followup work.

These five recommendations call for FNS to do three things: (1) propose that the Secretary seek legislative changes that would provide FNS the authority to require any applicant for a location that has been previously permanently disqualified for trafficking to have a vested interest before authorization; (2) revise regulations and policy to permanently disqualify certain retail store owners at all authorized retail locations they operate; and (3) revise regulations to ensure owners that have been permanently disqualified for trafficking are not granted authorization as a SNAP retailer at new locations.

- 4) Is FNS doing a better job of ensuring those disqualified from the program are in fact removed from the program?

² *Controls for Authorizing Supplemental Nutrition Assistance Program Retailers*, Audit Report 27601-0001-31, July 2013.

Response: FNS has not reported to OCFO the actions FNS has taken to implement the 15 recommendations that it agreed with in our July 2013 audit report. Therefore, we could not assess whether FNS is doing a better job of ensuring that disqualified SNAP retailers are in fact removed from the program. This subject area will be part of our plans for future followup work.

We do know that, at the time of our audit, FNS did not have clear procedures and guidance to carry out key oversight and enforcement activities. As a result, FNS does not consistently provide deterrents for trafficking. We found that FNS did not properly determine potentially \$6.7 million in penalties, and authorized 51 ineligible store owners, who redeemed over \$5.3 million. In addition, we identified 586 owners allowed to continue participating in SNAP at other locations after being permanently disqualified, and 90 retail locations that had two or more firms permanently disqualified.

Investigations provides case related information, openings, closings, and legal action memos to FNS on a routine basis. FNS utilizes these data to make determinations on administrative action against retailers and recipients, regarding disqualification. Additionally, Investigations provides a quarterly report to OCFO identifying indictments and convictions that have occurred each quarter. FNS has advised that it requires additional documentation to move forward on suspension and debarment actions and Investigations is working with FNS to provide the necessary information.

- 5) Please provide a table that shows how much of OIG's budget is spent on monitoring SNAP to reflect fiscal years 2009 through 2014 and estimated for fiscal years 2015 and 2016.

Response: The following tables reflect the cost of direct audit and investigation staff time spent on SNAP oversight during fiscal years 2009 through 2014. The estimate for fiscal years 2015 and 2016 is a projection based on work being performed on SNAP. For fiscal years 2009-through the second quarter of 2013, the amounts include OIG oversight activities pursuant to the American Recovery and Reinvestment Act of 2009.

SNAP AUDITS

Fiscal Year	Percent of Direct Audit Time Spent on SNAP Audits	Cost (in millions)
FY 2009 (actual)	0.13%	\$0.05
FY 2010 (actual)	5.89%	\$2.5
FY 2011 (actual)	4.56%	\$1.9
FY 2012 (actual)	8.82%	\$3.7
FY 2013 (actual)	9.01%	\$3.6
FY 2014 (actual)	3.97%	\$1.6
FY 2015 (estimated)	5.35%	\$2.2
FY 2016 (estimated)	5.35%	\$2.2

SNAP INVESTIGATIONS

Fiscal Year	Percent of Direct Investigations Time Spent on SNAP Investigations	Cost (in millions)
FY 2009 (actual)	23.27%	\$10.2
FY 2010 (actual)	36.26%	\$16.3
FY 2011 (actual)	45.99%	\$20.7
FY 2012 (actual)	52.35%	\$22.8
FY 2013 (actual)	54.52%	\$22.8
FY 2014 (actual)	58.32%	\$25.1
FY 2015 (estimate)	59.50%	\$27.0
FY 2016 (estimate)	58.00%	\$29.5

- 6) Please provide a table showing the number of SNAP-related cases that were investigated, the number referred to the Department of Justice, and the number accepted by the Department of Justice, for fiscal years 2010 through 2014.

Response: The information requested follows:

	Opened	Referred to DOJ	Accepted by DOJ
FY 2010	81	56	16
FY 2011	184	110	73
FY 2012	201	123	88
FY 2013	195	137	109
FY 2014	207	138*	64
Total	868	564	350**

*OIG referred an additional 61 SNAP investigations (not reflected in the above chart) to State and local prosecutors, of which 39 were accepted.

**The period of time to obtain court action varies widely, therefore the 350 cases accepted by DOJ does not necessarily correlate to the total number of cases resulting in convictions.

- 7) Please provide a table showing the number of SNAP-related cases that were successfully prosecuted for fiscal years 2010 through 2014.

Response: The information requested follows:

Successfully Prosecuted SNAP Cases for FYs 2010 through 2014

	Number of SNAP Cases Resulting in Convictions
FY 2010	68
FY 2011	82
FY 2012	141
FY 2013	149
FY 2014	174
Total	614

- 8) Please provide the Subcommittee with an update as to whether or not FNS has followed OIG's recommendation that States use proper databases and perform the proper checks to prevent fraud.

Response: Yes, FNS has reported to OCFO that the agency implemented OIG's recommendation that States use proper databases and perform the proper checks to prevent fraud. FNS reported that it completed both of these corrective actions on April 9, 2014.

- 9) FNS hired a contractor to define a set of standard fraud detection and prevention tools for States. What is the status of this work?

Response: In our September 2012 report, *Analysis of SNAP Fraud Prevention and Detection Efforts*, Audit Report 27002-0011-13, we recommended that FNS define and communicate a standard set of fraud detection and prevention tools to be used by all States for fraud detection and prevention, such as required EBT.

In response to this recommendation, FNS stated that it communicated the importance of increasing fraud detection efforts on March 30, 2012. FNS encouraged States to work with their contractors to develop more functional EBT reports, focus on higher-value fraud cases, and require standard and ad hoc data warehouse analysis tools for State fraud investigators. On October 14, 2011, FNS also issued a memo notifying States they are expected to use the results of FNS retailer disqualifications to pursue administrative actions against recipients. FNS notified the States of additional data that can be used to pursue recipient fraud.

In February 2015, OCFO accepted these FNS actions and closed this recommendation. As noted above, FNS encouraged States to work with their contractors to develop more functional EBT reports, etc. In addition to the FNS actions cited above, which addressed audit recommendations, in 2013, FNS established a national contract with Accenture to focus exclusively on how to better assist States with identifying, investigating, and prosecuting individuals suspected of trafficking SNAP benefits. FNS selected seven States to participate in this multi-year effort. Through this contract, FNS conducts a full business process re-engineering effort in the respective States to identify process improvements among State efforts to prevent fraud. This effort remains ongoing through calendar year 2015.

- 10) Please tell us the progress of Phase 1 of the SNAP Initiative?

Response: The first phase of the SNAP Initiative (Initiative) began in September 2013 in Seattle, Washington. Working with our State and local law enforcement partners, several stores were identified as potential subjects for the Initiative. In at least 10 stores, our law enforcement activities confirmed that the retailers were trafficking in SNAP benefits. The Initiative confirmed that one disqualified store was using a Point of Sale terminal from another authorized retailer. The Initiative also identified 15 retailers selling ineligible items. Law

enforcement action took place in the form of multiple arrests, search warrants, and seizure warrants.

Three owners of three separate stores were charged with trafficking through the county prosecutor's office. Two pled guilty to the charges and the third is awaiting trial scheduled for July 2015. One recipient was charged with trafficking by the respective county prosecutor's office and a second recipient received a drug related charge. Judicial action related to this phase of the Initiative is still ongoing.

11) What will be included in the next phase of the Initiative?

Response: The second phase of the Initiative began in September 2014 in Los Angeles, California. OIG, with support from the Los Angeles County District Attorney's Office (LADA) and FNS Retailer Investigations Branch, identified 20 potential retailers suspected of trafficking SNAP benefits. Positive SNAP trafficking occurred at six retailers. The results of the ongoing investigation were presented to the LADA's office, which accepted the cases for prosecution.

12) When will that phase begin?

Response: This phase has begun and is ongoing.

13) What is its estimated cost?

Response: The estimated cost for phase two is \$20,000. This includes travel, but does not include the salaries of the OIG special agents involved in the Initiative.

14) How many staff will be assigned to it?

Response: Typically, we assign a primary agent dedicated full time to oversee the activities associated with the Initiative. The number of other OIG agents and local and State law enforcement officers varies based upon the nature of the activity during the Initiative. For example, additional OIG personnel would be assigned if we were preparing to execute a search warrant. Our State and local law enforcement partners also provide personnel to assist as needed during the Initiative.

The Subcommittee has encouraged the OIG to expand its efforts to raise public awareness of successful investigations of fraud, particularly regarding SNAP.

15) What deterrent effect does increased reporting of successful prosecutions of fraud have on participants and retailers?

Response: OIG posts press releases from United States Attorney Offices (USAOs) and other prosecutors about significant investigative developments in OIG cases on our public internet home page. We also routinely provide information, as appropriate, when requests for information regarding successful prosecutions are received from the media and external requestors. Reporting and media attention regarding such

prosecutions may deter others. Also, when public action is taken by the States against recipients abusing the program, other legitimate SNAP recipients may more fully realize the risk of losing their SNAP benefits permanently, further serving as a deterrent.

16) Is FNS doing everything it should be doing to deter and prosecute fraud?

Response: FNS conducts activities which lead to administrative sanctions against retailers; however, FNS does not prosecute fraud, but works closely with OIG and refers information to OIG to conduct criminal investigations/prosecutions. FNS also utilizes State Law Enforcement Bureau (SLEB) agreements, which authorize State and local law enforcement agencies to use EBT benefits for SNAP investigative purposes within the State. Additionally, FNS works closely with OIG to address loopholes in the program, which we identify through our audit and investigative work.

17) Is FNS appropriately assisting States with their responsibilities and efforts to deter fraud? How has the SNAP Initiative helped in this area?

Response: Based upon several FNS initiatives underway, it appears that FNS is providing appropriate assistance to States in their efforts to deter fraud. According to FNS, in 2013 it established a national contract with Accenture to focus exclusively on how to better assist States with identifying, investigating, and prosecuting individuals suspected of trafficking SNAP benefits. FNS selected seven States to participate in this multi-year effort. Through this contract, FNS has conducted a full business process re-engineering effort to identify process improvements among State efforts to prevent SNAP trafficking; including, but not limited to, State fraud procedures, case tracking, performance measurement, and client education.

FNS provides each State with a report recommending improvements and provides contracted staff, available onsite, to each State for up to 12 weeks to provide on-going technical assistance to help implement recommendations. Furthermore, FNS conducts a detailed analytics assessment to design a predictive model to help states identify recipients suspected of SNAP trafficking. In FY 2014, FNS awarded just over \$5 million in grants to State agencies to help them implement innovative strategies to prevent SNAP trafficking by recipients. This project remains ongoing and is expected to continue through the end of calendar year 2015.

Additionally, FNS continues to utilize a coordinated strategy with the various State and local agencies to deter fraud and improve program efficiency, through the use of SLEB agreements. The SNAP Initiative works in conjunction with State and local law enforcement agencies that have SLEB agreements in place. SLEB agreements encourage and assist State and local law enforcement agencies in maintaining the integrity of SNAP by investigating, apprehending, deterring, and punishing retailers who illegally traffic in EBT benefits. A SLEB agreement also requires that States take appropriate action against recipients who engage in trafficking. SLEB agreements serve as a clearinghouse to avoid conflicting investigations between local and Federal

agencies. The SNAP Initiative reinforces the importance of the SLEB agreement, as it addresses criminal activity on the part of retailers as well as recipients who engage in SNAP trafficking, while also establishing an effective working model for future joint investigative efforts.

I am pleased that OIG is examining whether FNS has the proper controls in place to ensure the SNAP Quality Control error rate is accurate. While the error rate is low – 3.2 percent for FY 2013 – that still translates into almost \$2.4 billion in improper payments.

18) What is the status of your work on this issue?

Response: We currently have work in process to evaluate the internal controls in place to ensure the SNAP Quality Control error rate is accurate. Our objective is to determine whether FNS and State agencies have internal controls in place to ensure the integrity of the SNAP error rate determination. To accomplish this, we are performing fieldwork at eight State agencies responsible for administering SNAP. We are currently drafting the report. We estimate the report will be released in September 2015.

OIG has an 800-number hotline where individuals may report potential fraud. In fact, this Subcommittee directed the Food and Nutrition Service ensure the hotline number is printed on SNAP EBT cards as well as the WIC food instruments.

19) On average, how many calls and/or reports does OIG receive on SNAP and WIC fraud per month?

Response: In FY 2014, the OIG Hotline received, on average, 283 complaints per month related to SNAP and WIC fraud. In FY 2013, the Hotline received, on average, 205 complaints per month related to SNAP and WIC fraud. This information includes complaints received via phone, e-mail, fax, and mail.

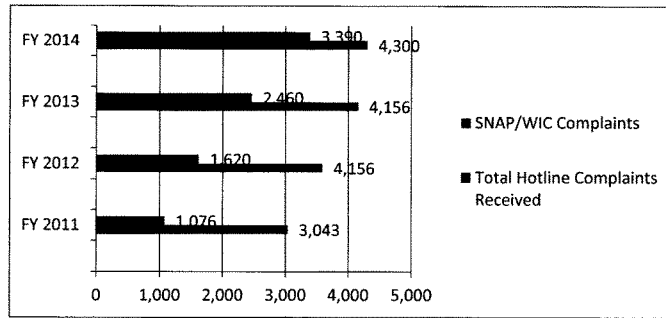
20) Have you seen an increase in the number of hotline calls over the years? Please update the charts to include fiscal years 2010 through 2014.

Response: There are multiple ways to file an allegation with the OIG Hotline. Generally, we have seen a decrease over the years in the number of complaints received via telephone, while the number of complaints received through electronic media such as email and fax has increased.

The OIG Hotline received a total of 4,300 complaints from the public, employees, and other governmental agencies in FY 2014, including SNAP/WIC. This information includes complaints received via phone, e-mail, fax, and mail.

In FY 2014, we received a total of 3,390 complaints related to SNAP/WIC only, which is an increase from FY 2013 to FY 2014 of 930 hotline complaints. The increase from FY 2012 to FY 2013 was 840 SNAP/WIC related complaints.

In FYs 2014 and 2015 to date, we have received over 95,000 contacts related to the welfare of a circus elephant. All 95,000 were reported under one Hotline number, as they were very similar in nature.



21) Do you think the hotline will continue to be a valuable tool for combatting fraud and abuse in SNAP and WIC?

Response: Yes, the OIG Hotline will continue to be a valuable tool for individuals to report allegations of fraud, waste, and abuse. A large percentage of our contacts involve allegations of SNAP recipient fraud. We forward information obtained from these complainants directly to FNS, which refers it to the appropriate State entity for investigation and action. Additionally, most States have contact numbers where nutrition assistance fraud can be reported directly to the State. The Hotline serves as a conduit for information to assist with combatting fraud in the SNAP and WIC programs.

Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

In September, your office issued a report titled “State Agencies’ Food Costs for WIC”. Clearly, the message from this report is that FNS must do a better job of managing the cost containment practices implemented by the States. FNS has been revising its management evaluation process to help with this. The Service should have completed this process last December.

22) Has FNS met this deadline to have the revised management evaluation process completed and in place?

Response: In response to our recommendation, FNS agreed to implement corrective actions by December 2015. In our September 2014 Report, OIG recommended that FNS develop a national cost containment strategy for the WIC program that should include, at a minimum, guidance to State agencies on the deadlines to correct issues

identified during management evaluation (ME) reviews, and the enforcement actions FNS will take if the deadlines are missed.

On December 23, 2014, FNS provided a revised response through which we achieved management decision. The response, in part, added that, "...FNS also is working to implement a consistent approach for addressing findings identified in ME reviews across the agency. WIC staff participates in a collaborative workgroup that is developing Standard Operating Procedures (SOP) for tracking and resolving MEs." FNS agreed to implement this corrective action by December 2015.

One year ago, in January 2014, FNS told OIG that it created a new national Program Integrity Monitoring Branch that will be responsible for management evaluations and other duties. Yet your report notes that there have been significant delays in making this new branch operational.

23) What is the current operational status of this branch?

Response: In April 2015, FNS advised us that the new National Program Integrity Branch is fully operational. However, we have not yet been able to confirm or assess such status.

This isn't the first time OIG has audited the WIC management evaluation process, which is FNS' primary oversight tool for the WIC program.

24) Do you believe the agency is making progress in this area?

Response: Yes, based on FNS' response to our recommendation, we believe that it is making progress. FNS has reported to OCFO that it has implemented the nine recommendations in our March 2013 report (*Vendor Management in FNS' WIC Program*). In addition, FNS has agreed with the six recommendations in our September 2014 report, *States' Food Costs for the FNS WIC Program*, and is in the process of implementing them.

25) States are required by the Healthy, Hunger-Free Kids Act of 2010 to establish a system that allows for electronic disbursement of WIC benefits by 2020. Based upon your observations and experience with SNAP EBT, what benefits, especially in regards to fraud reduction, can be achieved by transitioning WIC to EBT? Previously you cited an example of WIC EBT in Michigan that has prevented fraud in both SNAP and WIC. Has OIG reviewed any other States with WIC EBT to see how fraud might be prevented?

Response: Our audit work has indicated that EBT in WIC might facilitate better monitoring by FNS of WIC cost containment measures at the State level. We concluded that the Michigan State agency properly monitored vendors. We noted that Michigan uses an EBT system, while Illinois and Florida still use paper food instruments. Michigan's system uses the same device to process SNAP and WIC food

instruments and removes it when a vendor is disqualified from one program—thereby ensuring reciprocal disqualification.

Investigations has found EBT does not necessarily reduce fraud; however, it allows OIG to more accurately and efficiently identify and document trafficking. With EBT systems, benefits are transacted electronically, providing access to information on every transaction between recipient and vendor. WIC paper vouchers can be falsified by hand and do not produce an accessible record of a transaction, other than the record provided by the retailer. Transitioning WIC paper vouchers to EBT allows investigative personnel to review large volumes of redemption data, captured from participating WIC vendors, in a short period of time. EBT cards also require the recipient to designate a PIN, which is utilized during each transaction, creating a safeguard against the fraudulent use of stolen or misplaced cards. An examination of the data, coupled with historical information on the vendor, allows Investigations to quickly determine whether to initiate an investigation which could ultimately lead to a criminal prosecution, or allow FNS to pursue administrative action.

- 26) The Committee has been concerned about instances when WIC-purchased infant formula and other foods are sold through social media websites. Previously you said that OIG does not investigate trafficking through social media websites, but FNS works to ensure the postings are removed. Can you confirm what actions FNS is taking to combat this type of fraud?

Response: FNS has established relationships with social media websites. In 2012, FNS sent letters to Craigslist, eBay, Twitter, and Facebook, informing them that the sale or offer to sell SNAP benefits online is an intentional program violation. The letter requested that websites post a notice explaining the illegal activity and remove posts where any individual attempts to buy or sell benefits. The OIG Hotline routinely receives allegations regarding the use of social media websites to sell benefits, demonstrating that the educational information FNS is distributing to citizens and websites, regarding the illegal sale of benefits online, is being noticed.

School Meals

You have previously provided information to the Committee that your office is evaluating the methods FNS uses to lower error rates in the National School Lunch Program and the School Breakfast Program. OIG investigations in this area often find that some school food providers falsely inflate the number of meals provided to obtain more funding than they are eligible to receive.

- 27) What is OIG finding about the steps FNS is taking to lower error rates in the school meals program and are there measures FNS can take to ensure schools do not falsely inflate their numbers?

Response: In our *FNS – National School Lunch and School Breakfast Programs* (NSLP) report (Audit Report 27601-0001-41, issued April 2015), our objective was to evaluate the methods FNS used to lower the error rates for NSLP and the School Breakfast Program (SBP). We sought to determine if FNS, State agencies, and school food authorities (SFAs) had adequate controls to ensure (1) that children met the eligibility requirements, and (2) that meal claims were supported and accurately reimbursed.

The controls that FNS can place on NSLP and SBP are limited by law to make the programs accessible to all children. During school year (SY) 2012-2013, as a result of the annual verification process, SFAs reduced or eliminated benefits for 107,974 of the 199,464 sampled households because household income was unsupported or excessive. We estimated that FNS may have spent nearly \$12.5 million on lunches for students who later had benefits reduced or denied after being selected for verification. Further, at least 97 percent of the households determined to be eligible for benefits based on household applications are not selected for verification and receive benefits based on self-reported income.

SFAs are required to verify any questionable application. During SY 2012-2013, 44 of the 56 SFAs we reviewed did not question any applications, even though we later identified at least 42 potentially questionable applications based on FNS' criteria. Further, 20 of our 61 sampled SFAs mismanaged and misused non-profit School Food Service Funds intended to be used for operating and improving the school food service. As a result, SFAs accumulated excess cash, totaling \$4.8 million; expensed nearly \$6 million in capital expenditures in the year of purchase without obtaining prior approval from State agencies; and charged unallowable costs totaling \$166,933 to cafeteria funds. We did not identify any issues related to meal claims.

We recommended that FNS consult with the Office of the General Counsel to determine its regulatory authority to require households to submit income documentation with school meals applications. Based on this determination, FNS should take the appropriate actions to revise the programs' documentation requirements; FNS should also clarify criteria for identifying questionable applications and provide guidance and training for cafeteria fund management. FNS generally agreed with our recommendations, and we accepted management decision for all recommendations.

28) Are there penalties or fines for those found to be engaging in these fraudulent behaviors?

Response: Yes. Current NSLP and SBP regulations provide for fines of up to \$25,000 and imprisonment of up to five years for those convicted of fraud in these programs.

Food Safety Inspection Service and Rancho Feeding Corp. Investigation

The testimony mentions the OIG investigation into a California meat processing plant where clearly criminal activities occurred.

- 29) Did OIG have any recommendations for FSIS regarding anything the agency could have done or protocols the agency might modify to prevent these types of willful acts from occurring again?

Response: As noted in our testimony, all the subjects of the criminal investigation have pled guilty and are currently awaiting sentencing. Now that judicial action is almost complete in this matter, FSIS will be assessing its own actions in this matter.

Crop Insurance

Last year, OIG reviewed the RMA's prevented planting provisions. The agency found that RMA's decisions allowed for \$480 million in potentially excessive payments, and that it was providing incentives to producers to file prevented planting claims.

- 30) According to your report, RMA generally agreed with your assessment. Please describe the changes that needed to be made.

Response: In our September 2013 report, *RMA: Controls Over Prevented Planting* (Audit Report 05601-0001-31), we recommended that RMA needed to re-evaluate coverage levels provided for prevented planting; make any necessary changes to reduce program costs, where possible; and bring the coverage levels consistently in line with preplanting costs for each crop. In its response, dated August 12, 2013, RMA stated that it awarded a Prevented Planting Evaluation (PPE) contract to determine if prevented planting payments are appropriate when a producer is prevented from planting a crop, but not excessive to the extent that the coverage encourages producers not to plant. RMA also stated that any changes deemed necessary to reflect appropriate prevented planting payments will be determined by June 30, 2014, in order to be effective for the 2015 crop year. According to information from OCFO as of April 14, 2015, this corrective action has been completed.

We also recommended that RMA needs to establish a schedule to periodically reevaluate prevented planting coverage levels to ensure that the coverage levels remain in an appropriate and consistent relationship with preplanting costs. RMA agreed to periodically reevaluate the coverage levels and stated that one of the deliverables under the PPE contract was to provide a methodology that would allow RMA to periodically reevaluate the coverage levels to ensure that the levels used are reasonable and adequate. RMA also agreed to establish an appropriate schedule to reevaluate these coverage levels. As of April 15, 2015, RMA was seeking input/comment on its proposed schedule to reevaluate its coverage levels on its website. It is our understanding that RMA will then take all feedback into consideration, decide if the proposals are appropriate or not, and then set a schedule.

- 31) What is OIG's overall assessment of the crop insurance program? Does it have sufficient safeguards against fraud and abuse?

Response: While RMA continues to strengthen its compliance review process and to modify its improper payment error rate methodology to meet the Office of Management and Budget (OMB) guidelines, OIG's reviews continue to detect weaknesses in RMA's program policies and procedures that result in questionable indemnity payments. For example, we issued an interim report in September 2014 that reviewed how RMA administers its Pasture, Rangeland, Forage (PRF) insurance program to determine if the level of protection for irrigated and non-irrigated crops is reasonable. We found that, in Colorado and New Mexico, RMA insures non-irrigated hay producers at the same level as irrigated hay producers, even though irrigated land is capable of producing much more hay. As a result, non-irrigated producers received indemnities substantially in excess of the value of their lost hay production. For example, our initial sample of seven producers received over \$8.2 million in indemnity payments for non-irrigated forage acres, based on average yields that they could not feasibly produce.

In April 2015, we issued the final report on RMA's PRF program (Audit Report 05601-0003-31). We reported that RMA insures irrigated forage producers as if a reduction in rainfall affects their yields to the same extent as non-irrigated forage producers. However, based on our interviews of subject-matter experts in 7 of the 29 States offering PRF, irrigated yields are not nearly as dependent on rainfall as non-irrigated yields and, thus, do not incur the same level of loss. As a result, irrigated producers are able to receive indemnities in excess of lost hay production. Since we were unable to differentiate between irrigated versus non-irrigated practices in RMA's data, we questioned all indemnity payments totaling \$134 million (less the amount questioned above) for crop years 2010 through 2013. Our results overlapped with the results of an RMA contractor's review of the PRF program. RMA agreed with our recommendation, stating it plans to incorporate a separate pricing scheme for irrigated and non-irrigated practices in crop year 2016.

- 32) What work does OIG have planned on the program?

Response: OIG has two ongoing reviews involving the Federal crop insurance program. These include the following:

Audit Number	Audit Title	Audit Objectives
05601-0002-22	Risk Management Agency National Program Operations Reviews	The overall objective is to assess whether RMA's National Program Operations Reviews (NPOR) reasonably determine if the approved insurance providers are substantially in compliance with laws, regulations, the Standard Reinsurance Agreement, associated appendices, and approved Federal Crop Insurance Corporation (FCIC) policies and procedures. Also, to assess if the NPORs provide an accurate and effective basis to determine RMA's improper payment rate. We expect to release this report in May 2015.
05601-0004-31	RMA Crop Insurance Compliance Case Management	The overall objective of the audit will be to evaluate the Risk Management Agency's crop insurance compliance case management. Specifically, we will examine the adequacy and effectiveness of RMA's processes related to 1) establishing cases, 2) monitoring and tracking cases, 3) monitoring and tracking findings, and 4) final disposition of cases. Fieldwork is ongoing.

OIG has several ongoing investigations involving the crop insurance program. Increasing our investigative focus on farm programs is a priority for FY 2015. Investigations has developed farm program training for OIG employees, scheduled to occur in FY 2015. It will focus on ensuring we have the latest information with respect to the numerous and often complicated fraud schemes associated with these programs. The training will also focus on new technology that can be used to assist in investigating crop insurance fraud.

USDA Information Technology (IT) Security

In testimony and reports, OIG has identified and made recommendations on longstanding weaknesses in USDA's information technology security.

33) Please describe OIG's recent, current and future plans regarding USDA's IT concerns.

Response:

Recent Work

In our FY 2014 FISMA report (Audit Report 50501-0006-12, *U.S. Department of Agriculture, Office of the Chief Information Officer, Fiscal Year 2014 Federal Information Security Management Act (FISMA)*, issued November 2014), we continued to report a material weakness in USDA's IT security. We found that the Department has not (1) developed policies, procedures, or strategies for risk management in accordance with Federal guidance; (2) monitored agencies for compliance with baseline configurations; (3) applied software patches and ensured known vulnerabilities were fixed timely; (4) deleted and terminated separated employees' access to computer systems timely; (5) developed and implemented a policy to detect and remove unauthorized network connections; or (6) ensured that contractor systems had effective controls implemented.

In September 2014, we issued a report on *USDA's Implementation of Cloud Computing Services* (Audit Report 50501-0005-12). This review identified several IT security concerns. We found that USDA does not have a complete inventory of its cloud systems, due to poor inventory management and the inconsistent application of the definition of cloud computing. Additionally, contracts did not have the detail and standard provisions required by Federal guidelines when acquiring cloud systems.

In July 2014, we issued a report on USDA's universal telecommunications network (UTN) (*Management and Security Over USDA's Universal Telecommunications Network*, Audit Report 88501-0002-12). We found that USDA is not adequately overseeing UTN security and performance. OCIO staff concentrated on the operational aspects of the UTN, without placing adequate emphasis on security and task order management, and the contracting officer (CO) from the Office of Procurement and Property Management (OPPM) was not familiar with the task order. We found that AT&T had not yet installed required network security features. In addition, OCIO did not perform an adequate reconciliation of AT&T billings, and reconciliation procedures were inadequate and outdated. AT&T had both overbilled and under-billed USDA for an aggregate total of more than \$1.9 million. Even after becoming aware of this, OCIO did not fix the discrepancies and AT&T continued to overbill almost \$90,000 in subsequent months.

Ongoing and Planned Work

In our audit of *Farm Service Agency's Initiative to Modernize and Innovate the Delivery of Agricultural Systems (MIDAS)* (Audit Report 035001-0001-12), our objective is to determine if: (1) the needs and expectations of Congress are being met, (2) overall management of the project is being performed effectively and efficiently, and (3) secure practices are being performed during the implementation process in accordance with Departmental and Federal guidance.

As part of our FY 2015 FISMA audit, we will conduct our annual independent evaluation of USDA's information security program. This requires OIG to conduct audit procedures to evaluate OCIO and USDA agencies' progress in implementing a Department/agency-wide security program. As part of our work, we will also review corrective actions taken by OCIO to implement OIG's prior audit recommendations.

We are also conducting the general and application controls review and testing for select information technology systems that have a material effect on Rural Development, Federal Crop Insurance Corporation, and USDA's Consolidated Financial Statement Audits for FY 2014 and 2015. We will test selected controls in IT systems relevant to financial reporting to determine whether those controls are in place and operating effectively to prevent and detect material misstatements to the financial statements.

34) Where should USDA's Office of the Chief Information Officer focus its efforts?

Response: OCIO needs to focus on IT security. In the FY 2014 FISMA report (Audit Report 50501-0006-12, *USDA OCIO FY 2014 FISMA*, issued November 2014), we stated that OCIO needs to continue issuing policies; it also needs to prioritize one or two areas and begin a process to ensure agencies are creating and implementing procedures based on these policies. In order for USDA to attain a security posture that is secure and sustainable, all 34 of its agencies and offices must consistently implement Department policy based on a standard methodology. Once all of the Department's agencies and offices reach this level of compliance with security policies, USDA's security posture will be consistent, effective, and sustainable. The degree to which USDA, as a whole, complies with FISMA and other security guidance is based on the security posture of each of its agencies and offices.

USDA also needs to work with its agencies to ensure that a complete inventory of all hardware and software systems exists. USDA also needs to implement corrective action for the 36 open recommendations identified in our FY 2009 through 2014 FISMA audits. Additionally, USDA needs to ensure all of its cloud computing service providers are compliant with the Federal Risk and Authorization Management Program (FedRAMP) requirements.

35) What management changes need to be made across the Department to ensure security?

Response: The Department needs to collaborate with its agencies and develop an overall plan to mitigate the material weaknesses. The Department must achieve agency buy-in consensus and the project plans must be priority based. For example, one of the problem areas involves the need for agencies (including OCIO) to patch their systems for known vulnerabilities. This is a continuing problem that the Department and all agencies need to resolve.

36) Has USDA improved?

Response: In FY 2014, OIG found that although USDA continues to improve the security posture of its IT infrastructure and associated data, many longstanding weaknesses remain. In FYs 2009 through 2014, OCIO released five additional Departmentwide policies which, once implemented, should improve IT security within USDA. However, it is now critical that agencies create and implement agency-specific procedures based on Departmental policy. OCIO then needs to review the agencies' implemented procedures to ensure compliance with USDA policy. Once this process is institutionalized throughout USDA, its security posture will improve and be sustainable into the future.

In FYs 2010 through 2013, USDA had the lowest cybersecurity score of all of the large Departments. However, USDA improved its score from 37 percent for FY 2013 to 53 percent for FY 2014, and no longer has the lowest cybersecurity score.

37) What are the most problematic areas?

Response: The three most problematic areas relating to IT security are the lack of a complete inventory of hardware and software, the lack of policy and procedures implementing IT security requirements, and the length of time it takes to close open recommendations.

Our work over the past several years continues to show that the Department does not have a complete inventory of hardware and software. It is very difficult for the Department to secure hardware and software that it does not know exists. In FYs 2009 through 2014, OIG made 57 recommendations for improving the overall security of USDA's systems, but only 21 of these have been closed (i.e., the agreed upon corrective action has been implemented).

38) Does Congress need to consider legislative changes to help USDA address this problem?

Response: In our view, before considering legislative changes, the Department and its agencies need to implement current OMB, National Institute of Standards and Technology (NIST), and Departmental guidance. We also note that in 2014, Congress enacted certain provisions of the Federal Information Technology Acquisition Reform Act,³ and passed the Federal Information Security Modernization Act of 2104,⁴ which are intended to improve IT security practices Government-wide.

USDA provides funding for many grants, loans, and assistance to American families and individuals. In order to receive assistance, these families and individuals must provide Personally Identifiable Information.

39) Is USDA sufficiently protecting Personally Identifiable Information?

Response: We found, during the course of a number of audits, that USDA and its agencies have not effectively implemented the security measures required by OMB, NIST, and the Department. As a result, USDA systems have an increased risk of sensitive and personally identifiable information (PII) being lost, disclosed, altered, or destroyed.

40) Is this information safe from cyber criminals?

Response: As indicated in our prior response, we found during the course of a number of audits that USDA and its agencies have not effectively implemented required security guidance. As a result, USDA systems and PII are at risk of being accessed and compromised by outside entities, including cyber criminals.

USDA also has a good deal of secret and sensitive non-personally identifiable information, such as on its plant and animal disease research.

³ See Pub. L. No. 113-291.

⁴ See Pub. L. No. 113-283.

41) What is OIG's assessment of USDA's cybersecurity on this type of data?

Response: Until USDA improves its security posture for its information systems and the information residing on these systems, including PII and non-PII sensitive information, there is an increased risk of data being lost, disclosed, altered, and/or destroyed. In our FY 2014 FISMA report, *USDA OCIO FY 2014 FISMA* (Audit Report 50501-0006-12, issued November 2014), we continued to report USDA's IT security as a material weakness. We found that the Department has not (1) developed policies, procedures, or strategies for risk management in accordance with Federal guidance; (2) monitored agencies for compliance with baseline configurations; (3) applied software patches and ensured known vulnerabilities were fixed timely; (4) deleted and terminated separated employees' access to computer systems timely; (5) developed and implemented a policy to detect and remove unauthorized network connections; and (6) ensured that contractor systems had effective controls implemented.

42) Does it have appropriate safeguards in place to ensure only those allowed to access this information are able to?

Response: Currently, we do not believe USDA has sufficient safeguards in place to ensure that its information is accessed by only those people requiring access for official purposes. We continue to find that users that have left USDA still have access to its systems, and that some users have a higher level of access than required to perform their job.

OIG Audits, Investigations and General Information Requests

43) Please update the table from the fiscal year 2015 questions for the record (QFR) showing the financial Statement audits OIG contracts for and those conducted in-house, as well as the cost of each audit for fiscal years 2009 through 2014.

Response: See table below.

Audited Agency	Method of Performance	FY 2009 Actual Cost	FY 2010 Actual Cost	FY 2011 Actual Cost	FY 2012 Actual Cost	FY 2013 Actual Cost	FY 2014 Actual Cost	FY 2015 Estimate
Federal Crop Insurance Corporation *	Contract	\$395,450	\$394,440	\$416,235	\$342,501	\$313,003	\$433,856	\$500,000
Commodity Credit Corporation	Contract	\$1,792,026	\$1,743,048	\$1,872,158	\$1,910,229	\$1,935,520	\$1,859,293	\$1,482,874
Food Nutrition Service	In-House	\$1,464,347	\$1,000,722	\$1,097,324	\$1,129,030	\$1,063,129	\$952,203	\$1,114,625
Rural Development	In-House	\$1,816,359	\$2,148,758	\$2,368,598	\$1,723,854	\$1,513,150	\$1,325,696	\$1,598,468

Audited Agency	Method of Performance	FY 2009 Actual Cost	FY 2010 Actual Cost	FY 2011 Actual Cost	FY 2012 Actual Cost	FY 2013 Actual Cost	FY 2014 Actual Cost	FY 2015 Estimate
Natural Resources Conservation Service	Contract	\$2,067,191	\$1,893,442	\$2,291,408	\$1,675,767	\$1,475,407	\$1,424,991	\$1,402,755
USDA Consolidated	In-House	\$2,155,387	\$1,962,294	\$2,089,368	\$2,184,386	\$1,909,983	\$2,170,507	\$2,248,750

* Starting in FY 2015, FCIC's financial statements audit will be performed in-house and the estimation insurance claims methodology section of the audit will be contracted.

- 44) Please update the table from the fiscal year 2015 QFRs showing the amount of funds expended for public accountants hired under contract for fiscal years 2009 through 2014.

Response: See table below.

Audited Agency	Method of Performance	FY 2009 Actual Cost	FY 2010 Actual Cost	FY 2011 Actual Cost	FY 2012 Actual Cost	FY 2013 Actual Cost	FY 2014 Actual Cost	FY 2015 Estimate
Federal Crop Insurance Corporation*	Contract	\$359,648	\$370,138	\$380,942	\$297,162	\$277,594	\$397,148	\$100,000
Commodity Credit Corporation	Contract	\$1,746,126	\$1,701,148	\$1,823,830	\$1,855,111	\$1,898,000	\$1,810,993	\$1,433,124
Rural Development**	In-House	\$909,762	\$864,461	\$890,400	\$253,079	\$238,157	\$245,830	\$242,218
Natural Resources Conservation Service	Contract	\$2,018,537	\$1,868,302	\$2,248,258	\$1,607,314	\$1,440,349	\$1,389,249	\$1,362,955

* Starting in FY 2015, FCIC's financial statements audit will be performed in-house and the estimation insurance claims methodology section of the audit will be contracted.

** The audit is performed by OIG; however, the credit reform review is performed by an Independent Public Accounting firm under contract.

- 45) What was OIG's cost of performing audits of Commodity Credit Corporation (CCC) financial Statements in fiscal year 2014? What was the reimbursement from CCC?

Response: CCC's financial statements audit is contracted out. However, OIG monitors the audit in accordance with GAO/CIGIE Financial Audit Manual, Section 650, to ensure that the audit is performed by an audit firm that is independent, objective, and possesses the required qualifications. This monitoring also ensures that the audit is performed in accordance with generally accepted auditing standards in the United States. OIG's cost of performing the monitoring for FY 2014 was \$48,300. OIG did not receive reimbursement from CCC for this service. CCC paid the contractor cost of \$1,810,993 for FY 2014.

- 46) Please update the status report included in the fiscal year 2015 QFRs on all current findings of material weakness since 2008. Specifically, please list the finding, OIG's recommendation and the current status.

Response: See table below.

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
FY 2008 Consolidated Financial Statements Audit, Assignment No. 50401-65-FM	
Finding 1: Improvements are needed in overall financial management. Recommendation: Provide additional oversight to ensure that general ledgers reflect valid obligations and that agencies perform the required reviews timely and effectively.	Yes
Finding 2: Improvements are needed in Information Technology, Security and Controls. Recommendation: The Department and its agencies are in the process of addressing the weaknesses; therefore, no recommendations were made in the report.	Yes
FY 2009 Consolidated Financial Statements Audit, Assignment No. 50401-67-FM	
Finding 1: Improvements are needed in overall financial management. Recommendation: Provide additional oversight to ensure agencies (1) properly monitor and review obligation balances, (2) provide valid certifications based on complete and accurate reviews as required by Departmental Regulation 2230-001, and (3) understand the importance of responding to requests for bills or additional information in a timely manner.	Yes
Finding 2: Improvements are needed in Information Technology, Security and Controls. Recommendation: (1) Create a plan of action and milestones to correct deficiencies in both System Security Plans and Contingency and Disaster Recovery Plans, (2) revise Cyber Security Assessment and Management and/or system documentation to reflect consistent and accurate information, and (3) institute policy and procedures to ensure review and signature of all parties bound by Interconnection Security Agreements.	Yes
FY 2010 Consolidated Financial Statements Audit, Assignment No. 50401-70-FM	
Finding 1: Improvements are needed in overall financial management. Recommendation: Provide additional oversight to ensure that agencies are properly reviewing, researching, and timely implementing action to correct abnormal balances.	Yes
Finding 2: Improvements are needed in Information Technology, Security, and Controls. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2011 Consolidated Financial Statements Audit, Assignment No. 50401-01-11	
Finding 1: Improvements are needed in overall financial management. Recommendation: (1) Provide additional oversight of the accounting functions at FAS to ensure that the objectives of the internal control over financial reporting are maintained, (2) provide additional oversight and training to ensure agencies are following Departmental policy in identifying and reconciling intradepartmental transactions.	Yes
Finding 2: Improvements are needed in Information Technology Security and Controls. Recommendation: Because of recommendations made in our annual FISMA audits, we are making no further recommendations.	Yes
FY 2012 Consolidated Financial Statements Audit, Assignment No. 50401-03-11	
Finding 1: Improvements are needed in overall financial management. Recommendation: Because of recommendations already made to CCC and NRCS in other reports, we are making no further recommendations in this report.	Yes
Finding 2: Improvements are needed in Information Technology Security and Controls. Recommendation: Because of recommendations made in our annual FISMA audits, we are making no further recommendations.	Yes
FY 2013 Consolidated Financial Statements Audit, Assignment No. 50401-05-11	
Finding 1: Improvements are needed in overall financial management. Recommendation: Because of recommendations already made to NRCS, CCC, and FCIC in other reports, we are making no further recommendations in this report.	Yes
Finding 2: Improvements are needed in overall Information Technology Security Program. Recommendation: Because of recommendations made in our prior FISMA audits, we are making no further recommendations.	Yes
FY 2014 Consolidated Financial Statements Audit, Assignment No. 50401-0007-11	
Finding 1: Improvements are needed in overall financial management.	Yes

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
Recommendation: Because of recommendations already made to NRCS, CCC, and FCIC in other reports, we are making no further recommendations in this report.	
Finding 2: Improvements are needed in overall Information Technology Security Program. Recommendation: Because of recommendations made in our prior FISMA audits, we are making no further recommendations.	Yes
FY 2008 CCC Financial Statements Audit, Assignment No. 06401-23-FM	
Finding 1: Improvements needed in financial system functionality and fund control. Recommendation: CCC is addressing the weakness; therefore, no recommendations were made in the report.	Yes
Finding 2: Improvements needed in management's review procedures over its cash flow models. Recommendation: The Office of Budget and Finance (OBF) should perform a more thorough and in-depth review of the models prior to submitting them for auditor review. In addition, OBF should begin making any necessary revisions to the model earlier in the fiscal year.	Yes
Finding 3: Improvements needed in management's analysis of obligations and liabilities for the Direct and Countercyclical Payment Programs. Recommendation: The formalized policies and procedures specific to the Countercyclical Payment and Direct Payment program specifically describe: (1) a process to perform a reasonableness analysis on the prior program year accruals and obligations carried forward to the current period; (2) actions that should be taken based on this analysis; and (3) procedures that should be followed to update the recorded amounts based on information that comes to management's attention subsequent to fiscal year-end that is relevant to current year recorded amounts.	Yes
FY 2009 CCC Financial Statements Audit, Assignment No. 06401-24-FM	
Finding 1: Improvements are needed in financial management system's functionality. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2010 CCC Financial Statements Audit, Assignment No. 06401-25-FM	
Finding 1: Improvements are needed in financial management system's functionality. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2011 CCC Financial Statements Audit, Assignment No. 06401-01-11	
Finding 1: Improvements are needed in financial management system's functionality. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2012 CCC Financial Statements Audit, Assignment No. 06401-02-11	
Finding 1: Improvements are needed in funds control. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2013 CCC Financial Statements Audit, Assignment No. 06401-03-11	
Finding 1: Improvements are needed in funds control. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2014 CCC Financial Statements Audit, Assignment No. 06401-0004-11	
Finding 1: Improvements are needed in funds control. Recommendation: Because of actions planned by the Department and recommendations made in other audits, no recommendation was made.	Yes
FY 2008 NRCS Financial Statements Audit, Assignment No. 10401-02-FM	
Finding 1: Improved accounting and controls needed over undelivered orders. Recommendation: Ensure balances for undelivered orders balances are valid at period end.	Yes

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
Finding 2: Improved accounting and controls needed for unfilled customer orders. Recommendation: Ensure unfilled customer orders are complete and valid at period end.	Yes
Finding 3: Improved accounting and controls needed for accrued expenses. Recommendation: Develop and provide guidance and training regarding policy and procedures over-preparing, reviewing, and recording accruals.	Yes
Finding 4: Improved accounting and controls needed for property, plant, and equipment. Recommendation: Ensure capital leases are identified and accounted for as required.	Yes
Finding 5: Improved controls are needed over financial reporting. Recommendation: Ensure employees preparing the financial statements have the appropriate training and that financial statements are reviewed and approved by management to ensure compliance with generally accepted accounting principles.	Yes
FY 2009 NRCS Financial Statements Audit, Assignment No. 10401-03-FM	
Finding 1: Improved accounting and controls needed over undelivered orders. Recommendation: Continue to train budget and program personnel to review open obligation balances and monitor compliance.	Yes
Finding 2: Improved accounting and controls needed over the revenue and unfilled customer order process. Recommendation: Develop and implement policies and procedures for reimbursable agreements, accounts receivable, and unfilled customer orders.	Yes
Finding 3: Improved accounting and controls needed over accrued expenses. Recommendation: Provide additional training to field personnel regarding the policy and procedures for recording accruals.	Yes
Finding 4: Improved controls needed over financial reporting. Recommendation: Obtain and use the United States Government Standard General Ledger posting models for conservation easements, travel advances to others, cumulative results of operations for non-appropriated funds, recoveries of prior year obligations, and accounts receivable with the public.	Yes
Finding 5: Improved accounting and controls needed for property, plant, and equipment. Recommendation: Establish a policy that outlines the proper procedures for identifying and tracking the appropriate costs related to the development of new applications through the various stages of the development process.	Yes
FY 2010 NRCS Financial Statements Audit, Assignment No. 10401-03-FM	
Finding 1: Improved accounting and controls needed over undelivered orders. Recommendation: Review the current policies are compliant with Title 31 of the U.S. Code and GAO's Redbook, The Principles of Federal Appropriations Law.	Yes
Finding 2: Improved accounting and controls needed over the revenue and unfilled customer order process. Recommendation: Develop a systematic methodology for calculating the allowance for uncollectible accounts which considers historical data, estimates losses on an individual and aggregate account basis, and considers other risk factors that may have an impact on NRCS' ability to collect amounts due.	Yes
Finding 3: Improved accounting and controls needed over accrued expenses. Recommendation: Perform quality assurance procedures to determine if accrued expenses are complete, accurate, and exist at quarter and year-end.	Yes
Finding 4: Improved controls needed over financial reporting. Recommendation: Establish a more robust internal control identification and evaluation process to identify all significant control deficiencies.	Yes
Finding 5: Improved accounting and controls needed for property, plant, and equipment. Recommendation: Reinforce segregation of duties responsibilities for inventory taking, reminding Accountable Property Officers that the inventory taker should not also have the authority to purchase Property, Plant and Equipment (PP&E).	Yes
Finding 6: Improved general and application access controls needed.	Yes

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
Recommendation: Establish a process to actively review and document its review of application, active directory, and VPN access to determine whether it is appropriate based on the employee's role.	
Finding 7: Improved controls needed over purchase and fleet card transactions. Recommendation: NRCS management immediately reviews all cardholders to determine whether they are current NRCS employees and should have access to a purchase card.	Yes
FY 2011 NRCS Financial Statements Audit, Assignment No. 10401-01-11	
Finding 1: Improved accounting and controls needed over undelivered orders. Recommendation: (1) provide additional training to field personnel related to the identification and recording of advances and disbursements; (2) provide guidance and policy to field personnel relating to the monitoring and validation of the obligation's period of performance prior to payment.	Yes
Finding 2: Improved accounting and controls needed over accrued expenses. Recommendation: (1) perform quality assurance procedures to determine if accrued expenses are complete, accurate, and exist at quarter and year-end; (2) reduce the number of standard voucher and year-end accruals required by configuring systems to record accruals when goods/services are received in the application, where there is a cost benefit; (3) enhance monitoring internal controls over obligations and payment approvals to determine whether appropriate documentation is provided to support the obligation and disbursement; (4) utilize transaction codes in FFIS to record accruals that do not reverse for direct entry obligations; and (5) provide guidance on the Prompt Payment Act related to the entry of acceptance dates and determine if additional interest is due to vendors or whether the vendor was overpaid as a result of any errors.	Yes
Finding 3: Improved controls are needed over financial reporting. Recommendation: Enforce NRCS' Circular 21 to ensure condition assessment policies and procedures are compliant with Statements of Federal Financial Accounting Standards (SFFAS) No. 29.	Yes
Finding 4: Improved accounting and controls needed for property, plant and equipment. Recommendation: Develop in coordination with the Department Chief Information Officer a reconciliation process for State offices to utilize to reconcile between the International Technology Services (ITS) property report and State inventory reports.	Yes
Finding 5: Improved general and application access controls are needed. Recommendation: Establish controls to monitor the control environment at ITS and mitigate the identified weaknesses.	Yes
FY 2012 NRCS Financial Statements Audit, Assignment No. 10401-02-11	
Finding 1: Improved controls are needed over general accounting operations. Recommendation: (1) Focus on strengthening the internal control environment and ensuring that system components are fully operational; (2) identify the underlying impediments causing errors in the Accounts Receivable billing module, proper liquidation of advances, and posting of depreciation/amortization; (3) continue to implement procedures over the Fund Balance with Treasury (FBWT) process, to include procedures for ensuring that unprocessed items are cleared from the suspense account in a timely manner; and (4) complete a thorough review of the FBWT suspense account to identify older reconciling items, and take the appropriate actions to clear these items.	Yes
Finding 2: Improved controls are needed over financial reporting. Recommendation: (1) Continue to implement a comprehensive financial management system strategy to ensure compliance with Federal financial management systems requirements; (2) enforce accounting entries that are consistent with those prescribed by the United States General Ledger (USSGL); (3) develop policies to ensure all relevant Federal accounting standards are followed; (4) improve the communication and implementation of policies and procedures regarding the preparation of financial Statements; Management's Discussion and Analysis, footnote disclosures, and Required Supplementary Information;	Yes

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
(5) ensure all qualitative information reported in footnote disclosures, including supplementary information, is accurate and current; and (6) continue to develop remediation plans to address FMFIA and FFMIA noncompliance.	
<p>Finding 3: Improved controls are needed over property, plant and equipment (PP&E). Recommendation: (1) Complete the PP&E remediation efforts as soon as possible to ensure that real property and personal property information is provided in a timely manner. Remediation efforts should include completion of real property and personal property physical inventories, and review of budget object codes currently assigned to personal property; and (2) finalize efforts to implement the "Methodology for Condition Assessment Surveys and Determining Deferred Maintenance" to track deferred maintenance, and suggest that NRCS continue to develop and implement effective steps and related policies and procedures to track improvements to leased and owned assets.</p>	Yes
<p>Finding 4: Improved controls are needed over accrued expenses. Recommendation: (1) Finalize and implement steps to regularly review the accounts payable accrual methodology, and grants and agreements accrual methodology against actual results to validate their predictive reliability; (2) develop a process for accruals and disbursements, including Intragovernmental Payment and Collection transactions, to properly document that the related accrual or disbursement is appropriate; and (3) research and remediate current debit vendor balances.</p>	Yes
<p>Finding 5: Improved controls are needed over reimbursable agreements. Recommendation: (1) Continue to implement sustainable internal controls to verify the completeness and accuracy of Unfilled Customers Orders (UCOs) for future years; (2) continue to conduct analysis of current UCO balances to determine if they are complete; (3) continue to review open UCO balances for validity and accuracy; (4) continue to provide comprehensive training, instruction, and support to personnel responsible for recording and monitoring Reimbursable Agreements (RA); (5) continuously monitor the effectiveness of RA controls; and (6) confirm the accurate conversion of UCO balances for beginning balances FY 2013.</p>	Yes
FY 2013 NRCS Financial Statements Audit, Assignment No. 10401-03-11	
<p>Finding 1: Improved accounting and controls are needed over undelivered orders. Recommendation: (1) Continue to monitor activity in USSGL accounts 4801, 4871, and 4881 to ensure that invalid upward and downward adjustments are identified and negated in a timely manner and that balances are appropriate; (2) continue to monitor open obligations to ensure that upward and downward adjustments are recorded in the appropriate period and liquidated timely; and, (3) provide adequate training to personnel related to the documentation requirements for support.</p>	Yes
<p>Finding 2: Improved controls are needed over financial reporting. Recommendation: (1) Identify and document transactions that, when required, are recorded in accordance with the guidance found in SFFAS No. 21; (2) implement procedures to reduce the need to record a large volume of misstatements at year-end; (3) establish policies/guidelines that assist accounting personnel in properly determining the type of sufficient supporting documentation for journal entries and deferred maintenance; and (4) enhance the management review of journal entries to include use of appropriate posting models obtaining and inspecting supporting documentation.</p>	Yes
<p>Finding 3: Improved accounting and controls are needed over expenses. Recommendation: (1) Provide guidance and/or training to employees on policies and procedures to ensure purchase transactions have adequate supporting documentation to determine if they are accurate and exist; (2) enhance monitoring controls over payment approvals to determine whether appropriate documentation is provided to support the disbursement; and (3) enhance procedures to determine if accrued expenses are complete, accurate, and exist at quarter-ends and are properly supported.</p>	Yes
<p>Finding 4: Improved accounting and controls are needed over revenue and accounts</p>	Yes

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
receivable. Recommendation: (1) Continue to improve documentation that will support revenue, accounts receivable, and unfilled customer orders transactions in accordance with OMB Circular No. A-123; and (2) review and liquidate invalid unfilled customer orders.	
FY 2014 NRCS Financial Statements Audit, Assignment No. 10401-0004-11	
Finding 1: Improved accounting and controls are needed over obligations and undelivered orders. Recommendations: Develop comprehensive policies and procedures to monitor the Grassland Reserve Program (GRP) and confirm transactions are accurate, adequately supported, and recorded in the proper fiscal year. (1) Continue to monitor activity in USSGL accounts 4871 and 4881 to ensure that invalid upward and downward adjustments are identified and corrected in a timely manner and that balances are appropriate; (2) continue to monitor open obligations (USSGL accounts 4801 and 4802) to ensure that they are recorded in the appropriate period and liquidated timely; and (3) provide adequate training to personnel related to the documentation requirements for support.	Yes
Finding 2: Improved controls are needed over financial operations. Recommendations: Review and evaluate options to reference accruals to the appropriate undelivered orders so that these amounts can be incorporated in the balances. (1) Identify and document transactions that, when required, are recorded in accordance with the guidance found in SFFAS No. 21; (2) implement procedures to reduce the need to record a large volume of misstatements at year-end; (3) establish policies/guidelines that assist accounting personnel in properly determining the type of sufficient supporting documentation for journal entries and deferred maintenance; and (4) enhance the management review of journal entries to include use of appropriate posting models and obtaining and inspecting supporting documentation.	Yes
Finding 3: Improved accounting and controls are needed over expenses. Recommendation: (1) Provide guidance and/or training to employees on policies and procedures to ensure purchase transactions have adequate supporting documentation to determine if they are accurate and exist; (2) enhance procedures to determine if accrued expenses are complete, accurate, and exist at quarter-ends and are properly supported; and (3) enhance monitoring controls over payment approvals to determine whether appropriate documentation is provided to support the disbursement.	Yes
FY 2013 FCIC/RMA Financial Statements Audit, Assignment No. 05401-03-11	
Finding 1: Improvement needed in controls over estimated losses on insurance claims calculation. Recommendation: (1) Implement procedures to ensure that manual processes of the indemnity projection model are performed and subsequently reviewed by independent individuals within management to ensure the review process over calculation is adequate and limits the risk of material misstatements in the liability for estimated losses on insurance claims at yearend; (2) consider performing an Independent Verification and Validation review of the indemnity projection model every year in which a new model is implemented, or when a model has been substantially enhanced; (3) consider the need to save documentation to provide an audit trail of all relevant computations; (4) consider performing additional risk assessments on the indemnity calculation aimed at the processes that have the greater risks of errors in the calculations.	Yes
FY 2014 FCIC/RMA Financial Statements Audit, Assignment No. 05401-0004-11	
Finding 1: Improvement needed in controls over estimated losses on insurance claims calculation. Recommendations: Design and implement policies and procedures to include the	

FY 2008 through FY 2014 Material Weaknesses Findings and Recommendations	Reached Management Decision
<p>following: when evaluating the need to change estimation methodologies, particularly as it relates to significant financial statement balances, management should consider: availability of support for assumptions, comparability with prior years methods and computations, potential effect on balances and the effect on the consistency of financial statements, and changes or enhancements to estimation methodologies that are in accordance with US Generally Accepted Accounting Principles (GAAP).</p> <p>The following were identified in the prior year audit and should be considered when developing the corrective action plan: (1) implement actions to ensure that changes to the indemnity projection methodology are performed and subsequently reviewed by independent individuals within FCIC/RMA management to ensure that the changes to the calculation are appropriate and verifiable to limit the risk of material misstatements in the liability for estimated losses on insurance claims at yearend; (2) consider performing an Independent Verification and Validation (IV&V) review of the indemnity methodology every year in which a new methodology is implemented or when the indemnity model has been substantially enhanced; (3) consider the need to save supporting documentation to provide an audit trail of all relevant estimate computations; and (4) consider performing additional risk assessments on the indemnity calculation aimed at the processes that have the greater risks of errors in the calculations. The magnitude of potential errors should be viewed in terms of financial statement line items and the financial statements as a whole, in order to ensure that management limits the risk of material misstatements on the financial statements.</p>	<p>Yes</p>

47) Please update the table from the fiscal year 2015 QFRs showing the amount spent for confidential operational activities for fiscal years 2009 through 2014.

Response: The information requested follows:

Fiscal Year	Available	Spent
2009	\$125,000	\$ 77,654
2010	\$125,000	\$ 88,451
2011	\$125,000	\$ 92,835
2012	\$125,000	\$ 96,979
2013	\$125,000	\$ 83,061
2014	\$125,000	\$ 76,408

Confidential funds are utilized to assist USDA-OIG in undercover investigations. These funds represent payments made to individuals or informants who provide information that assists the agency in carrying out its duties. The funds are used to purchase evidence necessary in the prosecution of criminal investigations.

48) Please provide a summary of complaints from the OIG Hotline for fiscal year 2014.

Response: The information requested follows:

Number of Hotline Complaints Received FY 2014

Type	Number
Employee Misconduct	207
Participant Fraud	3531
Waste/Mismanagement	405
Health/Safety Problem	22
Opinion/Information	134
Bribery	1
Reprisal	0
Total Number of Complaints Received	4,300

49) Please provide a table showing the number of audit reports, investigative reports, indictments, convictions, and lawsuits filed for fiscal year 2014.

Response: The information requested follows:

Fiscal Year 2014	
Audit Reports	36
Investigative Reports	334
Indictments	846
Convictions*	609
Lawsuits Filed**	11

*The period of time to obtain court action on an indictment varies widely; therefore the 609 convictions do not necessarily correlate directly to the 846 indictments.

**Any civil judicial proceeding filed on behalf of a Government agency that results directly and substantially from an OIG investigation.

50) How were the indictments resolved, and what percent led to convictions? Please report for the latest data available.

Response: For the investigations closed during FY 2014, in which an indictment was obtained and wherein all judicial and administrative action had been completed, 93 percent of the indictments in those investigations led to convictions. It should be noted that indictments may be obtained in one fiscal year, while the resulting convictions may not be obtained until months later, or longer, due to prosecutorial and judicial processes.

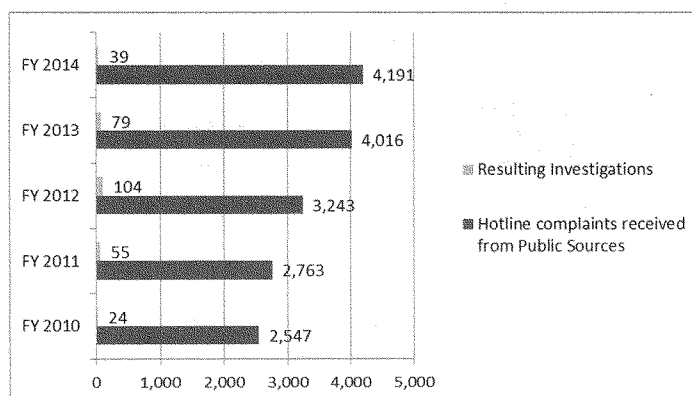
51) Please update the description from the fiscal year 2015 QFRs of the work the IG is doing in regard to Federal, State, or industry employee whistleblowers. How many open investigations and reviews are related to whistleblower complaints?

Response: OIG receives complaints from many sources including, but not limited to, Federal and State employees and the general public. Any individual who contacts OIG to report an allegation of fraud, waste, or abuse is considered a potential whistleblower.

In FY 2014, there were a total of 43 open investigations and 13 audits initiated resulting from complaints received through the OIG Hotline. Each Hotline complaint received is reviewed and a determination made whether the matter should be addressed by OIG; referred to the appropriate USDA agency for review, response, and appropriate action; or referred to the appropriate Federal government agency for any action if deemed appropriate.

52) How many complaints did OIG receive from outside groups that are not whistleblower complaints in fiscal years 2010 through 2014? How many did OIG consider worthy of further investigation?

Response: As noted in response to the previous question, we consider all complaints received to be potential whistleblower complaints. However, we do track complaints received from public sources through the OIG Hotline as follows:



*A previous chart provided in response to the FY 2014 QFRs included an erroneous number for FY 2013. The corrected number is included in the above chart.

53) Please provide for the record the amounts transferred to OIG from the Department of Justice Assets Forfeiture fund for fiscal years 2008 through 2014. Provide an explanation of the use of these funds by OIG.

Response: As a participating member of the Department of Justice’s (DOJ) Assets Forfeiture Fund, OIG receives funds pursuant to annual allocation requests and pursuant to petitions for remission or mitigation.

Under DOJ’s annual allocations, funds can be requested for program operations expenses and investigative expenses. Investigative expenses incurred by OIG involve mainly the equipping of conveyances when the DOJ annual allocation allows. Program operations expenses include the following: case related expenses, joint law enforcement operations, special contract services, contracts to identify assets, and training.

Funds received as a result of petitions for remission or mitigation are utilized for law enforcement activities authorized under the Inspector General Act.

Department of Justice			
Fiscal Year	Petitions	Annual Allocations	Totals
2008	\$663,650	\$1,640,000	\$2,303,650
2009	\$123,041	\$2,219,000	\$2,342,041
2010	\$145,711	\$2,222,000	\$2,367,711
2011	\$11,663	\$1,683,000	\$1,694,663
2012	\$40,190	\$1,725,000	\$1,765,190
2013	\$0	\$1,614,000	\$1,614,000
2014	\$818,495	\$1,647,000	\$2,465,495

- 54) Please provide for the record amounts transferred to OIG from the Department of Treasury Forfeiture Fund for fiscal years 2008 through 2014. Provide an explanation of the use of these funds by OIG.

Response: The amounts below represent funds received from petitions for remission or mitigation from the Department of Treasury Forfeiture Fund. OIG does not receive a separate annual allocation from the Department of Treasury. Petition funds are used to purchase specific items (e.g., ballistic vests, software, and the removal and installation of equipment into GSA vehicles being rotated in and out of the OIG fleet) for law enforcement activities authorized under the Inspector General Act.

Receipt of Petition Funds	
Fiscal Year	Department of Treasury
2008	\$210,421
2009	\$485,279
2010	\$1,400,501
2011	\$0
2012	\$52,033
2013	\$135,205
2014	\$1,124,225

- 55) Please provide for the record amounts transferred to OIG through the granting of a Petition for Remission or Mitigation for fiscal years 2008 through 2014.

Response: The information requested follows:

Receipt of Petition Funds			
Fiscal Year	Department of Treasury	Department of Justice	Totals
2008	\$210,421	\$663,650	\$874,071
2009	\$485,279	\$123,041	\$608,320
2010	\$1,400,501	\$145,711	\$1,546,212
2011	\$0	\$11,663	\$11,663
2012	\$52,033	\$40,190	\$92,223
2013	\$135,205	\$0	\$135,205
2014	\$1,124,225	\$818,495	\$1,942,720

56) Please describe the pay scale for OIG employees. How many are entitled to Law Enforcement Officer Pay? How many receive Law Enforcement Availability Pay?

Response: OIG does not have any employees on a special rate pay scale. OIG employees are either on the GS or ES pay scale. However, 145 of the Criminal Investigators (GS 1811) are entitled to Law Enforcement Officer Pay, which provides them with an additional 25 percent, pursuant to law and Office of Personnel Management (OPM) regulations. OIG uses the Federal locality pay scale authorized by OPM for all other employees within the Federal Government.

57) Please provide for the record a table showing OIG-owned firearms.

<i>OIG Owned Firearms</i> (Inventory of 04.9.15)	
Type of Firearms	Number
.40 cal. semiautomatic pistols	268
H&K MP5, 9mm submachine guns	83*
H&K UMP .40 cal. submachine guns	85
.357 cal. revolvers	4
.38 cal. revolvers	2
12-gauge shotguns	92
Miscellaneous weapons maintained for training purposes	103
Total	637

*The 83 MP5 submachine guns are to be excessed once the transition to the UMP submachine guns has been completed in 4th quarter of FY 2015.

58) Please update the table from the fiscal year 2015 QFRs showing the allocation of
 OIG's resources and the percent of each that went towards investigations and audits of
 each USDA agency for fiscal year 2010 through 2014.

FY 2010 Audit						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Audit Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Audit Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$4,300	29	\$1,600	5%	11	2%
FSA	10,000	67	3,800	4	27	5
FAS	500	3	0	0	0	0
FNS-SNAP	18,900	123	2,600	3	18	3
FNCS- OTHER	8,500	56	2,800	3	20	3
AMS	1,600	11	900	1	6	1
APHIS	4,200	28	800	1	5	1
GIPSA	50	0	0	0	0	0
FSIS	4,000	27	1,700	2	12	2
ARS	600	5	80	0	0	0
NIFA	100	0	40	0	0	0
RD	1,200	8	1,200	1	8	1
RBS	1,700	12	1,600	2	11	1
RHS	6,900	47	4,700	5	33	6
RUS	1,300	9	1,000	1	7	1
FS	8,800	60	6,800	8	48	8
NRCS	3,000	21	2,100	2	15	2
OO	40	0	0	0	0	0
OCFO	800	6	700	1	6	1
OCIO	500	3	500	1	3	1
OIG (internal)	6,400	44	5,700	5	40	7
Multi- Agency	4,797	34	4,646	4	33	6
OCRE	80	0	0	0	0	0
SEC	30	0	0	0	0	0
Total	\$88,297	593	\$43,266	49%	303	51%

FY 2010 Investigations						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Investigation Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Investigation Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$4,300	29	\$2,800	3%	18	3%
FSA	10,000	67	6,200	7	40	7
FAS	500	3	500	1	3	1
FNS-SNAP	18,900	123	16,300	18	105	18
FNCS-OTHER	8,500	56	5,700	6	36	6
AMS	1,600	11	800	1	5	1
APHIS	4,200	28	3,400	4	22	4
GIPSA	50	0	40	0	0	0
FSIS	4,000	27	2,200	3	15	3
ARS	600	5	500	1	4	1
NIFA	100	0	50	0	0	0
RD	1,200	8	0	0	0	0
RBS	1,700	12	100	0	1	0
RHS	6,900	47	2,100	2	14	2
RUS	1,300	9	300	0	2	0
FS	8,800	60	2,000	2	13	2
NRCS	3,000	21	1,000	1	6	1
OO	40	0	40	0	0	0
OCFO	800	6	100	0	2	0
OCIO	500	3	0	0	0	0
OIG (internal)	6,400	44	700	2	4	0
Multi-Agency	4,797	34	91	0	0	0
OCRE	80	0	80	0	0	0
SEC	30	0	30	0	0	0
Total	\$88,297	593	\$45,031	51%	290	49%

FY 2011 Audit						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Audit Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Audit Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$3,300	22	\$1,000	1%	7	1%
FSA	7,500	51	3,100	3	22	4
FAS	700	5	300	3	2	0
FNS-SNAP	22,700	151	2,000	2	14	2
FNCS- OTHER	8,400	57	2,400	3	17	3
AMS	2,100	15	1,400	2	10	3
APHIS	3,600	25	1,500	2	11	2
GIPSA	200	2	0	0	0	0
FSIS	4,700	32	2,300	3	16	3
ARS	600	4	300	0	2	0
NIFA	120	1	20	0	0	0
RD	1,500	10	1,400	2	10	2
NASS	20	0	0	0	0	0
RBS	1,500	10	1,100	1	8	1
RHS	5,900	41	4,000	5	29	5
RUS	1,100	8	900	1	6	1
FS	6,900	49	5,600	6	40	7
NRCS	3,600	25	2,900	3	21	3
CR	400	3	400	0	3	0
OO	20	0	0	0	0	0
OCFO	700	5	700	1	5	1
OCIO	700	6	700	1	5	1
OGC	30	0	0	0	0	0
OIG (internal)	6,800	48	6200	7	45	7
OHCM	10	0	10	0	0	0
Multi- Agency	5,009	36	5105	3	37	5
OCRE	200	1	0	0	0	0
SEC	130	1	0	0	0	0
Total	\$88,439	608	\$43,335	49%	310	51%

FY 2011 Investigations						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Investigation Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Investigation Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$3,300	22	\$2,400	3%	16	3%
FSA	7,500	51	4,400	5	29	5
FAS	700	5	500	1	3	0
FNS-SNAP	22,700	151	20,700	23	137	23
FNCS-OTHER	8,400	57	6,000	7	39	6
AMS	2,100	15	700	1	5	1
APHIS	3,600	25	2,100	2	14	2
GIPSA	200	2	200	0	2	0
FSIS	4,700	32	2,400	3	16	3
ARS	600	4	300	0	2	0
NIFA	120	1	100	0	1	0
RD	1,500	10	0	0	0	0
NASS	20	0	20	0	0	0
RBS	1,500	10	300	0	2	0
RHS	5,900	41	1,800	2	12	2
RUS	1,100	8	200	0	1	0
FS	6,900	49	1,300	1	8	1
NRCS	3,600	25	700	1	4	1
CR	400	3	0	0	0	0
OO	20	0	20	0	0	0
OCFO	700	5	0	0	0	0
OCIO	700	6	0	0	0	0
OGC	30	0	30	0		
OIG (internal)	6,800	48	600	1	4	2
OHCM	10	0	0	0	0	0
Multi-Agency	5,009	36	4	1	1	0
OCRE	200	1	200	0	1	0
SEC	130	1	130	0	1	0
Total	\$88,439	608	\$45,104	51%	298	49%

FY 2012 Audit						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Audit Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Audit Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$2,986	19	\$992	1%	7	1%
FSA	6,016	38	1,666	2	11	2
FAS	1,177	8	725	1	5	1
FNS-SNAP	26,546	164	3,699	4	25	5
FNCS-OTHER	3,955	25	1,129	1	7	1
AMS	1,599	10	1,030	1	7	1
APHIS	2,689	17	1,419	2	9	2
GIPSA	369	2	0	0	0	0
FSIS	4,622	29	2,318	3	15	3
ARS	677	4	457	1	3	1
NIFA	34	0	2	0	0	0
ERS	10	0	0	0	0	0
NASS	20	0	0	0	0	0
RD	1,351	9	1,351	2	9	2
RBS	1,897	12	1,136	1	8	1
RHS	4,476	29	2,273	3	15	3
RUS	2,716	18	2,304	3	15	3
FS	5,661	37	4,328	5	29	5
NRCS	2,566	17	2,295	3	15	3
CR	258	2	258	0	2	0
OO	2	0	0	0	0	0
OCFO	1,039	7	1,023	1	7	1
OCIO	219	1	197	0	1	0
OHCM	14	0	11	0	0	0
OIG (internal)	6,269	41	5,690	7	38	7
Multi-Agency	6,196	41	6,099	7	40	8
OGC	1,116	7	1,116	1	7	1
OCRE	72	0	0	0	0	0
DM	320	3	320	0	2	0
OMS	93	1	93	0	1	0
SEC	608	4	0	0	0	0
Total	\$85,573	545	\$41,931	49%	278	51%

FY 2012 Investigations						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Investigation Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Investigation Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$2,986	19	\$1,993	2%	12	2%
FSA	6,016	38	4,349	5	27	5
FAS	1,177	8	451	1	3	1
FNS-SNAP	26,546	164	22,847	27	140	26
FNCS-OTHER	3,955	25	2,826	3	17	3
AMS	1,599	10	569	1	3	1
APHIS	2,689	17	1,271	1	8	1
GIPSA	369	2	369	0	2	0
FSIS	4,622	29	2,304	3	14	3
ARS	677	4	219	0	1	0
NIFA	34	0	33	0	0	0
ERS	10	0	10	0	0	0
NASS	20	0	20	0	0	0
RD	1,351	9	0	0	0	0
RBS	1,897	12	761	1	5	1
RHS	4,476	29	2,202	3	13	2
RUS	2,716	18	412	0	3	1
FS	5,661	37	1,333	2	8	1
NRCS	2,566	17	271	0	2	0
CR	258	2	0	0	0	0
OO	2	0	3	0	0	0
OCFO	1,039	7	16	0	0	0
OCIO	219	1	23	0	0	0
OHCM	14	0	3	0	0	0
OIG (internal)	6,269	41	578	1	4	1
Multi-Agency	6,196	41	98	1	1	1
OGC	1,116	7	0	0	0	0
OCRE	72	0	72	0	0	0
DM	320	3	0	0	0	0
OMS	93	1	0	0	0	0
SEC	608	4	608	0	4	0
Total	\$85,573	545	\$43,641	51%	267	49%

FY 2013 Audit						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Audit Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Audit Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$3,066	19	\$874	1%	6	1%
FSA	6,696	42	2,574	3	17	3
FAS	1224	8	916	1	6	1
FNS-SNAP	26,409	161	3,617	4	24	5
FNCS- OTHER	5,374	34	2,480	3	16	3
AMS	916	6	664	1	4	1
APHIS	3,214	20	1,538	2	10	2
GIPSA	180	1	0	0	0	0
FSIS	3,820	24	2,118	3	14	3
ARS	703	4	374	0	2	0
NIFA	73	0	2	0	0	0
ERS	78	0	0	0	0	0
RD	1,242	8	1242	2	8	2
NASS	266	2	266	0	2	0
RBS	1,389	9	582	1	4	1
RHS	2,991	19	995	1	6	1
RUS	2,115	14	1,561	2	10	2
FS	2,017	13	1,310	2	9	2
NRCS	1,795	12	1,621	2	11	2
OPPM	568	4	568	1	4	1
OO	2	0	0	0	0	0
OCFO	1,451	9	1,411	2	9	2
OCIO	510	3	439	1	3	1
OGC	1384	9	1,381	2	9	2
OIG (internal)	6,438	41	5,938	7	38	7
OHCM	11	0	11	0	0	0
Multi- Agency	5,729	37	5,698	6	37	7
OCRE	3	0	0	0	0	0
OHSEC	358	2	358	0	2	0
OMS	99	1	99	0	1	0
SEC	317	2	0	0	0	0
DM	1,525	10	1,525	2	10	2
Total	\$81,963	514	\$40,162	49%	262	51%

FY 2013 Investigations						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Investigation Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Investigation Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$3,066	19	\$2,192	3%	13	1%
FSA	6,696	42	4,120	5	25	5
FAS	1224	8	307	0	2	0
FNS-SNAP	26,409	161	22,792	28	138	28
FNCS-OTHER	5,374	34	2,894	4	18	4
AMS	916	6	252	0	2	0
APHIS	3,214	20	1,677	2	10	2
GIPSA	180	1	180	0	1	0
FSIS	3,820	24	1,702	2	10	2
ARS	703	4	329	0	2	0
NIFA	73	0	71	0	0	0
ERS	78	0	78	0	0	0
RD	1,242	8	0	0	0	0
NASS	266	2	0	0	0	0
RBS	1,389	9	807	2	5	1
RHS	2,991	19	1,997	2	13	3
RUS	2,115	14	553	1	3	1
FS	2,017	13	708	1	4	1
NRCS	1,795	12	174	0	1	0
OPPM	568	4	0	0	0	0
OO	2	0	3	0	0	0
OCFO	1,451	9	40	0	0	0
OCIO	510	3	71	0	0	0
OGC	1384	9	3	0	0	0
OIG (internal)	6,438	41	500	1	3	1
OHCM	11	0	0	0	0	0
Multi-Agency	5,729	37	31	0	0	0
OCRE	3	0	3	0	0	0
OHSEC	358	2	0	0	0	0
OMS	99	1	0	0	0	0
SEC	317	2	317	0	2	0
DM	1,525	10	0	0	0	0
Total	\$81,963	514	\$41,801	51%	252	49%

FY 2014 Audit						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Audit Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Audit Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$4,301	25	\$1,979	2%	12	2%
FSA	7,541	44	3,915	5%	24	5%
FAS	841	5	524	1%	3	1%
FNS-SNAP	26,793	151	1,644	2%	10	2%
FNCS- OTHER	5,773	33	2,174	3%	13	3%
AMS	1,127	7	997	1%	6	1%
APHIS	2,547	15	1,302	2%	8	2%
GIPSA	93	1	0	0%	0	0%
FSIS	3,480	20	1,768	2%	11	2%
ARS	936	6	786	1%	5	1%
NIFA	91	1	2	0%	0	0%
RD	1,226	7	1,226	0%	0	0%
ERS	26	0	0	1%	7	1%
NASS	15		15	0%	0	0%
RBS	896	5	252	0%	2	0%
RHS	2,320	13	593	1%	4	1%
RUS.	638	4	19	0%	0	0%
FS	2,132	13	1,262	1%	8	2%
NRCS	2,592	16	2,454	3%	15	3%
CR		0	0	0%	3	0%
OGC	107	1	107	0%	0	0%
OPPM	439	3	439	1%	8	1%
OCFO	1,305	8	1,283	2%	0	2%
OCIO	43	0	32	0%	1	0%
NAD	78	0	0	0%	0	0%
OIG (internal)	9,332	57	9,004	11%	53	11%
OHCM	15	0	0	0%	0	0%
Multi- Agency	8,723	53	8,693	10%	53	11%
OTHER	7	0	0	0%	0	0%
OCRE	167	1	0	0%	0	0%
DM	957	6	957	1%	6	1%
SEC	7	0	00	0%	0	0%
Total	\$84,546	494	\$41,428	49%	252	51%

FY 2014 Investigations						
	<i>Total OIG Dollars in Millions</i>	<i>OIG Staff Years</i>	<i>Investigation Dollars in Millions</i>	<i>Percentage of OIG Dollars per Agency</i>	<i>Investigation Staff Years</i>	<i>Percentage of OIG Staff Years per Agency</i>
RMA	\$4,301	25	\$2,322	3%	13	3%
FSA	7,541	44	3,624	4%	20	4%
FAS	841	5	316	0%	2	0%
FNS-SNAP	26,793	151	25,148	30%	141	29%
FNCS-OTHER	5,773	33	3,598	4%	20	4%
AMS	1,127	7	130	0%	1	0%
APHIS	2,547	15	1,247	1%	7	1%
GIPSA	93	1	93	0%	1	0%
FSIS	3,480	20	1,712	2%	10	2%
ARS	936	6	149	0%	1	0%
NIFA	91	1	89	0%	1	0%
RD	1,226	7	0	0%	0	0%
ERS	26	0	26	0%	0	0%
NASS	15		0	0%	0	0%
RBS	896	5	644	1%	4	0%
RHS	2,320	13	1,727	2%	10	1%
RUS	638	4	618	1%	3	2%
FS	2,132	13	871	1%	5	1%
NRCS	2,592	16	138	0%	1	1%
CR		0	0	0%	0	0%
OGC	107	1	0	0%	0	0%
OPPM	439	3	0	0%	0	0%
OCFO	1,305	8	22	0%	0	0%
OCIO	43	0	11	0%	0	0%
NAD	78	0	78	0%	2	0%
OIG (internal)	9,332	57	327	0%	0	0%
OHCM	15	0	15	0%	0	0%
Multi-Agency	8,723	53	30	0%	0	0%
OTHER	7	0	9	0%	0	0%
OCRE	167	1	167	0%	0	0%
DM	957	6		0%		
SEC	7	0	7	0%	0	0%
Total	\$84,546	494	\$43,118	51%	242	49%

QUESTIONS SUBMITTED BY CONGRESSMAN KEVIN YODER

False reporting by USAID-IGO

In recent months, eight current auditors and employees of USAID – OIG have come forward to complain about negative findings being stricken from audits between 2011 and 2013. In some cases, the findings were even put into confidential “management letters” and financial documents, which are generally kept from public view.

59) Are you aware of this scandal?

Response: Yes, we have noted that this situation has been reported in the media.

60) What assurances can you give me that your organization is immune to this type of public deception?

Response: USDA OIG does not issue confidential management letters. When we identify an issue that needs to be immediately raised to agency or Departmental leadership, prior to the release of the final report, USDA OIG issues interim reports. These interim reports are publicly available on our website. If an interim or final report contains information that cannot be publicly released (due to such considerations as personal privacy information), those portions of the report will be redacted prior to being publicly posted. In cases where the entire report cannot be released publicly, a summary of the report is posted to our website.

In addition, an OIG internal directive provides specific guidance to OIG audit staff regarding procedures for maintaining quality in the conduct of audit engagements. During the conduct of an audit engagement, if any auditor feels that quality is not being upheld or maintained for an audit engagement, in total or in part, it is the auditor’s responsibility to raise any concern to audit management. If the auditor does not feel the concern was satisfactorily addressed, he/she should elevate the concern to the next level of audit management for additional consideration, up to and including the Assistant Inspector General for Audit.

Information Technology (IT) Security Concerns

In your written testimony, you mentioned the Department’s potential risks associated with its information technology (IT) systems several times.

61) Can you please elaborate on what these risks are and how you plan to work with the Department to address IT security needs?

Response: Please see our response to Question 33 in this document, which discusses those risks and OIG’s planned work in detail. Also, our response to Question #34 provides our views on the necessary actions that USDA should take.

62) Additionally, how will the White House’s announcement today on cyber security affect your recommendations to USDA and how these resources should be allocated.

Response: We will continue to allocate staff time and effort to this critical area. OIG has identified IT security as a top management challenge at USDA in order to draw

the attention needed to this critical area. We have also made a concerted effort to resolve outstanding audit recommendations and to follow up to ensure they are implemented. From FY 2009 to FY 2014, OIG has made 57 recommendations for improving the overall security of USDA's systems, but only 21 of these have been closed (i.e., the agreed upon corrective action has been implemented). However, our testing identified that security weaknesses still exist in 3 of the 21 closed recommendations. These recommendations include issues regarding continuous monitoring, risk management, oversight of contractor systems, cloud computing services, incident reporting, and the lack of compliance with OMB, NIST, and Departmental guidance. OIG made two recommendations in the FY 2014 audit regarding an enterprise-wide continuous monitoring plan and the Department's Incident Policy. OCIO agreed with both recommendations and has proposed viable corrective action plans.

- 63) If these funds do not become available, how do you plan to mitigate these risks given the current resources at your disposal?

Response: If funds do not become available, we will plan and conduct audits that are mandatory (i.e., FISMA) and other limited scope audits in IT security areas where we consider the Department to be particularly vulnerable. Without the additional funding requested, the number of USDA agencies and IT program areas we can review on a cyclical basis will be reduced.

Concerns with the WIC Program

As you know, the GAO published a report in 2013 regarding the eligibility determination process for WIC. Among some of the concerns were the inconsistent criteria allowing applicants access into the program. Additionally, the report cited a lack of income data for approximately 7 percent of all WIC participants. USDA subsequently issued a guidance memo reiterating earlier recommendations for States on how to define annual income, family or household and most recent income. The USDA memo continued to provide local agency discretion in applying these definitions.

- 64) Can you update the committee on the progress of USDA/FNS and the State agencies in addressing the concerns of the GAO report? In order to make additional progress, could the State and/or local agencies use additional tools in order to execute more consistently in upholding the integrity of the program and ensuring those who are actually at risk receive benefits?

Response: According to FNS, in response to the GAO report, the WIC National Office developed a process to identify areas in need of correction or improvement based on FNS' review and analysis of WIC Certification/Eligibility Management Evaluations (MEs). The process uses an automated ME Tool output report developed to more readily identify WIC problem areas and trends by functional area. Based on the report, policy clarification, training, or other corrective action will be taken in response to frequency of findings during MEs. The report went into production on

November 1, 2013. The delayed release of the report was the result of the contract being awarded late and the government shut-down. The report was designed so that it can also be used to identify areas needing improvement for all functional areas, not just certification and eligibility. WIC's focus by functional area for fiscal years 2013 and 2014 is Vendor Management. WIC Certification and Eligibility will be the next functional area for focused reviews and training. FNS also established a Program Integrity Branch at the National Office dedicated to coordinating WIC ME activities. The output report will be reviewed quarterly. In April 2015, FNS advised us that the new National Program Integrity Branch is fully operational. However, we have not yet been able to confirm or assess such status.

- 65) Can you please comment on the GAO report addressing online fraud in the WIC program, and the resale of infant formula purchased with WIC benefits? Is the agency pursuing this and other kinds of fraud?

Response: The GAO report identified concerns regarding the re-sale of infant formula that was purchased with WIC benefits on line. OIG Investigations has not conducted any work involving infant formula being fraudulently re-sold online. In addition to our work involving the trafficking of WIC benefits, as noted in our testimony, our work as it pertains to WIC and infant formula has focused on stolen infant formula. Stolen infant formula presents a potential health and safety issue for USDA and WIC recipients. When infant formula is stolen, there is no way of knowing how the formula is handled or maintained. Without control over the formula, there is no way to know if the formula is safe if and when it re-enters the market for sale to unsuspecting customers; it is therefore a food safety issue for USDA. Because demand is high, infant formula is among those items that are targeted for theft, re-packaging and re-sale, especially since infant formula is a high cost retail product.

FNS has attempted to address the sale of EBT benefits on line. However, OIG is not aware whether FNS is pursuing action against individuals who engage in the re-sale of infant formula.

“Improper Payments” for Crop Insurance

Use of the term “fraud rate” is a misnomer in crop insurance. “Improper payments” is the correct term. RMA measures improper payments, which could potentially be anything from an incorrect address, to an overpayment or underpayment of indemnities. I would just like to clarify this for the record.

- 66) My understanding is that what IG measures for crop insurance is an improper payment rate, not a fraud rate, per se. Is that correct?

Response: Please note that OIG does not measure USDA's crop insurance improper payment rate. According to the Improper Payments Information Act of 2002, as amended, USDA is required to annually estimate its improper payments for its programs, including crop insurance. The law requires IGs to annually review and assess agency/Department compliance with improper payment requirements. In

response to your comment on whether USDA's crop insurance estimate is a fraud rate or improper payment rate, you are correct. The annual rate reported for USDA's crop insurance is an improper payment rate as defined by the law and OMB Circular A-123, Appendix C, Requirements for Effective Estimation and Remediation of Improper Payments. The rate could include improper payments due to fraud, but fraud is not the only cause associated with the improper payment estimate reported annually.

67) So to be clear, the improper payment rate in no way, shape or form means that a farmer, crop insurance agent or crop insurance company was doing anything to intentionally defraud the Federal government or the Federal crop insurance program?

Response: No, it is possible that the improper payment rate could include fraudulent payments. According to OMB Circular A-123, Appendix C, fraud is included in the "Other Reason" category of improper payments. In instances where agencies are able to identify improper payments resulting from fraud, they should report those dollar amounts in the "Other Reason" category, unless they already report fraud through a mechanism outside of the annual improper payment process (e.g., an annual report to Congress).

68) So what constitutes an improper payment? Can it be an overpayment? Can it be something as simple as an incorrect address for the farmer?

Response: According to OMB Circular A-123, Appendix C, an improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, or duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law). In addition, when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment. In regards to whether it can be something as simple as an incorrect address for the farmer, it depends on whether the farmer's address affects any factors related to eligibility.

QUESTIONS SUBMITTED BY CONGRESSWOMAN ROSA DELAURO

Public Health Information System (PHIS)

69) Since May 2012, your Semi-Annual Reports to Congress have listed a study on the implementation of the domestic module for the Public Health Information System (PHIS) being used at the Food Safety Inspection Service (FSIS). When is that study going to be completed? Is your office also going to look at the implementation of the

PHIS for imported products? If so, when do you anticipate that study being completed?

Response: We are currently completing work to evaluate FSIS' implementation and oversight of the domestic inspection module of PHIS. We plan to issue this report in July 2015.

In our current annual plan, one of our priorities is to evaluate FSIS' imported meat process, specifically FSIS' determinations that the exporting countries' food safety systems are equivalent to U.S. standards, and oversight to ensure that foreign systems remain equivalent. We will evaluate PHIS as it pertains to the FSIS equivalency process. As with all of our projects, we have to balance our staffing resources with demands from other projects. We will notify you when this work is initiated.

Study Status Reports

70) Your Semi-Annual Report to Congress for the Second Half of FY 2014 lists the following studies that are underway:

- ground turkey inspection and safety protocols (FSIS),
- controls over introduction of genetically engineered organisms (APHIS),
- procurement and inspection of fruits and vegetables (Agricultural Marketing Service (AMS)),
- adequacy of controls to prevent the release of sensitive technology (Agricultural Research Service (ARS)),
- oversight of research facilities (APHIS),
- follow-up on 2007 and 2008 audit recommendations (FSIS)
- USDA's response to antibiotic resistance (ARS, FSIS, APHIS)

Would you provide us a progress report on the status of these studies?

Response:

- Regarding the ground turkey inspection and safety protocols (FSIS), OIG's objective is to review the inspection of ground turkey, including sampling and testing protocols, to evaluate the effectiveness of the program. We expect to issue the report in July 2015.
- Regarding controls over introduction of genetically engineered organisms (APHIS), this audit is currently in fieldwork. The overall objective is to determine whether APHIS has established adequate controls over the introduction of genetically engineered (GE) organisms. Specifically, we will assess controls intended to minimize the inadvertent release of GE organisms and provide reasonable assurance that movements and releases of GE organisms in the environment are in accordance with laws and regulations. As part of this audit, we will also follow up on recommendations made in a prior report.

- As to the procurement and inspection of fruits and vegetables (Agricultural Marketing Service (AMS)), the audit team is currently completing fieldwork. The objective of our review is to evaluate whether AMS has adequate controls to ensure (1) processed fruits and vegetables are procured in compliance with Federal purchasing regulations and (2) processing facilities and products are timely and effectively inspected.
- We are currently performing fieldwork on the adequacy of controls to prevent the release of sensitive technology (Agricultural Research Service (ARS)). The objective is to assess ARS' policies and procedures for identifying, approving, and monitoring sensitive or dual-use research. In addition, we will determine if ARS has designed and implemented the controls recommended in a prior audit to ensure sensitive technology has not been susceptible to questionable transfer.
- In December 2014, we issued our report on the oversight of research facilities (APHIS). OIG discovered that since FY 2001, APHIS' Animal Care (AC) unit conducted at least 500 inspections at 107 research facilities that had not used, handled, or transported any regulated animals for more than 2 years. As a result, AC did not make the best use of its limited resources, which could have been assigned to inspect other more problematic facilities, including breeders, dealers, and exhibitors. Further, the Investigative and Enforcement Services (IES) unit worked with AC and other APHIS programs to reduce a 2,000-case agencywide backlog. However, AC did not follow its own criteria in closing at least 59 cases that involved grave (e.g., animal deaths) or repeat welfare violations. IES issued penalties that were reduced by an average of 86 percent from the Animal Welfare Act's (AWA) authorized maximum penalty per violation. Consequently, 26 of the 30 violators in our sample received penalties in 2012 totaling at least \$272,298 less than what they would have received using the worksheet in effect during our 2010 audit. We also found that IES under-assessed penalties by \$33,001 in four cases we reviewed by granting good faith reductions without merit or using a smaller number of violations than the actual number. Finally, some of APHIS' veterinary medical officers (VMOs) and some Institutional Animal Care and Use Committees (IACUCs)—the oversight committees at research facilities responsible for ensuring compliance with AWA—are not always adequately monitoring experimental procedures on animals. As a result, AC has reduced assurance that protocols are properly completed, approved, and adhered to and that animals are always receiving basic humane care and treatment. We found no issues related to AC's mission critical information system.
- Regarding followup on 2007 and 2008 audit recommendations (FSIS), we are currently conducting fieldwork. OIG's objectives are to evaluate the corrective actions taken by FSIS to implement prior OIG audit recommendations in Audit Report 24601-0007-KC, *Evaluation of FSIS Management Controls Over Pre-Slaughter Activities*; and Audit Report 24601-07-Hy, *Issues Impacting the Development of Risk-Based Inspection at Meat and Poultry Processing Establishments*. We will also address questions/concerns we received in a

Congressional request related to FSIS' staffing and management decisions for livestock slaughter establishments. Specifically, we will address whether FSIS has controls in place to ensure that the right mix of human capital is in place, adequately trained, and properly performing pre-slaughter and humane handling activities.

- We are currently conducting fieldwork on USDA's response to antibiotic resistance (ARS, FSIS, APHIS). The objectives of this audit are to review USDA's oversight of its goals and plans to address major issues and impediments related to antibiotic resistance. We will also examine the Department's efforts to improve the surveillance, stewardship, and development of new treatment methods that are designed to address concerns regarding the prevention and control of antibiotic resistant infections and diseases. In addition, we will evaluate key short-term and long-term actions planned to address these concerns.

Pesticide Residue Monitoring Programs

71) In November 2014, the Government Accountability Office (GAO) publicly issued a report entitled, "FDA and USDA Should Strengthen Pesticide Residue Monitoring Programs and Further Disclose Monitoring Limitations (GAO-15-38)." Have you had an opportunity to review that report and the recommendations made for FSIS and AMS? How does that report's findings align with what your office found in your March 2010 report entitled, "FSIS National Residue Program for Cattle (Report No. 246011-08-KC)?"

Response: In light of our report on the National Residue Program, we reviewed the GAO report. In its report, GAO found that FSIS is not required by law to test the foods it samples for specific pesticides, but disclosing this limitation in annual reports would meet OMB reporting best practices. GAO recommended that USDA better inform the public about the frequency and scope of pesticide tolerance violations, and that FSIS disclose in the agency's annual pesticide monitoring program report which pesticides with EPA-established tolerances the agency did not test for in its National Residue Program and the potential effect of not testing for those pesticides. FSIS agreed with this recommendation.

In our report, *FSIS National Residue Program for Cattle*, we found that the National Residue Program is not accomplishing its mission of monitoring the food supply for harmful residues. We made a series of recommendations for FSIS, FDA, and EPA to take steps to improve how they coordinate the National Residue Program; work towards expediting approval of new testing methodologies; establish policies and procedures for handling hazardous substances with no tolerances; facilitate the exchange of residue testing data between FSIS, EPA, and FDA to enhance opportunities for identifying trends; and canvass industry and other entities for information on determining other compounds to test.

GAO's work focused more on what FSIS data show with respect to pesticide residue violations in the foods that it regulates, and any limitations in its efforts to monitor foods for pesticide violations. Our work focused on the effectiveness of the National Residue Program, and whether the program's objectives for cattle were being met. Because GAO's audit objectives differed from ours, we did not evaluate the same aspects of the program. The reviews did complement one another to help frame a more complete picture of the program when read together.

HACCP-based Inspections Models Project (HIMP) for Swine Slaughter

72) In May 2013, your office issued a report entitled, "Food Safety and Inspection Service Inspection and Enforcement Activities at Swine Slaughter Plants (Report No. 24601-0001-41)." One of the critiques leveled in the report was the fact that the agency had not conducted an evaluation of the HACCP-based Inspection Models Project pilot that it was running in 5 hog slaughter facilities to determine whether food safety goals were being met. On November 14, 2014, FSIS posted a report entitled, "HACCP Inspection Models Project (HIMP) for Market Hogs." Have you had a chance to review that document and does it address the concerns your office raised in your May 2013 audit report?

Response: FSIS' study was completed in response to our recommendation that FSIS determine what measurable improvement the HIMP program has achieved. At this time, OIG has not performed follow up work to validate FSIS' conclusion.

For our audit, *FSIS Inspection and Enforcement Activities at Swine Slaughter Plants*, we evaluated FSIS' controls over food safety and humane handling, and determined if appropriate enforcement actions were taken against plants that violated the Federal Meat Inspection Act (FMIA) and Humane Methods of Slaughter Act (HMSA). Specific to HACCP-Based Inspection Models Project (HIMP) swine slaughter, we found that FSIS could not determine whether the goals of the HIMP pilot were met because FSIS did not adequately oversee the program. In the 15 years since the program's inception, FSIS did not critically assess whether the new inspection process had measurably improved food safety at each HIMP plant, which was a key goal of the program. FSIS also allowed one HIMP plant to forgo the standard FSIS policy to manually inspect viscera, and did not have formal agreements with the HIMP plants. Since FSIS did not provide adequate oversight, HIMP plants may have a higher potential for food safety risks. Nationwide, 3 of the 10 plants cited with the most noncompliance records (NRs) continue to participate in the HIMP program. Accordingly, we recommended that FSIS determine what measurable improvement the HIMP program achieved and its suitability as a permanent program. FSIS' November 2014 report was completed to assist the agency in addressing this recommendation.

In the November 2014 report, FSIS analyzed the performance of HIMP establishments compared to non-HIMP establishments, as well as their performance with respect to performance standards established by an independent consulting firm contractor.

FSIS' evaluation compared 5 HIMP market hog establishments with a set of 21 non-HIMP market hog slaughter establishments. The non-HIMP establishments were comparable to the HIMP establishments with respect to production volume, line speed, and days of slaughter operation. The report's findings are assessed across three interrelated inspection activities: (1) verification, by offline inspectors, of the establishment's execution of its HIMP slaughter Process Control Plan (PCP), under which establishment employees sort out unacceptable carcasses and parts; (2) verification by offline inspectors of the establishment's execution of its Sanitation Standard Operating Procedures (Sanitation SOP) and its HACCP plans, under 9 CFR Parts 416 and 417; and (3) verification of the outcomes of the establishment HACCP and PCP both organoleptic and microbiologic. Organoleptic properties are the aspects of food as experienced by the senses, including taste, sight, smell, and touch. Microbiology is a study of biology dealing especially with microscopic forms of life.

As a result of the evaluation, FSIS concluded that market hog slaughter establishments participating in HIMP are performing as well as comparable large non-HIMP market hog establishments and meeting FSIS expectations for the overall HIMP project. Again at this time, OIG has not performed followup work to validate FSIS' conclusion.

Integrity of Benefits

- 73) Regarding integrity of benefits, I think that it is important for us to understand the issue of SNAP errors and fraud in the broader context of other programs under USDA's jurisdiction. Can you explain what issues of fraud there are in other USDA programs such as crop insurance or subsidy payments? What are examples of the kinds of problems that you see there? From your testimony, it would seem that there may not be enough resources allocated by the Department to do adequate oversight of these programs.

Response: In most of OIG's investigative work, fraud against government programs occurs when a person or group of people provide false statements or false claims to acquire money or resources, to which they are not lawfully entitled. Some of the most common fraud schemes we have identified in USDA programs are:

Crop Insurance Fraud: Crop insurance fraud often involves producers falsifying the amount of damage to their crops, and claiming RMA-backed insurance funds for crops that were damaged intentionally, not damaged, or never planted at all.

Farm Loan Fraud: Like other types of loans, farmers seeking a farm loan are required to provide information concerning collateral, financial solvency, ability to produce crops as expected, and ability to make the agreed-upon loan payments. Farm loan fraud may involve any form of false statement or misrepresentation made to FSA, or a lender in the case of guaranteed loans, in an effort to be approved for funds, which would otherwise not be loaned. Our investigative work has found these producers fail to pay back FSA, and may use the funds to purchase items other than what is

necessary to support farming operations. This fraud may also involve selling the collateral pledged to secure the loan.

Subsidies Fraud: USDA provides various subsidies to producers to supplement income, and improve the financial stability of the overall agriculture infrastructure. Fraud related to USDA subsidies may involve steps taken by producers to overcome the rules or limits associated with subsidy payments. For example, a producer might make false statements or induce others to make false statements to USDA agencies such as RMA, FSA, and NRCS, in order to give the appearance that several producers are conducting separate farming operations, which allows the farmer to fraudulently acquire additional subsidy monies.

We believe that strengthened oversight by the Department and its agencies could reduce or mitigate such potentially fraudulent activities. Furthermore, our audit work has identified instances where agencies should better allocate their resources to provide better program oversight. For example, we reported in *Farm Service Agency Compliance Activities* (Audit Report 03601-0001-22, issued July 31, 2014), that despite FSA's declining resources—its salary and expense appropriation shrank from \$1.57 billion in FY 2010 to nearly \$1.4 billion in FY 2013—the agency has not developed an integrated compliance strategy to ensure that its resources are focused on areas posing the most significant risk of noncompliance. Instead, FSA conducts various compliance activities that are not coordinated within an overall strategy. As a result, some of FSA's compliance activities were duplicative and were not achieving their intended results and FSA cannot ensure that it is maximizing the use of its resources to ensure that its compliance activities focus on areas of greatest risk.

Likewise, we found that staffing shortages have affected FAS' ability to monitor active Food for Progress Program agreements (*Private Voluntary Organization Grant Fund Accountability*, Audit Report 07601-0001-22, issued March 31, 2014). Our review found that FAS' Food Aid Division did not always receive, review, or monitor semiannual reports submitted by private voluntary organizations (PVOs), which in turn has impacted its ability to reasonably ensure the integrity of the financial information in these reports. Additionally, the Food Aid Division cannot confirm that PVOs established separate bank accounts to administer agreements or ensure that PVOs remitted interest earnings on the Commodity Credit Corporation's advanced administrative funds. FAS officials explained that they had given higher priority to awarding grants rather than to monitoring them.

We also found that APHIS' Animal Care (AC) unit did not make the best use of its resources when fulfilling its inspection requirement under the Animal Welfare Act. Since FY 2001, AC conducted at least 500 inspections at 107 research facilities that had not used, handled, or transported any regulated animals for more than 2 years. We found that these resources could have been assigned to inspect other more problematic facilities, including breeders, dealers, and exhibitors. *Animal and Plant Health Inspection Service Oversight of Research Facilities* (Audit Report 33601-0001-41, issued December 9, 2014).

QUESTIONS SUBMITTED BY CONGRESSWOMAN CHELLIE PINGREE

Audit Centers of Excellence

74) Last year, I asked about the Audit Centers of Excellence and whether the focus of these centers would be on SNAP fraud or on farm subsidy payments. When you compare the farmers who receive \$50,000 a year in crop insurance subsidies to the Mainer receiving \$122 per month to help them buy groceries, it seems that crop insurance payments have a much higher potential for high-dollar fraud. Putting politics and ideology aside for a moment and looking at it purely from a cost-benefit perspective, doesn't it seem that OIG's time would be best spent investigating folks receiving tens of thousands of dollars in subsidies? Can you give us a sense of how the Audit Centers of Excellence will focus their investigations?

Response: The Audit Center of Excellence was an OIG initiative in our FY 2015 budget request. It was designed to focus on improper payments in USDA's high-risk programs, starting with RMA. Although both OMB and Congress were supportive of this initiative, it was not funded during the omnibus approval process, so no work has been done on this initiative. However, we have again included this request in our FY 2016 budget proposal. If approved, Audit would begin by examining RMA improper payments, given the status of the agency's efforts to revamp its improper payment error rate methodology. Subsequent to the review of RMA, Audit would focus on improper payments in other USDA high-risk programs based on an analysis of risks associated with those programs at that time.

With limited resources and staff available for these focused investigations, I urge you to take a balanced approach. I know you didn't have the answers available during the hearing last year, and wanted to see if you have the answers this year.

U.S. Meat Animal Research Center

I want to add my voice to the chorus of concern around the deeply troubling New York Times story outlining the disturbing treatment of research animals at the U.S. Meat Animal Research Center, which is run by USDA's Agricultural Research Service.

Since that article came out, I've heard from many Mainers who share my outrage at stories of USDA scientists using experimental "surgery and breeding techniques to re-engineer the farm animal to fit the needs of the 21st century meat industry". The article details countless cruel and inhumane practices like leaving newborn lambs in pastures "till death, if necessary – to test whether mothers would respond to the young ones' growing desperation". Some days, the article States, "30 to 40% of the lambs were dead". This cruelty is the result of a research center with the Stated goal of increasing the meat yield per animal production: for the meat industry but on the American taxpayer's dime.

I am a strong advocate for funding for agricultural research, but I question who benefits from this cruel and inhumane research other than industrial agribusiness, which is apparently desperate for ways to increase their bottom line by any means necessary.

75) I'm grateful to journalist Michael Moss for dedicating his time and resources to conducting this thorough investigation. But why did we have to depend on a journalist to expose these wrongdoings?

Response: There are several outlets for reporting wrong doing to OIG. The OIG Hotline allows employees and the public to provide information regarding allegations of potential wrong doing anonymously or confidentially. Additionally, allegations of potential wrong doing could also be provided directly to regional OIG offices. Prior to the *New York Times* article, OIG had not received any allegations regarding animal welfare and research practices at the Roman L. Hruska U.S. Meat Animal Research Center (MARC).

76) Was the Office of Inspector General aware of the research practices at the Meat Animal Research Center before the Times broke the story last month? Was anyone at OIG ever contacted by a whistleblower? Do you believe that this research is in the public's best interest? Is this the best use of taxpayer funding? Does it live up to the ethical standards of humane treatment of animals that USDA purports to follow?

Response: OIG was not aware of any concerns relating to research practices at MARC prior to the *New York Times* story. We were not contacted by any whistleblowers regarding the research practices and animal welfare violations at MARC.

We currently have work in process to review the research practices and operations of the MARC to evaluate the concerns expressed by Congress and reported by the media regarding animal welfare. We will also examine ARS' oversight and monitoring of MARC, as it relates to animal welfare. Our current audit work may disclose information that might address these questions.

In Maine and across the country, average Americans are going out of their way to buy meat that's humanely raised, because the treatment of farm animals is important to them. According to the USDA's Economic Research Service, per capita meat consumption is declining, but demand for beef produced in a certified organic natural grass-fed system is actually growing at a rate of 20% per year. We should not be subsidizing a method of raising animals that many Americans are trying to move away from. I would like to close by expressing my disappointment that the America taxpayer is paying \$27 million a year for research that violates our ethical standards and only serves to benefit industrial Big Ag.

THURSDAY, FEBRUARY 26, 2015.

**DEPARTMENT OF AGRICULTURE FOOD SAFETY AND
INSPECTION SERVICE**

WITNESSES

**AL ALMANZA, DEPUTY UNDER SECRETARY, FOOD SAFETY, U.S. DE-
PARTMENT OF AGRICULTURE**

**MICHAEL YOUNG, BUDGET OFFICER, U.S. DEPARTMENT OF AGRI-
CULTURE**

INTRODUCTION OF WITNESSES

Mr. ADERHOLT. Good morning. The Subcommittee will come to order. I want to welcome to the Subcommittee this morning Mr. Al Almanza, the Deputy Under Secretary for Food Safety with the Food Safety and Inspection Service, and welcome back Mr. Michael Young, USDA's budget director.

OPENING STATEMENT—MR. ADERHOLT

Today we are going to focus on the fiscal year 2016 budget request for the Food Safety and Inspection Service, which totals approximately \$1 billion. USDA's FSIS works to ensure that our Nation's supply of meat, poultry, and processed eggs are safe, wholesome, and correctly packaged and labeled.

In fiscal year 2014, FSIS conducted 6.8 million food safety and food defense procedures and nearly 180,000 humane handling verification procedures. FSIS is comprised of more than 9,200 employees and regulates more than 6,400 establishments across the United States. Approximately 80 percent of FSIS' budget is for personnel, salaries and benefits.

One of the goals of this year that we have in this Subcommittee is to ensure that agencies and programs within our jurisdiction are properly managed, which leads to efficient use of the taxpayer dollars and transparent decision-making.

This past August, FSIS published a final rule to modernize the poultry inspection system. Secretary Vilsack has been a strong supporter of this regulation, and it is projected to improve food safety through a reduction in foodborne illnesses, and I look forward to an update on that as we move forward.

In May last year, FSIS sent a final rule to the Office of Management and Budget (OMB) to establish an inspection program for domestic catfish. During last year's hearing, we were told that the final rule would be published no later than December 2014, yet the rule remains at OMB. The 2008 and 2014 Farm Bills require the USDA to establish this program, and I want to emphasize that I hope this final rule can be published in the very near future.

Another goal for the Subcommittee is to target our limited resources to the most important programs and functions. No one questions the valuable work carried out by FSIS personnel every day.

Mr. Almanza, you started as an inspector, so you have seen firsthand the importance of the work that inspectors do and that the inspectors perform. FSIS inspectors are on the front line to protect public health and maintain the food safety supply that we as consumers often take for granted. I appreciate the work of all the FSIS employees, who strive to keep safe meat, poultry, and egg products that are available for consumers.

The third goal for the Subcommittee is to promote U.S. agriculture and the bounty of this great Nation. America is a world leader in agriculture, and we are blessed to have the safest food supply in the entire world. There is a long history of support in Congress for meat and poultry inspection, which plays a unique role at USDA.

That is why I question the President's proposal merging the duties of FSIS with the Food and Drug Administration under the Department of Health and Human Services. The Department of Health and Human Services is a large, cumbersome agency with a myriad of responsibilities, and the concern is that the food safety would not be one of their top priorities.

Again, thank you for being our witness this morning. Look forward to your testimony, along with Mr. Young. And at this time, I would like to recognize the Ranking Member from California, Mr. Farr.

Mr. FARR. Thank you very much, Mr. Chairman. I really have nothing to add. I think you said it all. I am not necessarily in agreement with your decision not to unify; I think this is one thing a modern government has to do, is we have to get more collaborative. And we can get into that in the testimony.

But thank you for your service and thank you for being here today.

Mr. ADERHOLT. Mr. Under Secretary, you may have the floor, and we look forward to your testimony.

OPENING STATEMENT—MR. ALMANZA

Mr. ALMANZA. Thank you. Well, good morning, Mr. Chairman, Ranking Member Farr, and the members of the subcommittee. My name is Al Almanza, Deputy Under Secretary for Food Safety at the United States Department of Agriculture. With me is Michael Young, USDA's budget officer. Thank you for the opportunity to discuss the status of the agency's programs and policies.

Before I get into the budget request, let me take a moment to express my condolences to the members and staff of the Subcommittee on the passing of Representative Nunnelee. As one who has appeared before this Subcommittee many times, I can say that he always took great interest in the activities of FSIS, and will be missed.

I am pleased to appear before you today in support of the President's fiscal year 2016 budget request for FSIS, which is set at about \$1 billion. With this funding level, I am confident that FSIS

will maintain effectiveness in its core mission of preventing foodborne illness.

FSIS is the public health agency in USDA responsible for ensuring that the Nation's commercial supply of meat, poultry, and processed egg products is safe, wholesome, and correctly labeled. By law, FSIS is legally required to have inspectors present in all facilities we regulate.

This directive to our agency is a result of the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The USDA mark of inspection is an important part of the confidence that American consumers have in the safety of their food supply.

FSIS will always prioritize in-plant food safety inspection and dedicate significant resources to ensuring that all plants have the required number of inspectors. The dedicated men and women of FSIS are on the front lines nationwide, following procedures based on the best available scientific evidence to ensure safe and wholesome food.

Just over 20 years ago, we relied on sight, touch, and smell as a basis for our inspection system. As one who began his career in 1978 as a slaughter inspector in Dalhart, Texas, I could tell you that I know that this is true. I did it. But this approach has changed significantly as our understanding of science-based inspection has changed.

It is important to remember how far we have come, but our work is not done, and inspection system modernization continues. This is what I want to highlight today as I discuss our accomplishments over the past year.

Many of our accomplishments are laid out in my written testimony. Ultimately, however, it is about protecting public health and reducing foodborne illness. As noted in the budget and our Annual Performance Plan (APP), the all-illness measure showed a reduction of about 41,000 estimated illnesses between fiscal years 2013 and 2014.

During the agency's testimony last year, we reported on our plans to combat *Salmonella* contamination. Since combating *Salmonella* remains the agency's top priority, I want to focus on that a little bit more today. Recently FSIS sought comments on updated and more aggressive performance standards for *Salmonella* and *Campylobacter* in chicken parts and comminuted poultry. This was in response to the agency's *Salmonella* Action Plan.

We believe these standards will have a major impact on public health, preventing an estimated 50,000 illnesses annually. We are also attacking *Salmonella* by modernizing our approach to poultry slaughter inspection. In 2014, we made a major advance in this effort by publishing a final rule on poultry slaughter inspection.

As we look forward to the future, we are eager to finalize a proposed mechanically-tenderized beef rule, which will make it easier for consumers to understand what they are buying at supermarkets and what steps they must take in the kitchen to keep their families safe.

We look forward to further guiding industry in driving down pathogens to performance standards. We look forward to further improvements in the Public Health Information System (PHIS), a

tool that has proven to be invaluable in communicating real and potential threats and guiding policy.

As we strive to improve, it is important to understand that we already have the world's greatest food safety system. People from around the world want our products. Enhanced food safety increases consumer confidence. More and more countries agree our foods are produced within a first class food safety system. This is why other nations strive to emulate our system.

Safe food opens new markets from the European Union to Asia to Latin America. As I mentioned earlier, I began my career as an FSIS line inspector. I know firsthand the hard work that these dedicated men and women perform every day to ensure that we have the safest food supply in the world. It is because of this work that millions of Americans can sit down at the table and enjoy safe, wholesome meals every day.

Thank you for your continued support of our vital work as a public health agency.

[The information follows:]

FOOD SAFETY

**Statement of Al Almanza, Deputy Under Secretary for Food Safety
Before the Subcommittee on Agriculture, Rural Development,
Food and Drug Administration, and Related Agencies
Committee on Appropriations, U.S. House of Representatives**

February 26, 2015

Introduction

Mr. Chairman, Ranking Member Farr, and members of the Subcommittee, my name is Al Almanza, Deputy Under Secretary for Food Safety at the U.S. Department of Agriculture (USDA). With me is Michael Young, USDA's Budget Officer. Thank you for the opportunity to discuss the status of the agency's programs and policies.

I am pleased to appear before you today in support of the President's Fiscal Year (FY) 2016 budget request for the Food Safety and Inspection Service (FSIS), which is set at \$1.012 billion. This includes \$60.9 million for state inspection programs; 3.7 million for Codex; and an additional \$2.5 million for catfish inspection. With this funding level, I am confident that FSIS will maintain effectiveness in its core mission of preventing food-borne illness.

The President is again asking Congress for authority to submit fast-track proposals to reorganize or consolidate Federal programs and agencies to reduce the size of Government or cut costs. With this authority, the Administration is proposing to consolidate the FSIS and the food safety components of the Food and Drug Administration to create a single new agency within the Department of Health and Human Services.

In the meantime, I am responsible for making sure the Agency functions properly today. The way FSIS conducts business right now is not changing as a result of this proposal. Carcass-by-

carcass inspection is the cornerstone of our work, and this proposal does not change that. As I said to our personnel during an all-employee Town Hall meeting earlier this month, the dedicated public servants of FSIS are all are doing great work and will continue to do so. The Administration's proposal will not overshadow the things that we are doing this fiscal year and plan to do in FY 2016. Modern, science-based food safety requirements and strong enforcement are now and will continue to be very much a part of what we do.

FSIS is the public health agency in USDA responsible for ensuring that the nation's commercial supply of meat, poultry, and processed egg products, whether domestic or imported, is safe, wholesome, and correctly labeled and packaged. By law, FSIS is required to examine and inspect all livestock and poultry slaughtered and processed, as well as processed egg products, for use in commerce for human food. This directive to our agency is a result of the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The USDA mark of inspection is an important part of the confidence that the American consumer has in the safety of their food supply.

FSIS is legally required to have inspectors present in every meat, poultry, and processed egg products facilities in the country. Our inspectors and veterinarians verify the health of the animals upon their arrival at slaughter plants and ensure that livestock are treated humanely. They then verify that the plants' slaughter process functions as designed to produce safe products. As part of that verification, they collect the samples that our scientists analyze for the presence of pathogens and chemical residues. The dedicated men and women of FSIS are on the front lines nationwide following procedures that are designed based on the best available scientific evidence to ensure that meat, poultry, and processed eggs in commerce are safe and wholesome.

FSIS will always prioritize in-plant food safety inspection and dedicates significant resources to ensuring that all plants have the required number of inspectors. I am confident that the budget we have presented will provide every establishment we regulate in this country with appropriate staffing levels.

Just over 20 years ago, we relied on sight, touch and smell as a basis for our inspection system. As one who began his career in 1978 as an inspector at a slaughter house in Dalhart, Texas, I can tell you I know this is true. I did it. But this approach changed drastically following the 1993 Jack-in-the-Box outbreak of *E. coli* in ground beef, which caused 400 illnesses and four deaths. In response, FSIS took action by adopting a more science-based inspection – science rooted in the work of researchers and public health experts. This shift has significantly contributed to the overall decline in bacterial foodborne illnesses. It is important to remember how far we’ve come, but our work is not done, and inspection system modernization continues. That is what I want to highlight today as I discuss our accomplishments over the past year.

FY 2014 Accomplishments

The main driver of FSIS’ Strategic Plan is the focus on the Agency’s public health mission and the ability to adapt to evolving and emerging food safety risks. Our Annual Performance Plan (APP) for FY 2015 is linked to the Strategic Plan and holds the Agency accountable by reporting on the accomplishments and deficiencies, as measured by 36 specific key results within eight goals and structured along three basic themes: preventing foodborne illness; using science to understand and influence the farm to table continuum; and empowering people and strengthening infrastructure.

Ultimately, it is all about protecting the public health and reducing foodborne illness. And, as noted in the budget and our APP, the All-Illness Measure showed a reduction of about 41,000 estimated illnesses between FY2013 and FY2014. Further, in FY 2014, FSIS “met” or “exceeded” 81 percent of our annual performance measures. Here are just a few of those accomplishments from the past year:

- Began implementation of the New Poultry Inspection System after the release of the Poultry Modernization Final Rule this past summer;
- Launched stronger performance measures to reduce *Salmonella* and *Campylobacter* in poultry products; these new standards could help prevent an estimated 50,000 illnesses annually;

- Drafted, based on risk assessment findings, a best practices guideline for retailers to help them to protect public health by decreasing the potential for *Listeria monocytogenes* contamination;
- Completed an economic analysis for expanding the testing for non-O157 in ground beef and components other than trim;
- Announced and began implementing the strategy to co-analyze all raw beef product samples for *Salmonella* and STEC;
- Announced a proposed rule requiring all makers of ground beef, including retail outlets, to maintain more complete record-keeping – i.e., “grinding logs” – sensitive to the concerns by industry but informed by the advantage to the public health of an enhanced ability to trace product back to the original supplier in case of an outbreak;
- Expanded our work using Centers for Disease Control and Prevention (CDC) outbreak data to estimate foodborne illness attribution for FSIS-regulated products;
- Prepared to start pork exploratory sampling;
- Continued to implement the Public Health Information System (PHIS) by increasing plant connectivity and enhancing information sharing capabilities, thus aligning our efforts to modernize food safety through technological enhancements;
- Continued to work to increase the number of establishments employing a humane handling systematic approach;
- Increased public education by targeting at-risk and vulnerable audiences; and
- Improved traceback timelines, as well as response time in which consumer complaints were investigated.

Combating *Salmonella*

During the Agency’s testimony last year, we reported on our plans to combat *Salmonella* contamination, which is one of the most challenging issues FSIS faces in keeping America’s food supply safe. Combating *Salmonella* remains the Agency’s top priority. Thus, in 2014, FSIS sought comments on updated and more aggressive performance standards for *Salmonella* and *Campylobacter* in chicken parts and comminuted poultry in response to the Agency’s *Salmonella* Action Plan, which FSIS introduced in 2013. We believe these standards will have a major impact on public health, preventing an estimated 50,000 illnesses annually.

The *Salmonella* Action Plan outlines the actions FSIS will take to lower *Salmonella* contamination rates on meat and poultry products. The plan also includes developing new strategies for inspection to address potential sources of *Salmonella* contamination throughout the food production process. In addition, the Plan calls for the agency to redesign its education and outreach tools to raise public awareness of ways to limit *Salmonella* cross contamination at home. We continue to move forward to implement all components of this plan and recently published a one year status report.

FSIS adapts our actions to address emerging risks to maximize public health benefits. The dramatic reduction of *Salmonella* contamination in young chickens during the past decade is an example where we've seen real results. In 2006, FSIS sampling showed that approximately 16 percent of carcass samples that the Agency took were positive for this pathogen. By 2014, that number was below 4.5 percent. We hope that the performance standard for poultry parts, including chicken, will have a similar effect. The baseline that the Agency recently completed on parts showed a national prevalence of *Salmonella* of 24 percent. FSIS believes that implementing a new and stronger performance standard for poultry parts will help to reduce consumer exposure to *Salmonella* from this source.

Modernization to Improve Food Safety

Another way we are attacking *Salmonella* pursuant to the *Salmonella* Action Plan is through our efforts to modernize our approach to poultry slaughter inspection. In 2014, we have made a major advance in this effort by publishing a final rule on poultry slaughter inspection and beginning the implementation of the New Poultry Inspection System (NPIS).

As a result of the final rule, poultry slaughter plants, except for very small plants, have begun sampling their products at two points on the slaughter line, both before and after the chiller, each day. The goal of this testing is to verify that plants are controlling the presence of enteric pathogens like *Salmonella* and *Campylobacter* on their products.

The final rule also put in place a new inspection system that is designed to reduce the risk posed by *Salmonella* in poultry. A risk assessment done by FSIS shows inspection systems that provide increased off-line inspection activities directly related to food safety result in greater compliance with sanitation and HACCP regulations. In addition, these off-line inspection activities lead to poultry carcasses that have lower levels of visible fecal contamination and equivalent or lower levels of *Salmonella* and *Campylobacter* contamination. The peer-reviewed risk assessment estimates that this new approach to inspection will prevent approximately 5,000 foodborne illnesses each year.

The New Poultry Inspection System aligns with Goals 5 and 6 of our Strategic Plan, which are about using science to understand foodborne illness and emerging trends and developing effective policies. Other accomplishments of FSIS within these two goals in 2014 include:

- Completed all-priority data analysis projects for *Salmonella* and *Campylobacter* in raw products, *Listeria monocytogenes* and *Salmonella* in RTE products, and STECs in raw beef, helping FSIS to identify actions to improve policy or instructions to field personnel based on these analyses;
- Announced final traceback procedures for beef product contaminated with STEC that will allow FSIS to identify problems sooner, and better protect the public from potentially contaminated product; and
- Made available pre-harvest guidance on intervention options for reducing Shiga toxin-producing *E. coli* shedding. This guidance incorporated lessons learned from the cattle pre-harvest meeting in November 2011 and provided important updates on pre-harvest interventions for non-O157.

I am confident that we are accomplishing our goals. In terms of compliance, which is Goal 2 of our Strategic Plan, the percentage of broiler establishments passing the carcass *Salmonella* Verification Testing Standard exceeded the FY 2014 goal of 92 percent. The percentage of establishments with a functional food defense plan increased slightly in 2014 to 84 percent, and about 95 percent of in-commerce facilities have implemented food defense practices. And, after the issuance of the FSIS Compliance Guide in late 2013, on-site assessments have resulted in 63

percent of active slaughter establishments having a systematic approach to humane handling, exceeding last year's target of 60 percent. In measurement after measurement, we are improving the public health and making America's food supply safer.

Leveraging Resources

But FSIS doesn't work alone in keeping the food supply safe. The Agency coordinates the development of its policies with other USDA agencies and other Federal agencies, including the Food and Drug Administration, the Environmental Protection Agency, and the Centers for Disease Control and Prevention, as well as foreign governments and international organizations, to ensure a comprehensive approach to food safety.

In modernizing our approach to food safety, we are collaborating and communicating with the public – including our partners in industry, stakeholder groups, state and local government, and academia. We benefit from the recommendations of outside experts formally through the National Advisory Committee on Meat and Poultry Inspection (NACMPI) and the National Advisory Committee on Microbiological Criteria for Food (NACMCF), and informally through periodic meetings with industry and consumer stakeholder groups roughly once a month. Indeed, it is as a result of recommendations from NACMPI in 2013 that FSIS conducts a periodic analysis of the Public Health Regulations (PHRs) that the Agency has highlighted and posts revised lists and corresponding cut-points on its website, which informs FSIS decision-making regarding prioritizing the in-depth evaluations of establishments' food safety systems, or Food Safety Assessments, which are conducted by our Enforcement, Investigations, and Analysis Officers. Another analysis was conducted in 2014, and the Agency posted a revised set of PHRs at the start of FY 2015.

In FY 2014, in order to be responsive to the unique needs of small and very small establishments, we published guidance to small plants about how to develop a recall plan and developed a new rule on generic labeling so that only a limited number of labels need to be submitted to FSIS for approval before they can be used on product in the market. Finally, we have improved our electronic Label Submission and Approval System (LSAS), so that all companies can submit their labels to FSIS electronically and more easily obtain FSIS label

approval. FSIS also updated our PHIS industry user guidelines, making PHIS more user-friendly and thereby facilitating compliance.

With respect to international stakeholders, FSIS created the Office of International Coordination within the Office of the Administrator to coordinate and address international issues. The final import rule was published, requiring that all official import inspection establishments have Sanitation Standard Operating Procedures (SOPs). FSIS has also improved and streamlined our Self-Reporting Tool (SRT), an equivalence questionnaire used by foreign food safety inspection systems to collect key information for countries currently eligible and those seeking eligibility to export FSIS-inspected products to the United States. FSIS has entered all the information that eligible countries have submitted into the SRT and has sent this information to each foreign country. This advancement will enable foreign countries to update their information more easily on an annual basis. FSIS has also posted the SRT on its website to increase the transparency of the equivalence process. FSIS took this step in response to comments that it received on a January 2013 *Federal Register* notice on equivalence. We will continue to look for opportunities to update, streamline, and enhance the effectiveness of our international program.

Conclusion

I have described just some of the ways we are holding ourselves accountable for achieving positive results and outcomes on critical food safety issues, as described in our 2014 Annual Performance Plan. We are continuously tracking performance, modernizing, and applying science-based approaches. FSIS considers our work towards strategic planning and the Annual Performance Plan a critical factor in ensuring the Agency's long-term effectiveness and its efficiency of operations. We are committed to accomplishing the work necessary to create both an overarching and relevant Strategic Plan, as well as a yearly Annual Performance Plan, which both ensure that we stay focused on our aim to reduce foodborne-related illnesses across the United States.

As we look toward the future, we are eager to finalize the proposed mechanically tenderized beef rule, which will make it easier for consumers to understand what they are buying at supermarkets and what steps they must take in the kitchen to keep their families safe. We look forward to

further guiding industry in driving down pathogens through performance standards. We look forward to further improvements in PHIS, a tool that has proven to be invaluable in communicating real and potential threats and guiding policy.

As we strive to continue building upon past success to make our food safety system better, it is important to understand that we do have the world's greatest food safety system. People from around the world want our products in part because they know they are safe. Enhanced food safety increases consumer confidence, and safe products create, maintain, and expand markets for U.S. exports. More and more countries agree our foods are produced within a first-class food safety system, which is why over the past year, Mexico, Uruguay, Ecuador, Hong Kong, and Sri Lanka all lifted longstanding restrictions to provide for full access to safe, wholesome U.S. beef and beef products. This is why other nations strive to emulate our system. Safe food opens new markets from the European Union to Asia to Latin America.

As I mentioned earlier, I began my career at FSIS as a line inspector. I know first-hand the hard work that these dedicated men and women perform every day to ensure that we have the safest food supply in the world. It is because of this work that millions of Americans can sit down at the table and enjoy safe, wholesome meals each day.

Thank you for your continued support for our vital work as a public health agency.

NEW POULTRY INSPECTION SYSTEM

Mr. ADERHOLT. Thank you, Mr. Almanza, for your testimony this morning. And we will look forward to having some time to ask you some questions and shed some more light on some of the issues that we will bring before you this morning.

Secretary Vilsack, yourself, and so many others at the Food Safety and Inspection Service have been very strong supporters of the New Poultry Inspection System (NPIS), and it is projected to prevent an additional 5,000 foodborne illnesses each year. Given that the final rule was issued last August, can you talk a little bit about the current status of implementing this new system?

Mr. ALMANZA. Yes, sir. We are currently in bargaining with the National Joint Council, with the representatives that represent the union of the food inspectors. We anticipate that that bargaining will last about six months. We began in December, and we are hopeful or our plan is to implement or begin the implementation of the New Poultry Inspection System around the latter part of July or the first part of August.

Mr. ADERHOLT. How many plants have indicated they will implement the new system and will begin implementing the new system this calendar year?

Mr. ALMANZA. This calendar year? So the deadline for opting in for the first wave was February 23rd, and we had just over 40 plants that had expressed an interest in opting in.

Mr. ADERHOLT. Just over 40?

Mr. ALMANZA. Yes, sir.

Mr. ADERHOLT. As this system is implemented and as you move forward into getting it implemented, what do you think is going to be the top benefit that we as Members of Congress could tell consumers that this is doing, this investment is doing?

Mr. ALMANZA. Well, it is going to prevent 5,000 foodborne illnesses. As a public health agency, I think that is where we need to be focused, preventing foodborne illnesses and protecting public health. I think that is the number one thing. I think the second is that we are always looking for modernization and modernizing how we inspect on the slaughter line.

Mr. ADERHOLT. So the number of foodborne illnesses overall—I used the 5,000. Is that consistent with what you are seeing?

Mr. ALMANZA. Yes, sir. That is an estimate, but that is what we are seeing as part of this poultry slaughter rule.

CATFISH INSPECTION

Mr. ADERHOLT. Let me switch over. You mentioned Congressman Nunnelee, and we certainly miss his presence here on the Subcommittee and his untimely death last month. But let me switch to an issue that he would have probably asked had he been here, and that is about the catfish inspection.

As I mentioned in my opening remarks, I am hopeful that the final rule establishing a program for domestic inspection of catfish will be published in the very near future. Your fiscal year 2016 budget request includes \$2.5 million and 18 full-time employees for the implementation of the rule. When can we expect the final rule to be published and implemented?

Mr. ALMANZA. We are hopeful to get it back from OMB. But in the interim, we are having a lot of correspondence go back and forth between OMB and the agency. They ask us questions regarding the rule. We are hopeful that that will conclude soon.

Mr. ADERHOLT. And when you say soon, do you have a time frame that—

Mr. ALMANZA. We are hopeful that around April, we will get it back from OMB.

Mr. ADERHOLT. There are some rumors going around that the delay is linked to the trade negotiation with Asian countries. Can you speak to that at all?

Mr. ALMANZA. No, sir. I quite frankly stick to food safety and I really do not get involved in those types of issues.

Mr. ADERHOLT. Have you heard anything that that could be a—

Mr. ALMANZA. No, sir.

Mr. ADERHOLT. Not that you are aware?

Mr. ALMANZA. Not that I am aware of.

Mr. ADERHOLT. How many catfish slaughter and processing plants will be incorporated?

Mr. ALMANZA. Slaughter plants, about 18, and processing, over 400 that FDA has given us a list of.

Mr. ADERHOLT. What kind of changes will these plants need to make to meet expectations under the new program that would go forward?

Mr. ALMANZA. Well, they will have to adapt Hazard Analysis and Critical Control Points (HACCP) principles, so that will be something new to the industry, though they do have a form of HACCP. I do think that they will just need to look at things in a little bit different way that FSIS requires.

Mr. ADERHOLT. How will the new catfish inspection program affect your staff?

Mr. ALMANZA. My staff here at headquarters?

Mr. ADERHOLT. Overall.

Mr. ALMANZA. Overall? Well, we will have an increase of about 18 full-time inspectors in the slaughter facilities. And it will expand the number of inspectors in processing facilities because we will have to have more processing inspectors to staff those additional plants that come in that process catfish as well.

Mr. ADERHOLT. And the inspection of catfish processing plants are being incorporated into the existing inspection controls?

Mr. ALMANZA. Yes, sir.

Mr. ADERHOLT. Mr. Farr.

BEEF SLAUGHTER FACILITIES

Mr. FARR. Thank you very much. Thank you for your career of service.

I need to know more to understand the process for beef slaughter. I represent a lot of cattlemen who want to get into the organic, selling grass-fed beef to the local markets and restaurants. So your testimony points out that the responsibility of the government is to require that you have inspectors present in every meat, poultry, and processed egg product facilities. So there are two kinds. You mentioned there is slaughter and there is processing.

To be an inspector in a slaughter plant, what are the qualifications? Because you mention that there are also veterinarians. Do you have to have a veterinary license to be an inspector?

Mr. ALMANZA. No, sir. We have inspection personnel or inspectors. Basically, the basic requirements is that they have a minimum of a high school education and that they also have a minimum of three years' experience in a food environment.

Mr. FARR. So when do the veterinarians come into the procedure?

Mr. ALMANZA. Any establishment that slaughters has a veterinary presence. So I would say in livestock, usually if it is a bigger plant, we have a veterinarian that is there all the time. If it is a smaller plant that can be put on a patrol—let's say they slaughter, say, five to ten a day or a week—then we have a veterinarian in the area.

Mr. FARR. Visiting. That is what I am interested in. So it is a very expensive process, to have veterinarians, a doctor in veterinary med.

Mr. ALMANZA. Veterinarians.

Mr. FARR. Is that still necessary, do you think?

Mr. ALMANZA. I do. I think the veterinarians are the expert in food diseases and animal health in those establishments. And when you have issues surrounding animal health, they can get a lot of attention very quickly.

Mr. FARR. How many beef slaughter facilities do we have in California?

Mr. ALMANZA. In California? I do not know the number right off the top of my head, but I can get that for you.

Mr. FARR. I would like to know. And then each one of those, if it is a full-time—see, the problem is that it is all consolidating. And so you really have—as a beef producer, as a rancher, you have got a whole—if you haul your cattle to the slaughter plant, those are a long ways away because they have been consolidated because it is a very expensive operation, as you indicated.

Mr. ALMANZA. Right.

[The information follows:]

BEEF SLAUGHTER ESTABLISHMENTS IN CALIFORNIA

There are 21 beef slaughter establishments and 293 beef processing establishments in California. FSIS has a total of 466 inspection program personnel in California.

STATE MEAT AND POULTRY INSPECTION PROGRAMS

Mr. FARR. Do you have any States where you have contracted with the State to do the inspections?

Mr. ALMANZA. We have different State programs. We have the newest Cooperative Inter-state Shipment Program, but we also have the Talmadge-Aiken inspection program where States—

Mr. FARR. What States have you contracted with? Is it full States or just pieces of States?

Mr. ALMANZA. Full States. So it is the ones—27 States.

Mr. FARR. So it might be incentive for the States to essentially take over that manpower development that you need to be certified. Is there a process for being—when you—

Mr. ALMANZA. To enter into the Talmadge-Aiken program?

Mr. FARR. Yes.

Mr. ALMANZA. Yes. If they have a State program, then they just contact us. And they use their personnel, but we provide them 50 percent of their—

MOBILE SLAUGHTER UNITS

Mr. FARR. Here is the problem I am constantly getting. I represent the central coast of California. It is essentially the salad bowl capital of the world. We grow more grapes than Sonoma, Napa, and all those counties with the screw-top bottle wine.

And so a lot of these ranchers now, they say, I am growing all my cows from birth. They are birthing here. They are being raised on my ranch. They never leave. And it is nothing but natural grass-fed; in fact, some of the ranchers are trying to bring back the native grasses. They are doing all this wonderful land conservation.

And they are organic, and they want to market it to the farmers markets and to the local restaurants who they have all made a deal. And they are saying, look. My neighbor is growing grapes and puts those in a bottle, and you come to his house for dinner and he can sell you a case of wine with his name on it.

People come to my ranch and have a nice meal with me and I give them some—I can slaughter it for my own personal consumption, but I cannot sell them that meat. So what they are trying to do is make it cost-effective to have a local—we actually created a trailer that you can move around, and you inspected it and it is all okay.

Mr. ALMANZA. A mobile slaughter unit.

Mr. FARR. But now we do not have those inspectors. We need to figure out a way that is cost-effective to get a circuit rider, essentially, for inspectors because what you could do—and I do not know all the intricacies of the difference between a slaughter unit and a processing plant.

But it seems to me we have—I think Monterey Pasta is one in the process because it has meat in the pasta. They have to have an inspector. I think there are about seven or eight processing facilities that package foods that have to have an inspector.

But I would love to figure out a way with you to make these rural areas—I know Washington and the islands, and I am sure up in your area in Maine, there are probably—where these micro—these are startup small businesses that could really get going if we could help them in this lineal process of making it cost-effective. So can the government—we need to work out a way to sort of ride circuit.

Mr. ALMANZA. We have a number of relief inspectors that are not necessarily assigned to a specific establishment that—say, for example, in some other Midwestern states, we have like Amish canning facilities that move from one part of the country to the other. And so as they move from one district to another, one inspector will inspect them in one State, and then they get picked up in another State.

And so we can do that anywhere. That is not just exclusive to processing plants. We can do that with slaughter plants. They just have to have the facility or the mobile slaughter unit to be able to accomplish that.

Mr. FARR. We have those. It is just too expensive to get the inspector out in these really rural areas, in non-urbanized areas. They really—because these are not full-time—they do not have the economy of scale. So you have to haul cattle hundreds of miles to get them slaughtered. I just do not think that makes sense. Anyway—

Mr. ALMANZA. I do not know why the inspector could not go there because basically, they get eight hours of free inspection every day.

Mr. ADERHOLT. Mr. Yoder.

COUNTRY OF ORIGIN LABELING

Mr. YODER. Thank you, Mr. Chairman. Mr. Almanza, Mr. Young, welcome to the Committee. Thank you for your testimony today.

I noted yesterday when Secretary Vilsack appeared before the Committee there was some discussion relating to the Country of Origin Labeling (COOL) standards and the WTO ruling, and I thought I would follow up with you, sir. Some of this falls near your agency's or your subdivision's responsibilities.

And I wondered if you could update us on where the WTO is in the appeal, describe what the impact would be on the United States of an unfavorable ruling, what sort of ramifications or retaliatory measures we could expect, and what the timeline of that would be.

Mr. ALMANZA. Congressman, as far as the FSIS goes, we really have limited responsibility over COOL other than some of the requirements for labeling would fall under us. But we really do not have any level of engagement in the COOL negotiations or in that area.

Mr. YODER. When it comes to food labeling and your division's responsibilities related to that, what interactions do you have related to some of the trade agreements that are being negotiated such as the Trans-Pacific Partnership (TPP) or other items?

The secretary was just out in my district last week to promote the idea of exporting more agricultural goods around the world, and promoting free trade and the value that would create to agricultural communities, and job creation in all of our districts, and the opportunity to move people out of poverty, and really testified to all the positives that come with that. And the Administration is putting its full weight behind support of the TPP. Fast-track authority for the President is another area, the Trade Promotion Authority (TPA).

And so I guess I would be interested to know, what engagement does food safety have related to that? Because as we get into free trade, labeling does have an impact on some of those agreements and the retaliatory measures that could occur.

Mr. ALMANZA. Right. The labeling feature, or I would say our responsibility in labeling, obviously carries over into the international market. But we have a very robust labeling program right now. In fact, it used to take—the turnaround time for labels in the industry used to be close to 21 days. Right now, if someone in the industry wants a label approved, we are able to turn those around within three to five days. But those are all labels that—

Mr. YODER. My question is a little different, just in terms of are you aware or is your subdivision engaged in any relationship re-

lated to those labels and their ability to impact free trade agreements?

Mr. ALMANZA. No. Not from a food safety standpoint, they are not.

SINGLE FOOD SAFETY AGENCY

Mr. YODER. And then I noted in your testimony that the President is again asking Congress for authority to submit fast-track proposals to reorganize or consolidate federal programs to reduce the size of government and cut costs. The Administration is proposing to consolidate the FSIS and the food safety components of the Food and Drug Administration (FDA) to create a single new agency within the Department of Health and Human Services.

What does that future look like? How does it affect the services that our constituents would receive? How much savings would that achieve? How many employees would be consolidated? Where would the savings come from, and what does that look like?

Mr. ALMANZA. Well, to me, I would say that one of the things that I have focused on since I came to FSIS is modernization. And I would say the consolidation of two agencies or three agencies or 18 agencies that have food responsibilities, I think that is an initiative for the Administration.

As long as we are engaging in that conversation, as long as we maintain carcass-by-carcass inspection and we maintain a daily presence in all processing facilities, I think that that is where we play a vital role in that discussion.

Mr. YODER. Are you aware of what the savings would be or how the consolidation would create less government bureaucracy? Certainly I understand that your goal would be to maintain the services at the same level. What does that look like on the other side in terms of savings or costs that would be reduced either through personnel or through equipment or other maintenance?

Mr. ALMANZA. I think it is too early to tell because we have not even started the discussion of how that would look. But again, as long as we are at the table and are able to engage in what we believe is the core mission of our agency, I think that that is where we need to be in the discussion.

Mr. YODER. I just think it is helpful for us to have that information as we try to decide whether these are good ideas or bad ideas. I think most of us would certainly believe that government is too large, too expensive, too bureaucratic, and so opportunities to reduce some of those inefficiencies while still providing a good service for our constituents would be high on our priority list. So that information would be helpful so that we could really consider those proposals.

Thanks for your testimony. Appreciate it. Thanks, Mr. Chairman.

Mr. ADERHOLT. Mr. Bishop.

NEW POULTRY INSPECTION SYSTEM AND WORKER SAFETY

Mr. BISHOP. Thank you very much, Mr. Almanza and Mr. Young. Thank you for coming.

As you and I have discussed, FSIS believes that under the new rule, FSIS inspectors who are assigned to poultry processing plants

will be able to intercede on behalf of plant workers when the FSIS inspectors believe that there are some safety issues or violations within the facility. Given the history surrounding the plant safety issue, I would like to fully understand how the process would work, how the new poultry inspection system can make a positive impact on worker safety in poultry processing plants.

From my perspective, worker safety is not really a worker or a management issue. It is everybody's issue. So I have got some specific questions I would like to just ask you to respond to.

One is, what specific authority will the inspectors have as it relates to safety? Is there an inter-agency agreement between your folks and the Department of Labor's Occupational Safety and Health Administration (OSHA) with respect to FSIS inspectors reporting plant safety violations, and how are those violations going to be treated and processed?

What kind of training will be made available to the inspectors in this area? And has the agency discussed the process and sought the input of both industry and labor representatives? Are there any added costs that are associated with the expanded safety responsibilities, and who will be responsible for assuming those costs?

And how will it affect the animal welfare along the line? Will there be independent external audits performed in addition to the internal inspector reports? And put that in the context of the fact that you are asking for less money in this budget than you did last year, and you are including in what you are asking for a performance-based user fee which you have requested in the past and which Congress has not seen fit to allow.

So you are going to be taking on more, asking for less resources, fewer resources, to undertake it, and of course including in what you are asking for is something that Congress has not had the inclination to grant you. So can you kind of react to that for me?

Mr. ALMANZA. Yes, sir. I will try to answer as many questions as you asked, and if I miss one, just get me back on track.

So the New Poultry Inspection System, we engaged with the Department of Labor extensively. Yes, we have an agreement with Department of Labor as to what their expectations are, what our expectations are, because our inspectors are not going to be OSHA inspectors.

It is simply going to be if they observe an issue that involves worker safety. And I am not talking about FSIS employees; I am talking about industry employees. They are not obviously experts. We are food safety inspectors. But we are——

Mr. BISHOP. So they will not have any authority with respect to safety?

Mr. ALMANZA. They will call OSHA and they will notify OSHA of that hazard that they observe.

Mr. BISHOP. That will not be one of their responsibilities or requirements?

Mr. ALMANZA. Well, they will call OSHA. Yes, they will. And yes, we do have a training capacity for that to be implemented once we finish through the negotiations or the bargaining with the union.

Now, the piece of how we are going to be more efficient——

Mr. BISHOP. Is there an agreement? Do you have a memorandum of understanding with OSHA?

Mr. ALMANZA. With Department of Labor.

Mr. BISHOP. With Department of Labor?

Mr. ALMANZA. Yes, sir.

Mr. BISHOP. You do have that? Okay. Would you mind submitting that for the record?


Mr. ALMANZA. Yes, sir. As far as the staffing in the plant, actually it is much more effective to have inspectors off line rather than on the line touching every single bird. Having them at the end of the line and having the plant remove any birds that have cosmetic deficiencies or that are not suitable for food, then they are removed before they ever get to the inspector.

[The information follows:]

FSIS MEMORANDUM OF UNDERSTANDING WITH OSHA


FSIS has had a Memorandum of Understanding (MOU) with OSHA since 1994 which is provided for the record.

Building on this MOU, in 2014, FSIS released the attached Notice which implements the main intent of the MOU as well as addresses some of the primary concerns raised by comments to the poultry slaughter modernization rule.


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● Memorandums of Understanding - Table of Contents

● **Information Date:** 02/04/1994
 ● **Agreement Agency:** OSHA and USDA

MEMORANDUM OF UNDERSTANDING
 between
 The U.S. Department of Labor
 Occupational Safety and Health Administration
 and
 The U.S. Department of Agriculture
 Food Safety and Inspection Service

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to delineate policies, procedures and responsibilities which will guide the working relationship of the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) and the U.S. Department of Agriculture (USDA Food Safety and Inspection Service (FSIS)).

Specifically, this MOU establishes a process and framework to: 1) train FSIS meat and poultry inspection personnel to improve their ability to recognize serious workplace hazards within the meat and poultry industry; 2) reinforce procedures for meat and poultry inspection personnel to report unsafe and unhealthy working conditions to which they are exposed to the appropriate authorities; 3) institute new procedures for meat and poultry inspection personnel to refer to OSHA serious workplace hazards affecting plant employees; and 4) coordinate possible inconsistencies between OSHA job safety and health standards and FSIS sanitation and health standards.

This agreement establishes a foundation for the training of FSIS inspectors in the recognition of serious workplace hazards and for a referral system. It is not OSHA's expectation or desire that through this training FSIS inspectors would be able to supplant OSHA expertise in identifying serious workplace hazards/ FSIS inspectors will be trained in a manner and to a degree established under Section VI. of this agreement. FSIS inspectors will be trained to recognize and refer serious workplace hazards (see expected to, identify, evaluate, or refer serious workplace hazards affecting plant employees that tend to arise only after protracted, cumulative exposure, such as those related to repetitive motion and noise.

II. DEFINITION OF HAZARDS TO BE REFERRED

For purposes of this agreement, a serious workplace hazard is a condition such that there is a substantial probability that death or serious physical harm could result. Examples of these types of hazards appear in the attached appendix.

III. AUTHORIZATION

This MOU is authorized under general and specific OSHA and FSIS statutory authorities. General OSHA and FSIS statutory authorities permit each agency to enter into agreements with other Federal agencies in order to further the legislative objectives listed below. Specific statutory authorities for each agency are as follows:

A. OSHA

1. The Occupational Safety and Health Administration (OSHA) was established under the authority of the Occupational Safety and Health Act (OSHA Act) of 1970 (P.L. 91-596) which authorizes the Secretary of Labor to assure safe and healthful working conditions for men and women by "authorizing enforcement of standards developed under the Act; assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and providing for research, information, education, and training in the field of occupational safety and health."
2. Section 7(c)(1) of the OSH Act authorizes the Secretary "to use, with the consent of any Federal agency, the services, facilities, and personnel of such agency" in carrying out his or her responsibilities.
3. Section 18 of the OSH Act provides for States which desire to assume responsibility for the development and enforcement of occupational safety and health standards within their borders, to submit a State plan for OSHA for approval. Upon approval, these States, referred to as Plan States, may operate their own Federally-monitored safety and health programs which must be "at least as effective as" the Federal program.
4. Section 19 of the OSH Act requires the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program and to provide safe and healthful places and conditions of employment for Federal employees, consistent with the standards promulgated under the OSH Act. Executive Order No. 12196, issued in accordance with Section 19, gives Federal employees the right to report unsafe and unhealthful working

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=262

conditions to the appropriate Federal authorities.

B. FSIS

1. FSIS is responsible for administering and enforcing the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) which authorize the Secretary of Agriculture to promulgate such rules and regulations as are necessary for the efficient execution of the provisions of these acts. These rules and regulations prescribe requirements designed to assure that meat, meat food products, and poultry products, capable of use as human food, will not be adulterated or misbranded when delivered to the consumer.

2. Section 301(c) of the Federal Meat Inspection Act (FMIA) and section 5(c) of the Poultry Products Inspection Act (PPIA) provide that States must develop and effectively enforce, with respect to establishments operating wholly in intrastate commerce in the State, requirements "at least equal to" those under the FMIA and PPJA.

IV. CLARIFICATION OF AUTHORITIES AND RESPONSIBILITIES

The content of this agreement is not intended to diminish or otherwise affect the authority or responsibilities of OSHA or FSIS to administer their respective statutory functions. FSIS meat and poultry personnel are not agents of OSHA and their presence in no way relieves meat and poultry industry employers or employees of their responsibilities under the OSH Act.

Specifically:

A. OSHA

OSHA remains the government agency charged with safety and health oversight responsibilities in the meat and poultry industries, e.g., encouraging and assisting employers and employees to reduce workplace hazards; researching occupational safety and health problems; and developing and enforcing standards to assure, as far as possible, a safe and healthful workplace for all employees.

B. FSIS

FSIS's primary responsibilities continue to be to administer a comprehensive system of inspection laws to ensure that meat and poultry products moving in interstate and foreign commerce for use as human food are safe, wholesome, and accurately labeled.

FSIS inspection personnel, pursuant to executive Order No. 12196, have a right to report unsafe and unhealthful working conditions within their own workplaces and to which they are exposed. Such reports are to be handled as complaints in accordance with Federal Agency Program procedures currently in effect. This MOU in no way alters the normal procedure used by FSIS inspectors to report a workplace safety and health hazard that affects them to their supervisor or to the FSIS Deputy Administrator, Administrative Management.

C. Employers

Employers in the meat and poultry industries continue to have responsibilities as specified in the OSH Act, e.g., the responsibility to provide a workplace free from recognized hazards; the responsibility to examine workplace conditions to ensure they conform to applicable standards; and the responsibility to inform all employees about OSHA.

D. EMPLOYEES

Employees in the meat and poultry industries continue to have responsibilities and rights as outlined in the OSH Act.

V. BACKGROUND

A. GENERAL

The OSH Act requires employers to furnish a place of employment that is free from recognized hazards that cause or are likely to cause death or serious physical harm and to comply with occupational safety and health standards. In order to determine employer compliance with safety and health standards and regulations, Federal and Plan State (reference Section VI) compliance safety and health officers (CSHOs) conduct investigations and inspections of work-sites.

FSIS meat and poultry inspectors also conduct inspections of employer work-sites, but the purpose of these inspections is to protect consumers by ensuring that meat and poultry products for use as human food are safe, wholesome and accurately labeled. In the course of these inspections, however, FSIS meat and poultry inspectors are also in a position to observe safety concerns or be presented with information concerning conditions about the safety or health of plant employees.

FSIS currently trains its meat and poultry inspectors in occupational safety and health matters, but this training is limited. Under the terms of this MOU, OSHA will support and coordinate with FSIS to train FSIS inspections personnel in recognizing and reporting serious workplace hazards, thereby reinforcing and supplementing their previous training.

B. Standards Development

Coordinated Standards Development outlined in Section VI.B of this MOU covers the substance of the OSHA/FSIS May 1982 MOU. The May 1982 MOU will be superseded by the signing of this agreement.

VI. SUBSTANCE OF THE AGREEMENT

A. TRAINING

1. Objective

The primary objective of the training conducted under the terms of the MOU is to heighten the awareness of meat and poultry inspectors in the recognition of serious workplace hazards. After receiving instruction, FSIS will be better able to:

- (a) recognize and report unsafe or unhealthful working conditions within their own workplace and to which they are exposed, in furtherance of Executive Order No. 12196; and
- (b) recognize and refer to FSIS headquarters those instances where plant employees are exposed to serious workplace hazards.

2. Development

OSHA and FSIS will cooperate in developing and conducting the training program designed in support of the MOU. OSHA representatives will participate with an FSIS joint team comprised of representatives from the FSIS Human Resource Development Division (HRDD), the International Programs Import Inspection Staff, the Inspection Operations (IO) Safety and Health Steering Committee, and the National Joint Council of Food Inspection Locals. The team, with OSHA participation, will address such issues as necessary including:

- evaluating current safety modules in FSIS courses and recommending changes;
- determining the target population for field training;
- developing training topics pertinent to FSIS workplace conditions. The training will focus on (1) OSHA's or Plan State's statutory authority and enforcement program as it applies to the meat and poultry industry; (2) serious workplace hazards frequently cited by OSHA in meat and poultry facilities, e.g. machine guarding and personal protective equipment (PPE); (3) OSHA workplace fire safety standards which require employers to provide proper exits, fire fighting equipment, emergency plans and employee training to prevent fire deaths and injuries in the workplace; (4) procedures for notifying FSIS management offices of serious workplace hazards to which plant employees are exposed.
- developing instructional objectives for each topic;
- determining approximate training time for each topic;
- obtaining slides, photographs and other visuals illustrating occupational safety hazards present in meat and poultry plants;
- designing evaluation instruments for the core training sessions and for the training to be delivered by those receiving the core training.

OSHA will then develop training which meets the instructional objectives of all training topics and which is fully compatible with the training delivery implementation plans devised by the FSIS joint team and OSHA participants.

3. Training Delivery and Evaluation

OSHA will provide an initial training session to all members of the FSIS joint team, as designated in paragraph VI.A.2, and additional FSIS personnel as deemed necessary. The training material used at the initial training session will be evaluated by attendees, and will be adjusted, as appropriate, based on these evaluations. These FSIS personnel will conduct subsequent training with involvement of OSHA to the general target group of FSIS inspectors.

OSHA will provide all training materials for the initial session and one additional master copy to HRDD for subsequent field training. OSHA will provide two additional master copies to HRDD when all agreed upon revisions are completed. OSHA training personnel will be on-site for the first training session with FSIS field personnel. Evaluations provided by group of FSIS personnel and OSHA participants will be used to determine if additional revisions are necessary before nationwide delivery.

When field training has been completed, OSHA and FSIS will analyze field personnel supplied evaluations to assure that the primary objective of the MOU is achieved.

B. Coordinated Standards Development

In administering their respective responsibilities, OSHA and FSIS will, to the extent possible, consult and exchange information with each other through the coordinating offices named in section VIII of the MOU. Specifically, the offices will:

1. Coordinate standards development programs in order to minimize possible inconsistencies between standards, establish standard setting priorities, and identify other issues where coordination is desirable.
2. Exchange information and reports on general enforcement matters and on particular situations of common concern to each agency.
3. Make every effort to achieve uniformity of approach in long-range standard development planning.
4. Obtain legal and policy positions on statutory authority regarding the extent to which the other agency can remedy a particular condition or item that may be within the regulatory authority of that agency.

C. Referrals

In the course of an FSIS inspection, FSIS meat and poultry inspectors might either recognize a serious workplace hazard or may receive complaints about unsafe or unhealthful working conditions of plant employees.

Though FSIS inspectors are not to perform the role of OSHA inspectors, they will be trained to recognize serious workplace hazards. FSIS inspectors will report those serious workplace hazards affecting plant employees to their agency headquarters. Agency headquarters officials will simultaneously refer these hazards to OSHA and notify plant management to the referral. The report of a hazard shall be in writing, using OSHA designated forms and consistent with guidance set forth in this MOU and implementing agency directives. OSHA will handle such reports as formal complaints and schedule an inspection according to existing procedures for such complaints. OSHA will receive all referrals and notify Plan States when appropriate. FSIS will afford the same confidentiality to the plant employees making a complaint as that afforded by OSHA.

VII. PLAN STATES

A. OSHA

OSHA will encourage States which operate their own occupational safety and health programs under a plan approved by OSHA as provided for in Section 18 of the OSH Act (Plan States) to participate in activities outlined in this MOU as appropriate.

B. FSIS

FSIS will propose to States administering State meat and poultry inspection programs that they implement policies and procedures consistent with those outlines in the MOU.

VIII. EVALUATION

OSHA and FSIS will work together to evaluate the effectiveness and impact of the agreements reached and actions taken under the terms of the MOU. Specifically, OSHA and Plan States will record information regarding referrals made to OSHA by FSIS and State inspection programs. Information will include, but will not be limited to: 1) the number of referrals; 2) the number of inspections made in response to FSIS referrals; and 3) the number and types of hazards cited on the inspections.

Evaluation data will be reviewed by both OSHA and FSIS annually. Based on the evaluation of related data and feedback from OSHA, FSIS inspectors and meat and poultry employers and employees, adjustments to the MOU will be made, as appropriate.

IX. COORDINATION

A. Training Issues

Training issues regarding this agreement will be coordinated between OSHA's Director, Office of Training and Education and FSIS's Director, HRDD.

B. Operational Issues

Issues regarding safety-related and health-related referrals by USDA Inspectors will be coordinated between OSHA's Office of Field Programs and FSIS's Deputy Administrator, Administrative Management.

C. Interagency Policy and Standards Development Issues

Resolution of interagency policy issues concerning this agreement, including efforts to coordinate standards development, will be coordinated between OSHA's Director of Policy and FSIS's Director of Policy Evaluation and Planning Staff.

X. CONDITIONS OF AGREEMENT

The OSHA/FSIS MOU signed on May 24, 1982, is superseded by this MOU.

This MOU will become effective on the date of the last signature and shall continue in effect unless: 1) the agreement is modified in writing by mutual consent of both parties; 2) the annual evaluation required in Section VIII is not performed; or 3) the agreement is terminated by either party upon thirty (30) days advance written notice to the other.

Each inspector's responsibility to make referrals will not take effect until that inspector has completed the training provided for in this MOU.

FSIS and OSHA agree to initiate training as soon as practicable.

This MOU in no way restricts FSIS from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

Specific work projects or activities involving the transfer of money, services, or property between the agencies to this MOU shall require execution of separate agreements or contracts. Each subsequent agreement between the parties to this MOU shall comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.

Nothing in this MOU shall obligate FSIS or OSHA to expend appropriations or to enter into contract or other obligation.

APPENDIX

SERIOUS WORKPLACE HAZARDS

As stated under Section I of the MOU, FSIS inspectors will not be trained to and therefore, will not be expected to identify or evaluate or refer serious workplace hazards that tend to arise only after protracted, cumulative exposure, such as those related to repetitive motion and noise. A serious workplace hazard is a condition such that there is a substantial probability that death or serious physical harm could result. Examples of these hazards include, but are not limited to:

No emergency evacuation plans.

Blocked means of egress or exits.

Unmarked exits.

Lack of machine guards.

No control of hazardous energy during plant maintenance of equipment.

Electrical hazards.

Broken or missing guardrails.

Falling object hazards.

Walking/working surfaces. e.g. drain covers.

Lack of personal protective equipment.

Release or spill of a toxic chemical.

Plant workers reporting or exhibiting irritation of the eyes, nose and throat due to exposure to an unknown substance.

Plant workers exposed to hazardous chemicals not included in the plant's hazard communication program.

Plant workers reporting exposure to asbestos.

Plant workers entering confined space without the protection of a confined space entry program.

Plant workers exposed to carbon monoxide during warehousing operations.

Plant workers exposed to operations involving a dust hazard.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS NOTICE	37-14	8/11/14
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**PROCEDURES FOR NOTIFYING THE OCCUPATIONAL
SAFETY AND HEALTH ADMINISTRATION (OSHA)**

I. PURPOSE

Upon issuance, this notice advises inspection program personnel (IPP) that they can contact OSHA directly, and how they do so, whenever they observe workplace hazards that may affect workers (both FSIS and non-FSIS plant employees) in FSIS- inspected meat, and poultry products establishments and egg products plants. This notice emphasizes that it is important that IPP follow FSIS Directive 4791.12, Reporting and Correcting Occupational Hazards, and FSIS Directive 4791.13, Workplace Inspections, and Injury, Illness and Motor Vehicle Incident Reporting; and the Collective Bargaining Agreement.

II. BACKGROUND

A. OSHA and FSIS established a Memorandum of Understanding (MOU) in 1994, the primary purpose of which was to develop training for FSIS personnel to recognize workplace hazards and to create a mechanism for IPP to communicate to OSHA any workplace hazards affecting workers at FSIS-inspected facilities. Some examples of serious hazards that may lead to unsafe or unhealthful working conditions are:

1. No emergency evacuation plans;
2. Blocked means of egress or exits;
3. Unmarked exits;
4. Lack of machine guards;
5. Failure to control hazardous energy during equipment maintenance;
6. Electrical hazards;
7. Inadequate guardrail systems;
8. Hazards relating to free falling of overhead objects;
9. Walking/working surfaces (e.g., missing drain covers);
10. Lack of personal protective equipment;
11. Release or spill of a toxic chemicals;

DISTRIBUTION: Electronic

NOTICE EXPIRES: 9/1/15

OPI: OPPD

12. Exposure to a hazardous substance: for example, ammonia or disinfectant products;
13. Refrigeration systems – Ice formation on refrigerant lines, abnormal sounds or vibrations of piping or fans;
14. Exposure to asbestos;
15. Confined spaces; and
16. Musculoskeletal disorders, (e.g., Carpal Tunnel Syndrome).

B. To improve FSIS employees' ability to recognize and report workplace safety and health hazards in accordance with [FSIS Directive 4791.12](#), FSIS AgLearn Course 8500, *Recognizing and Reporting Occupational Safety and Health Hazards*, is available to IPP. This course also provides an overview of how safety inspections are conducted according to [FSIS Directive 4791.13](#). The course is also available in a CD format upon request from the District Office. FSIS will track IPP hazard recognition training.

III. REPORTING WORKPLACE HAZARDS/WORKER DISCRIMINATION

A. If in performing their inspection duties IPP recognize or brought to their attention an occupational safety and health (OSH) hazard that would affect them or their FSIS colleagues, they are to report the hazard in accordance with procedures set forth in [FSIS Directive 4791.12](#).

B. Workers can communicate a serious OSH hazard directly to OSHA by calling OSHA's toll-free telephone number: 1-800-321-OSHA (6742). According to its whistleblower protection program, OSHA will withhold the worker's (complainants) identity from the employer in accordance with Section 8(f)(1) of the OSH Act. OSHA will not give any information to the employer that would allow the employer to identify the complainant. If a plant employee has provided a verbal complaint to IPP, FSIS will afford the same confidentiality. Information about whistleblower protection can be found at: www.whistleblowers.gov.

C. If IPP are uncertain of how to proceed or have any questions about a potential OSH hazard, they should contact the FSIS, Office of Management (OM), Employee Safety, Health and Wellness Staff (ESHW), Environmental, Safety and Health Group (ESHG), Occupational Safety and Health Specialist (OSHS) assigned to their District. The District assignments are maintained up to date on the FSIS Intranet site at: [EHS](#). They can also send an email question directly to: [AskEmployeeSafety](#).

IV. EMPLOYEE LIABILITY

A. FSIS recognizes that the safety and health of the inspected establishments' employees are the responsibility of the inspected establishments.

B. IPP should be aware that the Federal Tort Claims Act protects Federal employees from liability for actions related to the official performance of their duties. FSIS inspection personnel, acting within the scope of their employment, are covered by the Federal Tort Claims Act for an incorrect action or failure to perform an action in carrying out the MOU.

V. SAFETY AND HEALTH TRAINING TO IMPLEMENT THIS NOTICE

A. FSIS recognizes the importance of ensuring the health and safety of its employees and encourages its personnel to use their training and awareness to help ensure the safety of non-federal employees in the establishments they inspect. To that end:

1. In-plant FSIS supervisory personnel and frontline supervisors (FLS) that have not completed AgLearn Course FSIS-8500, *Recognizing and Reporting Occupational Safety and Health Hazards* will need to do so within 6 months after issuance of this notice.
2. In-plant FSIS non-supervisory personnel with off-line inspection responsibilities are to complete AgLearn Course FSIS-8500 within 6 months after issuance of this notice. Additionally, IPP assigned or promoted to off-line responsibilities need to complete the course within 60 days of their new appointment.

B. In-plant FSIS supervisory personnel and FLS's are to provide bargaining unit employees with off-line inspection responsibilities up to four hours of administrative time to complete AgLearn Course FSIS-8500 and to familiarize themselves with the OSHA website on whistleblower protections as stated under Section III. B. above.

VI. GUIDELINES FOR MITIGATING MUSCULOSKELETAL INJURIES

A. At the next weekly meeting after receipt of this notice, the IIC is to share this notice with the establishment management to make them aware of the following recommendations provided by the National Institute for Occupational Safety and Health (NIOSH) to improve work conditions and minimize exposures to factors that increase the risk for musculoskeletal disorders and traumatic injuries:

1. What the employer can do:
 - a. Implement the OSHA Guidelines and recommendations from industry groups to prevent musculoskeletal disorders;
 - b. Design or redesign job tasks so that they are below the American Conference of Governmental Industrial Hygienists' threshold limit value for hand activity and force;
 - c. Until the redesign is completed, use a job rotation schedule where employees rotate to jobs that are below the American Conference of Governmental Industrial Hygienists' threshold limit value for hand activity and force;
 - d. Ensure that employees are using sharp knives for cutting;
 - e. Provide more than one break during the work schedule;
 - f. Enhance reporting, screening, and medical assessment onsite to improve early intervention of musculoskeletal disorders and traumatic injuries; and
 - g. Use good housekeeping procedures (e.g., repair holes/depressions in the floor and excess water on walking surfaces, repair drain coverings, and remove wash hoses and extension cords from walkways) to reduce fall/slip/trip injuries.
2. What employees can do:
 - a. Report symptoms and injuries as soon as they occur to supervisors and onsite medical staff;
 - b. Use only sharp knives for cutting;

- c. Make sure the standing platforms are adjusted to the correct height to do your job; and
- d. Report potential fall/slip/trip hazards to supervisors so they can be quickly addressed.

B. At the meeting, the IIC at poultry products establishments is to make the establishment management aware of the availability of the OSHA and NIOSH documents at these links:

1. [Guidelines for Poultry Processing](#)
2. [Musculoskeletal Disorders and Traumatic Injuries Among Employees at a Poultry Processing Plant](#).

C. Supervisors are to share hard copies of this notice with IPP who may not have access to electronic mail.

VII. DATA ANALYSIS

Approximately 90 days after the issuance of this notice, the DAIG will analyze AgLearn training records to determine overall compliance with completing FSIS AgLearn Course 8500. Follow-up analyses may be performed as determined by FSIS.

VIII. QUESTIONS

Refer questions through supervisory channels.



Assistant Administrator
Office of Policy and Program Development

Mr. BISHOP. Do you have any agreements with the labor organizations within the processing plants regarding the FSIS inspectors' involvement with safety? And how will that work when the FSIS inspectors who are now currently there—they will be downsized, and of course you will have fewer inspectors there. What kind of relationship or what kind of understanding agreement do you have with the worker organizations?

Mr. ALMANZA. Well, we are currently in bargaining, as I said earlier, and we expect the bargaining to conclude somewhere around May. But actually, we do not have—it is not less inspectors. It is going to be inspectors positioned to where they are able to focus on food safety tasks rather than on cosmetic type issues involving those birds. And as I have said before—

Mr. BISHOP. The ones at the end of the line will be observing for cosmetic—

Mr. ALMANZA. The ones at the end of the line will be catching anything that the plant does not catch or plant personnel does not catch.

Mr. BISHOP. So they still will be doing cosmetic inspection.

Mr. ALMANZA. Well, it is kind of like standing at the end of the line and watching anything that is different.

Mr. BISHOP. Right. I think my time has expired. But I guess my concern is if you now have FSIS inspectors who are independent all along the line and you will be replacing them, eliminating them and only having FSIS inspectors who are independent at the end of the line, it seems to me that—and you are delegating authority to the industry personnel that FSIS inspectors formerly had, that seems to be what some have said is the fox is guarding the henhouse.

Mr. ALMANZA. Well, that is not true at all. Actually, by removing the inspectors from touching every single—

Mr. ADERHOLT. Go ahead and finish that thought.

Mr. ALMANZA. Okay—touching every single bird, we are going to be completing sometimes double and triple the number of food safety tasks that are protecting public health.

Mr. ADERHOLT. Mr. Young.

HIGHLY PATHOGENIC AVIAN INFLUENZA

Mr. YOUNG of Iowa. Thank you, Mr. Chairman. Gentlemen, thank you for being here today.

I want to ask you about a great issue affecting a lot of our poultry producers in Iowa and across the country, and that has to do with the avian influenza, found in birds in the wild in the Pacific Northwest. It has led to a lot of countries banning imports from the region, and a few have banned U.S. poultry products altogether.

I want to know what your agency is doing to help resolve this issue and at what levels any kinds of resolutions are being sought, if it is at the Secretary level or your level or lower. How are you working with producers in the affected regions to prevent the spread of the virus?

Mr. ALMANZA. We have been engaged from day one. Obviously that is a live animal issue, which falls under the Animal and Plant Health Inspection Service (APHIS) jurisdiction. But because it affects the domestic market, we have been engaged with APHIS and

with the Secretary's office. The Secretary's office has been very proactive in trying to address some of these issues, trying to regionalize the affected areas to minimize the impact to the industry.

Mr. YOUNG of Iowa. Where do you think we are in terms of resolution, and how far are we in the process of demonstrating that this avian flu is under control and we have good, safe poultry products for the markets abroad?

Mr. ALMANZA. It is hard to say what other countries will do, sir. But we are being very proactive in trying to get the message to them that this is very localized in the areas in which avian influenza has been found, and so we are trying to communicate that to our most important trading partners.

SINGLE FOOD SAFETY AGENCY

Mr. YOUNG of Iowa. Thank you. This could be for both of you, this next question. It touches on what my colleague Mr. Yoder was commenting on about FSIS and the FDA consolidation proposal.

You mentioned modernization. That can mean many things to many different people. I do not know what that means to you. It means something different to everybody in this room, in a sense. Is there duplication now that you see that has spurred this on? Are there prospective savings that you see already, or do you need to further investigate this and look at the agencies? How will it affect services in our districts? Just what does this all mean?

Mr. ALMANZA. The modernization that I was talking about, sir—and I do not know if Mike wants to address part of that—but the modernization that I was talking about is we have a lot of tools that tell us that we can do things better. For example, our Public Health Information System, we perform hundreds of thousands of tasks in these establishments every year. And so what does that tell us, and how are we using that data to tell us whether we are inspecting smarter and we are actually doing public health/food safety type issues?

So I was talking about looking at our data internally to see in what direction we need to go and are we doing the smartest things that we need to to keep food safe. And so modernizing poultry inspection, I think that is another area that was long overdue. We have been inspecting poultry the same way for 57 years.

The only thing that had changed in poultry plants was how we inspected. Everything else has changed because of how things are done in these facilities, the science and everything else. So I would say, from my perspective, the modernization piece is looking internally to see how we do things and can we do them better and more responsible to the taxpayer.

Mr. YOUNG. Sir, at this point in time I do not have any specifics on what the savings might be. That sort of a consolidation would be worked out over time if the authority were granted.

Mr. YOUNG of Iowa. But is your bet that there will be savings, and this is not going to cost us more?

Mr. YOUNG. Again, at this point, I do not think I would speculate on that.

Mr. YOUNG of Iowa. Well, when you can speculate, you will let us know?

Mr. YOUNG. Yes, we will.

Mr. YOUNG of Iowa. Thank you very much, Mr. Chairman. I yield back my time.

Mr. ADERHOLT. Ms. Pingree.

SMALL PRODUCER/FARMER ASSISTANCE

Ms. PINGREE. Thank you very much, Mr. Chair. Thank you for being here today and bringing your many years of expertise and experience into this role. I appreciate that.

I want to talk a little bit about something that the Ranking Member brought up. I am interested as well in the bigger poultry processing facilities. But I represent the State of Maine, and we used to be a poultry State. In fact, we used to be a giant in the poultry world, which would seem hard for people to believe today, but I think that with consolidation and transportation costs and grain coming from the Midwest, not New England, things changed dramatically.

The good news is it is coming back, and probably related to some of the things the Ranking Member said. There are all these great new markets because the consumer wants to buy naturally-raised poultry. They have all these new criteria that they are really interested in, and they would love to buy more locally.

That is great for Maine. We are very proud of the idea that poultry is coming back. But the logjam is always the slaughtering facility, and that is true with all locally produced meats. But I want to focus on poultry.

We have an agreement in our State. You can slaughter up to 20,000 birds in a State-operated facility. Actually, I have one on my farm. But that is 400 birds a week, so it does not get very large, and it does not take too long for somebody who wants to really be in the business to get beyond that.

And we have two facilities about to come on line; at least, we hope so. This winter has slowed things down a little. And one in particular I brought up last year, but it is another year and they are very close. There is a farm in Northeastern Maine that has dairy and have been doing poultry processing under the 20,000-bird exemption, but they are now just about to the final stages of completion of a USDA-inspected facility.

They have invested an enormous amount of money, probably close to a quarter of a million dollars in doing this, and have gotten a lot of really local, community-based support. They just went to get their first order of chicks. They were so worried that the cold weather would affect the chicks. As you might know, in small facilities, people get their baby chicks through the mail, so they were worried the chicks would get too cold on the way, and they drove all the way to New Jersey between storms to get those chicks.

And they are close to Eastport, Maine which has the record for snowfall in New England right now, 108 inches. So anyway, you can imagine it is not the easiest place to operate.

And the question I brought up last year, and now I am closer to worrying about it, is will they have an inspector? Do you have the money to make sure that they have a USDA inspector there? How can we guarantee them, now that they have gone through all this process and now that Maine has the opportunity to come back, that there will be an inspector?

There is a second facility. We had another poultry grower, Mainely Poultry, that got too big for their 20,000-bird exemption. And so they are teaming up with another poultry operation to have a plant in Gardiner, Maine. So we are hoping that will come online soon.

So this is a big change for us. This is not an area of the country that you have operated in a lot. And they have certainly asked me many times, "Do you think we will really have an inspector when we get to that point?" So I am here today to make sure we talk about this again as they get closer.

Mr. ALMANZA. Sure. All we need is lead time, and it does not take a whole lot of lead time. If we know eight weeks out, we can prepare for that. Obviously, we will need to hire new employees.

But as I said earlier in one of the other questions, we have what we call relief inspectors, which are inspectors—typically we have like a relief inspector for every seven employees that we have. And that is for sick leave, for annual leave, for any type of leave that they take, but also for situations like this. When a new plant opens up, we are going to have to draw from somewhere.

We also have what we call intermittent inspectors, which are basically like substitute teachers. We call them. We only pay them while they are working. And so we have that population as well. So we can take, say, some When Actually Employed (WAEs), put them in full-time positions in one part of the country, and move full-time inspectors on relief to a new facility because obviously, a slaughter facility is going to take more than one inspector. It is going to take multiple inspectors.

So the answer to your question is yes. You can go back home and tell them they will have inspection personnel.

Ms. PINGREE. I am interested in how it operates anyway. Is it likely that over the long run, assuming this is a profitable facility and they stay in business, that there would be an inspector that moves there and is stable and works with that facility all the time? Or will it always be a traveling inspector?

Mr. ALMANZA. I am sorry. Yes. No, we would have permanent employees assigned there. It is cheaper for us to have permanent employees there, and that way we are not paying them per diem and other things for them to be there temporarily.

Ms. PINGREE. Great. I only emphasized the amount of snow and the distance from civilization to make sure that people understand some of these facilities are very remote. But those used to be the centers of agriculture, and we would like to see them coming back.

Mr. ALMANZA. Sure. And I thought it was pretty good that they were able to get in between storms. [Laughter.]

Ms. PINGREE. That is true.

Mr. ALMANZA. They ought to go into the weather forecasting business.

Ms. PINGREE. Yes. That was lucky. Well, thank you very much. I appreciate your answers.

Mr. ALMANZA. Thank you.

Mr. ADERHOLT. Dr. Harris.

FOODBORNE ILLNESSES

Dr. HARRIS. Thank you very much. Thank you, Mr. Almanza, for coming before us. And I do want to thank you for working with the industry on the poultry modernization of the inspections. Poultry is a big industry in my district, and I know that you work with industry, and you brought it up to date, just like you said. We are now doing it in a modern way.

Let me ask you—I have only two questions for you. The first one is that in the fiscal year 2016 budget, once again you propose the collection of a user fee for performance to recover the costs of any additional inspections due to performance. And I guess I will just make a comment; I do not need you to comment.

I have a little concern that I feel it actually creates an incentive for an inspector to find something wrong so that they come back. That is just human nature, and so I just have reservations about that. We have a system. If the inspector finds something wrong, I do not mind you coming back to reinspect. But I do mind levying a fee when you have to do that because again, I just think it creates an incentive for finding something wrong.

And I know in your industry it might not be true. But I will tell you, in other regulatory environments, you talk to business people and they say their regulators come in and they have to find something wrong because they can collect a fine if they do. So they look for the smallest little thing that may or may not make a difference.

But my major question is, this week the FSIS, along with the Centers for Disease Control and Prevention (CDC) and FDA, announced a new method for estimating the percentage of foodborne illnesses associated with specific foods. And it was to look for source attribution for *Salmonella*, *E. coli* 157, *Listeria monocytogenes*—it has been many years since I had to say that—and *Campylobacter*.

Can you provide us with some of the details and how this coordinated effort will create more effective measures for preventing foodborne illnesses?

Mr. ALMANZA. Yes. The Interagency Food Safety Analysis Collaboration (IFSAC) report reported that *Salmonella* illnesses by FSIS-regulated products is at 34 percent. And so they are talking about 10 percent for chicken, 9 percent for beef, 8 percent for pork, 7 percent for turkey; and then for FDA-regulated products, at about 66 percent.

So I think that that is just another opportunity as these discussions move forward about the single food safety agency that those are the kinds of things that we need to engage in and talk about before anything is done.

Dr. HARRIS. So is the plan just to look through the other pathogens—you gave the example of *Salmonella*. Is this to create that same matrix for other pathogens and then to see what is the way to best make foodborne illnesses less prevalent?

Mr. ALMANZA. Yes, absolutely. And then we do, through attribution, to figure out what products are making people sick. Yes, sir.

Dr. HARRIS. I would imagine that what we will find, is that *Salmonella*—the FSIS, it is your products predominately. That will be the largest contributor from what you inspect, would be the *Sal-*

monella contamination, I guess, although *E. coli* may also be significant.

Mr. ALMANZA. *E. coli*, it is significantly down. But that is something that we pay close attention to as well. Yes, sir.

Dr. HARRIS. And just out of curiosity, what are some of the new scientific methods that you are using to detect the contamination?

Mr. ALMANZA. There is a lot of new technology available on the market. We have three labs that we do a lot of testing in, which we have one in Athens, Georgia, one in St. Louis, Missouri, and one in Alameda, California that we send samples to daily for different types of testing.

Dr. HARRIS. What about onsite? Are there onsite tests available for these pathogens as well?

Mr. ALMANZA. Rapid tests?

Dr. HARRIS. Yes. Rapid tests.

Mr. ALMANZA. We do not use that type of technology yet. Obviously, that is something that, with an eye toward the future, we could get there.

Dr. HARRIS. Sure. Listen, again, thank you very much for coming before us. And I do want to thank you for working with the industry on the poultry inspection.

Mr. ALMANZA. Thank you.

Dr. HARRIS. Thank you. I yield back.

Mr. ADERHOLT. Mr. Valadao.

OUTREACH TO SMALL/VERY SMALL PLANTS

Mr. VALADAO. Thank you, Mr. Chairman. And I apologize for being late. I was in another Committee.

I wanted to follow up on a couple comments that were made earlier to two of my colleagues here when it comes to small beef plants. I am a dairy farmer, a small business guy myself, and I have watched a lot of my friends who have not had the opportunity to grow or are still new to the marketplace struggle with regulations because they do not have the resources at hand to be able to get through the regulatory process like others, if it is attorneys or if it is engineers or whatever it may be.

So can you explain a little bit about how FSIS ensures that small and very small processing plants have access to the regulatory information, and if there is any type of—I do not want to say exemption, but relief for those that are in the process of either getting into the business or not wanting to grow but trying to chase that niche market?

Mr. ALMANZA. We have a very, very robust outreach program for small and very small plants, and the goal simply for that program is to help small businesses navigate through the regulatory process. We have a USDA small plant help desk that we fielded over 1,900 inquiries last year, but that is basically what it is targeted at, is helping these new farmers and ranchers deal with FSIS-type issues. Also, we have a web page. Last year we received over 11,000 views from these small plant producers. So I would be glad to provide that information for you if you would like.

Mr. VALADAO. Yes, please.

Mr. ALMANZA. Because I think that that would be helpful in helping your constituents.

[The information follows:]

FSIS OUTREACH TO SMALL AND VERY SMALL PROCESSING PLANTS

There were 1,902 Small Plant Help Desk inquiries and 11,263 small plant webpage views during FY 2014.

The Small Plant Help Desk's toll-free number is 1-877-FSIS-HELP (or 1-877-374-7435). Staff is available 8 a.m. to 4 p.m. Eastern time, Monday through Friday. They can also be reached at *InfoSource@fsis.usda.gov*. The Agency also publishes Small Plant News which has information on new regulatory developments affecting small plants. Finally there is a great deal of information online, including past issues of Small Plant News, located at <http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/svsp>.

NEW POULTRY INSPECTION SYSTEM

Mr. VALADAO. All right. And I think a little bit was asked earlier. This is the joy of being the last man to ask questions. You always get the leftovers. But the FSIS has modernized the inspection process for poultry. Can you elaborate as to your plans regarding the next steps in modernization of the food industry? And when implementing system improvements, do you request stakeholder input?

Mr. ALMANZA. Yes, we do request stakeholder input. But again, as I was saying a little bit earlier, modernization for me is looking internally on how we can do things better, how we can do things smarter. Obviously, preventing foodborne illnesses is number one. That is our number one priority. But if we can go along and save the taxpayers money, that is an added bonus to us as well. That is not our priority. Our priority is reducing foodborne illnesses and deaths. That is what we focus on.

Mr. VALADAO. Well, thank you. I yield back.

Mr. ADERHOLT. Ms. DeLauro, I think we skipped over you a while ago. I apologize for that.

Ms. DELAURO. Fine, Mr. Chairman.

Mr. ADERHOLT. So I will give you a couple—

Ms. DELAURO. We are all running back and forth to hearings.

Mr. ADERHOLT. Yes. Since you are getting back to your Subcommittee, if you need to take a couple extra minutes, go right ahead.

NEW POULTRY INSPECTION SYSTEM

Ms. DELAURO. Thanks so much. I appreciate it.

Thank you and welcome, Mr. Secretary. No surprise that I am concerned about the poultry inspection system. And in my view, once again the USDA is asking Congress to cut FSIS' budget for inspections and to justify that cut on savings from implementing the new poultry inspection system. Let me just ask a series of questions here and where we can go from there.

What about NPIS implementation to date gives you confidence that your agency can anticipate these savings? Are these the last cuts to inspectors or are we going to see further cuts next year? FSIS says it has about 8200 inspectors currently. How many inspectors will FSIS have once the NPIS is fully implemented?

FSIS claims that NPIS will prevent up to 5,000 illnesses from *Salmonella* and *Campylobacter*. How will you confirm that? And if you cannot, then how will you know it is working? What happens

to those numbers if only 50 plants shift to NPIS, or how about a hundred plants?

Mr. ALMANZA. I will try to take them in the order that you gave them to me, and if I skip one, just—

Ms. DELAURO. Fine. I will come back.

Mr. ALMANZA. I feel confident that the New Poultry Inspection System will do exactly what we expect, which is not only reduce foodborne illnesses, but it will put inspectors in the right place, in the right places to perform food safety tasks.

In other words, today, and I said this earlier, if we have inspectors on the line touching every single bird, that is all they can do. They are removing birds, and that is about it. Looking at normal from abnormal, that is basically their function.

Under the poultry inspection system, for every line we are going to have one inspector on the line and one inspector off the line. So they will rotate, one hour off, one hour on. And the one that is off-line will be performing food safety tasks anywhere in that establishment.

So in most cases, we are going to have two, three times more off-line inspectors performing food safety tasks, which is really what we are supposed to be doing.

Ms. DELAURO. Well, in terms of the savings, however, if you have a smaller number of plants that shift to this new process, they will stay with the original configuration of the inspectors. And then how do you anticipate—where does your savings come from that effort?

Mr. ALMANZA. We have already had over 40 plants opt in, and we anticipate that number to keep growing. But the one thing that we need to focus on is obviously the impact that it is going to have on our employees. And we do because we are not going to be moving employees all over the country until we fully implement the system regionally. So that is something that gets lost in the discussion, is we are worried about our employees.

INSPECTOR SHORTAGES

Ms. DELAURO. Well, having been to a slaughterhouse, I think you very well should worry about your employees, given the conditions under which they work. And so I appreciate that. But you mentioned inspectors before, and we are hearing about chronic shortages of inspection personnel across the country that undermines the ability of FSIS to conduct a continuous inspection.

Now, that is not words. That is documented in releases and also by inspectors themselves talking about this. There was an article last September. All of these—recently a release that, “USDA Records Reveal Staffing Shortages Undermining Food Safety.” Now, you are moving to further cut back on inspectors.

So I find it very difficult, then, if I try to make the tie between your inspection system, which I believe will be shortchanged in this process, and then taking a look at how you will be able to prevent up to 5,000 illnesses from Salmonella and Campylobacter. And how are we going to be able to confirm all of that if that is the case? Let me just go to—how many plants does USDA now anticipate moving over to the new inspection system when full implementation is completed?

Mr. ALMANZA. I believe that we are going to get full implementation in the four-year time frame that we projected.

Ms. DELAURO. How many poultry plants does that represent, and how many actual jobs are going to be eliminated in your plan here?

Mr. ALMANZA. In FSIS?

Ms. DELAURO. Your budget says you are going to save \$10 million in fiscal year 2016 through the elimination of 282 staff years by implementing NPIS. How many poultry plants does that represent? How many actual inspection jobs will be eliminated?

Mr. ALMANZA. The 282 staff years is the number of employees.

Ms. DELAURO. 282 staff years. You say you are going to save \$10 million in 2016? You are going to eliminate 282 staff years by implementing NPIS? How many poultry plants does that represent? How many actual inspection jobs will be eliminated?

Mr. ALMANZA. 282 staff years represents one employee for each staff year, so it is 282.

Ms. DELAURO. How many plants does this represent?

Mr. ALMANZA. About a hundred. About a hundred plants.

Ms. DELAURO. So you are saying you are going to lose a hundred inspection jobs eliminated?

Mr. ALMANZA. About 282.

Ms. DELAURO. 282. And then we have got the data that talks about a shortage of inspectors that exists. How many HACCP Inspection Models Project (HIMP) plants have contacted FSIS wishing to move under the parameters of the system?

Mr. ALMANZA. Of the 40, over 40, I believe all the HIMP plants have already opted in.

Ms. DELAURO. Say that again? I'm sorry.

Mr. ALMANZA. Seventy-five percent of the current HIMP plants have already opted in.

Ms. DELAURO. Can you identify those for us? Can you identify who they are for us and for the record?

Mr. ALMANZA. Yes. I can provide that to you. Yes, I can.

Ms. DELAURO. And how many new plants have expressed an interest in shifting to NPIS.

Mr. ALMANZA. We will submit that.

Ms. DELAURO. And will you identify those by name as well?

Mr. ALMANZA. Sure.

[The information follows:]

NEW POULTRY INSPECTION SYSTEM

To date, 43 establishments have submitted letters of interest in the New Poultry Inspection System. These establishments include 24 chicken and turkey HIMP facilities. Thirty-two of the establishments are large, and 11 are small. The 43 establishments are located in all 10 FSIS districts.

Ms. DELAURO. So your view is that you are going to eliminate 282 inspectors positions?

Mr. ALMANZA. Positions.

Ms. DELAURO. And I don't know, and I would like—and we can submit this for the record because I know my time is complete—is there is substantial data on already the crisis in the shortage of inspectors and what that means to our food safety system. So it is hard for me to believe that by cutting back 282, that what we are going to do is to see better results in being able to identify *Sal-*

monella, *Campylobacter*, et cetera. It just does not flow from the way that this process has been set up.

Thank you very much, Mr. Chairman.

SINGLE FOOD SAFETY AGENCY

Mr. ADERHOLT. Let me shift back to something I had mentioned earlier regarding the single food safety agency. And I think we are all interested in the particulars from the President's proposal to consolidate the major federal food safety inspection program under the Department of Health and Human Services (HHS).

As I had stated earlier in my comments, the concern is about food safety would not be a priority of this one large agency. I asked the Secretary yesterday about this issue, but maybe you can tell me a little bit more, whether there is a scientific justification that supports the consolidation of FSIS with the Food and Drug Administration under HHS.

Mr. ALMANZA. Not that I'm aware of, sir.

FOOD RECALLS

Mr. ADERHOLT. The Secretary spoke of long recall times associated with regulated products. If FSIS or your counterparts at FDA can develop ways to improve upon the time that scientists confirm the contamination of a product and when your teams go to work to pull the product from the marketplace, it would appear that we would have fewer reasons to undertake a massive merging of the two critical food safety functions into one massive agency. What have you done over the past four to six years to shorten this recall time?

Mr. ALMANZA. Well, we certainly have improved, A, our methodologies within our labs. That is significant in that the shorter the time period is for the incubation of these pathogens as we test them—that is number one. And number two, we have gotten a lot better at sharing data with CDC and with FDA to be able to try to figure out whose product is it? What is in the ingredients for these products? So we have done a number of things to improve that.

Unfortunately, a lot of these cases we have to trace back to a patient or somebody that has gotten ill from this *Salmonella* or O157:H7, whatever that foodborne illness is, and we have to have a direct link between that pathogen to that patient. In fact, a recent case, we did about 132 investigations, or 131, and the 132nd we were able to link that from the plant to product and the patient, which is critical for us to be able to use that information to be able to do recalls or things of that nature.

TRAVEL COSTS

Mr. ADERHOLT. Let me move on over to regarding travel costs. The Secretary, when he came before the Subcommittee, he confirmed that the savings he offered in the fiscal year 2016 budget was requests for real and that the USDA could find these actual savings.

We note in the information that FSIS is proposing savings of \$2.9 million in operating and travel cost, a little bit over \$2.9 mil-

lion. However, if you look on page 23-17, your budget shows increases in travel cost within the two main travel categories. Can you explain a little about that and the contradictory nature of that?

Mr. ALMANZA. Without looking at it, sir, I cannot.

Did you want to talk about that, Mike?

Mr. YOUNG. No. I do not have any additional details on that off-hand. I think the overall decrease was travel and other operating costs, but we would need to look into the specifics a little bit.

Mr. ADERHOLT. If you could get back with us on the record on that, that would be helpful.

Mr. ALMANZA. Great.

[The information follows:]

PROPOSED OPERATING AND TRAVEL SAVINGS

Of the \$2.9 million in operating and travel savings for FY 2016, the reduction in spending from our base for travel is \$1.7 million; however, there is a non-recurring increase in travel cost of about \$5.1 million due to the training requirements for implementation of the New Poultry Inspection System.

PUBLIC HEALTH INFORMATION SYSTEM

Mr. ADERHOLT. Recently, there seems to be an increase in recalls for imported products that were not presented at the United States point of entry for inspections. What is generating the increase in recall notices, and what is FSIS doing to ensure impaired products does not enter the country would the benefit of an inspection?

Mr. ALMANZA. The current number of recalls associated with that is a direct by-product of our new Public Health Information System in that now we track every single import before it reaches the border. And there is a mechanism within this system that if they do not present that for inspection, it generates a record.

Right now we are having to manually look through all these records, and sometimes that is why you see some of these products that are being recalled that the product entered the country two or three, sometimes even six months earlier. But it is a direct product of that system that captures that data.

We are hopeful that by the end of this fiscal year, we are merging our data systems with Customs and Border Patrol, and it will also be merged with FDA, to where that system will be able to trigger more quickly or close to real time when someone does not stop with an FSIS-regulated product trying to enter the country. So this would be more of an electronic type—

It is an electronic system. Yes, sir.

Mr. ADERHOLT. Instead of going physically through the records then—

Mr. ALMANZA. Yes, then this will all be electronically generated.

Mr. ADERHOLT. Mr. Farr.

SMALL/REMOTE PLANT INSPECTIONS

Mr. FARR. Thank you very much. I want to follow up with Ms. Pingree's questions. And you said that—this is the first time I have heard this. You said if we build it, you will come. You are going to have inspectors there. How do you do that when you have been—discussion of shortages and manpower and—I mean if they are out in the boonies, that is going to—you are going to—how are

you going to fulfill that promise? Is there going to be a fee associated with that cost?

Mr. ALMANZA. No, there will not be a fee. We can do that, and we have done that. And I know there is a lot of discussion of shortages, but to be honest with you, sir, I travel around the country, and I hear about a spot here and a spot there, but it is not as pervasive as people lead you to believe.

Mr. FARR. Well, here is what I would like you to take back and think about because I think you are working for a Secretary that thinks outside the box. And this whole idea of consolidation of how we get better bang for the buck, I am interested in all that. What I am also interested in is that I think government—the taxes people pay are there to serve the people.

We have done some marvelous things in agriculture. I carried the bill that created the California Organic Law, which is the model for the federal law. What we did in the organic in creating it, if you think about it, we just built an entire new industry in agriculture. We required inspections, that you have to be certified that you are organic. And it is still reported by the industry itself. It is the fees that our other colleagues were opposed to because there is no really taxpayer money that goes into it.

We do not have a department of organic inside either the State, Department of Agriculture, or in the Federal Government. But the industry, the growers, pay for the inspectors to come and certify. And in that has been—they come to where the soil is and where the plants are being grown.

And I think that is the kind of movement that is taking place now in animal husbandry where poultry owners and growers and cattle and so on, they say, “We want to be like them. We want to be in the same restaurants, the same farmers markets. We want the same thing.”

The difficulty though with it, and I am not criticizing the law that creates the inspection for all the health safety reasons, but the difficulty is in the process. The bureaucracy has not really changed. It really requires us to go to you in economy of scale. And what happens in the whole meat—and you know this better than I do—and poultry industry is it just turns into a big conglomerate. There is no competition in cattle marketing or beef pricing. It has been taken away.

I think in this free enterprise system, we ought to try to think about how—look at your role, which is really the one that certifies all this, legalizes it, as a way of developing new small businesses in America. How can we be more accessible, more streamlined, more cost-effective in essentially allowing this market? We ought to be teaming up with the Small Business Administration to saying if you want to get into this, there maybe needs to open up more slaughter units. Small business, how can we make sure that that is cost-effective?

See, I think you have a chance to do a lot of opportunity in the meat area, meat and poultry, that we have been doing in the vegetable organic world. But we have got to look at it. We have got to think outside the box. So I am really excited to hear that you can help them. But I will tell you, I have lots of people that are raising cattle that want to just go into the organic business, and they have

to—and I just talked to Congressman Valadao because he is in the business. I do not know anything about this.

And there is all kind—he is a dairy farmer, but he sells a lot of beef, too. But he has to haul his beef to Colorado. He has got to haul his—he is near Hanford where the slaughter plant is. I told him all the people that I represent have to go all the way over the mountains, hundreds of miles away.

And if you are organic, you have got to get in your lines, like going through the Panama Canal. You have got to pay your fee, and you have got to make sure that you are the same—the cow that went in is the carcass that comes out. That is very time-consuming. And then you have got to haul it all the way back.

So if we can bring more of the slaughter process and cut and wrap process to the growers like we have in organic, I think we can really make this industry blossom and surge. So I would like to have you look at—have the Department think about that.

Mr. ALMANZA. There are a lot of entrepreneurs that are trying different things. In fact, I met with a gentleman from California just day before yesterday, and that they have a marketing scheme which is quite, I would say, interesting in that they basically match up the people that want those products with the people that produce these products. And so they are like a go-between in a very interesting way that he came to me with this to make sure that he is going to meet our requirements.

And I think at least from my perspective in understanding the risks that could potentially exist in—what if there is—somebody does not know, but they bring Bessie to market, and there is something radically wrong with that and it is not inspected, that could—

Mr. FARR. I am not against the inspections. I am not fighting that at all. I am just saying that the inspections ought to be more creative in their ability to help entrepreneurs, help startups get into it. And they are—it is highly regulated. And that is the problem we have had, is that we have had people that have tried to take over old slaughterhouses, and they modernize them, and there was not enough economy of scale, they all went bankrupt. Then there are people like the Hearst family and others that are raising cattle that want to get into this. There are some people with some money. So what we just have to do is bring the processing—I guess that is what I am trying—the processing process has to be closer to where the product is being grown. Okay?

Mr. ALMANZA. I would be very interested in knowing those specific locations to try to help you out with that.

Mr. FARR. Thank you.

Mr. ADERHOLT. Mr. Young.

FOREIGN EQUIVALENCE DETERMINATIONS

Mr. YOUNG of Iowa. Thank you, Mr. Chairman.

Mr. Almanza, we have a lot of countries that want to export meat and poultry products into the United States, and I am assuming we have to make sure that they have the same safety standards we have for our own producers here.

Mr. ALMANZA. Yes, sir.

Mr. YOUNG of Iowa. How does that process work to make sure that they do have those same standards?

Mr. ALMANZA. We use an equivalency determination process for them. So they express an interest. We explain the equivalency process to them. They do not have to have a system that is the same as ours. It has to be equivalent to ours. So we go over, and will audit their system and whatever products or product they are wanting to export to the United States.

Generally, for a new country or a country that is interested in exporting to the United States, we have to look at the risks associated with that country, look at different animal diseases that have been present in that country. And so we take all of that into account when we do their equivalency determination, go into the country, look at the plants, look at the processes, make sure they have a HACCP system, and things that assure that their products are going to be as safe as if they are produced in the United States.

Mr. YOUNG of Iowa. How many countries are eligible to export meat and poultry into the U.S.?

Mr. ALMANZA. About 34.

Mr. YOUNG of Iowa. How often do you follow up to see that they have those equivalent standards of safety?

Mr. ALMANZA. We will audit them annually in some manner, which means that there are documents that are generated in these countries that we review every year. But we try to get to every country at least once every three years unless there is some type of problem detected where they have not met our standards or there are some issues around that country. And we will go back as often as every year depending on what the issues are around that.

Mr. YOUNG of Iowa. Have you run into instances where there are certain countries that fall on and then off the list in their—

Mr. ALMANZA. Yes.

Mr. YOUNG of Iowa. How many? Can you name them?

Mr. ALMANZA. Not off the top of my head. I can certainly get that for you, because we do—we will submit that for you. But there are countries that have problems that come and go ever three or four years, five years.

[The information follows:]

FOREIGN EQUIVALENCE DETERMINATIONS

To date, no country has been removed from equivalency regulations once listed as equivalent. However, there have been countries that self-stopped shipping products to the U.S. because of persistent non-compliance with U.S. requirements. Countries that have voluntarily suspended recently include Mexico in 2008 because of numerous non-compliances identified during an audit, and Brazil in 2009 because of prohibited residues in meat identified at the port-of-entry in the United States. FSIS put intensified verification and in-country auditing mechanisms in place once the country asked for re-instatement.

BEEF IMPORTS FROM ARGENTINA AND BRAZIL

Mr. YOUNG of Iowa. Last year, USDA's APHIS issued proposals allowing chilled or frozen beef to be imported from Argentina and Brazil. The beef industry, of course, is concerned about this. They believe there is a lack of transparency there. I am not sure that is true, but you would know better than me. Your agency employees are experts in ensuring that this is safe and that hopefully

there is transparency involved. What is the involvement of FSIS in creating those proposed rules to allow that?

Mr. ALMANZA. Obviously, we are engaged with APHIS in the development of the rule. Outside of that, there are live animal issues that they deal with. And then we focus on the testing after that. Once we go in and make sure that they have all the requirements for equivalency to export those products, then we have a different metric that we use for that.

Mr. YOUNG of Iowa. Thanks for your testimony. Thanks for being here, gentlemen.

Mr. Chairman.

Mr. ADERHOLT. Mr. Bishop.

STATE MEAT AND POULTRY INSPECTION PROGRAMS

Mr. BISHOP. Thank you very much. FSIS currently has approximately 1,700 State-inspected establishments under the 27 State meat and poultry inspection programs through a cost-sharing of up to 50 percent of allowable State costs. What kinds of resources does FSIS provide to States that are participating in the program other than cost sharing? For example, do you provide training support, particularly in terms of industry best practices? And what is the role of industry in this process? How many of the most recent incidences of *Salmonella* or *E. coli* originated in a State-inspected establishment versus a federally-controlled facility?

Mr. ALMANZA. So in answer to your first question, we do training—the training that we have for our own inspection personnel, we also have State inspection program employees that attend that training as well, every type of training that we do. I do not know the numbers of the *Salmonella* and O157:H7 illnesses attributable to State-regulated plants, but I can get that to you and submit it for the record if you would like.

Mr. BISHOP. Thank you.

Mr. ALMANZA. Yes, sir.

[The information follows:]

STATE MEAT AND POULTRY INSPECTION PROGRAMS

With respect to the most recent incidence of *Salmonella* or *E. coli* levels reported by FSIS, state-inspected testing results are not included since States maintain their own testing programs and data.

EGG-LAYING HENS

Mr. BISHOP. Over the past few years we have seen legislative proposals also at the State level which would codify an agreement between the Humane Society of the United States and the United Egg Producers over the treatment of layer hens. Many livestock and farm groups, particularly in Georgia, have expressed grave concerns regarding that kind of legislation and consider the proposals as an unwelcome precedent for federally mandated farm production practices, i.e. interference.

I know that your agency has taken a look at the treatment of egg-laying hens in the past. Has your agency seen or identified an issue or a problem with the current federal regulatory framework which governs the treatment of layer hens?

Mr. ALMANZA. Obviously, we work very closely with APHIS. Their responsibility is with the live animals. And we work very closely with them because ultimately those laying hens will wind up in food production. But to that extent of the agreements with HSUS, we do not get involved in that because basically it is not until the laying hens come to market where we have any type of regulatory responsibility.

CONSUMER COMPLAINT MONITORING SYSTEM

Mr. BISHOP. As you know, the Consumer Complaint Monitoring System is the national surveillance system that records, analyzes, and tracks consumer complaints for food hazards, terrorist attacks on food supply. Can you give us an update on the system and its effectiveness as an identifier of hazards? How many complaints, alerts did it receive last year? And of these, how many were prevented as a direct result of the CCMS? And how would you describe, if you can, any identifiable trends?

Mr. ALMANZA. Well, to me the CCMS, Consumer Complaint Monitoring System, is basically the very beginning of how we start looking at any type of issues that are identified within the public. But we are seeing about a thousand complaints that are registered per year and about 10 percent are attributable to illnesses and injuries.

Mr. BISHOP. Okay. So it is working, then?

Mr. ALMANZA. Yes, sir.

EQUIVALENCE VERIFICATION AUDITS

Mr. BISHOP. FSIS manages and conducts verification audits of food safety inspection systems of those countries that are exporting and are intending to export products into the United States. How many countries are currently eligible to export meat, poultry and egg products into the United States?

And it is my understanding that FSIS initiated a rulemaking process in fiscal year 2014 to add Lithuania to the list of countries that are eligible to export meat into the U.S. Can you explain how the rulemaking process worked, how it works? And have any countries that had eligibility to export to the U.S. been terminated? And if so, which countries were terminated?

Mr. ALMANZA. So there are about 34 countries that export to the United States. Yes, Lithuania is one of the countries that is seeking equivalence. But to my knowledge, we have never quit or terminated any type of agreement with any country because of any export infractions that they have had.

Mr. BISHOP. So is it because you have never found any, because they were corrected, or is it because the regime for inspecting them is not sufficient to—

Mr. ALMANZA. No. It is because we alert them to what the issues are and they have a period of time to correct those issues, and that is how the process works. Sometimes they will take an extended time, and we will self-suspend until they are eligible to export again.

Mr. ADERHOLT. Ms. Pingree.

NEW POULTRY INSPECTION SYSTEM AND WORKER SAFETY

Ms. PINGREE. Thank you very much. I will just ask you one more question. I am very grateful for all the hard work that Congresswoman DeLauro has done on these issues of the poultry slaughter modernization rule, and she has already asked you a lot of good questions. I signed onto one of her requests earlier on about the impact of the increased line speeds on health and safety.

The way I understand it is the line speed was originally proposed at 175 birds per minute. In the final rule, it is 140 birds per minute, so it seems like that is some recognition of the line speed being that fast at 175 could have health and safety concerns both for the workers and for the product. So the way I understand it, there were 20 poultry slaughter plants that were operating at 175 birds per minute under the pilot program, and the final rule exempted those plants.

And they are not just a handful of little plants; they put out between 38 million and 150 million birds a year. So we have got 20 plants that are exempted that are doing a very high volume of slaughtering and processing. If you made the decision to go with 140-bird speed, why did you let 20 plants stay at the high speed if that is not safe?

Mr. ALMANZA. I disagree that they are not safe. I think that they are perfectly fine. I think 175 and 140 are arbitrary numbers. I think that as long as a plant maintains process control and they are able to produce a safe and wholesome product, I do not know why there is a number, to be honest with you.

Ms. PINGREE. And I understand what you are saying, that it is looking at it with a different criteria. My only question would be if the rule was scaled back to 140, I am assuming there was a rationale for that decision. Why did not everybody have to go back to 140?

Mr. ALMANZA. Because in the process of rule, we just chose to exempt them because they had been operating at 175 birds per minute and really, we have not found any food safety concerns. And in fact, none of those plants had ever been associated with a recall, so I do not know where 175, 140, anything in between—it just becomes an arbitrary number. As long as they maintain process control and maintain the product in a way that is safe and healthy for human consumption, I think they are just arbitrary numbers.

Ms. PINGREE. Well, I appreciate your perspective on it, and I guess the jury is still out on how this system will work. And I think I am about to be followed by my colleague who must have many more things to say. But thank you for your testimony.

Mr. ALMANZA. Thank you.

Mr. ADERHOLT. Ms. DeLauro.

HIMP HOG SLAUGHTER PILOTS

Ms. DELAURO. Thank you very much, Mr. Chairman. Sorry to be jumping back and forth, but that is the way of life. I think it is interesting to note, and I just comment as a followup on my colleague Ms. Pingree's question, and having, again, been at the slaughterhouse, our understanding—and these are not my num-

bers—is that at 140 birds per minute, we are looking at an inspector’s ability—the inspector has about 1.8 seconds to look at the bird and make any kind of determination.

So if you can imagine what would happen if you go to 175, it is—you look, and so how that in essence—I keep making reference to—ensures food safety is a little bit mind-boggling to me and I think to others if we are going to improve food safety by making it less able for an inspector to his or her job.

Let me ask a question about—the USDA Office of Inspector General and the GAO issued two critical reports in 2014 regarding FSIS oversight of the HIMP hog slaughter. In addition, there has been a book published entitled “The Chain.” It describes how badly the working conditions are for the workers in some of these plants, how the increased line speeds and the reduction and the number of FSIS inspectors assigned in these plants have contributed to a deterioration of the inspection process.

Recently, four FSIS inspectors working in hog HIMP plants released affidavits corroborating what was alleged in the book. What has been done to address the criticisms? What is the status of the HIMP pilot in hog slaughter? Does USDA intend to propose a rule that expands the HIMP pilot to all hog slaughter plants? And if so, when?

Mr. ALMANZA. I would say this, Congresswoman DeLauro. I read the article about the four employees. I can tell you that I go into these plants. That is not what I hear from our employees. I hear that they have much more responsibility, which is in the food safety arena. They believe that they are doing a more adequate job. So I mean—

Ms. DELAURO. With all due respect, what else are they going to say to their boss?

Mr. ALMANZA. Well, I think that they are brutally honest. I worked on the line with some of these inspectors. They are still working on the line. There is no reason for them not to tell me the truth.

Ms. DELAURO. But the folks who are USDA inspectors condemn hog plant HIMP model. That was just a few weeks ago. Are these people not there? Are they not witnessing these—anyway, with regard to my questions on this effort, what—you do not hear any criticisms, is what I understand from you. You hear no criticism of this?

Mr. ALMANZA. No, that is not what I said. I said in these plants that I go to, and I am including all the HIMP plants, the hog HIMP plants and the poultry slaughter HIMP plants, I have not heard any—

Ms. DELAURO. You do not hear any criticisms? Okay. God is in His heaven, all is right with the world. What is the status of the HIMP pilot in hog slaughter?

Mr. ALMANZA. We have to get a lot more data to be able to determine whether we are going to follow through with rulemaking in swine in HIMP.

Ms. DELAURO. Do you intend to propose a rule that expands the HIMP pilot to all hog slaughter plants?

Mr. ALMANZA. It just depends on what the data tells us.

Ms. DELAURO. What is your timing on—

Mr. ALMANZA. Well, we are just starting a baseline in slaughter for Salmonella. So I would say we are going to need at least a year's worth of data to see what direction we are going to go in.

Ms. DELAURO. And has anybody looked into these concerns that the folks here have expressed?

Mr. ALMANZA. Not that I am aware of.

RANCHO FEEDING CORPORATION

Ms. DELAURO. You will examine to see whether or not there is any accuracy in any of this? Okay.

What is the status of the Rancho Feeding Corporation investigation? Can you give us an update?

Mr. ALMANZA. Well, to my understanding, I guess all the company owners have pled guilty and are all awaiting sentencing. That is the latest that I have heard.

NEW POULTRY INSPECTION SYSTEM POSITIONS

Ms. DELAURO. Okay. Thank you. I just want to make a point with just remaining time. The 282 inspectors that you spoke about, on those, who will be eliminated? What is the situation? What about promises of relocation or retirement? That was in last year's budget, but it is not in this year's budget.

Mr. ALMANZA. So one of the things that we have done is we have sent employees, some of our human resources employees, out there to train our inspectors that are in those plants on how to write their resumes so that they are eligible to apply for the positions that will be in these plants. That is number one.

Number two, we are going to offer early outs of Voluntary Early Retirement Authority/Voluntary Separation Incentive Payments (VERA/VSIP), if you are familiar with those terms, for people to take early retirements if they want to. But most importantly is we are not going to be moving people willy-nilly out of those—

Ms. DELAURO. But are you going to mostly relocate people? Are you going to retire people? Are they losing their jobs?

Mr. ALMANZA. If they choose to retire and they are eligible, they can. But our intent is to offer everybody a full-time job that is impacted by this.

Ms. DELAURO. So your intent is to rehire as many of those people who want to be rehired?

Mr. ALMANZA. We will never un-hire them. We will just move them from one establishment to another, just relocate them. They will not lose their job. They will have a job. We just may have to move them to—

Ms. DELAURO. Are any inspectors losing their jobs?

Mr. ALMANZA. My goal is none. Zero.

Ms. DELAURO. When will we know the results of that and know whether or not people are losing their jobs or the numbers have been diminished?

Mr. ALMANZA. Well, when we begin the implementation piece, which at the current time we are projecting around August, late July, early August.

Ms. DELAURO. Thank you.

Mr. ADERHOLT. Well, thank you, Mr. Under Secretary, for being here today. And of course, Mr. Young, thank you for your presence

here as well and for talking a little bit about FSIS and what is going on there. And I know that we have some followup questions for the record that you will get back to us in a timely manner, and so we appreciate that. And so the hearing is adjourned.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
QUESTIONS FOR THE RECORD
HOUSE AGRICULTURE APPROPRIATIONS SUBCOMMITTEE HEARING
FEBRUARY 26, 2015

QUESTIONS SUBMITTED BY CHAIRMAN ROBERT B. ADERHOLT

New Poultry Inspection System

Mr. Aderholt: Given that the final rule was issued last August, what is the current status of implementing the New Poultry Inspection System? Knowing the Agency has to negotiate with the unions and work with industry, when can we expect these negotiations to be resolved?

Response: The implementation of the New Poultry Inspection System is moving forward as expected, with plants that have expressed an interest in converting to the new system, and who meet the requirements to do so, working with FSIS to complete the conversion. Agency officials and union representatives are in ongoing negotiations at the present time. However, there is no estimated date for completion of these negotiations.

Mr. Aderholt: How many plants have indicated they will implement the new system and will they begin implementing the new system this calendar year?

Response: We have at the present time over forty plants that are actively beginning preparation for implementation of the new system. We expect to begin converting the initial establishments near the end of this fiscal year.

Mr. Aderholt: As this system is implemented in more poultry plants, what do you believe are the top benefits to consumers?

Response: We believe that the new system will result in safer food for the American people. The bacterial testing and sampling requirements are much more stringent for both the plants that join the system, as well as for those that retain their current slaughter system. We believe this will result in lower levels of pathogens on finished products and fewer illnesses as a result.

Catfish Inspection

Mr. Aderholt: When can we expect the final rule to be published and implemented?

Response: The rule is currently under review and we remain hopeful that it will be published soon, and we will begin implementation on the effective date, 90 days after the final rule is published.

Mr. Aderholt: The Committee is hearing that the delay is linked to trade negotiations with Asian countries. Is this true?

Response: There are many factors to consider when a rule is under review.

Mr. Aderholt: How many catfish slaughter and processing plants will be incorporated?

Response: Until the final rule is published, FSIS cannot adequately coordinate with affected siluriforme establishments to verify how many plants will slaughter and process siluriformes under the final rule. The FSIS FY 2016 budget was based on incorporating all 16-18 slaughter establishments in FY 2016. During the 18 month transition phase to full implementation, which begins 90 days after the final rule is published, FSIS will conduct outreach and will verify the number of processing establishments.

Mr. Aderholt: What changes will these plants need to make to meet expectations under the new program?

Response: As the rule is still under review, I cannot respond definitively. Under the proposed rule, the plants would have to follow and physically meet the Sanitation Performance Standard (SPS) and Hazard Analysis and Critical Control Points (HAACP) regulations, create written Standard Operating Procedures (SOP), and comply with FSIS regulations, including 9 CFR 307.1, which requires that FSIS inspection personnel be provided with an office in the establishment.

Mr. Aderholt: How will the new catfish inspection program affect FSIS staff?

Response: Because the draft final rule is still under review, I cannot answer definitively. Under the proposed rule, the primary effect on FSIS Catfish inspection program staff would be a need for increased workforce training. Based on the number of plants in the FDA program, we requested 18 additional positions in the FY 2016 budget for slaughter inspection.

Mr. Aderholt: Can inspection of catfish processing plants be incorporated into existing inspection patrols?

Response: While FSIS believes that it can absorb some of the work for processing plants within existing patrol assignments, FSIS is not able to completely validate this assumption until the rule has been finalized, inspectors begin performing the inspections, the number of processing/distribution establishments is substantiated, and the agency is able to evaluate the workload. The Agency would not be able to accurately project the impact on the staffing level until completion of the implementation phase.

Mr. Aderholt: FSIS will have to make foreign equivalency determinations to ensure all foreign countries wishing to export product to the U.S. has a food safety system equivalent to the U.S. Please explain this process.

Response: As with all requests submitted to FSIS for equivalency, foreign countries would need to submit adequate documentation showing the equivalence of their siluriformes inspection systems with that of the United States. FSIS would evaluate that documentation, and, if FSIS finds the documentation acceptable, FSIS would conduct an on-site audit to verify whether the country's siluriformes inspection system is equivalent to that of the United States. If FSIS finds the audit results acceptable, FSIS would

then initiate the rulemaking process to add the country to the list of countries in FSIS regulations that are allowed to export product to the United States.

Mr. Aderholt: Which countries currently export Siluriformes to the U.S. that would need to have plants determined as equivalent to continue exporting to the U.S.?

Response: All foreign countries would need to submit adequate documentation showing the equivalence of their Siluriformes inspection systems with that of the United States. Based on coordination with other agencies, the following countries exported Siluriformes to the U.S in FY 2014: Vietnam, China, Uganda, Philippines, Bangladesh, Canada, Venezuela, Thailand, Burma, Guyana, French Polynesia, Iceland, Taiwan, Columbia, Dominican Republic, Mexico, Korea, Japan, and Brazil.

Single Food Safety Agency

Mr. Aderholt: Is there is a scientific justification that supports the consolidation of FSIS with the Food and Drug Administration under HHS?

Response: The budget highlights several opportunities for reorganizing and reforming government, including the new proposal to consolidate USDA's Food Safety and Inspection Service and the food safety components at FDA into a single new agency responsible for food safety inspection and enforcement, and foodborne illness outbreak prevention and response. The Administration believes that this is an opportunity to drive efficiency and accountability, prevent duplication, and make government work better and smarter for the American people.

Mr. Aderholt: The Committee is concerned with the long recall times associated with a regulated product. If FSIS or your counterparts at FDA can develop ways to improve upon the time the scientists confirm the contamination of a product and when your teams go to work to pull the product from the marketplace, it would appear that we have fewer reasons to undertake a massive merging of two critical food safety functions into one massive agency. What have you done over the past 4 to 6 years to shorten recall times?

Response: On February 8, 2013, the FSIS policy on "Test and Hold" went into effect. This policy requires official establishments and importers of record to maintain control of product tested for adulterants by FSIS and not allow such products to enter commerce until negative results are received. Additionally, the current FSIS recall system is effective in ensuring the prompt recall of products. FSIS is currently able to convene a recall in a matter of hours. FSIS Recall Management Staff coordinates and convenes the recall committee, which makes recommendations for all recalls of FSIS-inspected meat and poultry products. When a company conducts a recall, which can and does occur 24 hours per day and seven days per week, FSIS notifies the public through a press release or recall notification, which is posted on FSIS' website along with a photo of the product, when practicable. After the recall occurs, FSIS conducts effectiveness checks to ensure that consignees have received notice of the recall and are making reasonable efforts to retrieve and destroy the recalled product or return it to the recalling firm. Upon compliance, the recalling firm is officially notified by letter that the recall is completed, and no further action is expected.

Travel Costs

Mr. Aderholt: Secretary Vilsack came before the Subcommittee to confirm that the savings he offered in the FY 2016 budget request were real and that USDA could find the savings. FSIS is proposing savings of \$2.976 million in operating and travel costs. However, on page 23-17, your budget shows increases in travel costs within the two main travel categories. Can you explain this potential contradiction?

Response: We have both a travel decrease for "operating and travel efficiencies" and travel cost increases associated with implementation of the New Poultry Inspection System (NPIS) and Catfish inspection. Of the \$2.976 million in operating and travel cost savings only \$1.759 million is in travel. The increase in travel is due to the training required for NPIS being greater than the FSIS baseline decrease for operating efficiencies. Therefore the net effect on travel is an increase. Below is a table detailing the changes in travel by initiative:

FSIS FY 16 Travel BOC Adjustments	
(Dollars in Thousands)	
Initiative	Amount
Poultry Slaughter	\$5,177
Catfish Inspection	\$47
Ops & Travel (Travel Portion only)	\$(1,759)
Total	\$3,465

Recalls

Mr. Aderholt: Recently there seems to be an increase in recalls for imported product that was not presented at the U.S. point of entry for inspection. What is generating this increase in recall notices and what is FSIS doing to ensure imported product does not enter this country without the benefit of inspection?

Response: The increase in recalls for imported products that were not presented at the U.S point of entry is attributed to improvements in our system and coordination with Customs and Border Patrol. We are catching more violators than we were able to previously. This increase is actually a sign that our system is working better. The Public Health Information System (PHIS) has improved our real time knowledge of the import shipments that should be inspected on a daily basis. Because of this knowledge, FSIS is more capable of quickly identifying what product shipments did not present for inspection and then pursuing recall action with the appropriate company. Before fielding the import functionality in PHIS, FSIS did not always have real time information about what import product its import personnel should be inspecting. As a result, some products that were not presented for inspection may not have been identified for recall. Now, because of the improvements in PHIS we have the ability to identify these products that "failed to present."

Salmonella

Mr. Aderholt: Your Agency has noted that one of the most challenging issues you face is combatting *Salmonella* contamination. In 2013, FSIS developed the *Salmonella* Action Plan, which includes more aggressive performance standards in poultry parts. FSIS written testimony notes that, "The baseline that the Agency recently completed on parts showed a national prevalence of *Salmonella* of 24 percent."

This number seems rather high so how is the Agency addressing this through the action plan?

Response: We believe that our previous actions with performance standards in young chickens can be a model for reducing *Salmonella* in chicken parts and in establishing new standards for comminuted chicken and turkey products as well. In 2006, FSIS sampling showed that approximately 16 percent of carcass samples that the agency took were positive for this pathogen. By 2014, that number was below 4.5 percent. On January 26, 2015 FSIS issued a notice and request for comments on performance standards for chicken parts and the new standards for comminuted chicken and turkey, and we believe these will have a similar effect when implemented.

Mr. Aderholt: How will the implementation of the New Poultry Inspection System (NPIS) help control *Salmonella* and *Campylobacter*?

Response: NPIS provides increased off-line inspection activities by FSIS inspection program personnel that are directly related to food safety, such as product sampling and verification activities related to sanitation and the establishment's food safety system. Under the other poultry inspection systems that were in place prior to NPIS, inspectors performed many activities that were related to quality defects rather than food safety. Our risk assessment shows that inspection systems that provide increased off-line inspection activities directly related to food safety result in greater compliance with sanitation and HACCP regulations. These off-line inspection activities also lead to poultry carcasses that have lower levels of visible fecal contamination and equivalent or lower levels of *Salmonella* and *Campylobacter* contamination. The peer-reviewed risk assessment estimates that this new approach to inspection will prevent approximately 5,000 foodborne illnesses each year because of projected lower levels of *Salmonella* and *Campylobacter*.

Other requirements in the final rule applied to all young chicken and turkey establishments. For example, as a result of the final rule for poultry slaughter modernization, most poultry slaughter plants have begun sampling their products for microorganisms at two points on the slaughter line, both before and after the chiller (very small and very low volume plants that operate under traditional inspection are only required to check at one point). Through this new testing, establishments verify whether they are controlling the presence of enteric pathogens like *Salmonella* and *Campylobacter* on their products and fecal contamination of the product.

Mr. Aderholt: In December 2014 Wal-Mart announced their Poultry Safety Initiative where the retailer is partnering with FSIS and the Center for Disease Control's National Center for Emerging Zoonotic Infectious Diseases (NCEZID) to decrease *Salmonella* and *Campylobacter* in chicken products provided by poultry suppliers. Please provide more information about this program such as the role and responsibilities of FSIS, NCEZID, and Wal-Mart

in this partnership; the expected duration of the new program; and the new requirements poultry suppliers must comply with by June 2016.

Response: FSIS does not have a role or responsibility in the Walmart program and is unsure of NCEZID's exact role in the program. Walmart informed FSIS about the program shortly before it was publicly announced because Walmart believed that the program was directly responsive to similar efforts underway by FSIS to reduce the instances of Salmonella and Campylobacter, specifically the FSIS Strategic Performance Working Group initiatives, including the issuance of FSIS pathogen reduction performance standards. As has been past experience, FSIS expects that Walmart will keep FSIS informed about the program's progress.

Rancho Investigation

Mr. Aderholt: The Office of the Inspector General (OIG) has completed its investigation into a California meat processing plant where clearly criminal activities occurred. Did OIG have any recommendations for FSIS in regards to improving protocols or suggesting measures that can be taken to prevent these types of willful acts from occurring again? Is FSIS conducting an audit and/or investigation of this facility and the actions of FSIS inspectors? If so, when will the investigation be complete?

Response: The OIG investigation involving Rancho Feeding focused on criminal activities by the subjects at the establishment. The OIG report identified the criminal behaviors that ultimately led to the convictions of the subjects. FSIS has reviewed the OIG report and is assessing internal processes to determine whether earlier detection of these willful acts can be made as the Agency is always interested in improving processes. Criminal acts by definition involve the intent to knowingly violate the law; and early detection is not always possible. In this case, surveillance practices by the Agency were successful in identifying alleged criminal activity and engagement of the investigative process. While we cannot comment on internal personnel matters due to privacy concerns, the agency is always interested in learning how we can improve our enforcement.

Hog HIMP

Mr. Aderholt: There are five pork plants that have been participating in HIMP. Both the OIG and GAO have issued reports about the Hog HIMP program and there has been some recent concerns raised by former FSIS inspectors. What has been the Agency's response to OIG, GAO, and concerns by the former inspectors?

Response: OIG issued its final report on "FSIS Inspection and Enforcement Activity at Swine Slaughterhouses" in May 2013. The report contained one finding related to oversight at market hog HIMP establishments, and 4 recommendations related to this finding. In response to OIG's report, FSIS published its final report in November 2014 on the Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs, reviewed instructions in FSIS Directives 5020.1 and 6100.3, and required all market hog HIMP establishments to submit signed letters agreeing to follow the *Salmonella* Initiative Program letter and protocol. GAO published its final report on the HIMP program, "Food Safety: More Disclosure and Data Needed to Clarify Impact of Changes to Poultry and Hog Inspections," in August 2013. In this

report, GAO recommended that FSIS evaluate the market hog pilot project. In response to this recommendation, FSIS published its final report on the Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs.

Equivalency

Mr. Aderholt: How many countries are eligible to export products to the U.S.?

Response: As of February 26, 2015, 34 countries are eligible to export products to the U.S.

Mr. Aderholt: When a country is determined eligible to export, how often does FSIS follow up to ensure approved countries maintain equivalent standards?

Response: FSIS uses a three-part approach for ongoing equivalence verifications of the food regulatory systems of countries that export meat, poultry, or processed egg products to the United States that includes; (1) document reviews, (2) on-site system audits, and (3) Point-of-Entry (POE) reinspections. FSIS regularly conducts on-site audits of the eligible foreign inspection systems to ensure they remain equivalent to the U.S. system and determines the scope and frequency of on-site systems audits based on its analysis of the results of its document reviews and ongoing assessment of a country's performance. This performance-based approach allows FSIS to direct its audit resources to foreign food regulatory systems that appear to pose a greater risk to public health than other foreign systems. In February 2015, FSIS announced its new Web-based Self-Reporting Tool (SRT) that was sent to foreign countries to report information on their food regulatory systems for the purpose of establishing that the systems continue to be equivalent to that of the United States' system. A foreign country's inspection system is then responsible for certifying individual exporting establishments to FSIS and for providing annual re-certification documentation.

Staffing

Mr. Aderholt: Please provide information for fiscal years 2012, 2013, 2014, and 2015 to date, that shows the number of staff (broken out by permanent and other-than-permanent) and vacancies nationally and by district.

Response: Submitted for the record is the number of staff and vacancies nationally for fiscal years 2012, 2013, 2014 and 2015, as of February 26, 2015.

[The information follows:]

Mr. Aderholt: FSIS has launched the Actual Time Automation (ATA) initiative. Please explain this initiative and the process required to document work hours in the plants. Describe the long term plan to move to a fully automated paperless system including expected efficiencies and cost savings.

Response: FSIS launched the ATA initiative to upgrade the Time and Attendance (T&A) system for reimbursable overtime inspection so that the Agency can simultaneously record inspectors' time worked and corresponding billing data electronically. Once ATA is fully implemented, FSIS will have a single data source for payroll and billing purposes, enhance the efficiency and accuracy of our timekeeping and billings to plants electronically, improve accuracy of timekeeping records, and reduce liability risks due to T&A issues.

FSIS' billing and time accounting processes are currently separate parallel operations that were not easily reconcilable. Employees have to prepare T&A submissions each pay period to record their hours worked, leave, etc. They must submit a separate paper billing document to record all overtime, holiday and voluntary services worked that should be billed to an establishment. Paper documents are sent to the Financial Service Center (FSC) to be entered into the FSIS billing system. These separate processes sometimes caused FSIS to collect fewer fees from industry than it should have collected in a timely manner. As part of the ATA initiative, FSIS has developed new business processes to help Agency personnel ensure that industry is billed timely at the correct rate and for the correct amount of time. Integrating time and billing input improves the process while enabling a more accurate billing method.

By combining the T&A and billing processes, FSIS will eliminate most of the discrepancies between the T&A and billing documents and improve the accuracy of billings. Automating these processes institutionalizes them, improves timeliness, and eliminates much of the paper documents.

When ATA is fully automated, FSIS will:

- Eliminate the submission of approximately 256,000 paper billing documents per year.
- Eliminate approximately 6,500 hours annually of employee time dedicated to capturing billing data, therefore allowing employees to dedicate more time to perform inspection services.
- Significantly reduce discrepancies between T&A and billing data. Therefore, FSIS will recuperate reimbursable activities performed that were not accurately captured on the paper billing document process.
- ATA will enhance internal controls.
- Ensure that individual plants are not erroneously billed and the risk of fraud, waste, and abuse is mitigated.

Mr. Aderholt: Please provide information for fiscal years 2012, 2013, 2014 and 2015 to date regarding staff bonuses and awards by all grade levels, including SES.

Response: The Awards for fiscal years 2012, 2013, 2014 and 2015 through 26 February are provided for the record.
[The information follows:]

Grade	FY 2012		FY 2013		FY 2014		FY 2015	
	# of Awards	Total Dollars	# of Awards	Total Dollars	# of Awards	Total Dollars	# of Awards	Total Dollars
AI-03	3	\$ 1,132.42	1	\$1,307.00				
AI-04	182	\$ 255,887.28	91	\$178,755.00	59	\$131,092.00		
AO-01	30	\$ 11,921.80	7	\$3,429.00	3	\$2,456.00		
AO-02	228	\$ 172,514.15	117	\$95,932.27	69	\$68,197.00		
AO-03	23	\$ 17,108.50	19	\$16,095.49	11	\$9,661.00		
AP-01	4	\$ 1,299.16	4	\$1,876.00	6	\$3,095.00		
AP-02	3	\$ 945.42	1	\$538.00	3	\$1,940.00		
AP-03	249	\$ 208,683.85	130	\$150,484.05	95	\$131,719.00		
AP-04	1,942	\$ 2,355,529.74	1022	\$1,884,004.82	866	\$1,820,482.00		
AP-05	256	\$ 350,349.73	149	\$285,044.61	145	\$304,892.00		
AP-06	32	\$ 53,365.11	22	\$53,662.00	17	\$43,318.00		
AP-52	589	\$ 1,010,729.86	282	\$732,482.52	227	\$671,804.00		
AP-62	142	\$ 308,564.02	77	\$214,853.82	51	\$150,438.00		
AS-01	9	\$ 1,724.33						
AS-02	6	\$ 3,604.47	1	\$576.00	4	\$2,693.00		
AS-03	21	\$ 16,766.90	16	\$14,019.00	10	\$10,090.00		
AS-04	11	\$ 8,202.63	7	\$7,227.00	4	\$4,455.00		
ES-00	13	\$ 106,532.00			15	\$134,259.00		
GM-13					3	\$785.56	3	\$4,159.00
GS-01					3	\$621.36		
GS-02							1	\$477.00
GS-03					1	\$500.00		
GS-04					5	\$1,800.00	8	\$4,493.04
GS-05	37	\$13,540.40			12	\$3,486.04	10	\$5,514.82
GS-06					10	\$3,215.76	24	\$15,004.52
GS-07	1,035	\$ 426,373.65	681	\$266,686.33	1,016	\$367,560.34	99	\$61,289.23
GS-08	497	\$ 219,423.32	379	\$157,709.11	501	\$196,321.04	31	\$7,459.37
GS-09	1,124	\$ 503,010.39	819	\$345,098.86	1,152	\$440,246.78	212	\$111,654.29
GS-10	267	\$ 120,682.36	160	\$66,776.12	301	\$113,132.00	95	\$122,647.31
GS-11					29	\$11,815.12	79	\$65,476.25
GS-12					425	\$166,966.64	693	\$1,241,257.56
GS-13					267	\$136,211.94	512	\$1,034,763.92
GS-14					121	\$67,003.72	261	\$542,948.48
GS-15					42	\$40,787.16	82	\$237,849.66
SL-00	4	\$ 18,133.00			4	\$4,168.52		
WG-04	11	\$ 8,217.78			8	\$2,484.72	9	\$4,589.76
WG-11	2	\$ 1,525.95			1	\$698.81	3	\$3,053.08
WL-04	2	\$ 1,180.19			1	\$250.00	2	\$1,537.00
Total	6,722	\$6,196,948.41	3,985	\$4,476,557	5,487	\$5,048,646.51	2,124	\$3,464,174.29

FY 2013 awards were partially impacted by sequestration. The Public Health Human Resources System pilot, a project used to test pay banding, flexible pay setting and pay-for-performance, was terminated in FY 2014 and the employees returned to General Schedule grades.

Mr. Aderholt: What are the total annual costs to operate the three FSIS laboratories?

Response: The estimated FY 2015 cost to operate the three FSIS laboratories is approximately \$36.3 million.

Mr. Aderholt: What are the total annual costs by location?

Response: Total annual cost by location is provided for the record.

[The information follows:]

FSIS Laboratories	Eastern Lab* (Athens, GA)	Midwestern Lab (St. Louis, MO)	Western (Alameda, CA)
Total	\$19,127,494	\$9,635,854	\$7,512,581

* The Eastern Laboratory includes frontline laboratory and employees who support Quality Assurance operations, Food Emergency Response Network, outbreak response staff responsible for genetic/molecular activities such as Pulsed-Field Gel Electrophoresis and antimicrobial sensitivity testing.

Mr. Aderholt: How many FTE are assigned to each laboratory?

Response: FTEs assigned to each laboratory is provided for the record.

[The information follows:]

FSIS Laboratories	Eastern Lab* (Athens, GA)	Midwestern Lab (St. Louis, MO)	Western (Alameda, CA)
Number of Full-time Equivalents (FTEs)	129	76	47

* The Eastern Laboratory includes frontline laboratory and employees who support Quality Assurance operations, Food Emergency Response Network, outbreak response staff responsible for genetic/molecular activities such as Pulsed-Field Gel Electrophoresis and antimicrobial sensitivity testing.

Mr. Aderholt: Please provide an object class breakout for each of the laboratories.

Response: The object class breakout for each of the laboratories is provided for the record.

[The information follows:]

	TOTAL	Eastern Lab	Mid West Lab	West Lab
Salaries & Benefits (11xx & 12xx)	\$24,950,712	\$12,866,494	\$6,806,637	\$5,277,581
Personnel Travel	\$101,217	\$84,000	\$12,217	\$5,000
Transportation of Things (22xx)	\$10,526	\$6,000	\$4,026	\$500
Rents & Communications (23xx)	\$96,307	\$48,000	\$28,307	\$20,000
Printing (24xx)	\$500	\$0	\$0	\$500
Training (2523)	\$57,973	\$50,000	\$2,973	\$5,000
All Other Services (25xx)	\$5,157,100	\$3,653,260	\$1,103,840	\$400,000
Supplies (26xx)	\$3,063,034	\$1,359,740	\$893,794	\$809,500
Equipment (31xx)	\$2,838,560	\$1,060,000	\$784,060	\$994,500
TOTAL	\$36,275,929	\$19,127,494	\$9,635,854	\$7,512,581

Mr. Aderholt: What percentage of baseline testing is being conducted by FSIS laboratories and what percentage of baseline studies does FSIS contract out?

Response: In FY 2015, the percentage was 50% for contracted baseline studies and 50% for in-house work. FSIS is conducting two baseline activities: a Beef/Veal Carcass baseline study, conducted in-house by FSIS laboratories, and a Pork Exploratory Baseline Study, being outsourced to a contract lab.

Mr. Aderholt: What is the annual cost of contracting out FSIS baseline studies?

Response: Costs for the pork exploratory study totaled \$345,000.

Public Health Information System

Mr. Aderholt: Please provide a full summary of the PHIS project with dates, milestones and full costs for each year beginning with fiscal year 2010.

Response: The information is provided for the record.

[The information follows:]

Date	Release Milestone
10/1/2008 - 4/10/2011	Design and planning
04/11/2011	Initial PHIS release (Domestic and Lab Sampling)
05/29/2012	Import module deployment Established automated data transfer connection between PHIS and Custom and Border Patrol's Automated Commercial Environment (ACE)/International Trade Data System (ITDS)
09/11/2012	PHIS Disconnected State (DCU) deployment
01/27/2013	Industry deployment
04/22/2013	PHIS State deployment
08/04/2013	Enhancements and fixes for Import module, introduction of electronic certification (eCert) with foreign countries
09/04/2013	Questionnaire Redesign deployment
03/09/2014	Lab Capacity Redesign deployment
06/29/2014	Enhancements and fixes Food Safety Assessment (FSA) and deployment of Compliance Investigator Sampling Tool
07/27/2014	Self Reporting Tool (SRT) Online and Foreign Country Enrollment deployment
09/14/2014	Component Analysis Verification Form (CAVF) and Foreign Equivalence Verification (FEV) deployment; Export module code delivery
11/16/2014	Enhancements and fixes for Import module, Industry Reports, Establishment profiles, and Lab sampling
01/25/2015	Enhancements and fixes for Import module and staff year calculations; Help Button deployment

The table below shows full cost associated with PHIS since FY 2007:

Fiscal Year	Development, Modernization & Enhancement and Ops & Maintenance	Staffing	Total
FY 2007 - FY 2011*	\$37,298,555	\$7,886,113	\$45,184,668
FY 2012	\$6,569,231	\$825,249	\$7,394,480
FY 2013	\$6,730,000	\$859,797	\$7,589,787
FY 2014	\$6,559,992	\$1,729,948	\$8,289,940
FY 2015 est.	\$6,190,793	\$1,781,846	\$7,972,639

* FY2007-2011 expenditures were summed during re-baselining.

Mr. Aderholt: What are the current benefits of PHIS?

Response: The information is provided for the record.

[The information follows:]

PHIS offers FSIS a number of important benefits, including:

- Strengthening FSIS' data infrastructure by arming and empowering FSIS inspectors with the tools needed on the ground to carry out FSIS' food safety mission more effectively.
- Proactively staying ahead of food safety threats by more rapidly and accurately identifying emerging trends, patterns, and anomalies in data.
- Improving access to data and efficiency in using information/analysis by focusing on the needs of frontline operations, including information related to on-the-spot decisions, pathogen-sampling tasks, trends in Noncompliance Records, and humane handling practices.
- When used in conjunction with other public health information, it helps by targeting inspection activities and improving inspection personnel's ability to quickly and accurately identify trends and vulnerabilities so that FSIS can rapidly respond to hazards and head off problems.
- Allows our ten District Offices to better adjust inspection assignments if the need arises.
- Import inspectors are able to rapidly receive data on shipments which will reduce the amount of imported product entering commerce without FSIS inspection.
- Our laboratories are able to determine capacity-sample load prior to product samples arriving for analyses.
- Through an innovative data sharing agreement with the CDC, PHIS allows for exchanging FSIS data between CDC's PulseNet and FSIS' PHIS systems, leading to better risk management and improved public health.
- Enables greater exchange of information between FSIS and other federal agencies involved in tracking cross-border movement of import and export shipments of meat, poultry and processed egg products because PHIS will establish an electronic interface with U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE), once ACE is compatible.
- Benefits industry by providing establishments access to certain data and enabling industry to request FSIS reports electronically.

Mr. Aderholt: For how many locations (plants) is PHIS available?

Response: PHIS was developed as an information tool primarily to help FSIS personnel perform their food safety missions and is not technically located in establishments. However, the following establishments regulated by FSIS are identified in PHIS:

- 5,400 Active Domestic Establishments
- 738 Voluntary Establishments *
- 155 Active Import Establishments
- 1,300 Active Foreign Establishments

* Voluntary establishments are those where FSIS is not mandated by FMIA, PPIA or EPIA to provide inspection but does so at the request of producers seeking the USDA mark of inspection.

IT Security

Mr. Aderholt: What is the current cost of IT security for the entire agency? Please provide a breakout by field and headquarters?

Response: FSIS does not breakout security costs by field and headquarters as these are enterprise services applied across all IT networks and services. Below is a FY 2015 breakdown by security tools, service

contracts to support cyber security activities, and costs associated with government FTEs.

[The information follows:]

Security Tools \$ 940,621
 Service Contracts \$4,419,401
 Staffing \$1,265,000

Total FY 2015 Security costs \$6,625,022

Mr. Aderholt: Please provide the total amount spent on Information Technology, broken out by Development, Modernization and Enhancement; Operations and Maintenance; and Salaries and Benefits for fiscal years 2012, 2013, 2014 as well as what is planned in fiscal years 2015 and 2016.

Response: The information is provided for the record:

[The information follows:]

Funding	FY12	FY13	FY14	FY15	FY 16
DME	\$0	\$0	\$0	\$0	\$0
O&M	\$5,506,492	\$4,733,052	\$5,198,295	\$ 5,360,022	\$5,520,823
S&B	\$1,227,428	\$1,239,826	\$1,252,350	\$1,265,000	\$1,277,650
Total	\$6,733,920	\$5,972,888	\$6,450,645	\$6,625,022	\$6,798,473

Mr. Aderholt: Has FSIS experienced any breaches of security in the past three years? If so, please provide general details of the events.

Response: FSIS has not had a security breach in the past three years.

Inspections by Foreign Countries

Mr. Aderholt: Please provide a list of countries, dates, and plants visited by representatives of foreign countries in fiscal years 2013, 2014, and 2015 to date.

Response: Please find a list of countries, dates and plants visited by representatives of foreign countries below.

[The information follows:]

FY 2013			
<u>Visiting Country</u>	<u>Dates of Visit</u>	<u>Name of Establishment Visited</u>	<u>Primary Commodity of Reason to Audit Establishment</u>
Japan	December 17 - 20, 2012	Greater Omaha Packing Co., Omaha, NE	Beef
		Swift Beef Co., Greeley, CO	Beef
		Cargill Meat Solutions Corp., Ft. Morgan, CO	Beef
Canada	February 5 - 22, 2013	OSI Industries, Oakland, IA	Pork
		John Volpi and Co., St. Louis, MO	Pork
		ConAgra Foods, Milton, PA	Pork
		Clemens Food Group, Hatfield, PA	Pork
		Cargill Meat Solutions, Dodge City, KS	Beef
		Tip Top Poultry, Inc., Marietta, GA	Poultry
		National Beef Packing Co., Dodge City, KS	Beef
		Swift Beef Co., Grand Island, NE	Beef
		SK Food Group, Reno, NV	Beef
		Swift Pork Co., Marshalltown, IA	Pork
Thailand	July 22 - August 1, 2013	Greater Omaha Packing Co., Omaha, NE	Beef
		Cargill Meat Solutions Corp., Schuyler, NE	Beef
		Superior Farms, Dixon, CA	Beef
		Richmond Wholesale Meat, Richmond, CA	Beef
		Rhea Cattle Co./Dehy Alfalfa Mills, Brothers Feed Service LLC, Elkhorn Valley Animal Care in Arlington, NE	Feed Lot, Feed Mill
		FSIS Alameda Western Lab	Laboratory
European Union	April 9 - 22, 2013	Creekstone Farms, Arkansas City, KS	Beef
		J.F. O'Neill Packing, Omaha, NE	Beef
Uruguay	September 9 - 13, 2013	Pilgrim's Pride, Canton, GA	Poultry (chicken)
		Fieldale Farms, Murrayville, GA	Poultry (chicken)

FY 2014			
<u>Visiting Country</u>	<u>Dates of Visit</u>	<u>Name of Establishment Visited</u>	<u>Primary Commodity of Reason to Audit Establishment</u>
Mexico	November 7 - 22, 2013	Cargill Meat Solutions, Friona, TX	Beef
		Swift Beef Co., Cactus, TX	Beef
		Farmland Foods, Milan, MO	Pork
		Triumph Foods, LLC, St. Joseph, MO	Pork
		Swift Pork Co., Marshalltown, IA	Pork
		Tyson Fresh Meats, Storm Lake, IA	Pork
		Preferred Beef Group, Booker, TX	Beef
		Emmpak Foods, Inc., Milwaukee, WI	Beef
		Tyson Fresh Meats, Inc., West Logansport, IN	Pork
		Indiana Packers Corp., Delphi, IN	Pork
		Cargill Meat Solutions, Beardstown, IL	Pork
		Cargill Meat Solutions, Ottumwa, IA	Pork
Russia	December 9 - 19, 2013	Peco Food, Inc., Canton, MS	Poultry (chicken)
		Jennie-O Turkey Store, Barron, WI	Poultry (turkey)
		Sanderson Farms, Inc., Collins, MS	Poultry (chicken)
		Jennie-O Turkey Store, Faribault, MN	Poultry (turkey)
		Peco Foods, Inc., Bay Springs, MS	Poultry (chicken)
		Tyson Valley Distribution Center, Russellville, AR	Poultry
		Koch Foods of Ashland, Ashland, KY	Poultry (chicken)
		Tyson Foods, Inc. Hope, AR	Poultry (chicken)
		Tyson Foods, Inc., Albertville, AL	Poultry (chicken)
		Koch Foods, LLC, Morristown, TN	Poultry (chicken)
		Koch Foods, LLC, Chattanooga, TN	Poultry (chicken)
		Nordic Logistics and Warehousing, Charlotte, NC	Poultry
		JCG Foods of Georgia, Pine Mountain, GA	Poultry (chicken)
		Mountaire Farms, Lumber Bridge, NC	Poultry (chicken)

<u>Visiting Country</u>	<u>Dates of Visit</u>	<u>Name of Establishment Visited</u>	<u>Primary Commodity of Reason to Audit Establishment</u>
		Pilgrim's Pride, Douglas, GA	Poultry (chicken)
		Butterball, LLC, Mt. Olive, NC	Poultry (chicken)
Republic of Korea	November 10 - 22, 2013	Hormel Foods Corp, Fremont, NE	Pork
		Amick Farms, LLC, Hurlock, MD	Poultry (chicken)
		Case Farms, Dudley, NC	Poultry (chicken)
		Swift Pork Co., Marshalltown, IA	Pork
		Mountaire Farms of NC, Lumber Bridge, NC	Poultry (chicken)
		Cargill Meat Solutions Corp., Ottumwa, IA	Pork
		Smithfield Packing, Clinton, NC	Pork
		Quality Pork Processors, Austin, MN	Pork
		Tyson Foods, Union City, TN	Poultry (chicken)
		Peco Foods of Mississippi, Sebastopol, MS	Poultry (chicken)
Japan	December 3 - 13, 2013	National Beef Packing Co., Dodge City, KS	Beef
		Tyson Fresh Meats, Lexington, KS	Beef
		Swift Beef Co., Grand Island, NE	Beef
		Cargill Meat Solutions Corp., Schuyler, NE	Beef
		More Than Gourmet, Akron, OH	Beef
Hong Kong	January 6 - 10, 2014	Cargill Meat Solutions, Schuyler, NE	Beef
		Volk Farm/J&C Simmental (Cow/Calf Visit), Arlington, NE	Cow/Calf Farm
		Rhea Cattle Company (Feedlot), Arlington, NE	Feedlot
		Purina Animal Nutrition (Feed mill), Lincoln, NE	Feed mill
		Darling International Inc. (Renderer), Sioux City, IA	Renderer
Taiwan	March 3 - 13, 2014	Tyson Fresh Meats, Inc., Holcomb, KS	Beef
		Cargill Meat Solutions, Dodge City, KS	Beef

<u>Visiting Country</u>	<u>Dates of Visit</u>	<u>Name of Establishment Visited</u>	<u>Primary Commodity of Reason to Audit Establishment</u>
		National Beef Packing Co., Dodge City, KS	Beef
		Tyson Fresh Meats, Inc., Amarillo, TX	Beef
		Swift Beef Co., Greeley, CO	Beef
Malaysia	April 28 - May 9, 2014	Seaboard Farms, Guymon, OK	Pork
		Triumph Foods, LLC, St. Joseph, MO	Pork
		Hormel Foods Corp., Fremont, NE	Pork
		Swift Pork Co., Worthington, MN	Pork
		Tyson Fresh Meats, Inc., Waterloo, IA	Pork
Ecuador	September 22 - 24, 2014	JBS Souderton Inc., Souderton, PA	Beef
		Clemens Food Group, LLC, Hatfield, PA	Pork/Casings

FY 2015 (As of 2/26/2015)			
<u>Visiting Country</u>	<u>Dates of Visit</u>	<u>Name of Establishment Visited</u>	<u>Primary Commodity of Reason to Audit Establishment</u>
Malaysia	October 14 - 21, 2014	Tripple J Family Farm, Buffalo Lake, MN	Beef
		Responsible Transportation, LLC, Sigourney, IA	Beef
		Turkey Valley Farms, Marshall, MN	Poultry (Turkey)
Chile	October 20 - 24, 2014	Cargill Meat Solutions, Schuyler, NE	Beef
		Rhea Cattle Company, Arlington, NE	Feed Lot
		Purina Mills Inc, Lincoln, NE	Feed Mill
		Prarieland Dairy, Firth, NE	Dairy
		National Veterinary Services Laboratory, Ames, IA	Laboratory
Taiwan	October 20 - 31, 2014	Mountain Meadows Lamb, Denver, CO	Lamb
		JBS Swift & Co, Greeley, CO	Lamb
		Mountain States Rosen, LLC, Greeley, CO	Lamb
		Superior Farms, Dixon, CA	Lamb
		FSIS Alameda Laboratory	Laboratory

<u>Visiting Country</u>	<u>Dates of Visit</u>	<u>Name of Establishment Visited</u>	<u>Primary Commodity of Reason to Audit Establishment</u>
Republic of Korea	October 20, - October 31, 2014	Creekstone Premium Beef, LLC, Arkansas City, KS	Beef
		Tyson Fresh Meats, Amarillo, TX	Beef
		Cargill Meat Solutions, Friona, TX	Beef
		J. F. O'Neill Packing Co., Omaha, NE	Beef
		National Beef Packing, LLC, Dodge City, KS	Beef
		National Beef Packing, LLC, Liberal, KS	Beef
		Cargill Meat Solutions, Schuyler, NE	Beef
		Swift Beef Co., Dumas, TX	Beef
		Swift Beef Co., Greeley, CO	Beef
		Cargill Meat Solutions, Ft. Morgan, CO	Beef
Japan	November 2 - 12, 2014	Washington Beef LLC, Toppenish, WA	Beef
		JBS Swift, Tullensson, AZ	Beef
		Manning Beef LLC, Pico Rivera, CA	Beef
		FSIS Alameda Laboratory	Laboratory
Vietnam	November 12 - 22, 2014	Cargill Meat Solutions, Schuyler, NE	Beef
		Smithfield Farmland Corp, Crete, NE	Pork
		Tyson, Vienna, GA	Poultry
		Pilgrim's Pride, Athens, GA	Poultry
		FSIS Athens Laboratory	Laboratory

User Fees

Mr. Aderholt: Please provide a list of user fees currently charged by FSIS. Specifically, please list the type, rates, billings and collections for each.

Response: FY 2015 collections to date are provided for the record.

[The information follows:]

Note-Difference between billed and collected is due to billing cycles.

USER FEE TYPE	RATE IDENTIFIER	TOTAL BILLED	TOTAL COLLECTED
EGG REIMBURSABLE	BASE	\$82.74	\$55.41
EGG REIMBURSABLE	OVERTIME	\$2,990,993.05	\$2,003,158.95
EGG REIMBURSABLE	HOLIDAY	\$287,490.00	\$192,540.79
VOLUNTARY	BASE	\$3,346,256.75	\$2,270,328.72
VOLUNTARY	OVERTIME	\$1,912,746.73	\$1,297,737.79
VOLUNTARY	HOLIDAY	\$210,484.00	\$142,806.70
MEAT AND POULTRY REIMBURSABLE	BASE	\$56,208.04	\$36,837.88
MEAT AND POULTRY REIMBURSABLE	OVERTIME	\$71,846,731.21	\$47,087,234.83
MEAT AND POULTRY REIMBURSABLE	HOLIDAY	\$14,450,042.75	\$9,470,334.21
	TOTAL	\$95,101,035.27	\$62,501,035.27

QUESTIONS SUBMITTED BY CONGRESSMAN KEVIN YODER

Consolidation of the Agency

Mr. Yoder: (From written testimony) "The President is again asking Congress for authority to submit fast-track proposals to reorganize or consolidate Federal programs and agencies to reduce the size of Government or cut costs. With this authority, the Administration is proposing to consolidate the FSIS and the food safety components of the Food and Drug Administration to create a single new agency within the Department of Health and Human Services."

If fast-track proposals are granted to POTUS and your Agency is in fact reorganized or consolidated, how do you plan to keep morale high and ensure that the services your agency provides, during the "meantime," remain at the highest possible quality assurance levels to protect the American public?

Response: FSIS' core mission is to protect the public health. As long as FSIS is at the discussion table, FSIS employees will continue to provide the highest public quality assurance level to protect the public.

Mr. Yoder: Additionally, how do you see this transition playing out?

Response: The Budget highlights several opportunities for reorganizing and reforming government, including the new proposal to consolidate USDA's Food Safety Inspection Service and the food safety components at FDA into a single new agency responsible for food safety inspection and enforcement, and foodborne illness outbreak prevention and response. The Administration believes that this is an opportunity to drive efficiency and accountability, prevent duplication, and make government work better and smarter for the American people.

Salmonella Action Plan

Mr. Yoder: "During the Agency's testimony last year, we reported on our plans to combat *Salmonella* contamination, which is one of the most challenging issues FSIS faces in keeping America's food supply safe. Combating *Salmonella* remains the Agency's top priority. Thus, in 2014, FSIS sought comments on updated and more aggressive performance standards for *Salmonella* and *Campylobacter* in chicken parts and comminuted poultry in response to the Agency's *Salmonella* Action Plan, which FSIS introduced in 2013. We believe these standards will have a major impact on public health, preventing an estimated 50,000 illnesses annually."

In your written testimony, you state that, "combating *Salmonella* remains the Agency's top priority" and that this problem, "is one of the most challenging issues FSIS faces in keeping America's food supply safe." Last year, your Agency reported its plans to combat *Salmonella* contamination.

How is the *Salmonella* Action Plan program doing today?

Response: FSIS has made significant progress on the actions outlined in its Action Plan. Further details are listed in the *Salmonella* one-year SAP report below, but highlights include the following:

- Publication of a final rule modernizing the poultry inspection and creating the New Poultry Inspection System (NPIS) and a tiered implementation plan for NPIS;
- Implementation of a sampling program that allowed FSIS to estimate *Salmonella* and *Campylobacter* prevalence in comminuted poultry products;
- Baseline sampling for chicken parts that allowed FSIS to estimate *Salmonella* and *Campylobacter* in parts
- To better understand how establishments that produce comminuted poultry are addressing the problems that they confront, FSIS conducted Hazard Analysis Verifications (HAVs) in 258 of the 260 FSIS-regulated establishments that produce comminuted poultry, and began conducting Food Safety Assessments (FSAs) in all of these establishments;
- Developed a draft Directive for Hog Sanitary Dressings, and is developing training materials before implementing the directive;
- Proposed listing the names of chicken slaughter plants in each performance category on its website;
- Initiated new exploratory testing of chicken parts and will be initiating new exploratory testing of pork products not currently subject to FSIS sampling to identify prevalence of *Salmonella* in these products;
- Began analyzing for *Salmonella* all beef samples FSIS analyzes for STEC; and
- Conducted a risk assessment to identify performance standards targeted to meet the Healthy People 2020 *Salmonella* goals. On the basis of those results, FSIS proposed to establish, for the first time, performance standards for chicken parts and revised stricter performance standards for comminuted poultry.

Mr. Yoder: Could you please elaborate on some of the "new strategies for inspection to address potential sources of *Salmonella* contamination throughout the food production process?"

Response: FSIS continually evaluates inspection data to identify and refine enforcement strategies. For example, FSIS conducted new Food Safety Assessments (FSAs) at establishments that are producing comminuted poultry products discussed in above using new methodology that more effectively and directly assesses whether establishments producing comminuted product have taken necessary steps to address *Salmonella* and *Campylobacter*. FSIS also provided its personnel performing the FSAs with additional guidance to identify when an establishment producing comminuted poultry product is not complying with regulations and new guidance on making recommendations to establishments to make changes to their food safety systems to avoid producing adulterated product in the future. The new methodology has been successful and FSIS intends to use it as a model for conducting FSAs in other poultry establishments and meat establishments in the near future.

Mr. Yoder: Could you also please submit a copy of the published one year status report to this committee for the record?

Response: [The information follows:]

<http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/foodborne-illness-and-disease/salmonella/sap-one-year>

QUESTIONS SUBMITTED BY CONGRESSWOMAN ROSA L. DELAURO

New Poultry Inspection System

Ms. DeLauro: While NPIS was designed to be implemented for young chicken and young turkey plants, we have heard that at least one poultry facility that slaughters older birds has been approached by the agency to switch over to the NPIS. Would you verify that?

Response: No one in the Agency has authorized such a contact.

Ms. DeLauro: If slaughter facilities that specialize in slaughtering older birds can switch to NPIS, under what conditions would the agency allow them to go to the new inspection system?

Response: Under the poultry slaughter modernization rule, establishments that slaughter poultry other than young chickens or turkeys are not eligible to operate under the NPIS unless they obtain a waiver under the *Salmonella* Initiative Program.

Ms. DeLauro: What would be the line speeds in those facilities as older birds tend to be larger in size?

Response: The line speed would be unchanged from current line speed for such birds.

Performance Standards

Ms. DeLauro: You have proposed new performance standards for *Salmonella* and *Campylobacter* in poultry and meat products. How will these be enforced?

Response: We have requested comments on the new standards, which are due on or before March 27, 2015. We will not assess whether establishments are meeting the new standards until FSIS has evaluated the comments, responded to them, and announced final implementation plans and dates in a subsequent *Federal Register* notice. FSIS uses performance standards to verify whether official establishments have effective controls for *Salmonella* or *Campylobacter*.

As FSIS explained in the proposal, if the establishment does not meet the standards based on FSIS test results, FSIS will immediately conduct follow up testing for *Salmonella* or *Campylobacter*. FSIS may also conduct a for-cause Food Safety Assessment (FSA), which includes more in-depth focused verification activities than daily inspection. In addition, even when the establishment is meeting the standard, if FSIS finds high numbers of positive or serotypes of public health significance, FDA may conduct a for-cause FSA that includes collection of samples or may take other appropriate actions, such as additional sanitary dressing verification procedures at the establishment that produced the positive product.

Port-of-Entry Inspection System

Ms. DeLauro: Since 2013, there have been 16 recalls of imported meat and poultry products because they bypassed our port-of-entry inspection system. The latest such incident occurred February 20, 2015 when FSIS announced that nearly 51,000 pounds of Polish pork bellies that were produced in April and May of 2014 had been recalled because the importer had failed to present these products for inspection. Why is this occurring?

Response: Imported product that enters commerce without import reinspection are Failures to Present (FTPs). They occur because the importers must drive from the border to the inspection house on their own and sometimes they go directly to their final destination without stopping for re-inspection. FSIS' Public Health Information System (PHIS), a web-based tool and coordination with Customs and Border Protection has increased our ability us to identify when FTPs occur. The Public Health Information System (PHIS) has improved our real time knowledge of the import shipments that should be inspected on a daily basis. Because of this knowledge, FSIS is more capable of quickly identifying what product shipments did not present for inspection and then pursuing recall action with the appropriate company. Before fielding the import functionality in PHIS, FSIS did not always have real time information about what import product its import personnel should be inspecting. As a result, some products that were not presented for inspection may not have been identified for recall. Now, because of the improvements in PHIS we have the ability to identify these products that "failed to present."

Ms. DeLauro: How well is FSIS coordinating with U.S. Customs and Border Protection on imported meat, poultry, and egg products shipments?

Response: FSIS coordinates well with the U.S. Customs and Border Protection (CBP). Importers of meat, poultry, or egg products are required to file an entry with CBP in order for the product to enter the U.S. commerce. Since May 2012, FSIS' Public Health Information System (PHIS) has received application data from CBP electronically to enable monitoring of shipment arrivals. As part of the Automated Commercial Environment / International Trade Data System (single-window) initiative, FSIS has developed, and successfully piloted, the FSIS PGA Message Set, which enables the industry to transfer all FSIS-required data with their Customs entry.

Ms. DeLauro: What are problems with the information technology systems that the two agencies are using that are contributing to this lapse in the inspection system?

Response: This is not really a lapse in the inspection system. The inspection system is actually being strengthened so that we are able to identify problems that would previously have likely gone undetected. Imported product that enters commerce without import reinspection are considered to be a Failure to Present (FTPs) to FSIS. With the interface to CBP's system, FSIS' Public Health Information System (PHIS) has allowed us to track entries and identify when FTPs occur. When the Partner Government Agency (PGA) message set is implemented by industry, FSIS' monitoring capabilities will be enhanced, allowing for a faster response to possible FTP shipments.

China Equivalency

Ms. DeLauro: Please give us an update on the status of the equivalency determination for the importation of processed poultry products from the People's Republic of China.

Response: In 2006, FSIS determined that China's poultry processing system was equivalent to the United States. On August 30, 2013, FSIS released the final audit report finding that China is eligible to export processed poultry product. While China has certified three plants to export to the U.S., currently, there is no processed poultry being exported from China to the U.S.

Ms. DeLauro: Are we importing any poultry products from China under the conditions of the 2006 equivalency determination rule?

Response: No, the United States is not currently importing any poultry products from China under the 2006 equivalency determination rule.

Ms. DeLauro: When is FSIS expected to publish a proposed rule on China's poultry slaughter system?

Response: FSIS will not propose to find China's poultry slaughter system equivalent until there has been an audit that finds that China's system is operating in a manner that is equivalent to that of the U.S. We have yet to make such a finding.

Ms. DeLauro: As you may know, the Food and Drug Administration has recently issued Import Alerts against two Chinese pet food manufacturers because they were processing poultry raised in China that contained veterinary drugs and antibiotics that are not approved here in the U.S. for use in poultry.

What discussions has FSIS had with the Chinese on the issue of veterinary drugs in poultry and what measures is FSIS contemplating taking to deal with this issue if it ever accords China equivalency status for its poultry slaughter system?

Response: FSIS auditors have had discussions with Chinese officials regarding the use of veterinary drugs in poultry. For poultry intended for human consumption, China has structured a system of recordkeeping requirements for veterinary drug use, including U.S. prohibited drugs, in the flock houses and mandated government oversight to ensure that flock houses and establishments adhere to U.S. requirements. Based on the conclusions in the 2010 and 2013 audits, the audits found no issues with this equivalence component.

Beyond-the-Border

Ms. DeLauro: What is the status of the "Beyond-the-Border" initiative with Canada?

Response: Implementation of the pilot for preclearance of fresh meat exports was not possible given policy challenges and several logistical impediments. However, building on lessons learned from work done to date, Canada and the United States are exploring alternative means to advance the Action Plan's underlying objectives of enhancing the efficiency of exporting meat products between the countries. These efforts include completion and utilization of the "single-window" concept known as the International Trade Data System (ITDS).

Canadian and Australian Equivalency

Ms. DeLauro: I understand that FSIS conducted audits of the Canadian and Australian inspection systems in 2014. When will those audit reports be posted?

Response: As soon as the audit reports are finalized, they will be made public and available on the FSIS website.

Ms. DeLauro: Is FSIS going to recognize the use of private third party inspection schemes in Australia for meat products exported to the U.S.?

Response: Meat product exported to the U.S. from Australia is inspected by Australian government inspectors.

Ms. DeLauro: If so, will that equivalency determination be subject to public comment?

Response: Meat product exported to the U.S. from Australia is inspected by Australian government inspectors.

Catfish Inspection

Ms. DeLauro: The FSIS FY 2016 budget request contains funds to start implementing the catfish inspection program. The final rule has been under review at the Office of Management and Budget since May 30, 2014. When do you anticipate the final rule to be published in the Federal Register?

Response: We remain hopeful that the rule will be published soon. We will begin implementation on the effective date, 90 days after the final rule is published.

Ms. DeLauro: What is the timeline for its implementation for both domestic and foreign processors?

Response: Because the draft final rule is still under review and subject to change, it is not possible to identify a timeline at this point.

Ms. DeLauro: The budget request indicates that there will be quarterly inspection visits to domestic catfish processing facilities at least initially. When do you anticipate moving towards a continuous inspection frequency?

Response: Because the draft final rule is still under review and subject to change, it is not possible respond to this question at this point.

Ms. DeLauro: Do you anticipate that there will be complaints filed with the World Trade Organization by one or more exporting countries to the implementation of the catfish rule?

Response: FSIS cannot say whether countries will file complaints.

Ms. DeLauro: If so, how will that impact your timeline for implementation?

Response: FSIS intends to do what it can to implement the rule in accordance with the timeline that emerges from the rulemaking process.

Public Health Information System (PHIS)

Ms. DeLauro: Please give us an update on the implementation of the Public Health Information System.

Response: The domestic and import functions of PHIS are fully operational. FSIS has also launched an industry component that allows industry to use PHIS to conduct business with FSIS, such as to review reports on verification activities, receive sampling data, and respond to non-compliance records. Additionally, 23 States are now using PHIS for State Meat and Poultry Inspection Programs in many of the same ways FSIS uses the system. Most recently, the Agency integrated its foreign equivalence program into PHIS, providing foreign governments with access to PHIS so that they can more easily and effectively update or submit new information on their equivalence to FSIS. The agency is also currently working toward implementation of the export component of PHIS.

Ms. DeLauro: Why are so many fewer inspection procedures being performed by FSIS inspectors since PHIS went into operation than before? For example, the FSIS Quarterly Enforcement Reports for FY 2010 - the last full year using the old IT system - showed that over just 8 million (8,048,068) inspection verification procedures were performed, yet in FY 2014 under PHIS, that had dropped to 6.7 million (6,795,731) inspection verification procedures - a 15.6% drop. Why?

Response: The work that the inspector performs in an establishment has not changed. They are still expected to verify all applicable regulations in broad categories such as Sanitation, HACCP, Humane Handling, etc. When PHIS was developed, FSIS reviewed the way inspectors document their daily work and made changes to the task definitions in the system. Some tasks were combined, some were eliminated as duplicative, some were clarified, and some were split. Overall, this resulted in a net reduction in the number of tasks that inspectors use to document their daily work, but it does not indicate that the work performed has decreased in any way.

Ms. DeLauro: There is also a drop in the number of Non-compliance reports being issued under PHIS - nearly a 14% decline when comparing the same two time periods. Why?

Response: The way inspection program personnel document their work in PHIS has been updated with the implementation of PHIS. Inspectors are able to document more of their daily activity in fewer entries into PHIS. While the number of tasks documented has decreased, the overall percentage of non-compliances observed has not changed. Thus, while non-compliances are numerically fewer, their percentage of the total tasks performed has remained consistent with pre-PHIS levels.

TPP Trade

Ms. DeLauro: In the pending trade negotiations, how engaged have been technical experts from FSIS in the talks as they have focused on food safety and sanitary/phytosanitary issues that have been discussed?

Response: Through the interagency consultation process, FSIS is advising the Office of the U.S. Trade Representative (USTR) on matters within FSIS' statutory and regulatory jurisdiction that are related to TPP negotiations. FSIS would not support a final TPP agreement that would undermine food safety.

Ms. DeLauro: Would you supply us with the dates that these experts have actually been brought into the talks and what issues were discussed?

Response: FSIS technical experts have been involved throughout the talks, primarily focused on the chapter on Sanitary/Phytosanitary (SPS).

Humane Handling Enforcement Coordinator

Ms. DeLauro: FSIS has not filled the Humane Handling Enforcement Coordinator role, which was vacated last June. FSIS has not yet posted this position or two other humane handling positions that we were told have been approved. When can we expect the humane handling positions to be filled?

Response: The two additional District Veterinary Medical Specialist (DVMS) positions were announced and filled. This is a fluid position, and we lose some employees through promotion or attrition and fill in behind as soon as we can. This will bring us up to 16 field DVMS positions.

The Humane Handling Enforcement Coordinator (HHEC) position was announced in August of 2014, and unfortunately there was not enough interest in the position to have a good candidate pool. We are working to re-announce the position at a higher grade level and have it filled by May 30. In the interim period, we have appointed the Executive Associate for Regulatory Operations Office of Field Operations as the acting HHEC.

Antibiotic Resistance

Ms. DeLauro: USDA's budget request includes an increase of \$77 million to address antibiotic resistant pathogens AND the Foster Farms outbreak shows how antibiotic resistance in food regulated by FSIS is a very real threat to human health. The President, the World Health Organization and the CDC have all said there is threat that we could face a future where antibiotics will no longer be effective. FSIS has the opportunity to declare antibiotic

resistant bacteria in meat and poultry an adulterant in a response to a petition by the Center for Science in the Public Interest. What is your plan for addressing this issue?

Response: FSIS received Center for Science in the Public Interest's (CSPI) petition on the subject in May 2011, and concluded that the data does not support giving the strains of antibiotic resistant *Salmonella* identified in the petition a different status as an adulterant in raw ground meat and raw ground poultry than *Salmonella* strains that susceptible to antibiotics. In October 2014, CSPI refiled the petition with expanded supporting information. Because the petition raises food safety issues, we are evaluating the petition ahead of other petitions that are not related to food safety. However, even with expedited review, it will take time to properly evaluate the petition because it raises complex issues and includes numerous studies and references.

E-coli Recalls

Ms. DeLauro: FSIS has announced a new recall policy for ground beef and bench trim that test positive for *E. coli* O157:H7 that is designed to protect public health by getting contaminated source materials out of commerce before they cause illnesses. Will that same policy apply to the six STECs that FSIS recently declared adulterants?

Response: Yes, in August 2014, FSIS announced new recall procedures. FSIS routinely requests that an establishment recall product if it was the sole supplier of beef manufacturing trimmings source materials for ground beef product that FSIS or another Federal or State agency finds positive for *E. coli* O157:H7, evidence suggests that the contamination most likely occurred at the supplier establishment, and a portion of the product from the originating source lot produced by the supplier establishment was sent to other establishments.

Ms. DeLauro: Why can't FSIS do the same thing to get contaminated chicken off the market before people get sick?

Response: Under the Federal Meat Inspection Act and Poultry Products Inspection Act, most foodborne pathogens, including *Salmonella* and *Campylobacter*, are not considered adulterants of raw meat or poultry products because ordinary cooking and preparation of these products is generally sufficient to destroy the pathogens. Therefore, the procedures above do not apply.

We know that in order to reduce cases of foodborne illness, we must reduce the amount of *Salmonella* in the food supply. Frequent presence of *Salmonella* in a product may indicate that the production process is not adequately controlled. In situations when product is associated with outbreaks involving *Salmonella* or *Campylobacter*, the product is considered adulterated.

WEDNESDAY, FEBRUARY 11, 2015.

COMMODITY FUTURES TRADING COMMISSION

WITNESS

TIMOTHY G. MASSAD, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION

Mr. ADERHOLT. Will the Subcommittee go ahead and come to order?

I know we have some Members that are coming in from conferences, both Republican and Democrat meetings this morning. And so I think they went a little bit long. So we will have a few members trickling in, but let me just go ahead and call the Subcommittee to order.

First order of business, I want to just take a moment and recognize the absence of one of our Subcommittee Members today. Alan Nunnelee lost his battle with cancer this past Friday. He was a great Member of this Subcommittee, was very engaged not only in the appropriations process, but certainly on this Subcommittee. He is someone that will be greatly missed, from Capitol Hill's perspective and, also, from, you know, his family, and all those in Mississippi.

I had the honor and privilege to be one of the members to go down to attend his funeral services in Tupelo on Monday, and it was a great celebration of his life and his legacy. And so I just wanted to take just a minute in silent prayer just to remember Alan's family, his wife Tori, their three children. Alan's mom and dad are still around, and they were there at the funeral. So we certainly want to be mindful of them as well.

So we will take just a minute or so just in silent prayer and just to pray for Alan's family.

Thank you.

Well, good morning, everybody. Welcome to the Agriculture Appropriations Subcommittee and to our first hearing for fiscal year 2016.

Chairman Massad, thank you for being here. And we look forward to discussing the CFTC's fiscal year 2016 budget request of \$322 million.

CFTC's request for such a large increase, you know, prompts me to set the stage for the Subcommittee's fiscal year 2016 priority funding. I don't like to be the bearer of bad news, but I do want to remind everyone that our overall funding allocation across the Subcommittee will likely remain the same as it has been for the last year.

And, of course, this Subcommittee covers all agencies, including CFTC, Food and Drug Administration, the majority of the U.S. Department of Agriculture. The FDA alone is asking for nearly \$150

million in new budget authority, and the USDA requests another several hundred million in increases. So I want to emphasize that nearly every agency under this Subcommittee's jurisdiction can probably make a case as to why one is worthy of an increase.

In the end, each of you will have to make an overly convincing case as to why you deserve any increase at all. Some may even face decreases so we can all live within our means. The bottom line is that our Nation needs to stay on a diet. The Budget Committee will likely ensure domestic spending remains flat.

With that said, the President's budget as a whole and this request before us today doesn't really reflect the crippling debt that we are facing in this Nation. The CFTC spending has increased 123 percent since the financial crisis of 2008 and would increase 188 percent under the proposal that is before us, which would nearly triple the agency's size.

The leadership on this side of the Capitol has agreed to a number of healthy increases to support financial oversight, although it did oppose Dodd-Frank. However, given the Administration's increased budget requests from \$280 million last year to a record number of \$322 million this year, I am concerned that this Administration may be caving to political extremes. In Washington, sometimes that is called moving the goalpost.

Today I would challenge CFTC to show where this increase in taxpayer money has reduced risk in the marketplace. How do we know that even more cops on the beat will prevent another "too big to fail"? It is difficult to see a direct correlation between CFTC's repeated increase and reduced risk.

Can you provide any assurance that a 188 percent increase will guarantee there will not be another financial crisis?

When compared to the decline in overall government spending and CFTC's significant increase, among the largest in the Federal Government, CFTC continues to lack concrete justification for its budget requests. Despite claims by your budget requests and others in our minority that you have been starved for resources, Congress has provided sufficient funding and controls since the financial crisis, and we may need to take a pause to assess its impact.

CFTC's reasons for these large increases stem from the responsibility over a new market sized at \$700 trillion in notional value. That number is nine times larger than the entire world economy. And we will explore the definition of notional value and uncover the real size of the market.

In addition, there are major management issues that need to be addressed. This includes excessive leasing costs reported by the Inspector General to the tune of \$64 million in projected waste, more than a quarter of the current budget, and approximately \$38 million needlessly spent since the enactment of Dodd-Frank.

In conjunction with Senate Appropriations Subcommittee Chairman Boozman, I have requested a top-to-bottom review of the CFTC's leasing practices, their authorities, and costs by the General Accountability Office to address this issue.

Finally, I look forward to discussing several policy issues that affect our Nation's farmers, ranchers, and small businesses. This includes the swap dealer de minimis level, which was included in the

fiscal year 2015 omnibus bill and directs CFTC to require a rule-making before the threshold automatically drops.

Before we proceed on, I would like to take just a moment to share the themes that we have set for this year's Subcommittee. In summary, they are management, targeting, and promotion. More specifically, they are, one, improving the management of our agencies and programs; number two, targeting funds to the most important programs and functions; and, three, promoting U.S. agriculture, free and fair markets, safe food, and medicines.

Theme Number 1 builds off on the oversight activities over the past several years. It is about improving governance, process and internal controls, and requiring disciplined and transparent decisionmaking. For the CFTC, this includes providing certainty to businesses with transparent rule-making instead of staff-driven, no-action letters.

The second theme is about making wise decisions on how we allocate funding in our bill. I want to invest in efforts such as WIC and providing relief to financial end users, those that are highly effective, such as agricultural research, and those that have a clear and unique reason for using Federal funding, such as animal and plant health programs.

The third theme is about telling our story. This is why the agriculture appropriations bill is important to our Nation and to every one of our colleagues. It funds the efforts that promote American agriculture overseas, like the Foreign Agricultural Service. It keeps our markets free and fair by keeping the CFTC responsible for its actions, and it keeps the Food and Drug Administration honest by going line-by-line through its budget.

The United States has highly productive agriculture, food, financial, and medicine sectors. While most of us believe we should reduce the Federal regulatory burden on these industries, the Federal Government does play a unique role in all of them.

We set the ground rules to ensure efficient trading of commodities. We support basic research in the facilities where it is conducted. We invest in rural infrastructure, such as water, waste, and housing programs, to support a vibrant and a rural community. We promote free and fair international trade regime that allows United States commodities and products to be sold literally around the world.

Our Subcommittee covers many important programs and many important activities. I am pleased to be the chairman again this year and anticipate a cooperative and productive year as we move forward.

So at this time I would like to yield to my ranking member, the distinguished Member from California, Mr. Sam Farr, for any comments that he may have.

Mr. FARR. Thank you very much, Mr. Chairman, and congratulations on being selected chair of this committee, as you pointed out, with some awesome jurisdiction.

And, Chairman Massad, thank you very much for being here, also.

And welcome, new members of the committee. This committee does have a lot of responsibilities.

And I have been in Congress a while, and what you realize is that we make the law and the administration carries it out. They are the chief executive office of the country, and they need money to carry out what we put in law.

I would just like to say that I think that what you are seeing today is one of our regulatory policing agencies.

And you think about first responders in this world today, and I think the Commodity Futures Trading Commission is quite a hero in being a first responder. It is America's—to America's fiscal responsibility.

Really, a lot is not known about it. I think most Members of Congress couldn't even tell you what "CFTC" stands for. But, since 1974, the CFTC has regulated U.S. agricultural commodity and other futures and options markets. For the last 36 years, CFTC has executed its responsibilities while protecting investors from fraud on a very small budget.

With the 2010 passage of Dodd-Frank, the Wall Street Reform and Consumer Protection Act, the CFTC's jurisdiction exploded. We gave them all kinds of new responsibilities. It exploded sevenfold, from a market they were regulating that was \$37 trillion to a market that is \$400 trillion. That is more than \$1 trillion a day. Make no mistake about it. That increased jurisdiction is absolutely essential.

The 2008 economic collapse was proof positive that our financial regulatory oversight had failed all Americans. The unregulated swaps market helped concentrate risk in the financial system, and that risk spilled over into the real economy. Eight million jobs were lost, millions of families lost their homes, and thousands of small businesses had to lock their doors. Something had to change.

Congress responded with new law. We called that law Dodd-Frank and mandated that the CFTC now regulate the \$4 trillion swaps market. So it stands to reason that we should better resource the CFTC to carry out their new responsibilities. Unfortunately, that is not happening.

Mr. Chairman, you just talked about how we need to have safe medicine. We also have to have safe markets. You can't have one without the other.

Yet, from 2011 to 2015, the CFTC's appropriations were, on average, 26 percent under what they requested. Every time the CFTC comes here, we cut, squeeze, and trim its budget. The CFTC is still being funded at \$250 million, which is barely enough to cover their old jurisdiction before the 2008 crisis.

If American taxpayers expect the CFTC to fully carry out its oversight and regulatory responsibilities, we should be providing them with at least the budget they request of \$322 million.

While I share the concern for our current economic predicament, our failure to adequately resource the CFTC so they can exercise prudent oversight over the swaps market has far graver financial consequences for our national economy.

It is worth repeating the price tag of mindful neglect: 8 million jobs lost, millions of families losing their homes, and thousands of small businesses locking their doors. There is absolutely no way our constituents, our markets, can withstand another economic tsunami, and they shouldn't have to.

Plus, the CFTC more than earns its keep. From 2009 to 2014, the CFTC collected fines and penalties of approximately twice the amount of its cumulative budgets. This year the fines and penalties collected are already six times more than the CFTC's budget.

The bottom line is this: The cost of fully funding CFTC is minor. The cost of underfinancing CFTC is enormous. The American taxpayers deserve this minor adjustment in the CFTC's budget to yield enormous long-term gains.

I might point out that they collected \$1.8 billion in fines. I mean, if it was a pay-for, they would be paid for many times over. But that money just goes into the Treasury of the U.S. and not back to the CFTC.

So perhaps we ought to think of allowing you to keep some of your fines or have a fee for service. I will be asking you some questions about that. But I appreciate you being here today and look forward to your testimony.

[The information follows:]

Congressman Farr CFTC Opening Statement

*Agriculture Appropriations Subcommittee Hearing: CFTC Chairman Timothy Massad
Feb 11, 2015*

The Commodity Future Trading Commission is the quiet hero of America's fiscal stability.

Since 1974, the CFTC has regulated the US agricultural commodity and other futures and options markets.

And for 36 years the CFTC executed its responsibilities while protecting investors from fraud, on a tiny budget.

But with 2010 passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFTC's jurisdiction exploded nearly **seven-fold** from \$37 trillion to \$400 trillion.

Make no mistake about it. That increased jurisdiction was absolutely essential.

The 2008 economic collapse was proof positive that our financial regulatory oversight failed Americans.

The unregulated swaps market helped concentrate risk in the financial system. And that risk spilled over to the real economy.

8 million jobs were lost
Millions of families lost their homes
And thousands of small businesses had to lock their doors

Something had to change. And Dodd-Frank mandated that the CFTC now regulate the \$400 trillion swaps market.

So, it stands to reason that we should better resource the CFTC to carry out their new responsibilities. Unfortunately, that has not happened.

And yet from 2011-2015, CFTC appropriations were an average of 26% under the request.

The CFTC is still being funded at **\$250 million**, which is barely enough to cover CFTC's *old* jurisdiction.

If American taxpayers expect the CFTC to fully carry out its oversight and regulatory responsibilities, we should be providing them with *at least* the Budget Request of \$322 million.

While I share the concern for our current economic predicament, our failure to adequately resource the CFTC so they can exercise prudent oversight over the swaps market, has far graver financial consequences for our national economy.

It is worth repeating the price tag of mindful neglect:

8 million jobs lost
Millions of families losing their homes
And thousands of small businesses locking their doors

There is absolutely no way our constituents and our markets can withstand another economic tsunami. And they shouldn't have to.

Plus, the CFTC more than earns its keep.

From 2009 to 2014, the CFTC collected fines and penalties of approximately twice its cumulative budgets. Twice.

This year, the fines and penalties collected are already over 6 times the CFTC's budget.

The bottom line is this:

The cost of fully funding the CFTC is minor.
The cost of underfunding the CFTC is enormous.

American taxpayers deserve this minor investment in CFTC to yield enormous long-term returns.

Mr. ADERHOLT. Thank you, Mr. Farr.

Chairman Massad, we will now turn to you for your opening statement. And it will, of course, also be included in the record.

So you have the floor.

Mr. MASSAD. Thank you. Is this on?

Good morning, Chairman Aderholt, Ranking Member Farr, and members of the Subcommittee.

Thank you for the opportunity to discuss the President's request for 2016 for the Commodity Futures Trading Commission. I am pleased to be here today on behalf of the Commission.

Just before I discuss our request, I just want to thank our staff for their hard work and dedication. I want to thank, also, my fellow commissioners for all their efforts. I believe we are really all working together in good faith today to do the best job we can on behalf of the American public.

The futures, options, and swaps markets that the Commission regulates are vital to our economy. They enable businesses of all types to manage risk, whether it is a farmer locking in a price for his crops, a utility hedging the cost of fuel, or a manufacturer managing foreign currency risk.

Our derivatives markets are the largest, most innovative and most dynamic in the world. They have been an engine for economic growth in our country, and they can continue to do so today, but only if we do what it takes to maintain their integrity and transparency through sensible oversight.

The budget increase we received for fiscal 2015 was essential to our ability to carry out our mission. We are grateful for it and we will use it wisely. Even with this increase, however, the CFTC's budget has not kept pace with its responsibilities. This is because the markets the Commission has traditionally overseen have grown significantly in scale, technological sophistication, and complexity.

As one measure, the number of actively traded futures and options contracts has doubled since 2010 and increased six times over in the last 10 years. Trading is increasingly conducted in an automated electronic fashion, and cyber attacks have become a major new threat to the integrity and smooth functioning of our markets.

In addition, as was noted, the Commission now has primary responsibility for overseeing the swaps market, an over-\$400-trillion market in the U.S. measured by notional amount. And I will be happy to discuss the issue of measuring it by notional amount.

For those reasons and as I will discuss in more detail, we are requesting a budget of \$322 million, which includes \$79 million for information technology for fiscal year 2016.

Since I took office, we have made it a priority to address the concerns of end users. We have worked to make sure our rules do not impose undue burdens or create unintended consequences. But there is more that we should do in this regard.

Our budget request will enable us to respond more quickly and thoroughly to the concerns of end users, and to review and act on new product approvals or other requests from market participants promptly so as to ensure that our markets continue to be dynamic and innovative.

The budget request will also enable us to expand our staff of economists by 50 percent so that all of our activities can be better enhanced by economic analysis.

Since I took office, we have focused on enforcement, because there is nothing more important than a robust enforcement program to prevent fraud and manipulation and to promote confidence in our markets.

And as was noted by Congressman Farr, from 2009 to 2014, the Commission collected fines and penalties of twice its budget, all of which goes directly to the U.S. Treasury and is not available to fund our budget.

Again, as was noted, in the last 4 months alone, the fines and penalties collected are over six times our current budget. They would fund the budget we have requested for the next 5 years. But for each case we initiate in enforcement, there are many that we cannot investigate because of resource constraints.

Our budget request is focused on enhancing our surveillance and enforcement capabilities. We must increase our investment in surveillance in light of the growth and increasing complexity of our markets.

We must have highly skilled professionals and high-powered data and technological capabilities to investigate the new types of manipulation that can occur today, often conducted through sophisticated electronic trading strategies.

And we must have adequate resources to go after other abuses, whether they are price-fixing schemes by large institutions or investment scams perpetrated against retirees. Enhancing our enforcement resources will help us send a strong message of deterrence to those who might contemplate engaging in fraud and manipulation.

Our budget request will also enhance our ability to ensure that customer funds are protected. It will increase our capacity to perform examinations of critical infrastructures, like clearinghouses, as well as the clearing members who hold billions of dollars in customer funds. We must step up our efforts, particularly given the risk of cyber attacks today, which can come not only from those motivated by money, but from those seeking simply to disrupt our financial system.

Our budget is focused also on modernizing our data and technological capabilities. Indeed, including staffing, almost 40 percent of our budget is for data and technology. The scope of the challenge we face is daunting. Every day we collect over 300 million data records that need to be processed, and our data intake and storage needs are increasing 35 percent year over year.

The United States has the best derivatives markets in the world, and it has been that way for decades. And, to me, that is because of the strength of our private sector, but it is also because we have had a sensible framework of regulation, one that promoted integrity and transparency as well as competition and innovation.

If we want to continue to have the best derivatives markets in the world, we must make the necessary investment. Our budget request is designed to do just that so that we help make sure our markets continue to thrive and contribute to economic growth in the future.

Thank you. And I look forward to your questions.
[The information follows:]

Testimony of Chairman Timothy G. Massad before the
U.S. House Appropriations Committee
Subcommittee on Agriculture, Rural Development, Food and
Drug Administration and Related Agencies
Washington, DC
February 11, 2015

Good morning, Chairman Aderholt, Ranking Member Farr and members of the Subcommittee. I am pleased to testify before you this morning on behalf of the Commission regarding the President's request for the fiscal year (FY) 2016 budget for the Commodity Futures Trading Commission (CFTC).

The Commission has been very busy since I and two other Commissioners joined this past summer. We have worked to make sure that commercial end-users can continue to use the derivatives markets effectively and efficiently. We have continued to work to bring the over the counter swaps market out of the shadows and implement the regulatory reforms mandated by Congress. We have worked closely with our international colleagues toward harmonizing new swaps rules as much as possible. We are continuing to engage in the compliance, surveillance, and enforcement work that is necessary to prevent fraud and manipulation and enhance market integrity and transparency. And we are continuing to engage in registration of market participants and other activities to make sure these markets serve our economy. But there is much more we need to do.

Before discussing our budget request, I know I speak for all the Commissioners in first thanking our staff for their hard work and dedication. The progress we have made is a credit to their tireless efforts. I also want to thank each of my fellow commissioners for their efforts and commitment. I believe we are working together in good faith to do the best job we can in implementing the law and carrying out the Commission's responsibilities.

Our current FY 2015 budget provides an increase of \$35 million over the previous year. This increase was essential to our ability to carry out our mission. We are grateful for it. We have outlined in our FY 2015 Spending Plan how we will use these resources, which will include modernizing our information technology capabilities and bolstering our staff in critical areas.

Even with this increase, however, the CFTC's budget is not at a level that is commensurate with the responsibilities Congress has assigned. The Commission's responsibilities were substantially increased by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This gave the Commission primary responsibility for the oversight of the over-the-counter swaps market, an over \$400 trillion market in the U.S., measured by notional amount.

In addition, the markets the Commission has traditionally overseen have grown in scale, technological sophistication, and complexity. The number of actively traded futures and options contracts has doubled since 2010 and increased 6 times over the last ten years. Trading is increasingly conducted in an automated, electronic fashion, and cybersecurity has become a major new threat to the integrity and smooth functioning of the critical market infrastructure that the Commission regulates. While these developments, among others, have brought new responsibilities and challenges to the Commission, its capabilities have not kept pace. Our resources continue to be stretched far too thinly over many important responsibilities.

The derivatives markets are profoundly important to a wide variety of businesses in our country. They enable businesses of all kinds to hedge commercial risk, whether it is a farmer locking in a price for his crops, a utility hedging the cost of fuel or an exporter managing foreign currency risk. Those businesses depend on the Commission to do its job efficiently and sensibly. The Commission's budget is a small, but vital, investment to make in order to make sure these markets operate with integrity and transparency.

It is also helpful to remember how excessive risk related to swaps contributed to the 2008 financial crisis, and the cost of that crisis to American families and our economy, to recognize the value of this investment. That crisis resulted in eight million jobs lost, millions of foreclosed homes, countless retirements and college educations deferred, and businesses shuttered. Indeed, the amount of taxpayer dollars that were spent just to prevent the collapse of AIG as a result of excessive swap risk was over 700 times the size of our budget. Another perspective on the size of our budget is the fact that from 2009 through 2014, the Commission collected fines and penalties of approximately twice its cumulative budgets. This year the fines and penalties collected are already over 6 times our budget.

The CFTC's Budget Request for FY 2016

The Commission requests a budget of \$322 million and 895 full-time equivalents (FTE) for FY 2016. The Commission's request is an increase of \$72 million and 149 FTE over the FY 2015 enacted level. This will enable us to engage in the following critical activities, among others, in support of our mission:

- Enhance our surveillance and enforcement capabilities to keep pace with our expanded oversight responsibilities and the overall growth and increasing complexity of the derivatives markets.
- Enable us to perform on a timely and thorough basis the examinations of critical market infrastructure, such as exchanges and clearinghouses, as well as intermediaries that hold billions of dollars in customer funds, to ensure that they are protecting customer interests and operating in compliance with Commission requirements.
- Enable us to review and provide timely responses to requests and concerns of derivatives market participants, including with respect to new product approvals and other innovations.
- Substantially expand our capabilities with respect to cybersecurity, which is the single most important threat to financial stability today.
- Make key investments in technology systems and resources that are vital to carry out our core mission activities.

We appreciate that this is a time of difficult budget choices. To that end, we have been and will continue to be prudent stewards of taxpayer dollars, and we are focusing our resources on the key activities that will strengthen and enhance the markets we oversee.

The 2016 Estimate Advances Key Commission Priorities

The 2016 Budget Request is focused on advancing key mission priorities. Of the requested \$72 million increase, nearly \$28 million is allotted for additional information technology investments that will help to modernize the Commission's capabilities. This would supplement the approximately \$51 million we plan on spending on technology in FY 2015. The remaining \$44 million of the

increase would provide for an additional 149 FTE for related mission-activity support, specifically targeting critical areas such as surveillance, enforcement, examinations, registration, and compliance.

Surveillance

The 2016 Budget Request seeks \$62.4 million for surveillance, an increase of \$5.9 million and 42 FTE over the FY 2015 enacted level. The Commission must enhance its surveillance capabilities to keep pace with the growth and increasing technological sophistication of the markets. Effective surveillance is essential to detect excessive risk, fraud, abusive practices, and manipulation.

The days when market surveillance could be conducted by observing traders in floor pits are long gone. Today, not only is almost all trading electronic, but in many products a majority is conducted through highly sophisticated automated trading programs. The Commission is responsible for overseeing the markets in over 40 physical commodities, as well as a wide range of financial futures and options products based on interest rates, equities, and currencies. There are over 4000 actively traded futures and options contracts, and thousands more subject to our oversight when all tenors and associated options are included. On a typical day, there may be 750,000 transactions in Treasury futures and more than 700,000 in just the E-mini S&P 500 contract, the most active equity index future. And this does not include the approximately 7 million open swaps reported to SDRs. In just a single commodity category such as crude oil, there are typically hundreds of thousands of transactions every day. Transactions are only part of the picture, however. In today's high speed markets, manipulation and fraud are often conducted using complex strategies involving bids and offers, which far outnumber consummated transactions. Each day in the Treasury futures market, for example, there can be millions of bids and offers.

Successful market surveillance activities require us to have the ability to continually receive, load, and analyze large volumes of data. This requires a massive information technology investment, sophisticated analytical tools that we develop for these unique environments, and experienced professionals who can identify potential problems and engage in further inquiry.

Moreover, the \$400 trillion swaps market presents different challenges than the futures and options market with respect to surveillance. This is because there are multiple trading platforms so data must be analyzed across platforms. There is also considerable voice-driven activity and complexities to the execution and processing of trades that do not exist in the vertically integrated futures

markets that require different surveillance perspectives. Aggregating data to understand participants' positions across futures and swaps markets is particularly challenging.

Whether in futures, options, or swaps, market surveillance is not simply dependent on sophisticated technological systems. We must have experienced personnel who understand the markets we oversee, who can discern anomalies and patterns and who have the experience, judgment, and skills to investigate possible infractions. There is great variation among the various products traded in our markets variation, which requires specialized knowledge: the market structure, trading patterns, and complexities of the crude oil market are quite different from that of soybeans or any other agricultural product, and each agricultural product itself has its own characteristics.

In addition to market surveillance, the Commission must oversee the risk being taken on by individual clearing firms by continually monitoring their customer and house positions and margining practices. Given the global nature of our markets, our surveillance personnel examine data from clearinghouses abroad and communicating frequently with regulators in other jurisdictions. This financial and risk surveillance function also looks through the intermediaries at large customer positions and aggregates customer data across clearinghouses. Today, for example, 36 firms hold more than \$500 million each in customer funds, and 10 of these firms hold more than \$10 billion each in customer funds. Failure or trouble at any one firm, particularly a larger firm, could seriously disrupt our markets. On site examinations are an important component of adequate surveillance, but they can only be conducted infrequently given the small size of our staff.

Without the requested increase in surveillance personnel and resources, the Commission will be severely limited in its ability to detect fraud and manipulation, market abuses, firms in trouble, or other improper behavior, thereby significantly increasing the potential costs and risks to our markets and our financial system generally.

Enforcement

The Commission requests approximately \$70.0 million and 212 FTE for enforcement activities, an increase of \$20.7 million and 48 FTE over the FY 2015 enacted level. There is nothing more important to maintaining market integrity and protecting customers than a robust enforcement program. The Commission pursues cases covering a wide variety of potential market abuses and bad behavior, ranging from traditional Ponzi schemes or precious metal scams that target retirees, to

complex manipulation schemes driven by sophisticated, electronic trading strategies, to price fixing or benchmark manipulation through collusion among large traders. The markets we oversee continue to grow in size and sophistication, and our enforcement resources are increasingly stretched. For each case the Commission initiates, there are many that we cannot investigate because of resource constraints.

Some cases can require large amounts of resources due to their inherent complexities, document-intensive nature or the ability of resource-rich defendants to prolong litigation. A recent case that arose as a result of the Peregrine fraud, for example, more than two years and has required more than 4800 hours of staff time. The MF Global litigation is ongoing, more than 3 years after the firm collapsed. The LIBOR and foreign exchange benchmark cases – in which the Commission obtained an aggregate of \$3.25 billion in penalties against several of the world's largest banks for colluding to fix or manipulating these benchmarks – involved intensive reconstruction of communications and trades requiring substantial document and email reviews. There will always be hard choices to be made in prioritizing matters for investigation and pursuit, but the Commission's enforcement resources today are simply not commensurate with the scale and complexity of the markets it oversees.

In particular, the Commission anticipates more time-intensive and inherently complex investigations due to innovative products and practices within the industry, including the use of automated and high frequency trading, and the global nature of the swaps marketplace. We are also experiencing an increase in international enforcement investigations in all of our markets (the most significant being the international benchmark rate rigging cases). At the same time, we must do all we can to deter unscrupulous fraudsters who target unsuspecting investors through scams, tricks and schemes.

Although the effectiveness of our enforcement efforts is best measured by the quality, breadth and effect of the cases pursued, quantitative metrics give some picture of the activity. The CFTC filed 67 new enforcement actions during fiscal year 2014. We opened more than 240 new investigations. The agency obtained \$3.27 billion in sanctions, including \$1.8 billion in civil monetary penalties and more than \$1.4 billion in restitution and disgorgement. An increase in our enforcement efforts is a good use of taxpayer dollars, especially when considered against the cost of failing to provide adequate resources for enforcement. That cost is measured by the abusive and fraudulent behavior that goes unpunished or is caught too late. It is the loss to consumers whose customer funds are

misappropriated, or to retirees whose savings are stolen through scams, or to our economy, when the efficiency and integrity of our markets is damaged by manipulation and fraudulent trading.

Examinations

The Commission requests \$35.4 million and 135 FTE for examinations, an increase of \$6.7 million and 21 FTE over the FY 2015 enacted level. Regular examinations, in concert with the Commission's surveillance and other activities, are a highly effective method to maintain market integrity so that American businesses can rely on these markets. This activity includes direct examinations performed by Commission staff and oversight of examinations performed by the self-regulatory organizations.

Among the most important examinations that the Commission conducts are those of clearinghouses, which have become critical single points of risk in the global financial system. Two clearinghouses under the Commission's jurisdiction have been designated as systemically important, and the Commission is responsible for twelve others. Five clearinghouses are located overseas, including some that are that are extremely important to our markets given the volume of swaps and futures cleared for U.S. persons. The Commission examines the two systemically important clearinghouses once a year; it lacks the resources to engage in more frequent or in-depth examinations or even to examine all the other major clearinghouses annually.

Although there is obviously great variation, today an annual clearinghouse examination may involve most of the time of an interdisciplinary team of eight to ten professional CFTC staff for the better part of six months. The resource requirements in terms of staff and time for a clearinghouse that has been designated as systemically important are greater because these entities must comply not only with CFTC regulations, but also with additional prudential standards.

The Commission is also responsible for examining other critical infrastructure in our financial markets, including 15 active exchanges, 22 swap execution facilities, and 4 swap data repositories. These examinations are an important investment in the safety and integrity of our financial and commodity markets.

Moreover, cybersecurity is a major risk to our financial system today, and therefore we must devote greater resources to this important challenge. We must engage in more frequent and more in-depth

examinations to assess the readiness of these institutions to meet these challenges. We must also be able to respond quickly as threats arise to better understand and mitigate such threats.

We must also engage in regular examinations of clearing firms. Recent failures of a few firms, such as MF Global and Peregrine Financial, underscore the importance of such examinations. Current market conditions like low interest rates and low volatility have increased the risk profiles of many of these firms. And concentration in the industry means that today only 20 firms hold \$211 billion in customer funds, or approximately 92 percent of total customer funds for the futures and cleared swaps industries. The Commission must examine whether clearing firms employ effective risk management techniques, have appropriate compliance monitoring and retain adequate levels of liquidity.

There are other entities that the Commission is responsible for examining, such as swap dealers. The recent volatility in the Swiss franc underscores the importance of examining retail foreign exchange dealers. We must be able to conduct not only annual or periodic examinations, but also other reviews triggered by unexpected incidents so that we can address the concerns of the businesses and individuals who use these markets. Without the requested level of funding, the CFTC will lack sufficient resources to conduct these examinations, which puts the markets and market participants at risk.

Registration and Compliance

The Commission requests \$17.8 million and 63 FTE for registration and compliance activities, an increase of \$1million and 3 FTEs over the FY 2015 level. The Commission's ability to analyze registrations in a timely and thorough manner is critical to market efficiency and confidence. The Commission's responsibilities have greatly expanded in this area, as there are over 20 SEFs and over 100 swap dealers provisionally registered. In light of the increasing globalization of the markets and changes made in Dodd-Frank, the Commission has applications for registration from 21 foreign boards of trade. The Commission is also considering applications for registration from five DCOs, and must begin to review petitions for exemption from DCO registration from several foreign clearinghouses this year. We expect to see additional applications in the future.

The Commission must also be able to respond to product and market innovation by carrying out registration reviews efficiently. A lack of adequate funding impairs the Commission's ability to

attract and retain the experts who understand the markets and who are needed to review registrations and carry out compliance oversight in a timely and thoughtful manner, and can result in delay, ineffective customer protection, regulatory uncertainty, and higher legal and compliance costs for registrants—severely impacting the efficiency, integrity, and attractiveness of our markets.

Data and Technology

The 2016 Budget Request includes \$108 million for the data and technology mission area, consisting of \$79 million for information technology investments (*e.g.*, hardware, software, and contractor services), and approximately \$29 million for staffing and other indirect costs. This is an increase of approximately \$28 million from the FY 2015 level. Data and technology accounts for almost 40 percent of the agency's requested \$72 million budget increase. Of the \$108 million, \$45 million represents amounts directly attributable to particular functional activities and \$63 million is data and technology support.

The Commission's data and technology budget comprises several elements. We must expand our data operations and collections systems to meet our vastly expanded data collection responsibilities as well as the increasing technological complexity of our traditional markets. Data, and the ability to analyze and report data, are more important than ever in the derivatives markets and in CFTC's ability to oversee those markets; therefore, data understanding and ingestion is the priority for the Commission's resources. We currently receive over 300 million records per day, and our data needs (intake, storage) are increasing annually by 35 percent.

The Commission must be able to aggregate various types of data from multiple industry sources, such as DCMs, SEFs, SDRs, and DCOs across multiple markets (*e.g.*, futures, exchange-traded swaps, and off-exchange swaps). The increasing complexity, volume, and interrelations of the data set will require significantly more powerful hardware such as high performance computing systems to support business analytics.

Our infrastructure and services must also be expanded to support the growth in the agency. This includes basic computing, printing, voice, and data communications, and it requires expansion of storage, server, telecommunications, and network capacity; implementation of DHS-mandated cybersecurity measures; and a refresh of end-of-life equipment. We must also enhance our operations, platforms, and systems across all divisions. This includes legal, technology systems, and

forensics support systems for enforcement as well as surveillance systems. It includes business process automation systems, public website operations, and management and administrative support systems.

Without the requested level of funds, the Commission will not have sufficient capabilities to fulfill the critical mandates of the agency, directly impacting the Commission's ability to protect market participants from fraud, manipulation, and abusive practices, and to protect the public and the U.S. economy from systemic risk.

Conclusion

The Commission is grateful to this subcommittee for the increases it has received and will continue to carry out its responsibilities as best it can with the resources it has. But with the current level of funding, the Commission cannot fulfill all of its new duties and continue to meet its traditional ones in the timely and thorough manner that the American people deserve and expect. Our responsibilities have substantially increased, and the markets we oversee are increasingly complex. Simply put, without additional resources, our markets cannot be as well supervised, participants and their customers cannot be as well protected, and market transparency and efficiency cannot be as fully achieved.

The 2016 Budget Request is designed to enable the Commission to continue making progress fulfilling its responsibilities to the American public to oversee our nation's futures, options, and swaps markets, so that we help make sure our markets continue to thrive and contribute to economic growth into the future.

I look forward to answering any questions you may have.

Mr. ADERHOLT. Thank you, Mr. Chairman, for the overview. And, again, thank you for being here.

Before we begin, I do want to mention, as Ranking Member Farr alluded to, we do have two new members of our Subcommittee, Dr. Harris of Maryland and Mr. Young of Iowa, and we want to welcome them to our Subcommittee.

As I say, this is our first hearing for the year. So we are glad they are here. And, of course, we are glad to have our returning members here as well on each side, on the Democrat and the Republican side.

Let me get into the questions here. I want to look at the stats you used for adding 30 percent to your budget, which is beyond the 123 percent growth CFTC has received since the financial crisis.

I think it is important to realize that we are dealing with a very large number here, but maybe not quite as large as is often portrayed by the Administration or sometimes in the media.

Some of you may have seen an article that talks about the size of the markets the CFTC regulates. We hear about the figure of \$600 trillion, sometimes over \$700 trillion, but the article talks about the actual size of the market is approximately 1 percent of the total.

The article claimed—and I quote—“The actual risk is even smaller. When the press reports \$710 trillion, remember, that is not the real story.” The amount is only a fraction of that inflated number. If you drill down into that number, the notional value is nowhere near the actual size or risk of the market.

Also in your budget request, there have actually been declines or only slight increases in CFTC’s responsibility. For example, registered entities in the markets have only gone up 10 percent since 15 years ago, the value of the futures and options market have gone down 20 percent since the financial crisis, and customer funds have only gone up 10 percent since the financial crisis.

CFTC’s budget request highlights the \$700-trillion notional value of the swaps market. The article I mentioned discussed gross credit exposure as a more accurate measure of the markets, which is only a fraction, or around \$1 trillion, of what is used in your request.

What my question would be to you, Mr. Chairman, is: Help us to understand the difference between gross credit exposure and what is talked about, notional value.

Mr. MASSAD. Certainly, Chairman. That is an excellent question.

And, frankly, I couldn’t agree with you more. Notional amount is not a particularly good way to measure risk. It is the only measure we have today until we fund this agency adequately enough that we can go and collect all the data we are supposed to collect about this market and so that we can load that data and analyze it. That is one of the jobs you have given us, is to build this data system to collect the information on this market. Recall that, in 2008, we didn’t have any information on this market and that was one of the problems.

And, again, to note your comment on the financial crisis, obviously, no regulator can sit up here and say that we are going to prevent the next financial crisis, but we can say that, if you adequately fund us, we can address the risks we can identify and, hopefully, minimize that potential.

In the 2008 financial crisis, one company alone, AIG, because of excessive swap risk, almost put our economy into a great depression, given all the other things that were happening. We had no insight into its swaps at that time. Whether you want to measure it by notional amount or whatever, we didn't know what was going on.

And as a result of that one company alone, this country had to take \$182 billion of taxpayer funds to prevent its collapse. I spent 5 years working to get all that money back. Fortunately, we got it back. But that \$182 billion, Congressman, is approximately 600 times our budget request.

So the point is that, yes, you are right. We don't have good statistics on this market. We need to have better statistics on this market. But that is the job we have been given. And so I am asking for the funds necessary to carry that out.

Mr. ADERHOLT. Just one quick follow-up. I know my time is running out.

Since Dodd-Frank, I think we have increased the technology budget by \$205 million. And based on that number, I guess, why would you say we have not been able to get that data that—

Mr. MASSAD. Sure. We are getting there. It is a big build, is the simple answer. And we are making a lot of progress on it. We have got a lot of activity in this area.

But that data and technology budget is covering a number of things. It is covering this whole effort to collect data on the swaps market. It is also covering what we need to do on the futures and options market.

Today, for example, you know, we can't observe trading pits to figure out whether someone is manipulating the market. We have to look at reams and reams of data on transactions and messages.

For example, there might be 700,000 transactions daily in the E-Mini S&P 500 contract alone. The number of messages, bids and orders and cancellations could be several times that. That is a lot of data to process if you want to look at what is going on. So, you know, that is the effort we are engaged in.

But that data and technology budget also covers simply our core infrastructure, whether it is computing power, phones, everything else, and it covers automating processes, so that, for example, as registrants file information with us, we can automate the use of that. So that data and technology budget is covering a lot of things.

Let me also say, in terms of the number of registrants—because you noted the increase—probably in an aggregate—I don't know the statistic you are using, but it may well be that the aggregate increase hasn't been that high.

But the types of entities that are now registered with us—it is quite different to have 100 swap dealers who are very, very large institutions versus 100 introducing brokers or commodity pool operators where there is not nearly as great a risk. We want to focus the resources on the risk.

Mr. ADERHOLT. Well, as I mentioned about the amount, the \$205 million, I just, you know, wanted to note that, you know, there has been a substantial amount of money that has been invested toward technology and, you know, we want to see that. So I am glad to

hear that you are saying that progress has been made towards gathering that data.

Mr. MASSAD. Absolutely.

Mr. ADERHOLT. Mr. Farr.

Mr. FARR. Thank you, Mr. Chairman.

For the new members, this is the only time you are going to have to ask these questions and review this because, from now on, we will be looking into other issues. And so it will only come back to our vote and decision at the end when we mark up our budget.

But I would like to point out that I think this Committee unfortunately sort of decided before we even had a hearing what they want your budget to be. We leap before we look.

You know, Dodd-Frank passed in 2010. The other party took over. And since then, from your request to what we have budgeted, in 2011, you had a 23 percent cut from the request; in 2012, a 33 percent cut from the request; in 2013, a 33 percent cut from the request; in 2014, a 32 percent cut from the request; and then last year an 11 percent cut from the request.

We can't ask you to go out and be the first responder to these markets if we are going to underfund you. We don't underfund any other law enforcement agency. We don't underfund our military.

The Republicans love to come in here and say everybody has to live with last year's budget except the military. "You can have all the money you want. We will lift sequestration. We will do everything for you. We will just throw money at you."

That is for all those weapons systems that Wall Street manufactures. And it is interesting that now, those same weapons manufacturers may be some of the people that we need to regulate. Anyway, I am just really concerned that we might again deny you your request.

I would like to enter into the record that last year The Wall Street Journal ran an article saying the Commodity Futures and Trading Commission is so cash-strapped that the agency is being forced to delay cases, shelve certain probes, and decide not to file charges against two former traders over JPMorgan Chase's London Whale, a trading mess that they were not able to file because they didn't have the money to do it. This is nuts.

I would like to enter that into the record, Mr. Chairman.

[The information follows:]

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MARKETS

CFTC Delays Cases, Shelves Probes, in Funding Squeeze

Outgoing Enforcement Chief Says Agency is 'Undersized;' No Charges for Two Men in J.P. Morgan Debacle

By JEAN EAGLESHAM

Updated Oct. 31, 2013 6:45 p.m. ET

The Commodity Futures Trading Commission is so cash-starved that the agency is being forced to delay cases, shelve certain probes and decided not to file charges against two former traders over J.P. Morgan Chase & Co.'s "London whale" trading mess, a top official said.

In an interview, David Meister, who stepped down this week as the CFTC's enforcement chief, said the agency is "absolutely undersized" for the sprawling futures and options markets it must police.

"We will do everything we can...but we have limited staff and limited resources," Mr. Meister said. "Ultimately, it comes down to the math."

The 50-year-old former prosecutor's warning came Wednesday, his last day at the CFTC after a near-three-year enforcement stint. Since he joined the CFTC in January 2011, the once-obscure agency has reinvented itself to become an apparent force to be reckoned with.

During Mr. Meister's watch, the CFTC nearly doubled its enforcement actions and tripled its sanctions, compared with the previous three-year period. This year alone, it has filed a number of high-profile cases, including civil actions against Jon S. Corzine, former chief executive of MF Global Holdings Ltd., and CME Group Inc., the world's largest futures-exchange operator. Both deny wrongdoing and are fighting the cases.

<http://www.wsj.com/articles/SB10001424052702303843104579169901294571302>

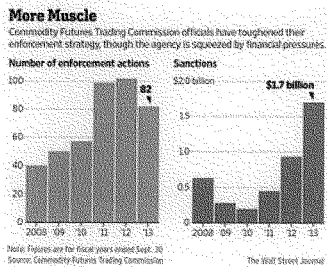
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David Meister's last day as CFTC enforcement director was Wednesday. MELISSA GOLDEN FOR THE WALL STREET JOURNAL

"We have shown quite clearly that...we're fine to bring a case into court and go to trial [rather than settle] if that's what necessary to do what we have to do," Mr. Meister said.

This aggressive stance has been matched by settlements with some of the world's biggest banks. The marquee world-wide probe into alleged rigging of the London interbank offered rate, begun by the CFTC in April 2010, has boosted its reputation and the government's coffers. When Dutch lender Rabobank this week became the fifth firm to admit rate rigging, it took the CFTC's tally of Libor sanctions to almost \$1.8 billion, about nine times the agency's \$195 million annual budget.



But can this enforcement pace be sustained? The volume of cases already has slackened: The agency in the 12 months to Sept. 30 filed 82 enforcement actions, down a fifth compared with the previous year. And "serious budget challenges" are causing delays and other problems, Mr. Meister said.

Complaints about funding pressures are standard from regulators, such as the CFTC, that rely on Congress to approve their budgets. CFTC Chairman Gary Gensler rarely makes a speech that doesn't include a call for more money.

House Republicans are among those questioning whether the CFTC's lobbying is justified. One CFTC commissioner, Republican Scott O'Malia, this year opposed President Barack Obama's request for a \$315 million budget for the agency, saying he didn't believe granting "unsubstantiated appeals for massive budget increases" made financial sense.

Mr. Meister declined to comment on the continuing congressional to-and-fro over the CFTC budget. But he said his concerns go deeper than the typical regulatory refrain of "more, please." His enforcement division is trying to do extra cases with fewer people, he said. It has about 155 officials, down 10% from when he started, and roughly the same level as 11 years ago.

"That's a very small staff compared with the size of the job," Mr. Meister said, comparing the CFTC with the Securities and Exchange Commission, which has more than 1,200 enforcement officials. "It's remarkable how small we are."

The funding squeeze is forcing the CFTC to make "some very tough choices" about its work, Mr. Meister said. One example: the agency's decision not to charge Julien Grout and Javier Martin-Artajo, the two former J.P. Morgan traders accused by the government of hiding multibillion-dollar losses.

Edward Little, a lawyer representing Mr. Grout, said it was "shocking" the CFTC said it could have charged his client, "given that all the trading was done by the government's own cooperator, Bruno Iksil, the London whale himself." A spokeswoman for Mr. Iksil's lawyers declined comment on this statement.

A lawyer for Mr. Martin-Artajo didn't respond to a request for comment.

J.P. Morgan agreed in October to pay \$100 million to settle CFTC allegations its aggressive trading bets recklessly manipulated derivatives markets. The firm admitted the agency's factual findings, that its traders acted recklessly and dumped huge amounts of swaps in trying to defend their positions.

The CFTC also could have charged the two former J.P. Morgan traders, on the basis of the facts alleged against them in separate criminal and civil cases filed this year by prosecutors and the SEC, according to its order charging the firm. The CFTC's budget pressures were "part of the calculation" not to bring a case, Mr. Meister said. "The fact that we are resource-challenged certainly was on our minds."

The J.P. Morgan case is an early example of the CFTC flexing enforcement muscles lawmakers gave it after the financial crisis. The 2010 Dodd-Frank Act is a "milestone" for the CFTC, giving the small agency a mandate to police the \$400 trillion swaps market, as well as powers to pursue various types of market manipulation, Mr. Meister said.

The CFTC is "just starting to enforce" its 62 new rules under Dodd-Frank, covering everything from sales practices to risk management by big banks and other swaps dealers, he added.

That task will now fall to his successor. After commuting weekly from his New York home to Washington, Mr. Meister said he is planning to spend some time with his family before looking for a new job, "most likely" in the private sector.

Gretchen Lowe, a veteran CFTC enforcement official, has been appointed as the CFTC's acting enforcement director. The decision on Mr. Meister's permanent successor likely will be left to the new chairman.

Mr. Gensler is due to leave the agency by the end of this year.

In a brief interview Wednesday, Mr. Gensler echoed the worries about the impact of budget pressures on enforcement, saying: "Occasionally, we are having to put some investigations on the shelf."

"It pinches how much we can do," he said. "We've already seen it."

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Mr. FARR. Is there a way that—I mean, how are the SEC and other markets funded?

Mr. MASSAD. Most financial regulators have user fees that fund their budgets. Now, there is still a Congressional appropriation. Congress decides how much money the agency should spend. But the money itself comes from the industry that is regulated.

Mr. FARR. Could we do that in this industry?

Mr. MASSAD. Yes. It is certainly practical. I would point out that the self-regulatory institutions that we work with, the National Futures Association, for example, is funded by those types of fees. In fact, it recently cut the amount of money it is collecting because it was getting too much.

Mr. FARR. Meaning we do that with the FDA when pharmaceutical companies couldn't get the research done on their proposals.

Mr. MASSAD. Yeah. I—

Mr. FARR. We ended up—they begged us, “Give us a”—

Mr. MASSAD. Right.

Mr. FARR [continuing]. “Fee structure. We will pay for the researchers.”

Mr. MASSAD. Yeah. I would say we have looked at this. We think it is practical. Every President since Ronald Reagan has proposed it. So I would be happy to work with the Committee if you wish to explore that.

I will say that, you know, my primary goal here is to increase the budget. And if you want to do it through user fees, that is great. I will work with you on that. If you want to do it another way, let's do it. But my concern is getting the budget up.

Mr. FARR. Well, you know, the same people that are complaining about whatever budget you have will be out there in force even stronger suggesting they not be charged a user fee. So you have some people here that will say, “That is a tax; and, therefore, I will never vote for it.”

But I think it is worth considering as a public policy that, if we can't give you the money out of the general fund, then we ought to give you the authority to set a user fee.

Mr. MASSAD. It is obviously important to do it in a way that doesn't impact the market adversely, and whether that is phasing it in or how you set the level—it is important to remember that the user fee concept is much different than a transaction tax.

A transaction tax, you know, is generally a larger amount. A user fee is a very small amount. And, again, we are funding the self-regulatory organizations that way today.

Mr. FARR. Thank you, Mr. Chairman.

Mr. ADERHOLT. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Chairman Massad, thanks for joining us today. I think it is your first time testifying before the committee, and we are honored to have you here today. And lots of important issues have been raised.

You know, if you were listening to the questions and answers from the first couple parts of this hearing, you would think that this committee had actually cut your budget last year. There has been discussion about a cut from a request that this committee

hasn't been funding adequately and that there are other cuts happening.

When I talk to people back home about how we are working to balance our budget here and if we have actually cut any spending, I always have to explain to them that Washington-speak for a cut is when you don't get as much as you requested. And so let's make sure I understand the conversation, we are all talking about the same thing this morning.

The CFTC did receive an increase of over 10 percent from last year. I don't know the exact percentage. But it was maybe over 15 percent, \$35 million off of 2015. And in 2010, when Dodd-Frank was passed, the budget was near \$160 million.

So there have been significant increases. It just may not be increasing as fast as you are requesting or as you believe you need or this committee does. And so I understand that debate. I just want to make sure we are talking in the same terms here for people who are following what we are doing in this committee.

One of the many responsibilities that you have is certainly implementing the Dodd-Frank regulatory legislation, and part of that is dealing with cross-border swaps. And that has been an issue, I know, that the CFTC has been working on. We have discussed this with your predecessor before in this Committee.

And the goal, I know, in that process is to create certainty, predictability, and stability. In doing that, you want to find a balance to ensure that the laws have a proper cost-benefit analysis. And that we are not overregulating to actually create more uncertainty, more unpredictability, less liquidity, those types of things; and that can happen. I know that is one of the jobs of CFTC, to come up with proper rules as it relates to things like that.

But that didn't happen in the cross-border swaps issue. In fact, there has been some litigation over this. It was a case before the D.C. District Court which actually related to the CFTC's issuing a guidance as opposed to a rule-making, that was a non-binding policy statement that essentially market participants were free to ignore.

And I wonder, as we go through the process, if you think that is the best way to move forward, in a guidance as opposed to a rule, and in that process, if you have fully considered the impact on foreign entities and our foreign regulators in Europe, our trading partners, who express great concern about the impact of those cross-border swaps on their institutions and business.

And so I guess my first question is: I know you have delayed the implementation of this guidance. Would you be willing to reopen that process and ensure that we don't have the impacts of jobs moving out of the United States, losing liquidity, and less stability? Would you be willing to work on a more comprehensive global approach? And, also, would you be willing to work with the SEC?

And then, finally, the second question would be the issue of guidance versus a rule. One of the allegations has been that the CFTC has avoided making a rule because they don't want to do a cost-benefit analysis. And I guess I would ask: Why can't we do a cost-benefit analysis and why can't we issue a rule?

Mr. MASSAD. Thank you, Congressman.

Mr. YODER. Thank you, Chairman.

Mr. MASSAD. I will try to answer all of that.

And, first of all, let me say to you and to other members of the Committee, particularly those who are new, I realize today may be the only time we have as a group, but I am happy to come up to any of your offices at any time and discuss these issues in more detail.

Mr. YODER. Thanks.

Mr. MASSAD. Let me go to your questions.

First of all, in terms of the cross-border issues, it is extremely important to try to harmonize our rules as much as we can, and I have been very focused on this since I took office.

In fact, before I came up here this morning, I was on the phone with my counterpart at the European Commission, Lord Hill, who has just taken over the last few months, discussing where we are on some issues.

I have been over to Europe a few times. I just came back from a trip to Asia, where I met with regulators in Beijing, Tokyo, Hong Kong, and Singapore. We are very, very focused on this.

I think it is important to step back, though, and remember a couple things. This is very unlike, probably, any other area of financial regulation in that, most other areas, the laws are different by nation. Swaps are different because swaps grew to be a global industry before anybody regulated them.

So now the G20 nations have come along and said, "We want to regulate," and they have agreed on the basic principles as to how to provide some oversight to this market, which is a huge step forward to even agree—to have the entire G20 agree on those principles.

But that has to then be executed by individual nations who have their own legal traditions and regulatory philosophies, timetables, politics. So there are going to be differences.

Now, having said that, again, we should try to harmonize as much as possible. We have done a lot in this regard. We are doing more. We are going to do more after this.

We are focused right now, for example, on clearinghouse regulation and making sure that we have good standards for clearinghouses, given their importance in the global system. We have made them more important in the global system.

We will be looking at the trading rules as well. On the guidance question, we delayed aspects of certain parts of it and we are thinking about that.

I guess what I would say to your question as to whether we should rethink everything, I think we are looking at this piece by piece. Let me give you an example: Margin for uncleared swaps.

Okay. What that refers to is we have said we are going to mandate clearing of standardized products. That is a way to reduce risk. But there will always be a large part of the market that is not cleared, and there should be. There isn't enough liquidity in certain products. Certain products are new. So you are still going to have big banks and other institutions engaging bilaterally in those swaps.

Now, we are passing rules around the world to require them to basically take some collateral for that exposure. And we have been working very closely with Europe and Japan, as well as our own

Federal banking regulators—because they are responsible for some of this, too—to get all those rules in the same place.

And the proposals that are out there are pretty close. I am committed to even narrowing the differences, and I have indicated that I am prepared to change some of the aspects of our rule so that we land in the same place as Europe and Japan. And, also, we have discussed that with the banking regulators.

So, if you watch that one, I think you will see that we are working very hard on this. And certainly, with the SEC, I have known Chair White for many, many years. We are in touch regularly. We meet and our staffs meet regularly. And I think we are doing a good job coordinating.

Mr. ADERHOLT. Mr. Bishop.

Mr. BISHOP. Thank you very much.

And let me join my colleagues in welcoming Chairman Massad.

Chairman, as you know, over-the-counter derivatives markets currently have no position limits. It is my understanding that the position limits which have existed in the agriculture futures markets have served the market participants well.

While establishing position limits for derivatives for both over-the-counter swaps and futures contracts may assist in curbing excessive speculation, many in the cotton industry, as well as other agriculture commodities, believe that the Commission's interpretation of the bona fide hedging definition is too restrictive and, as a result, true bona fide hedging by commercial enterprises will be limited.

In fact, the industry believes that CFTC should provide a mechanism which would allow some flexibility and even hedge exemptions. Without that kind of flexibility, some market participants may become unable to hedge legitimate commercial risks to their businesses and the true market may become less likely to function properly.

Can you give us an update on this rule and can you share with us the rationale for proposing what would appear to be position limits across the board, but not of the impact.

Mr. MASSAD. Thank you, Congressman Bishop.

We are very focused on this. Congress mandated that we set position limits for derivatives to curb excessive speculation, but Congress also made it clear we should make sure we allow for bona fide hedging.

And we are taking our time to make sure we get this right. It is very important that we have the rule drafted in such a way that the commercial end users who rely on these markets can continue to engage in bona fide hedging. That is what I view my job as being about, is making these markets work for the commercial end users who rely on them to hedge risk.

We have taken a lot of comments on this. We are going through that. It is a very complex issue. But I can assure you that we are looking to balance the concern about excessive speculation while also ensuring that real, legitimate hedging can continue to be conducted.

Mr. BISHOP. As a follow-up, under the rule, could buyers and sellers of cotton, other commodities on each end of the supply

chain, be harmed if traditional commercial market risk management practices are restricted for those in the middle of the chain?

And, further, if the practice of granting the hedge exemptions is restricted and, therefore, inconsistent with traditional commercial practices, wouldn't the trades which have been historically considered as bona fide hedges now be deemed speculative and, therefore, subject to a position limit? Do you have any thoughts on that?

Mr. MASSAD. Well, thank you, Congressman, for the question.

We are looking at those issues and taking in a lot of industry comments on this, as well as comments from the public, in order to devise a set of rules that do strike the right balance here. Congress mandated that we set these limits because of a concern about excessive speculation.

And so you have to figure out sort of where to set that limit, where to draw that line, how to define what is legitimate hedging from what might not actually be legitimate hedging, but might actually be engaging in speculation. So we are working very hard on that, and we take those issues very seriously.

Mr. BISHOP. The CFTC has granted brand-new swaps trading platforms, known as swap execution facilities, with the discretion and ability to require all market participants to execute certain types of swaps on the SEF simply by self-certifying to the CFTC that a swap is made available to trade.

In other words, these new SEFs have enormous power to determine how market participants must execute swaps without any approval or determination made by the CFTC.

Shouldn't your agency have more involvement in these important decisions that directly bind market participants and affect liquidity in the derivatives markets?

And while self-certification may have been appropriate for this in the futures contracts or the designated contract market, doesn't this self-certification approach fall short with respect to the swaps market where there is global market and fungibility between listed and bilateral contracts?

Mr. MASSAD. Thank you for the question, Congressman.

I think just to step back for a moment, Congress directed us to implement rules to facilitate trading of swaps on these platforms. That is the goal, get more of this trading onto these platforms.

The agency set a rule framework which basically tried to balance innovation and initiative on the part of the private sector with kind of the regulatory objectives.

So that "made available to trade process" is in one of our rules, and it sort of outlines some criteria for what can be made available to trade. But it does sort of invite industry participants to make proposals to the Commission.

Now, it is kind of funny that some people in the industry are suggesting, "No. No. No. No. We don't want that freedom. You guys should just decide it." You know, it is one issue that we are looking at in terms of how to make sure these swap trading rules work the best.

But what I would say about it generally is this: This is all new. Swap trading is all new on these platforms. It is going to take time to work it out so that it works well. But today volumes are growing

and people are adapting. People are coming up with platforms and technology to execute this.

As far as the cross-border piece, it is true. We acted before anyone else did. So if you have a global market that is entirely unregulated and then one jurisdiction sets a rule framework, well, traders will try to migrate sometimes to the unregulated area.

But Europe is due to come online with its rules, and we are going to work with them. We will try again to harmonize this as much as we can.

Mr. BISHOP. There is information—

Mr. MASSAD. Well, their rules aren't set to come on until 2017. But, you know, we are still working with them. We are looking at our rules for ways that we can enhance this.

I mean, fundamentally, you know, Congress's direction was, "Let's have as much of this market as possible traded on these platforms." And that is what we are working on. But at the same time, I recognize you can't create markets simply through government mandates. People have to want to trade on this market.

And so we are looking at how can we facilitate that, how can we create a rule framework that meets the Congressional mandate, that tries to ensure transparency and integrity, but that attracts participants and attracts liquidity.

That is what we did with the securities framework. That is what we did coming out of the Depression. We created a framework for securities regulation in this country. That basic framework hasn't really changed. It brought transparency and integrity to the market, oversight of market participants, enforcement against bad actors. And that is similar to where we are today.

Mr. ADERHOLT. Mr. Valadao.

Mr. VALADAO. Thank you, Chairman.

Chairman Massad, I represent many agriculture producers within my district who have the ability to forward-sell milk, cattle, and various commodities while at the same time purchasing long-term contracts through the use of financial derivatives that include swaps and OTC markets.

This is beneficial to producers in particular because the bank will fund the margin necessary to hold the trade with, obviously, a line of credit as opposed to a margin acquired directly from cash reserves, which, as you probably know, most farmers are asset-rich and cash-poor.

Yet, the rules and regulations that are necessary to open these accounts with banks are ever-changing, ultimately resulting in increased costs to producers in order to remain in compliance with current policies.

Is it possible to increase certain exemptions for small businesses who are using these tools to hedge their farms' inputs and production versus large financial institutions using these tools to make, sometimes billions in profits? And do you feel that small businesses should be regulated in the same manner as larger businesses and institutions?

Mr. MASSAD. Thank you for the question, Congressman.

I think it is very important to make sure our rule framework allows businesses of all sizes, including, in particular, smaller businesses, to use these markets effectively and efficiently.

So I would be happy to explore these issues—because I think there are a number of issues in your question—with you in more depth, but let me just note one way that we are trying to do that.

There are rules that require businesses who want to trade on the futures market to post collateral. You have to post collateral with the clearing intermediary that then posts it with the clearinghouse.

We had a rule that set a timeframe as to when that collateral had to be posted, and it was due to accelerate that timeframe automatically.

And we have got a rule out there right now that will cause that not to be accelerated automatically, that will keep it where it is today, in response to a lot of agricultural community users, smaller users in particular, saying they would have trouble—if we moved that deadline up, they would have trouble getting the money in.

So we said, “Okay. We are not going to do it automatically. We are going to look at it. We are going to take our time. We are going to invite your input.” So we are prepared to look at issues like that.

Mr. VALADAO. Chairman Massad, you discussed how the CFTC has yielded large amounts of revenue for the Government in fines and penalties, as well as an increase in market transparency and integrity. Fines have been levied against some of the largest industry-leading financial institutions.

Who calculates and determines the size and scope of the fines and/or the penalties? How do you respond to the notion that some of these fines and/or penalties are increasing the cost of doing business for these large financial institutions?

Mr. MASSAD. Thank you, Congressman, for the question.

The size of the fines are determined, first of all, by our statutory authority because the statute specifies what the fine levels are generally, and then you look at sort of the number of violations and the degree of violation.

And it is either determined in a court or determined in a settlement that is negotiated. So either you have a court making the determination or you have a negotiation where the institution is agreeing.

The big fines you referred to pertain to a couple of cases where some of the world’s largest banks tried to fix foreign exchange rates. And you can read the emails that we uncovered where you had traders at different banks basically communicating through texts and other means how exactly they were going to, as they say, bang the close or otherwise take action to fix that rate. That was a very egregious violation. That is what led to the penalties.

Mr. VALADAO. Thank you.

Thank you, Mr. Young, for allowing me to cut.

Mr. YOUNG. You owe me.

Mr. ADERHOLT. Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman.

And welcome, Mr. Chairman. Thank you very much.

I think it bears repeating, something that my colleague, Mr. Farr, mentioned earlier. From 2011 to 2015, appropriations were for the CFTC an average of \$79 million, 26 percent under the request each year—under the request for each year. Few, if any, agencies in the bill were funded that far below the request during that period of time.

Question: You are a regulatory agency, Mr. Massad, Chairman Massad?

Mr. MASSAD. Yes.

Ms. DELAURO. Okay. The responsibility is open, fair, transparent markets; avoiding systemic risk; protect market users, consumers; protect the public from fraud, manipulation, and abuse of practices related to commodities, futures, and swap markets. Is that the mission?

Mr. MASSAD. Yes.

Ms. DELAURO. Is it true that what Dodd-Frank did expanded what the effort is to \$400 trillion in the domestic swaps market?

Mr. MASSAD. Correct.

Ms. DELAURO. That is what the scope—

Mr. MASSAD. Yes.

Ms. DELAURO [continuing]. Of the jurisdiction is?

This is a Committee that has oftentimes consumed itself with the issues of fraud and error rates, whether it is in the SNAP program, by the way, lower error rates than any other Federal agency.

So my hope would be that we would see folks on this committee be as concerned with the fraud and abuse that goes unchecked in the swaps futures and commodities market.

I will also point out that this is a small agency, huge responsibility, gets a fraction of what we spend on oversight for other agencies, including Medicare, Social Security.

I mean, looking at what banks are doing—you talked about IT before, collecting the data that you need in order to be able to move forward. For 2016, \$63 million is what it says here.

Mr. MASSAD. Uh-huh.

Ms. DELAURO. CitiBank, CitiBank, \$250 to \$300 million a year to take a look at information security with regard to cyber attacks.

What are we speaking about here? \$72 million. I defy you to go to any other agency and take a look at what they are spending in a whole variety of efforts. Tell me how much money you brought back from what you uncovered last year. How much money?

Mr. MASSAD. Well, this year alone, \$1.5 billion in fines and penalties. Between 2009 and 2014, it was over \$2 billion.

Ms. DELAURO. Over \$2 billion.

And that is directly an opportunity to deal with enforcement and to help deal with our deficit, to help deal with a whole variety of things that we concern ourselves about with these budgets.

If you don't get the \$72-million increase that you are requesting, what doesn't get done? While we see manipulation and fraud, are we at risk for another financial crisis?

And I will mention one other thing, if you can address, is oversight of retail foreign exchange dealers and what we ought to be doing with regard to regulating those efforts to be in line with what is set for derivatives.

Mr. MASSAD. Thank you, Congresswoman.

Certainly the risks are greater. You know, if we don't have an adequate budget, there is a whole range of things we are not going to be able to do. And, you know, I have sat in this chair now, the chair of the chairman, for 8 months, and I have seen it.

I mean, just take examinations. You mentioned cybersecurity. We need to be looking at whether particularly the exchanges and the clearinghouses have the readiness to deal with cybersecurity.

Now, we are very focused on this, but we need more resources to do it. You mentioned the disparity in our budget versus theirs. I had a group of industry participants in my office the other day and I asked them—

Ms. DELAURO. That is one bank. That is one bank.

Mr. MASSAD. Well, I asked them this very question, “How many of you are, you know, spending more than our budget”—I said “more than our entire budget on cybersecurity.”

And one of them leaned over to me and said, “Well, which do you mean? Our cyber operations budget or our cyber change budget?”

And I said, “Well, you tell me.”

Well, he said, “Well, actually, both of them individually are a multiple of your budget.”

The risk of a cyber attack on critical infrastructure on having a clearinghouse go down or an exchange, I mean, that is just not something we want to contemplate.

Now, you know, no regulator, again, can say they will prevent the next financial crisis or they will prevent this, but certainly we will reduce the risk. And this is true, you know, in terms of the cost in surveillance, again, because of the high-speed trading.

If you really want to understand these markets today, we have to have much more sophisticated capability to process these messages.

You know, you read about high-speed trading and whether the markets are rigged. Our markets, fortunately, are a little different than the equity markets in that futures trading is concentrated on one exchange. But we still face some of the same issues, and we are looking at those very closely.

But, you know, if you want to look at trading in any given contract—and there is millions of messages—you have to have high-speed capability to do that.

On the retail foreign exchange, you know, the movement in the Swiss franc a couple weeks ago obviously created a lot of losses. We were on the scene at one dealer in particular that we thought might fail. We were making sure it didn’t do anything to further jeopardize customers. It fortunately did get a capital infusion; so, it stayed in business.

We are looking at our rules in that regard. One of the things we discovered was, even though—we discovered that many of these firms are actually taking risk from their foreign affiliates and the foreign affiliate risk isn’t subject to the same standards as ours. So we are looking at whether we can do something about that.

So there is a number of things in this area. I would be happy to visit with you more on it.

Ms. DELAURO. I would like to do that and talk about how we can increase the funding that you need to have.

Thank you.

Mr. ADERHOLT. All right. Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman.

I am going to forego talk of derivatives and swaps and cross borders and all those things because I want to comment on something,

Mr. Chairman, you mentioned about leasing practices and being a good steward of the taxpayer dollar, no matter how little or how much it is.

You know, there was an OIG report issued in June—June 4, 2014. I think you were sworn in June 5, 2014. So you just made it.

I want to ask about that report—it states that, in your Kansas City office, you have approximately 25 employees working in an office space that should hold nearly 80 employees, more than three times your workforce there. The OIG estimates that over the course of the lease, about \$3.6 million was wasted on space that is not being used.

I want to know if you are aware of this report. What actions is the CFTC taking to remedy this situation, especially after the OIG recommended that the CFTC take immediate steps to divest itself of this office space?

Mr. MASSAD. Excellent question, Congressman.

I was sworn in on June 5, and I think within about 2 weeks I went to Kansas City and I went to all of our offices. And, in particular, at Kansas City, I looked at this issue, and we made a decision shortly after that to consolidate our employees on one of the two floors we had, to give up the other floor.

Now, we can't do that on our own. If I could sublease, I would. I don't have the statutory authority to sublease. I have to go to the landlord and say, "Will you take it back and cut our rent?" Well, if you are a landlord, you know, you are only going to do that if you have got another deal. Right?

The ownership of the building has changed hands. The landlord is still thinking about it. We are awaiting a response. So I have done what I can on that. We are looking at our other leases, too, to see if there is other things we can do.

Now, I am grateful for the IG's report. We have worked with the IG. You know, he wants us to open an office in LA. That is one of the things I am not doing. But we are very focused on leasing costs.

Mr. YOUNG. Well, I think the mindset there was they were trying to justify, your predecessor, that you are going to get new employees and you are going to fill that space. But you know the expectation game with budgets and that kind of thing. It seems like a waste of money. I hope you will take a look at this. It goes to a broader context of, if you can't be a good guardian of the taxpayer dollars with a smaller amount in context of the larger amounts that you want for other things—

Mr. MASSAD. All right.

Mr. YOUNG. I just want you to be conscious of that.

Mr. MASSAD. I am absolutely conscious of it. And, you know, again, the budget requests we are putting in is very similar, as has been pointed out, with the budget requests that have been put in now for several years. And if that budget request, you know, assuming we get that, we are going to be at 95 percent occupancy.

But I can assure you that, in other areas, we are looking at where we can cut costs. We have cut our travel budget. When I travel, I don't travel with an entourage. I am lucky if I have one staff person come with me. I fly coach, generally. If I fly business, I think I pay for it.

We have looked at contracting costs and how to reduce those. We have looked at other administrative overhead. We have reduced our administrative overhead as a percentage of our budget. So I am very conscious of being a good steward of the taxpayer dollars.

Mr. YOUNG. Well, in your opening statement, you mentioned that you would use your budget wisely, and we will be watching that. We will work with you to help you with that.

Mr. MASSAD. Thank you.

Mr. YOUNG. And you can help us as well.

Mr. Chairman, I want to thank you for your attention to the leasing issue because I want to dive into those kind of things. Thank you.

Mr. ADERHOLT. Dr. Harris.

Dr. HARRIS. Thank you very much, Mr. Chairman.

And thank you, Chairman Massad, for appearing before us.

Just a couple of things before I get into the questions. First of all, it continues to amaze me that only in Washington is a cut a decrease and an increase. I don't understand the line of statements that we have been cutting—you know, there have been these cuts when, you know, they are cuts from fantasyland budgets.

That is what the President's budget was this year. It is a fantasyland budget. We are in a fiscal mess, and he suggests just breaking the rules once again, breaking the laws as if pretending that the law doesn't exist.

The other one is, you said you fly coach. Does that imply that your predecessors didn't?

Mr. MASSAD. No. Not at all.

Dr. HARRIS. Good.

Mr. MASSAD. And let me clarify. I meant—

Dr. HARRIS. I have 5 minutes. I have got to move on. Okay.

Mr. MASSAD. I meant that when I go overseas—

Dr. HARRIS. Chairman, I only have 5 minutes.

I got it. I have to move on. I just wanted to know if that was a distinction from predecessors.

Mr. MASSAD. Sorry.

Dr. HARRIS. Look, the futures options and swap markets is obviously an important marketplace that has two layers of regulation, and that was described by Congress in Section 17 of the Commodities Act as a self-regulatory structure and then the CFTC.

You have got about 700 employees. Self-regulatory structure actually has 1,800 employees in it—I am sorry—800. So together, you know, you could double the regulatory force if you make use of them.

So I have got to ask you: How are you working with, for instance, National Futures Association?

You know, you bring up cyber. You on your budget request is not going to solve cybersecurity. I mean, we see what the NSA budget and what other budgets are. You are not going to be the cyber cops of the United States.

The industry has the biggest vested interest in protecting itself from cybersecurity. Why wouldn't you farm that entire thing out to the industry? As an example, what are the areas that you think that self-policing is adequate?

I am from the medical field. Many States allow the medical community, the groups, to self-police with oversight of that self-policing. Why is this different here? Why do you need a bigger budget to self-police?

Mr. MASSAD. It is not different, Congressman. You are absolutely right.

I am working very closely with the NFA to have them expand what they do. We have had a number of meetings about this and discussions. They are taking on more responsibility for examinations. They are probably going to help us with cyber issues.

And let me say I am not trying to be the cyber cop. And, actually, the way you described it is exactly the way I want to go about it. We are probably going to look at standards that make sure that industry, our critical infrastructure, is engaging in the cyber tests that are necessary to make sure they are ready. We are not going to do it ourselves.

Dr. HARRIS. But why wouldn't you just ask the NFA to do that and just assume that they are going to actually come up with things that actually protect their companies?

Mr. MASSAD. Well, again, we are working with them on a number of fronts. Cyber is one of them. Examinations are one of them.

Let me just point out, though, NFA—you know, people have pointed out the size of our growth in our budget—their budget has doubled over the same period. And they are—they are——

Dr. HARRIS. And I would just suggest that we avail ourselves of that additional funding.

Let me go on to my second question

Mr. MASSAD. Well, but they are regulated by the industry themselves. The industry themselves decided their budget wasn't enough for their own regulation.

Dr. HARRIS. And our taxpayers should avail ourselves of the industry making that decision——

Mr. MASSAD. We are doing so.

Dr. HARRIS [continuing]. Use them when we can.

Mr. MASSAD. But we still have to do enforcement——

Dr. HARRIS. Sure.

Mr. MASSAD [continuing]. Surveillance. We still have to know the markets well enough to——

Dr. HARRIS. Chairman, I have only got 5 minutes.

Mr. MASSAD. I am sorry. Excuse me.

Dr. HARRIS. Okay. You know about the Volcker Rule.

Mr. MASSAD. I do.

Dr. HARRIS. Seems like everyone, you know, that comes before any of the financial committees of any kind know about the Volcker Rule.

And you also know that these firms have to determine the covered fund status, things like that, in order to decide whether they are going to participate in the market.

And, my fear is that some of the concerns may be forced to stop making markets in some products because of the technical issues of not knowing what the rules are.

Now, I understand the industry has submitted a reasonable fairly limited proposal to regulators related to how they could comply

with the Volcker Rule, but that the regulators haven't responded yet.

With a July deadline, look, these market makers have to figure out whether they are going to participate in markets. I don't want markets to collapse. You don't want markets to collapse.

Do you have a view on how your regulators will respond—because you are only one piece of the Volcker Rule puzzle—and when that response will occur to the industry that has submitted proposals?

Mr. MASSAD. Well, Congressman, on Volcker generally, we are coordinating with the other regulators. I don't think it makes any sense for us to go off on our own, you know, if they are not—

Dr. HARRIS. So I will expand it, then.

Do you have any idea when the coordinated regulators will respond and when that response will occur? Because July is coming up.

Mr. MASSAD. If you will allow me, let me get back to you on that issue. I am not certain exactly where our process is on that.

But I can assure you that we are coordinating with them, and I can also assure you that I recognize the importance of market makers in a number of our markets.

[The information follows:]

All five regulatory agencies involved with the Volcker Rule are working together to consider issues that have come forward related to compliance with the rule. I cannot speak to the specific timing of a response, but we are actively reviewing all input and deadlines with the other agencies. In particular, we continue to work on coordination of the examination process and to look for ways to reduce the amount of overlap and redundancy that institutions face from different regulators.

Dr. HARRIS. Great. Thank you very much.

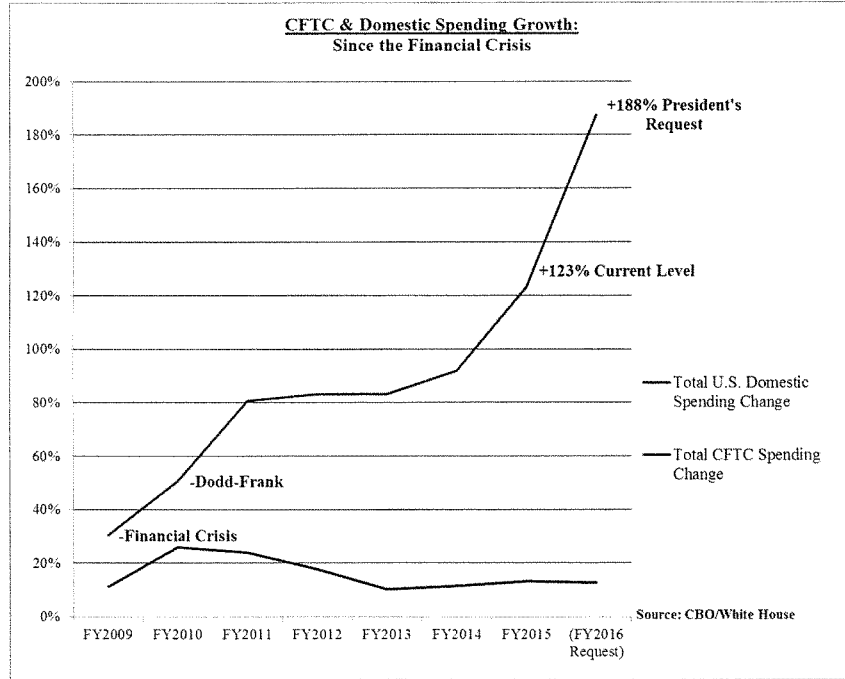
Mr. Chairman, I yield back, noting that I didn't even see the red light.

Mr. ADERHOLT. Thank you.

Let me get back a little bit about on the spending and—on the CFTC and just talk about domestic spending.

There was a chart that was included in my prepared statement, and in the chart there is highlighted the rapid growth in the CFTC spending since the financial crisis of 2008 and the decrease in U.S. domestic spending.

[The information follows:]



Mr. ADERHOLT. The agency's budget has increased 123 percent, as I noted in my opening remarks, since then, and your budget request would increase this to 188 percent, as I also mentioned. I would venture to say that CFTC has received one of the largest domestic spending increases in the entire Federal Government since that financial crisis.

In your request that you presented, you said the Commission's budget has increased somewhat since that time. I guess my question would be: Do you consider the agency's doubling in size a somewhat or a modest increase?

Mr. MASSAD. Mr. Chairman, let me make it very clear. I am very grateful for the increases we have received, and I recognize that our budget has increased.

I am simply looking at the needs. I am simply looking at what it is that I think—well, first of all, what it is that we are mandated to do and what it is I think the American public deserves in terms of protecting these markets.

And I can look across the board at any area, whether it is enforcement, surveillance, examinations, being responsive to industry. I can't be as responsive to industry requests for product approvals, for changes in our rules, unless I have the staff to do it.

So I am looking at it from that standpoint. I am looking at it from the need and the importance of these markets to our economy and to the many businesses that rely on them.

And if we don't adequately fund this, our markets simply won't be as good. People won't trust them as much. They won't be as innovative. Innovations will be slower coming on. We won't be able to fine-tune our rules as well. We won't be able to get rid of rules maybe that aren't needed as easily.

That is how I look at it, sir.

Mr. ADERHOLT. Well, I think what our message is—and I understand what you are saying. But I think what we are talking about is, you know, a larger and larger increase is being asked.

And, of course, the Nation's debt is the highest it has been in history, and that is what is, I think, concerning to many of us and that is the point that needs to be made.

Why did your budget request increase from \$280 million last year to \$322 million this year? And that is the highest it has ever been.

Mr. MASSAD. Well, I wasn't at the agency at the time that earlier request was put in. But what I do know is the original request was at 315 and then it was lowered to 280. Our request of 322 is, you know, pretty similar to the 315.

Mr. ADERHOLT. Well, of course, some would say that politics may be driving the agency's budget request and they are trumping off any assessment of needs.

But, you know, again, I just want to point out that \$280 million last year and going up to \$322 million requests this year is a substantial difference.

Mr. MASSAD. Well, again, Congressman, the way I—the way we got to that number was we looked at what the needs were. And this will fill the most egregious needs, number one. It is a budget we can execute on. We can get it done, and we can get it done wisely and prudently.

And, again, as a benchmark, it was consistent with essentially the requests that have been made in the last few years, recognizing the prior year was scaled back from 315 to 280.

Mr. ADERHOLT. Let me just follow up on a question that Mr. Young had mentioned about the leasing cost of the—of course, the Inspector General—as was pointed out, the waste is \$64 million over the life of the leases on unoccupied space, and we have already spent \$38 million since Dodd-Frank was enacted uselessly.

But just reiterate what—you know, your commitment to work with the GAO to address this and what kind of—as you move forward with recommendations. I just—

Mr. MASSAD. Sure. You know, on the savings, let's talk about Kansas City. The entire Kansas City lease budget is under a million dollars. I think it is about \$600,000. That is a pretty small percentage of our total budget, but we are taking steps to save where we can.

I would have to go back and look at how the IG got to the \$64-million number or whatever. I suspect it is some proportionate—you know, taking every bit of excess space today and calculating that out over the life of the lease.

But, again, if our budget—you know, assuming we are operating at the level I think we need to be operating at, we are at 95 percent capacity. I can assure you, though, we will continue to look at the leasing costs as well as all of our costs and look at where we can—where we can economize.

You know, another example on the budget, we have this separate fund for whistleblower awards and customer education that is supposed to be funded at at least \$100 million from the fines that we get. It is actually now at \$275 million.

Now, that is a great program because we needed a whistleblower program. And we are starting to get in more whistleblower tips, but we don't have enough resources to investigate them. We have got 275 there, and we have got an enforcement budget that is less than 70.

So, you know, it is sort of like the employer who posts a lot of suggestion boxes for his employees to talk about how to improve operations, but then you don't have the people to read them or act on them. We need to enhance the enforcement budget.

Mr. ADERHOLT. Mr. Farr.

Mr. FARR. Thank you, Mr. Chairman.

Chairman Massad, it is interesting coming before Congress because I think some people don't realize what you have to do to get your budget. You have to scrub it at your own—as chair, you have to scrub it, then at OMB, and they knock a lot more out. I mean, essentially, your budget is way under what you originally asked for when Dodd-Frank was passed.

I think, by statement, the Members all over Congress, we like to talk about taxpayers. I think I represent people who pay more taxes—Federal taxes—than most of the people in this room. I represent a very wealthy area in California.

I will tell you they are very concerned because they make their money doing the stuff that you are regulating, and they want good regulation. They are all for it. I think that we—seriously, this committee has got to be serious about what we do with first respond-

ers—we all love first responders. Perhaps if you wore a uniform you might get better treated.

I doubt anybody in this room knows what we give to the Capitol Police. They have a four-block jurisdiction. Your jurisdiction is a little more. It seems to me from your testimony you have worldwide responsibilities. Our cops have four blocks, and their budget is 356 million. And you are asking for 322 million, less than the Capitol Police.

In fact, we keep expanding them, although their jurisdiction never expands and their responsibilities don't expand and the amount of territory they have shut down that the public can't go to is less. So they have less jurisdiction than when they started many years ago. And, yet, we increase their budget.

I am trying to put this into some kind of perspective, that, when you come here and ask for this money, it is serious. It is not a game. The President isn't over-asking for this.

What happens if we don't give you any money? What happens if we do what the chairman said and you get only what you got last year?

By the way, Congress isn't getting for itself only what it got last year.

Mr. MASSAD. Right. Thank you for the question, Congressman.

You know, I say to our employees all the time—I repeat that Teddy Roosevelt line, “We will do all we can with what we have where we are.” And that is what we will do. We will stretch the dollars as far as we can.

But I can tell you there is a lot of things we won't be able to do that I think and I think most people who really studied it would think that we should be doing, whether that is making sure that we are as ready as we can be on cybersecurity—not, again, from doing the testing ourselves. I don't want to be the top cyber cop, but I want to make sure that critical institutions are doing it—or whether it is enforcement, going after the guys who are trying to defraud retirees in Florida or the sophisticated traders who are using automated trading programs, high-frequency trading programs, to manipulate prices.

The surveillance techniques that we need to do those things, the computing power we need to do those things, we will simply, you know, not be able to do as much and we will miss things. We won't be able to respond to industry as quickly when they have concerns. So it is across the board.

Mr. FARR. Well, you have had the *Wall Street Journal* suggest that you are inadequately funded. You have had industry tell you that they want you to be better funded so you can respond and set these regulations.

I mean, I don't know what we are doing here in Congress to think that regulation isn't good in modern society, to sort of get to the Wild West approach to financial—we did that. I mean, we had a Wild West when this all began, and that is what created this financial crisis. My God. We don't want to go back. We have learned from that.

If, indeed, we responded to 9/11 with our, essentially, investment in security, we certainly haven't responded adequately to the crash in financial regulation, as Congress called for. I mean, we enacted

Dodd-Frank. You didn't. All your job is to tell us how much it is going to cost to enforce the rules that we have established.

And so I hope, Mr. Chairman, that we don't just get into a battle of just cutting, squeezing, and trimming CFTC because a lot of people don't understand what it does and it doesn't have a lot of people in here lobbying for it.

Mr. MASSAD. Thank you, Congressman.

Mr. ADERHOLT. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Well, I think we are continuing this conversation on the Committee regarding what we are actually doing here. And I think my colleague just mentioned that we don't want to get into a debate about whether we are going to cut and squeeze the CFTC. And I think you would agree that there have been no cuts to the CFTC since the financial meltdown of 2008.

Mr. MASSAD. The budget has increased. But relative to the requests, there have been cuts.

Mr. YODER. I am sorry. I couldn't quite—there was a lot of conversation here. I am not quite sure who is testifying right now.

Mr. ADERHOLT. Watch the light when they are answering their questions.

Mr. MASSAD. I would say, Congressman, that the budget has increased. But relative to the requests, it has been substantially cut. And relative to the needs, it has been underfunded.

Mr. YODER. Well, not to belabor the point that Dr. Harris made as well, but most Americans understand that a cut of a request is not a cut. That is still additional money.

And the Chairman has laid out very clearly that there has been a 123 percent increase in the CFTC's budget since the financial meltdown. The President would like a 188 percent increase. Since last year, there has been a 16 percent increase. You are asking for a 28 percent increase next year.

Could you enumerate some of the other Federal programs that have had such increases.

Mr. MASSAD. I haven't had a chance to study that, Congressman, and I wouldn't—

Mr. YODER. Well, it would be a short list because there haven't been many. I can tell you there are many of us that are passionate about things like Head Starts or NIH funding and our efforts to, you know, stop cancer in this country. And many diseases have not increased nearly to that amount, if much at all.

And so we have to make choices in this Congress, and some, I think, argue that those choices don't need to be made, that there is an endless source of money. But at the end of the day, sir, the taxpayers are the ones who foot this bill.

And it is not just people in Mr. Farr's district, it is people in all of our districts that pay these bills. And I think they recognize that a 16 percent increase last year and a request for a 20 percent increase this year is an increase, and it has increased 123 percent since the meltdown.

And so I think to trivialize that and to say, "Well, that has just not been much," it has been probably more than almost any other agency in Federal Government's received. And I would just ask you

to enumerate ones that have received more, and I am sure it is going to be a short list.

This is while at the same time we are being lobbied by different organizations to increase this spending even greater, and some of those organizations—this particular union is also lobbying the CFTC to increase salaries by a double digit.

Are there discussions going on at the CFTC regarding raising the salaries of CFTC employees? And by how much?

Mr. MASSAD. Congressman, the employees did vote for a union. The union is entitled by law to negotiate over pay and benefits, as is the case with all of the financial regulators. We will negotiate in good faith because that is what we are required to do, but we haven't made any decisions.

Mr. YODER. Well, as we discuss in this country how to grow the earning power of working Americans, I note that at least 82 percent of the employees at CFTC make a six-figure salary. Certainly 82 percent of our constituents don't make those type of salaries.

And I hope this isn't the Administration's plan to grow paychecks, is simply to transfer tax increases which the President has requested in his budget, some significant ones, from our districts to Washington to grow double-digit increases for salaries for employees. Because, obviously, we know people at home are hurting and these are tough, tough times.

I do want to echo—and I appreciate the comments of my colleague Mr. Bishop, who brought up the issue of the rule-making you are engaging over bona fide hedging. And I had some Kansans in my office in recent weeks—agriculture producers, farmers, ranchers from Kansas—who expressed extreme concern.

And I just want to echo the comments that Mr. Bishop raised on the other side of the aisle, that in your rule-making, you may narrow the definition to the point where traditional hedging and risk-managing tools that frontline farmers and ranchers and agriculture industries in our districts utilize to hedge that risk would be limited.

And so I know you are engaging in that rule process. And I want to echo Mr. Bishop's concerns and hope that you will take those concerns of our constituents very validly.

And then, finally, you responded to our good conversation regarding cross-border swaps earlier by illustrating a rule that you specifically were exporting in Dodd-Frank.

But as you export all the rules of Dodd-Frank to our foreign partners and our largest trading partners, ensuring that they have to follow those same rules—and you said you are working to harmonize those—but to the extent that you are exporting all of them, do you believe that those trading partners are not capable of coming up with their own set of regulations? And is that why we are exporting all of our rules? Why do we feel that that is our position?

Mr. MASSAD. We are not exporting all of our rules, Congressman. We are setting rules for a market where there is no locus, if you will, to a lot of the activity that goes on.

This is a market where trades can happen between participants over the phone line, over computers. They don't necessarily happen—you can't say that that happens in New York or it happens

in London or it happens in Hong Kong. So you have to have rules that work for the modern economy that we live in.

Congress also directed us to take into account the risk that activity offshore could be imported back to the U.S. We saw that very clearly with AIG. Its activity was all—it was based all in London.

So we are not exporting our rules. We are trying to write rules. And we are trying to work with our counterparts around the world, again, to try to make those rules as consistent as we can so that this market can continue to function.

Mr. YODER. Thank you.

Mr. ADERHOLT. Mr. Bishop.

Mr. BISHOP. Thank you very much.

Mr. Chairman, you have indicated and, of course, you have been questioned significantly about the increase in your budget and the increase in requests. And, of course, we appreciate the fact that your budget has increased.

But over the same period of time, haven't you been required by Congress to perform additional duties by virtue of the exigencies of your work with your protecting the market participation relation, ensuring the integrity of the competitiveness and efficiency and abusive trading practices, et cetera.

So you actually have more duties. And I think you have requested an increase of 72 million and 149 additional personnel, which brings me to another interesting innovation and development, I should say, which is the utilization of bitcoins.

It is our understanding that you have been very active in monitoring the growth and the use of bitcoins, which is a form of digital currency that is created and held electronically and which appears to be under the control of no one in particular. Bitcoins aren't printed like dollars or euros, and they are produced by lots of people that are running computers all around the world using software that solves mathematical problems.

As one of the first government entities worldwide to begin focusing and holding hearings on the use by businesses and individuals of this virtual currency, can you share with us your views on this growing phenomenon and the potential role that bitcoins might potentially play in the derivatives market and how bitcoins fit in the existing definitions of currency, commodities, and potential market manipulation, given the context of your budget requests and lack of funding thereof for the additional responsibilities.

And I do have a follow-up about currency manipulation if I can get it in, sir.

Mr. MASSAD. Certainly, Congressman.

You know, bitcoin, as you are noting, raises issues that cut across a number of agencies. It comes into our jurisdiction if someone, for example, wants to trade a contract, like a derivatives contract, which is based on bitcoin. And a market participant did come to us with such a contract.

Now, our obligation, our responsibility, in that kind of a situation is to prevent fraud and manipulation. And so we looked at it from that standpoint. You know, we want to encourage innovation in our markets. That is good. That has always been good.

Our job in reviewing a new contract like that is really to look at the contract structure and make sure we don't think it could lead

to manipulation. And that is an ongoing duty. You know, we don't really approve it. We just don't object in that sense.

So we will continue to exercise that jurisdiction with respect to bitcoin when it comes up. But, as I say, bitcoin really raises issues for a lot of regulators, not just us.

Mr. BISHOP. Okay. Thank you for addressing that.

As you know, we are currently in negotiations on the Trans-Pacific Partnership (TPP), which could be one of the most significant trade agreements that has been considered in a while. And there has been a great deal of interest in Congress that any final TPP agreement include enforceable currency provisions.

Given the CFTC's ongoing role in oversight of the currency markets, in particular currency manipulation, what role has the CFTC played with respect to TPP thus far? And what role do you see the CFTC playing once an agreement is in place, should an agreement be reached?

Mr. MASSAD. Thank you for the question.

We have not been involved in TPP because derivatives and regulation of derivatives are essentially not in TPP. And, you know, as you know, certain currency contracts aren't subject to our regulation.

Certainly, though, to the extent that there are issues that come out of it, we will work with our fellow regulators to, you know, coordinate our activities. But, generally, it doesn't affect what we do.

Mr. BISHOP. Currency manipulation is really a real sticking point in the negotiations of that agreement. And, of course, you have an interest in currency—

Mr. MASSAD. We do have an interest that, sir.

Mr. BISHOP [continuing]. Manipulation.

Mr. MASSAD. We do have an interest in that. As you know, we did bring actions against five of the world's largest banks for their attempt to fix the benchmark. And we are very focused on benchmark manipulation because that is tied to the derivatives market.

The derivatives market—many, many contracts will rely on particular benchmarks. And so we have been very focused on looking at the integrity of those benchmarks, the administration of those benchmarks, making sure it is transparent.

We don't want the Government to do it. Private sector should do it. But we want to make sure that, you know, benchmarks are administered in a way that there is not manipulation.

Mr. BISHOP. Thank you.

Mr. ADERHOLT. Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman.

Chairman Massad, many Iowans have been struggling with stagnant wages over the past several years. Medium income is down. Some have taken pay cuts. Many haven't received a raise in years.

Over that time the CFTC has paid out millions of dollars in bonuses, and my colleague, Congressman Yoder, had mentioned that 82 percent of your employees have six-figure salaries or more. This doesn't necessarily sound like a Commission that is starving for funds.

Can you tell me how much in bonuses, including special pay, incentive awards, merit pay, performance pay, CFTC will pay out in

2015. If you don't know, I understand, but I would like to find out. Also, do you plan on doing this in 2016?

Mr. MASSAD. We haven't set what we will do. We don't really pay bonuses, Congressman. We do give a cost of living (COLA) adjustment, and we do give merit increases. And then we give—last year I think we took \$500,000 and gave some incentive awards to our employees who are basically at the lower end of our pay scale.

We set salaries in order to be competitive, as any agency or business would, in order to attract and retain people. And we have to be competitive with the other financial regulators, and I think you will find that our salaries are comparable to theirs.

The union thinks we are not comparable, that we are below the other financial regulators. And we have to compete with private industry. We can't match their levels. People don't come to our agency generally because of pay.

But, you know, I think we have got to at least be competitive with the other regulators so that people don't leave either for another regulator or for private industry. And, really, you know, that is how we think about the budget.

We don't think about the—I realize we have gotten increases, but we don't think about the budget, you know, in terms of the percentage increase as much as what the needs are, what our responsibilities are, and how—what do we have to have in order to carry those out.

We have got to have highly skilled people, and the only way to get them is to pay them the amount that they could otherwise earn at at least another financial regulator.

Mr. YOUNG. I want to thank you for coming to see us today and thank you for your thoughts and—

Mr. MASSAD. Thank you.

Mr. YOUNG [continuing]. For your service and what you do.

And just to put a more human face on this, with your job, what keeps you up at night when you think about your job and the tasks at hand?

Mr. MASSAD. I try not to let my job keep me up at night. You know, I guess it really is a matter of looking at the things that I know we should be doing that—and it is hard to stretch the resources to do them.

And it is all the things we have talked about, you know, whether it is being able to respond faster to industry requests or the registrations that we have that are pending that we can't act on fast enough or whether it is cyber.

Clearinghouse strength and stability is a big issue. We made clearinghouses more important in the financial system. That was a wise decision, but, you know, we have got to make sure now that we are vigilant in overseeing them. I think we have got a good framework there, but we have got to make sure we continue to implement it. Being able to attract and retain people.

I mean, those are the things. They don't keep me up at night, but those are the things I think about as my worries.

Mr. YOUNG. Iowa is a big agricultural State. Commodities is a common word there.

Have you ever been to Iowa? Would you be ever willing to go?

Mr. MASSAD. I would be happy to go. I have been, and I would be happy to go again.

Mr. YOUNG. Thanks for coming before us today.

Mr. MASSAD. Happy to come to your district anytime, sir.

Mr. ADERHOLT. Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman.

There has been some discussion about the deficit. I think it is worth noting that, since 2009, the deficit has dropped about 66 percent. It was \$1.4 trillion in 2009; 2014, \$486 billion.

That doesn't mean that one stops not to continue to deal with the deficit. And in that regard, I think that your mission, Chairman Massad, directly reflects the interest in doing that.

My understanding is that civil monetary penalties from last year alone was \$1.8 billion, more than seven times the Commission's total current operating budget. In addition, the Commission has filed 67 new enforcement actions. This would appear to be an area where additional spending would yield additional revenue for the Government and the opportunity to continue to reduce that deficit.

If I can take a moment—and I will take this as a moment of personal privilege and pride—I had the honor of chairing this Committee in 2009 and 2010. And as I pointed out earlier, where the requests have been below 2004, 2005, 2006, 2007, in 2009, under my Chairmanship of this Committee, we increased the CFTC's budget by \$16 million. In 2010, we did by \$8.2 million.

Subsequent to that, we saw a \$58-million cut, \$102 million, \$102 million, \$100 million, \$30 million in cuts below the request. Yes. One could argue that there has been a minimum in terms of increase, but that hasn't kept pace with the expanded scope of mission and responsibility that the agency has had.

With regard to that, if the enforcement budget is fully funded, do you have any calculation—or you can get it to us—how much more revenue do you estimate would be collected? With the division of enforcement opening more than 240 investigations, how can the CFTC continue to work in concert with the Department of Justice to crack down on bad players?

And I will make one final comment and then listen to your response.

My colleague, Mr. Farr, talked about legislation, and I am proud to say that I would love to see you put on equal footing with Securities and Exchange, FDIC, National Credit Union Association, Federal Housing Finance Agency, and the user fee issue.

And do you think a small user fee would impose any real burden on market participants?

Mr. MASSAD. Thank you, Congresswoman, for the questions.

I can't promise what the fines and collections would be, and we don't really even think about it that way. We really decide what we are going to go after based on the egregiousness of the behavior, the impact the case will have.

And we try to, as I was saying earlier, kind of look not just at maybe the things that are being done by big institutions where maybe there might be a big fine, but also the things that are victimizing elderly citizens in Florida. So I don't know what the fines would be.

I can assure you, though, that fully funding our enforcement sends a greater message of deterrence, which results in less of a chance that our economy is harmed by these things. And that is the real cost here, is the cost to our economy of some of these frauds.

You know, and the fact is, yeah, we have collected enough in fines and penalties over the last few years to fund our budget several years out.

In terms of trying to—

Ms. DELAURO. User fee and—

Mr. MASSAD. Yeah. The user fee issue.

You know, again, that is certainly a way to fund us that removes the issue of whether we give money to the CFTC or somewhere else. You still have the power to set the budget. It doesn't take that away.

And, you know, I think we have looked at it. If we think it could be done practically, it—obviously, you want to set it at a level that doesn't affect liquidity.

But, you know, most regulators abroad are funded this way, also. And, as I said earlier, the NFA is funded this way, and they recently reduced the fee that they charge. So I think it can be done practically.

I thought you had a third question.

Ms. DELAURO. No. In response to the issue of self-policing, I think we have watched what happened with regard to self-policing in the financial institutions, which brought this Nation to its knees and almost a collapse of our financial markets and industries, et cetera.

And I think you are the cop on the beat and I think that we ought to be working with you in order to be able to provide you with the resources that you need, as you point out, to get the job done.

Mr. MASSAD. Thank you.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Mr. ADERHOLT. Dr. Harris.

Dr. HARRIS. Thank you very much.

Let me just follow up on a couple of things.

The Commodity Exchange Act, Section 17, I mean, does it set up the primary—or the frontline regulator as the CFTC or does it set up the self-regulating entities, the self-regulation?

I mean, my understanding is that the front line can be the self-regulation with CFTC just overseeing. Is that the way you perceive the world or do you perceive, you know, the CFTC as the regulator, in which case why do anything over at the NFA?

Mr. MASSAD. I think it is both, Congressman. It is not an either/or.

Dr. HARRIS. Okay. How much can you delegate to the NFA under your authority, do you believe?

Mr. MASSAD. Well, as I said, we are working with them to expand what they do.

Dr. HARRIS. Could you prepare a list of perhaps—

Mr. MASSAD. Sure. Be happy to—

Dr. HARRIS [continuing]. Or if we submit one, if you could just tell us what things are you looking—

Mr. MASSAD. Absolutely. Absolutely.
[The information follows:]

The National Futures Association (NFA) is a registered futures association (RFA) under Section 17 of the Commodity Exchange Act. NFA develops rules and offers services that help protect the markets and assists its members in meeting their regulatory responsibilities. Membership in NFA is mandatory and NFA's membership consists of firms in almost every category of registration under the Commodity Exchange Act. The NFA is a regulatory partner to the CFTC, and its regulatory authority is closely overseen by the CFTC. The CFTC is overseen directly by Congress. As a registered futures association, NFA is required, among other things, to: establish training standards and proficiency testing for certain categories of persons involved in the futures industry; establish minimum capital, segregation, and other financial requirements for futures commission merchants (FCMs) and introducing brokers (IBs), as well as establish a program to examine FCMs and IBs for compliance with such financial requirements; and establish standards governing the sales practices of certain persons.

NFA also develops rules applicable to its members, and enforces those rules through its own examination and disciplinary process. NFA rule and rule amendments approved by NFA's Board are subject to CFTC approval. NFA's largest departments are devoted to monitoring members for compliance. Offending firms may be expelled from NFA. Firms that are expelled from NFA are effectively barred from the futures industry.

The Commission has delegated certain responsibilities to the NFA, including processing registration applications, performing reviews of all commodity pool operators (CPO) and commodity trading advisor disclosures documents, and performing reviews of all CPO and IB annual financial reports. In this regard, one of NFA's main areas of responsibility includes the registration of market professionals, including all swap dealers. As part of the registration processing, NFA conducts background checks of applicants and, where appropriate, may condition, deny or revoke a registration. NFA also maintains an arbitration program where market participants, including retail customers, may file a claim against an NFA member if they believe that they lost money as a result of improper treatment by the NFA member.

As a result of Dodd-Frank, the Commission increased NFA's responsibilities dramatically, and NFA's staff and budget increased also. This increase is primarily attributable to NFA's new responsibilities resulting from the regulation of swaps under the Dodd-Frank Act. In this regard, NFA is responsible for processing the registration applications from more than 100 swap dealers (SDs) or major swap participants (MSPs). In addition to reviewing and processing the registration applications to assess compliance with the SD and MSP requirements set forth in the Dodd-Frank Act and Commission regulations, NFA also has initiated a program to conduct examinations of SDs and MSPs. Commission staff also has worked with NFA to establish NFA as the recipient of all SD, MSP and FCM chief compliance officer annual reports and quarterly risk assessments.

In addition, as part of the Dodd-Frank amendments to the CEA and the regulations promulgated with respect to the registration and compliance of CPOs and CTAs, the Commission delegated additional authority to the NFA with respect to both CPOs and CTAs. Specifically, all CPOs and CTAs file their systemic reporting obligations on Forms CPO-PQR and CTA-PR, respectively, with NFA through NFA's EasyFile electronic filing system. NFA also continues to be the delegated recipient of all claims of exemption and exclusion under Commission regulations 4.5

and 4.13 for CPOs and CTAs, including the annual affirmations required pursuant to the Commission's recent amendments to those regulations. NFA also receives notices under Commission regulations 4.7 and 4.23 for CPOs wishing to use third party record-keepers for compliance with their recordkeeping obligations. Additionally, CPOs of registered investment companies seeking to utilize the Commission's harmonized compliance regime file their notice of exemption pursuant to Commission regulation 4.12 with NFA. Finally, NFA is responsible for the monitoring of delegations of authority between CPOs and receives notices of exemption filed by delegating CPOs.

We will continue to do all that we can to ensure that an appropriate balance is maintained between the work of the NFA, a self-regulatory organization, and the CFTC, the federal regulator and oversight body of the industry.

In either case, both the CFTC and the NFA have seen the scope of their work expand considerably since passage of Dodd-Frank.

Dr. HARRIS [continuing]. At with them so that we can perhaps move some of the things off ours.

But, you know, you could charge the user fee or you could transfer some of the obligations to the NFA and they could charge their members a fee. I prefer the latter rather than the former. But if you could get back to me on that, I would appreciate that.

Mr. MASSAD. If I may respond, Congressman, I would be happy to discuss with you the things that they do today and the things that we are asking them to take on in addition.

But that doesn't alleviate us of responsibility. We have to oversee what they do. We have to set the guidance and policies for what they do. And there is a number of things that we will need to continue to do.

Dr. HARRIS. Sure. I understand.

Thank you very much. And I want to also thank you for appearing before the committee.

I am going to yield the rest of my time to the chairman.

Mr. MASSAD. Thank you.

Mr. ADERHOLT. Thank you, Dr. Harris.

I think we just have a couple more questions and—myself and then Mr. Farr. So we will just wrap up after that. But let me just go back to the swap dealer de minimis issue that we had—was referred to a little bit earlier.

Of course, currently CFTC has the regulation that would reduce the threshold for end users by 60 percent automatically in the next 1 to 2 years from 8 billion to 3 billion, and this level will subject a lot of end users to register as swap dealers, which adds 4,000 unique regulatory requirements to these entities to comply with.

Just to cut to the bottom line, the recently passed omnibus included a directive in the agricultural portion of the bill to your agency to require a full vote and rule-making of the Commission before this level drops. This would prevent unelected bureaucrats from subjecting numerous end users to unnecessary financial regulations.

Can you tell us that you will comply with this directive and when that might be?

Mr. MASSAD. Thank you for the question, Mr. Chairman.

I can assure you that I want all decisions that we make to be data-driven. The swap dealer de minimis rule, as you know, is—currently, the way the rule reads, it would—the level would go down in 2017.

We are doing a study today—or commencing a study today to begin to look at that issue, and I think we want to do a lot of thinking about what is the proper level.

I am certainly conscious of weighing the costs and benefits. We always do cost-benefit analysis in any of our rule-making, and we will continue to do that.

And I think all the Commissioners share the view that we want to make informed data-driven decisions, and that is what we will do here.

Mr. ADERHOLT. Do you see any issue with requiring a vote by the full Commission before dropping the level and allowing—

Mr. MASSAD. Well, technically, sir, I would have to do a rule change and I would have to do, I guess, a cost-benefit analysis of that rule change.

And, you know, what I can assure you is that I, as chairman, am committed to looking at the facts. I don't have a preconceived notion of where we should land.

You know, recently we changed what is called our residual interest rule so that the level—the time didn't fall automatically, didn't accelerate earlier in the day.

So, again, I can assure you that I am certainly committed to making well-informed decisions.

Mr. ADERHOLT. Okay. All right.

Mr. Farr.

Mr. FARR. Thank you, Mr. Chairman.

I just have one question. You mentioned, I think, that you actually had regulators wanting you to have an increased budget.

Could you mention some of the industries that have asked you to—you know, have wanted that? My experience in Government has been that, we always kind of beat up on regulations when they become unnecessary, but the Congress and legislators are very good at creating the need for them, but not going back and reviewing and cleaning them up.

What I find is that industry gets very upset because they want to abide by the law. I think of people getting drivers' licenses and trying to register their cars and the complaints they have with the DMV if they don't get good service. In essence, you know, that's a fee-for-service job.

But I have had people that have been regulated come in and say, "What can you do to make sure that the agency responds adequately? I don't want to have to wait. It is time and money for me to wait. I want to get it done and I want to get the permit" or "I want to do that," and they do ask us to come in.

In fact, California voters, interestingly enough, because they saw when we shut down Government for all those years, that Government couldn't provide the services. The legislature didn't have the guts to increase taxes, but the governor of California went out and did an initiative, got enough signatures, got it on the ballot to increase a broad array of taxes in California and asked the voters to enact taxes against themselves, and they did, overwhelmingly.

I think the people are willing to pay for things as long as they get service. So I am just curious as to those in the private sector that would like to see you have the budget you requested.

Mr. MASSAD. Well, Congressman, I guess a number of people say that to me. I don't have a list, and I don't think it would really be appropriate maybe for me to volunteer their names. But I suspect that, if you did a survey and you made it a reasonably fair survey in terms of who you went to, you would get that reaction.

Again, you know, one objective measure is, again, what the National Futures Association has done over the same period that the Chairman referred to in terms of the growth of our budget.

That is an organization that is governed largely by people from the industry. They have doubled its budget, and they didn't, you know—

Dr. HARRIS. They didn't have to ask Congress for it.

Mr. MASSAD. Right.

They weren't charged with specific statutory additional responsibilities. They just doubled their budget in view of the increased cost to do what they are supposed to do, and that is even before the stuff that I am now talking to them about about taking on new responsibility.

Dr. HARRIS. Well, I appreciate, as other Members do, you coming before us. This is the only chance you have to make your plea for your budget. I think you have done a very good job.

Mr. MASSAD. Thank you, Congressman.

Mr. ADERHOLT. Yeah. Let me reiterate we appreciate you being here. I know that it is not probably a fun time to come and get a lot of questions thrown at you.

But at the same time, it is important for us to try to probe these questions and, as we try to go forward with this budget, it is just part of the process. And I know you understand that as well as anybody does.

But we nonetheless do appreciate your commitment to CFTC and, of course, your commitment to being up here today to speak before our Subcommittee as we move forward with these budget decisions. So thank you.

And the hearing is adjourned.

Committee on Appropriations
Subcommittee on Agriculture and Related Agencies
Public Hearing: 2016 Fiscal Year Budget for the CFTC
 Wednesday, February 11, 2015
 Questions for the Record
 The Honorable Timothy G. Massad, Chairman
 Commodity Futures Trading Commission

Robert Aderholt, Alabama

Notional Value

1. Please provide the definitions of Notional Value, Gross Credit Exposure, Gross Market Value, and Net Credit Exposure as defined by the Bank for International Settlements (BIS).

From BIS publication *OTC derivatives statistics at end-June 2014* pages 7 and 8 available at http://www.bis.org/publ/otc_hy1411.pdf. BIS defines 'notional amounts outstanding' rather than "notional value" and "net market values" rather than "net credit exposure".

Notional amounts outstanding: Nominal or notional amounts outstanding are defined as the gross nominal or notional value of all deals concluded and not yet settled on the reporting date. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts at the time of reporting. Nominal or notional amounts outstanding provide a measure of market size and a reference from which contractual payments are determined in derivatives markets. However, such amounts are generally not those truly at risk. The amounts at risk in derivatives contracts are a function of the price level and/or volatility of the financial reference index used in the determination of contract payments, the duration and liquidity of contracts, and the creditworthiness of counterparties. They are also a function of whether an exchange of notional principal takes place between counterparties.

Gross credit exposures: Gross credit exposures are calculated as gross market values minus amounts netted with the same counterparty across all risk categories under legally enforceable bilateral netting agreements. In other words, the market value of dealers' claims and liabilities are netted when they are claims on and liabilities to the same counterparty and the reporting dealer and the counterparty have a valid, legally enforceable netting agreement. The absolute value of amounts across counterparties is then summed. Gross credit exposures provide a measure of exposure to counterparty credit risk. However, they do not take collateral into account. Collateral would offset losses should the counterparty default.

Gross market values: Gross market values are calculated as the sum of the absolute of all open contracts with either positive or negative replacement values evaluated at market prices prevailing on the reporting date. Thus, the gross positive market value of a dealer's

outstanding contracts is the sum of the replacement values of all contracts that are in a current gain position to the reporter at current market prices (and therefore, if they were settled immediately, would represent claims on counterparties). The gross negative market value is the sum of the values of all contracts that have a negative value on the reporting date (ie those that are in a current loss position and therefore, if they were settled immediately, would represent liabilities of the dealer to its counterparties). The term “gross” indicates that contracts with positive and negative replacement values with the same counterparty are not netted. Nor are the sums of positive and negative contract values within a market risk category such as foreign exchange contracts, interest rate contracts, equities and commodities set off against one another. Gross market values supply information about the potential scale of market risk in derivatives transactions and of the associated financial risk transfer taking place. Furthermore, gross market value at current market prices provides a measure of economic significance that is readily comparable across markets and products.

Net market values: Net market values are calculated in the same way as gross credit, except that netting is restricted to one type of derivative product instead of across all products. In the OTC derivatives statistics, net market values are reported for credit default swaps only.

a. Please provide the most recent numbers of each for the total value of the Over-the-Counter and on-exchange traded derivatives market for each financial instrument/market, including Futures, Options, and Swaps as classified and quantified by the BIS.

In response to 1a and 1b are two tables (Attachment #1) that provide the most recent numbers available and five years' worth of data for OTC (through June 2014) and exchange-traded derivatives (through December 2014). BIS does not provide all of the information requested. For example, information on exchange-traded derivatives is only for financial derivatives and does not include physical commodities. Moreover, **net market value** is provided only for credit default swaps and for only one period, the first half of 2014. That number was \$144 billion total as seen in Table 4 on page 18 of *OTC derivatives statistics at end-June 2014*.

b. Please provide a 5 year table showing the data for each definition and financial instrument defined in the first two questions above.

In response to 1b and 1a are two tables (Attachment #1) that provide the most recent numbers available and five years' worth of data for OTC (through June 2014) and exchange-traded derivatives (through December 2014). BIS does not provide all of the information requested. For example, information on exchange-traded derivatives is only for financial derivatives and does not include physical commodities. Moreover, **net market value** is provided only for credit default swaps and for only one period, the first half of 2014. That number was \$144 billion total as seen in Table 4 on page 18 of *OTC derivatives statistics at end-June 2014*.

2. Please describe the process of “netting” used to dispose of Over-the-Counter Swaps and how this process occurs in layman’s terms.

At the most basic level, netting involves taking a trader’s long and short positions (or more generally, positions with opposite payoffs) in identical or fungible instruments, and “cancelling out” (or approximately “cancelling out”) all such positions, and in the case of non-fungible swaps, creating new swaps with smaller notional size but with risk exposures identical or similar to that of the original portfolio.

Given the lack of fungibility in swap portfolios, firms use various netting strategies, including portfolio compression, basis risk reduction, and portfolio compaction, to reduce notional size of their portfolios, and in the process drive efficiencies in credit exposure, capital cost, as well as lower legal and administrative expenses in the event of a default of any participating dealer.

3. How much of the Swaps market, both OTC and on-exchange, is made up of collateral including margin and underlying assets?

Under CFTC Regulation 39.19, on a daily basis, each DCO reports to the CFTC initial margin required and on deposit, variation margin, other cash flows, and end-of-day positions for each clearing member, by house origin and customer origin. An “initial margin” is collateral that the holder of a financial instrument has to deposit to cover some or all of the credit risk of their counterparty. The collateral can be in the form of cash or securities, and it is deposited in a margin account. DCOs registered with the Commission hold approximately \$120 billion in initial margin as collateral for cleared swap positions.

Although un-cleared swaps positions are reported to swap data repositories, there is no comparable reporting to the CFTC of data related to margin and other cash flows.

Bonuses, Performance Awards, and Special Pay**4. How much in bonuses, special pay, incentive awards, merit pay, and performance pay, were distributed to CFTC employees and contractors in FY 2014 and estimated in FY 2015 and in the FY 2016 President's Budget?**

The table below shows the in-fiscal year costs for the CFTC employees' merit pay and awards: Please note that CFTC contractors are not CFTC employees, and individuals working on CFTC contracts are paid by their respective employers.

	FY 2014 ¹	FY 2015 ²	FY 2016 ³
Merit Pay ⁴	\$ 530,596	\$ 2,173,668	\$ 2,637,955
Awards ⁵	\$ 735,723	\$ 74,500	\$ 1,448,110
Total	\$ 1,266,319	\$ 2,248,168	\$ 4,086,065

1 - FY 2014 Merit Pay includes only FY 2014 costs, which occur only in the final quarter of the fiscal year. There was no Merit Pay in FY 2013 as part of the pay freeze.

2 - FY 2015 Merit Pay amount includes \$1,591,788 of expenses from the FY 2014 Merit Pay increase

3 - FY 2016 Merit Pay amount includes \$1,745,640 of expenses from the estimated FY 2015 Merit Pay increase

4 - Merit Pay increases occur in the last quarter of the fiscal year. CFTC staff does not receive step increases.

5 - Includes bonuses, incentive awards, and performance awards. In FY 2014 CFTC only paid awards to staff. FY 2015 has a limited awards program. FY 2016 assumes awards pool of 1% of salary

5. Please provide the costs associated with pay increases for FY 2014, 2015, and FY 2016.

Pay Adjustment	Effective Pay Period	FY 2014 Cost*	FY 2015 Est. Cost	FY 2016 Est. Cost
1% COLA	Jan PP 01	\$ 708,414	\$ 1,178,329	\$ 1,382,789
Merit Pay	Jul PP 14	\$ 530,596	\$ 2,173,668	\$ 2,637,955

*FY 2014 was the first year after the government-wide pay freeze that CFTC had merit pay. Merit pay occurs in the final quarter of the fiscal year. Figures for FY 2015 and FY 2016 include the amounts budgeted in each fiscal year to accommodate the portion of the previous year's award, payable in the subsequent year.

Unionization of Employees at CFTC

6. Please provide the Memorandum of Understanding and any other contractual agreement or understanding between the CFTC and the National Treasury Employees Union (NTEU).

The Memorandum of Understanding is attached (Attachment #2.) There are no other contractual agreements between the CFTC and the National Treasury Employees Union (NTEU).

7. As a result of the pending MOU between CFTC and NTEU, please provide the estimated increased costs to CFTC using the FY 2015 Personnel Compensation and Benefits (PC&B) line items as defined by OMB object class, provided in the current year spend plan, at a maximum and a minimum (even if only based upon preliminary negotiations with the NTEU), of any salary negotiations that might occur under the Financial Institutions Reform, Recovery, and Enforcement Act or with the NTEU during FY 2015 and 2016.

CFTC is currently negotiating with NTEU on pay and benefits, and to date no agreement has been reached on pay and benefit levels. Negotiations are focused on FY 2015 (although the union has raised items that would affect FY 2016). The main pay and benefits structure for FY 2016 and beyond will be a part of the long-term agreement that will be negotiated next fiscal year. The first chart below provides the FY 2015 spend plan amounts compared to NTEU's initial written proposal of January 12, 2015, impacting FY 2015. The second chart provides the FY 2016 President's Budget Assumptions for salary and benefits as compared with the annualized impact that the FY 2015 initial written union proposal (January 2015) would have on FY 2016 personnel compensation and benefit assumptions. Please note that the second table below on FY 2016 does not make any assumptions as to what the NTEU might propose for pay and benefits for FY 2016; the effects shown for FY 2016 are only the impacts of the FY 2015 NTEU proposal.

Impact of NTEU's Initial (January 2015) FY 2015 Written Proposal on the FY 2015 Spend Plan

	FY 2015 Spend Plan	FY 2015 Spend Plan with NTEU Proposal	Net Increase
	\$(000)	\$(000)	\$(000)
Personnel Compensation	\$116,483	\$116,891	\$408
Personnel Benefits: Civilian	\$34,712	\$38,133	\$3,421
Total Personnel Compensation & Benefits	\$151,195	\$155,024	\$3,829

**Impact of NTEU's Initial (January 2015) FY 2015 Written Proposal
on FY 2016 the President's Budget**

	FY 2016 President's Budget	NTEU Proposal Impact on FY 2016	Net Increase
	\$(000)	\$(000)	\$(000)
Personnel Compensation	\$145,723	\$147,679	\$1,956
Personnel Benefits: Civilian	\$43,425	\$52,838	\$9,413
Total Personnel Compensation & Benefits	\$189,148	\$200,517	\$11,369

8. Please provide any projected increases or decreases in FTE levels and overall PC&B levels that may occur as a result of negotiations using the range provided in the previous question as well as a complete, updated pay scale reflective of the changes to PC&B based upon the information in the previous question.

CFTC has not projected different staffing levels than those that are currently included in the President's FY 2016 Budget Request. Based on the assumptions provided in the previous question, the CFTC recognizes that increased personnel costs beyond what was assumed in building the \$322 million President's Budget request would possibly require a reduction in the number of FTE brought on-board in FY 2016. Based on the average cost per FTE in the FY 2016 budget, the CFTC would possibly reduce hiring by 53 FTE if the union's initial written proposal of January 12, 2015 was agreed to.

Below are updated pay scales that reflect the projected ranges for CFTC employees in FY 2015. The ranges are only affected by the negotiations on the COLA rate (1% estimated in FY 2015). The CT-18 pay scale minimum exceeds the CFTC salary cap; therefore CT-18s will earn an amount equal to the cap of \$235,300.

CFTC Chicago Pay Chart 2015			CFTC Washington D.C Pay Chart 2015		
CT Grade	Minimum	Maximum	CT Grade	Minimum	Maximum
1	\$27,265	\$38,439	1	\$27,073	\$38,168
2	\$30,652	\$43,586	2	\$30,437	\$43,280
3	\$33,445	\$49,124	3	\$33,211	\$48,778
4	\$37,545	\$55,140	4	\$37,281	\$54,752
5	\$42,007	\$61,691	5	\$41,711	\$61,257
6	\$46,825	\$68,774	6	\$46,495	\$68,290
7	\$52,034	\$76,431	7	\$51,668	\$75,893
8	\$57,628	\$84,642	8	\$57,222	\$84,047
9	\$63,649	\$93,490	9	\$63,202	\$92,832
10	\$70,093	\$102,957	10	\$69,600	\$102,233
11	\$77,009	\$113,126	11	\$76,468	\$112,330
12	\$92,800	\$135,573	12	\$91,650	\$134,620
13	\$109,760	\$161,222	13	\$108,988	\$160,088
14	\$129,702	\$190,517	14	\$128,789	\$189,177
15	\$152,571	\$224,095	15	\$151,497	\$222,518
16	\$176,520	\$259,278	16	\$175,278	\$257,855
17	\$204,234	\$299,986	17	\$202,797	\$297,676
18	\$235,238	\$347,081	18	\$234,638	\$344,639

CFTC Kansas City Pay Chart 2015			CFTC New York Pay Chart 2015		
CT Grade	Minimum	Maximum	CT Grade	Minimum	Maximum
1	\$24,881	\$35,077	1	\$28,054	\$39,551
2	\$27,972	\$39,775	2	\$31,539	\$44,847
3	\$30,520	\$44,828	3	\$34,413	\$50,545
4	\$34,262	\$50,317	4	\$38,631	\$56,735
5	\$38,334	\$56,296	5	\$43,222	\$63,476
6	\$42,730	\$62,759	6	\$48,179	\$70,765
7	\$47,483	\$69,748	7	\$53,539	\$78,643
8	\$52,588	\$77,241	8	\$59,295	\$87,092
9	\$58,063	\$85,314	9	\$65,491	\$96,195
10	\$63,963	\$93,953	10	\$72,121	\$105,936
11	\$70,275	\$103,233	11	\$79,239	\$116,399
12	\$84,228	\$123,718	12	\$94,970	\$139,496
13	\$100,162	\$147,124	13	\$112,936	\$165,857
14	\$118,360	\$173,856	14	\$133,455	\$196,030
15	\$139,227	\$204,498	15	\$156,965	\$230,580
16	\$161,083	\$238,605	16	\$181,628	\$268,781
17	\$186,373	\$273,752	17	\$210,144	\$308,667
18	\$215,638	\$316,729	18	\$243,135	\$357,125

**Total Pay Capped at Vice President's Salary of \$235,300

9. How are the NTEU's dues paid? Does CFTC play any part in this process either at the payroll processing level or in the enforcement of payment of these dues by the employees?

Employees in the bargaining unit interested in paying dues complete the Standard Form 1187, Request for Payroll Deductions for Labor Organization Dues and provide the forms to CFTC. Once CFTC confirms the employee is a bargaining unit member, the employee's request is entered in the National Finance Center's payroll/personnel system. Dues are automatically deducted from the employee's paycheck and are sent directly from the National Finance Center to the NTEU via electronic payment.

10. Are meetings between CFTC employees and the NTEU required to be disclosed? Are the minutes to such meetings publicly available?

Meetings between CFTC employees and the NTEU are not required to be disclosed and there are no publicly available minutes of such meetings.

11. Are meetings with the NTEU and the Commissioners of Chairman required to be disclosed?

Meetings between the NTEU and the Commissioners and/or Chairman are not required to be disclosed.

12. Please provide a list of Sunshine Act meetings between Chairman Massad and any other Commissioners and the NTEU.

A Sunshine Act meeting is, by definition, a meeting of at least the number of Commissioners necessary to constitute a quorum (in most cases, three) for the purpose of deliberations to conduct or dispose of agency business. The Sunshine Act requires such meetings to be announced publicly. There have been no Sunshine Act meetings between the Commission and the National Treasury Employees Union.

Recoveries of Prior Year Obligations and Carryover of Funds

13. Please provide a table from FY 2009 to present detailing recovery of Prior Year Obligations with amounts for each year. In separate tables, please break down each year's recovered funds by object class.

The requested Prior Year Obligations tables are attached. (Attachment #3)

Leasing Costs

14. Please provide a table showing the leasing costs for all CFTC offices starting in FY 2009 through estimated FY 2016. Include in the table the actual FTEs for each year at each office. Include the FTE capacity at each office for each year. Include the FTE equivalent for contractors and the capacity at each office for each year. Include the square feet for each year and for each office with totals for each year. The table should be similar to the one provided for FY 2014.

In response to this question, please see (Attachment #4).

Office of Inspector General (IG)

15. Please provide the legal justification from the Office of General Counsel for charging or not charging rent and other overhead costs to the IG.

The legal opinion regarding OIG overhead is attached. (Attachment #5)

16. Does the agency believe the FY 2015 set-aside for the IG includes the amount for rent and other overhead costs or excludes these costs and does the agency believe these costs should be provided by the CFTC in addition to the amount appropriated for the IG by the set-aside?

The CFTC developed the FY 2015 spend plan by including overhead. That is, the FY 2015 President's Budget Request included the costs for rent and other overhead costs in the CFTC's OIG budget request. The FY 2015 enacted OIG set aside exceeded the President's Budget request. The CFTC considered the set aside to incorporate the overhead as requested.

17. Please provide the Treasury Appropriation Fund Symbols for the Inspector General, Information Technology, and S&E set-asides respectively.

Treasury Symbols are as follows:

Salary & Expenses	95-1400 /2015
Information Technology	95-1400 2015/2016
Inspector General	95-1400 /2015

18. Does CFTC believe it has legal authority to reprogram funds from the various set-asides (IG, IT, and S&E) to one another using the reprogramming authority found in Section 608 of Division E of the FY 2015 Omnibus Appropriations Act?

The CFTC has interpreted the FY 2015 appropriations language as to establish a floor for both the IG and IT line item appropriations. CFTC has also determined that it has the discretion and authority to reprogram funds within the S&E appropriation to pay for certain IG and IT related expenses consistent with the requirements of Section 608 of Division E of the FY 2015 appropriations. CFTC has further determined that it is prohibited by FY 2015 appropriations language from reprogramming funds between the IG and IT line item appropriations and also from reprogramming funds from the IG and IT line item appropriations to the S&E appropriation. Please note that the FY 2015 appropriations language authorizes CFTC to transfer up to \$10 million between the IT line item appropriation and the S&E appropriation.

Swap Dealer de minimis

19. When does CFTC believe the 5 year window for the automatic dropping of the Swap Dealer de minimis threshold will take place?

The 5 year phase-in period terminates on December 31, 2017.

20. Does CFTC plan to comply with the Swap Dealer de minimis directive in the FY 2015 Omnibus Appropriations Act? When does it plan to comply? The directive is below: "The Committee directs the Commission to provide clarity to market participants by amending CFTC regulation 1.3(ggg)(4) to require a rulemaking by the Commission, in accordance with the Administrative Procedure Act, before the 'phase-in level' currently in effect is automatically reduced."

The Commission staff is currently working on a report on the de minimis threshold and related topics that will be completed well in advance of the December 31, 2017 date and thereby enable the Commission to take any action it deems appropriate. Regulation 1.3(ggg)(4) directs Commission staff to prepare such a report. Staff will solicit public comment on the methodology and findings in a preliminary version of the report that we expect to publish later this year, and solicit comment on a variety of related topics. This report will provide data and analysis that will inform any amendments to regulation 1.3(ggg)(4). Because amending the regulation would itself require an agency rulemaking and such data, the staff needs to prepare the report before the Commission can take any action.

Data Security and Information Technology Budget**21. Please provide a detailed explanation on plans to have the Department of Homeland Security (DHS) perform cybersecurity monitoring for the CFTC.**

CFTC has entered into a Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS) through which DHS will provide additional or enhanced cybersecurity sensors, a CFTC-level dashboard to consolidate information from the enhanced sensors, and integration between the CFTC-level dashboard and the DHS federal-level dashboard. This is under the DHS Continuous Diagnostics and Mitigation (CDM) program and is part of our strategy for continuing to strengthen cybersecurity for CFTC systems. DHS currently performs external scanning of our network for vulnerabilities and inspects our internet traffic through our trusted internet connection (TIC) and the Einstein program. We anticipate implementation of the additional sensors, CFTC-level dashboard, and integration with the DHS-level dashboard to begin in mid-FY16.

22. Please provide the expected costs of an effort to have DHS perform these functions. Would this expense come out of CFTC's Information Technology Set-Aside?

There are no costs to the CFTC. This program is funded by DHS. CFTC is one of many federal agencies participating in the program. The additional and enhanced sensors, the CFTC-level dashboard, and the integration to the federal-level dashboard are being funded by DHS.

23. Please provide the OMB and/or CFTC legal decision interpreting the FY 2014 CFTC set-aside for Information Technology as a ceiling and a floor.

Neither OMB nor CFTC provided a written legal opinion on the FY 2014 set-aside for information technology provided in the Consolidated Appropriations Act of 2014, P.L. 113-76.

FY 2015 Budget Planning

24. Does the CFTC plan to hire staff and budget accordingly, so that if its budget remains flat in FY 2016, it will not be forced to furlough or reduce-in-force its staff levels?

The CFTC hiring plan is based on the FY 2015 enacted budget, which provides resources for 746 FTE. While the FY 2016 President's Budget has an increase in positions and FTE, the CFTC will not hire beyond the FY 2015 enacted level until a budget granting the necessary resources to do so is passed. Similarly, the Agency will monitor any CR language and ensure the hiring strategy is aligned.

The outcome of NTEU negotiations on the Pay Compensation and Benefits items will determine final resources needed to sustain the Commission staffing levels included in the FY 2015 enacted budget.

25. What is CFTCs rate of attrition?

The CFTCs annual rate of attrition through the 2nd quarter of 2015 was 9.6%.

CFTC Enforcement

26. Please provide a table showing: the number of staff, the number of cases opened, the number of cases closed, the level of funding, the monetary amount of sanctions and orders obtained, and the monetary amount of money actually recovered for the CFTC's Division of Enforcement, by fiscal years 2000 through estimated 2016. This table should be similar to the one submitted for FY 2014.

	FTEs	Level of Funding	Cases Opened**	Cases Closed**	Restitution & Disgorgement	Civil Monetary Penalties	
					Assessed	Assessed	Collected
FY 00	152	\$18,746,000	53	81	\$156,354,057	\$179,811,562	\$3,299,362
FY 01	150	\$20,988,000	44	32	\$7,687,379	\$16,876,335	\$3,170,252
FY 02	143	\$21,406,000	40	43	\$25,748,536	\$9,942,382	\$5,922,387
FY 03	146	\$24,336,000	64	47	\$106,785,796	\$110,264,932	\$87,699,077
FY 04	144	\$25,343,000	83	70	\$96,274,375	\$302,049,939	\$122,468,925
FY 05	135	\$25,913,000	69	53	\$87,424,932	\$76,672,758	\$34,163,077
FY 06	131	\$26,245,000	38	53	\$258,475,451	\$192,921,794	\$12,364,509
FY 07	112	\$25,791,000	41	63	\$296,623,405	\$345,614,139	\$12,137,848
FY 08	116	\$28,730,000	40	66	\$402,967,919	\$234,835,121	\$140,745,252
FY 09	121	\$36,168,000	50	48	\$176,185,109	\$99,489,609	\$17,362,486
FY 10	149	\$42,217,000	57	38	\$65,523,151	\$136,040,764	\$75,111,676
FY 11	164	\$37,051,000	99	76	\$181,844,807	\$316,682,679	\$11,343,236
FY 12	168	\$36,020,000	102	97	\$456,581,900	\$475,360,925	\$257,068,130
FY 13	157	\$9,728,000	83	84	\$201,409,408	\$1,570,700,568	\$1,040,966,258
FY 14	149	\$47,247,000	67	70	\$1,432,741,328	\$1,840,237,619	\$766,891,065
FY 15* (as of 4/27/2015)	153	\$39,630,000	35	32	\$35,104,561	\$2,509,333,755	\$2,322,888,536*
FY 16 (projected)	217	\$66,152,000	100	95			

*FY15 collections include the Deutsche Bank's \$800 million fine

**Cases refer to Litigations Opened and Closed; Cases closed represented in a fiscal year are irrespective of when the case was opened.

CFTC Pay Scale

27. Please provide the pay-scale the CFTC currently uses for all grades, ranks, levels and steps. Use the most up to date information available.

CFTC Chicago Pay Chart		
CT Grade	Minimum	Maximum
1	\$26,995	\$38,058
2	\$30,349	\$43,154
3	\$33,114	\$48,638
4	\$37,173	\$54,594
5	\$41,591	\$61,080
6	\$46,361	\$68,093
7	\$51,519	\$75,674
8	\$57,057	\$83,804
9	\$63,019	\$92,564
10	\$69,399	\$101,938
11	\$76,247	\$112,006
12	\$81,386	\$134,231
13	\$108,673	\$159,626
14	\$128,418	\$188,631
15	\$151,060	\$221,876
16	\$174,772	\$256,711
17	\$202,212	\$297,036
18	\$233,958	\$343,645

CFTC Washington DC Pay Chart		
CT Grade	Minimum	Maximum
1	\$26,805	\$37,790
2	\$30,136	\$42,851
3	\$32,882	\$48,295
4	\$36,912	\$54,210
5	\$41,298	\$60,650
6	\$46,035	\$67,614
7	\$51,156	\$75,142
8	\$56,655	\$83,215
9	\$62,576	\$91,913
10	\$68,911	\$101,221
11	\$75,711	\$111,218
12	\$90,743	\$133,287
13	\$107,909	\$158,503
14	\$127,514	\$187,304
15	\$149,997	\$220,315
16	\$173,543	\$254,906
17	\$200,789	\$294,927
18	\$232,313	\$341,227

CFTC Kansas City Pay Chart		
CT Grade	Minimum	Maximum
1	\$24,635	\$34,730
2	\$27,685	\$39,381
3	\$30,218	\$44,384
4	\$33,923	\$49,819
5	\$37,954	\$55,739
6	\$42,307	\$62,138
7	\$47,013	\$69,057
8	\$52,057	\$76,476
9	\$57,508	\$84,469
10	\$63,330	\$93,023
11	\$69,579	\$102,211
12	\$83,394	\$122,493
13	\$99,170	\$145,667
14	\$117,188	\$172,135
15	\$137,849	\$202,473
16	\$159,488	\$234,262
17	\$184,528	\$271,042
18	\$213,499	\$313,593

CFTC New York Pay Chart		
CT Grade	Minimum	Maximum
1	\$27,776	\$39,159
2	\$31,227	\$44,403
3	\$34,072	\$50,045
4	\$38,249	\$56,173
5	\$42,794	\$62,848
6	\$47,702	\$70,064
7	\$53,009	\$77,864
8	\$58,708	\$86,230
9	\$64,843	\$95,243
10	\$71,407	\$104,887
11	\$78,454	\$115,247
12	\$94,030	\$138,115
13	\$111,818	\$164,245
14	\$132,134	\$194,089
15	\$155,431	\$228,297
16	\$179,830	\$264,140
17	\$208,063	\$305,611
18	\$240,728	\$353,589

*Total Pay Capped at Vice President's Salary of \$233,000

28. Please provide a table with the number of employees the CFTC currently employs broken down by grade, rank, level, and steps. Use the most up to date information available.

The table with the number of employees the CFTC currently employs is provided below. The information is current as of April 4, 2015.

Pay Plan	Grade	Count
EF*	0	2
EX**	3	1
EX***	4	3
CT	6	1
CT	7	6
CT	8	8
CT	9	8
CT	10	2
CT	11	16
CT	12	36
CT	13	145
CT	14	282
CT	15	133
CT	16	37
CT	17	1
CT	18	9
Total		690

* Employee Consultants

**Chairman, EX-3

***Commissioners, EX-4

29. Please provide a table that displays the difference in pay-scale between the CT pay-scale that the CFTC currently uses and the GS pay-scale that is used government-wide. The values in this table must show the difference between the CT and GS pay-scale for each and all grades, ranks, levels and steps. Do not just provide a copy of the GS Pay scale and the CT Pay Scale. Use the most up to date information available.

A table that displays the difference in pay-scale between the CT pay-scale and the GS pay-scale is attached. (Attachment #6)

Purchase Cards

30. Please provide all purchase card account monthly statements for February 2014 to February 2015.

Purchase card account monthly statements for February 2014 to February 2015 are attached.

Position Authority

31. Please describe CFTC's authority to contact individual market participants about current positions. Does CFTC have the ability to tell market participants to not engage in further market activity or must a court order or other process be followed? Please describe this process. What benchmarks does CFTC use to exercise such authority? Where is this authority located in law? What safeguards are in place to ensure the authority is not abused?

The Commission's Part 18 and 20 regulations establish reporting requirements regarding traders with large positions as well as the CFTC's authority to contact such individuals about those positions. These regular reports are fundamental to the Commission's mission to protect market integrity and ensure that market participants can rely on these markets for their hedging and commercial activity. These provisions also authorize the Commission to contact members and large traders when these reports give rise to questions about the positions reported, and provide that all books and records, and any pertinent information concerning the positions, and the underlying transactions or activities, be made available for inspection to the Commission (and any representative of the Commission) upon request.

Separately, the Commission's recordkeeping provisions, including Commission Regulations 1.31, 1.35 and 1.37, generally mandate that Commission registrants, designated contract market members and swap execution facility members retain records regarding their derivatives trading activity. Such records must also be retained and made available to Commission representatives or the Department of Justice upon request.

The Commission may bring enforcement actions against market participants for violations of law or Commission regulations in the federal courts or before administrative law judges. In federal courts, remedies such as injunctions against further violations of law or to enjoin certain activities may be ordered by a court. Enforcement actions, whether brought in federal court or administratively, are governed by the rules of civil procedure and practice and in accordance with due process. Outside of the context of an enforcement action, the Commission has limited authority to take formal actions impacting positions held by market participants. Under CEA Section 8a(9), the CFTC is authorized to direct registered entities (e.g., DCMs, SEFs, DCOs, SDRs) to take certain actions in cases of emergencies as are "necessary to maintain or restore orderly trading in

or liquidation of any futures contract.” (Notably, under this emergency action authority the CFTC does not interact directly with individual market participants directly, but is limited to directing registered entities to take action.) Emergencies, as defined in the statute, are limited to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity, or other major market disturbance that prevents the market from accurately reflecting the forces of supply and demand for such commodity.

Under CEA Section 8a(9), the CFTC can direct registered entities to set temporary emergency margin levels on any futures contract and to fix limits on the size of market positions acquired in good faith prior to the effective date of the CFTC’s action. The Commission’s use of its emergency authority is subject to review by the federal courts of appeal. The Commission has used its 8a(9) emergency action authority only four times in history. The last time was in 1980.

Work with Department of Justice (DOJ)

32. Please provide the CFTC’s MOU with the DOJ and describe the process of how it refers cases to the DOJ.

The CFTC does not have a MOU with the Department of Justice (DOJ). Cases are referred to DOJ based on statutory authority (31 CFR Part 904).

Administrative Law Judges (ALJs)

33. Please describe the role of a Judgment Officer vs. an ALJ?

A Judgment Officer is authorized to conduct reparations proceedings under Section 14 of the Commodity Exchange Act and Part 12 of the Commission’s Regulations, and a class of statutory disqualification proceedings under Section 8a(2) of the Act and Commission Rule 3.60. An ALJ, in appropriate circumstances, could conduct the proceedings normally conducted by a Judgment Officer. In addition, an ALJ has authority to conduct other enforcement proceedings for which a Judgment Officer has no corresponding authority, such as statutory disqualification proceedings under Sections 8a(3) and 8a(4) of the Act, and any other enforcement proceeding.

Both are responsible for the fair and orderly conduct of Commission public adjudicatory proceedings. Both have complete and independent responsibility for all necessary steps of the proceeding process and in the issuance of decisions. The decisions of both are reviewable by the Commission.

34. How many Judgment Officers does the CFTC currently employ?

The Commission currently employs one Judgment Officer.

35. What are the employment requirements for a Judgment Officer?

The employment requirements for a Judgment Officer include the requirements to possess a background of general administrative law and be a member of the Bar. Attached is an official job description for Attorney-Examiner (Judgment Officer) at the CFTC. (Attachment #7)

36. How much did CFTC spend in FY 2014 and planned in FY 2015 and FY 2016 on ALJ?

The CFTC spent \$3,241.48 on ALJ in FY 2014. The budgets for FY 2015 and 2016 include \$10,000 for ALJ.

37. How many ALJs were detailed from other agencies? Please list the agencies from who the ALJs detailed from and number of cases that were worked on by ALJs.

Since 2011, when the CFTC last had a permanent ALJ on staff, the CFTC has only used one. That ALJ was on loan from the U.S. Coast Guard, and he heard two related cases during FY 2014.

Customer Protection Fund

38. What is the current balance of the Customer Protection Fund?

As of March 31, 2015, the balance of the Customer Protection Fund was \$271,577,473.

39. What are the planned obligations of the Fund for FY 2015 and FY 2016?

Planned obligations for FY 2015 for the Consumer Protection Fund total \$19,045,000 and \$32,380,000 for FY 2016.

40. How many FTEs will the Fund use in fiscal years 2015 and 2016?

For FY 2015 and FY 2016, a total of 11 FTE are projected to be funded from the Consumer Protection Fund.

Leveraging All Resources

41. CFTC has suggested that the Commission’s lack of funding has hampered its ability to fulfill its market oversight role, as well as its expanded regulatory mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Has the agency considered leveraging the work of the private sector as a way of alleviating the burden on the Commission and its staff? For example, your 2016 budget request evidences an enhanced focus on market oversight and surveillance. Are there industry-led efforts regarding data standardization and harmonization that could be leveraged to make your work in this area more efficient (i.e. cost effective)?

The Commission currently works with private sector entities and other third parties to make the most efficient use of its limited resources. This includes its work with self-regulatory organizations, which are given certain delegated responsibilities by the Commission, subject to the Commission’s oversight. The self-regulatory organizations include the National Futures Association (NFA) as well as designated contract markets. It also includes working with other private sector entities on different projects such as standardization and harmonization of data and reporting.

NFA is a registered futures association (RFA) under Section 17 of the Commodity Exchange Act. As a registered futures association, NFA is required by law to: establish training standards and proficiency testing for certain categories of persons involved in the futures industry; establish minimum capital, segregation, and other financial requirements for futures commission merchants (FCMs) and introducing brokers (IBs), as well as establish a program to examine FCMs and IBs for compliance with such financial requirements; and establish standards governing the sales practices of certain persons. NFA develops rules and offers services that help protect the markets and assists its members in meeting their regulatory responsibilities. Membership in NFA is mandatory and NFA’s membership consists of firms in almost every category of registration under the Commodity Exchange Act. In addition to performing its own responsibilities as an RFA, NFA has been delegated certain responsibilities by the Commission. To better understand the full range of functions NFA currently performs, we have outlined the following:

1. **Registration:**

Pursuant to authority delegated by the Commission:

- NFA processes and grants applications for registration and withdrawals from registration for all persons required to be registered under the CEA.
 - These persons include SDs, MSPs, FCMs, RFEDs, IBs, CPOs, CTAs, floor brokers, floor traders, and salespeople.
 - This processing includes:
 - Vetting the fitness of these persons through data bases maintained by, for example, the Federal Bureau of Investigation;

- Confirming the qualifications of salespeople through the Series 3 Exam, which NFA has developed and administers; and
- Confirming initial compliance with regulatory requirements, such as capital requirements in the case of FCMs.
 - NFA conducts proceedings to deny, condition, suspend, restrict or revoke registrations.
- NFA maintains the Commission's registration records for persons it registers.
 - NFA maintains an online data base where registration information for a particular person is readily available to members of the public.
 - NFA maintains a call center that members of the public can contact to inquire about the registration status of a particular person.
 - This registration information includes disciplinary history and whether the person has claimed any registration or compliance exemptions.
- NFA processes the requests to withdraw from registration submitted by all registrants.

2. Managed Funds

NFA performs the following functions for the Commission pursuant to delegated authority:

- Receives and processes regulatory notices claiming any exemption or exclusion from the definition of a CPO or CTA under Regulations 4.5, 4.6, 4.13, and 4.14(a)(5);
- Receives and reviews commodity pool disclosure documents for compliance with Commission Regulation 4.24;
- Receives and reviews CTA disclosure requirements for compliance with Regulation 4.25;
- Receives and reviews annual financial reports that each CPO that operates a commodity pool is required to provide to pool participants for compliance with Regulations 4.7 and 4.22;
- Performs periodic examinations of CPOs and CTAs for compliance with applicable regulations;

NFA also receives for the Commission all Forms CPO-PQR and CTA-PR filed by CPOs and CTAs, respectively. These Forms are filed electronically using the NFA EasyFile filing system.

3. Foreign Futures and Part 30 of the Commission's regulations:

Part 30 of the Commission's regulations provides that the Commission may issue an exemption permitting a foreign broker to solicit U.S. persons to trade futures on foreign contract markets without registering as FCMs (a "Regulation 30.10 Exemption"). Once a foreign jurisdiction is granted a Regulation 30.10 Exemption, a foreign broker seeking to operate under the Regulation 30.10 Exemption is required to request confirmation of relief to solicit U.S. persons. NFA performs the following functions for the Commission with respect to the Regulation 30.10 Exemptions:

- NFA receives requests for confirmation of relief from foreign brokers operating in jurisdictions granted a Regulation 30.10 Exemption.
- NFA reviews basic background information on firm's seeking confirmation of Regulation 30.10 Exemption.
- NFA issues confirmation of the foreign broker relief to the foreign jurisdiction's sponsoring regulator or self-regulatory organization.

NFA also processes Forms 7-R Exempt Foreign Firm exemption requests filed by foreign entities that would otherwise have to register as IBs, CTAs, and CPOs). Such entities may not have U.S. customers and must use FCMs or Regulation 30.10 Exempt foreign brokers to access the designated contract markets. NFA performs basic background checks on a firm submitting a Form 7-R Exempt Foreign filing for any obvious regulatory issues that would raise a question on the appropriateness of granting the exemption.

NFA processes the registration withdrawals of foreign firms under both Regulation 30.10 and Regulation 30.5 if the firms fail to maintain an agent for service of process as required.

4. Financial surveillance of futures commission merchants

NFA performs several financial surveillance functions as a self-regulatory organization and a registered futures association (other SROs also perform some of the functions listed below:

- NFA performs annual detailed risk based examination of intermediary registrants, including FCMs and RFEDs;
- NFA reviews and analyzes daily financial filings by FCMs;
- NFA reviews and analyzes bi-weekly schedule of investments filings submitted by FCMs showing depositories and how customer funds are invested by FCMs;
- NFA reviews and analyzes unaudited monthly financial statement and regulatory filings submitted by FCMs and RFEDs;
- NFA reviews and analyzes daily confirmation of account balances submitted by depositories holding customer funds;
- NFA reviews and analyzes notice filings under Regulation 1.12 as received;
- NFA reviews FCM notices of withdrawals of more than 25 percent of the residual interest from segregated and secured accounts;
- NFA performs anti-money laundering examinations of FCMs and IBs;
- NFA performs general compliance and compliance and sales practices examinations of registrants;

NFA reviews acknowledgment letters submitted by depositories holding customer funds for compliance with applicable regulations.

In addition to these responsibilities, over the last year, Commission staff, at the direction of the Chairman, has been discussing with NFA the possibility that additional

responsibilities or functions could be delegated to NFA in order to allow the Commission to use its limited resources most efficiently.

The matters where the Commission and NFA are working together to expand the NFA's role include activities with respect to the review of swap dealer registration applications as well as review of financial information provided by FCMs [and Swap Dealers] as part of the Commission's financial surveillance activities. As noted above, the NFA already has certain responsibilities in these areas and will take on additional work to minimize the need for Commission resources in these areas, although the Commission will of course still oversee the NFA's work. These matters also include the NFA taking on greater responsibility for certain types of examinations of Swap Dealers and other registrants.

The Commission also has discussed with NFA taking on the responsibility of reviewing capital and margin models for provisionally registered swap dealers and major swap participants. The Commission currently does not have the resources to review capital models and without NFA taking on this function, certain SDs and MSPs would be required to use alternatives to models that are less risk sensitive and would require the SDs and MSPs to maintain a higher amount of regulatory capital. Staff is also currently working with NFA to allocate examination responsibilities over SDs and MSPs for compliance with Commission external and internal business conduct requirements. In addition, the Commission also is in the process of transferring to NFA the responsibility to receive notices from SDs of swap valuation disputes and to investigate such notices as appropriate.

The President FY16 budget request for the CFTC assumed that the NFA would take on these types of additional responsibilities.

The Commission has consistently leveraged work done in the private sector not only to ensure efficient use of resources but also to ensure that the data standards and harmonization work aligns with industry best practices. For standardizing futures and swaps data, the Commission routinely works with industry associations and standards bodies such as ISO to leverage industry and consensus standards. In addition, the agency takes part in international work to standardize and harmonize data and routinely engages the industry and leverages work already done in the industry. For example, for swaps data, the agency leverages the work done by groups like ISDA and FIA to ensure that tagging standards and formats developed by the industry are used.

The CFTC actively looks for opportunities for SROs to help protect the markets, where appropriate. They are regulatory partners to the CFTC, but their regulatory authority is closely overseen by the CFTC. We will continue to do all that we can to ensure that an appropriate balance is maintained between the work of our self-regulatory organizations and the CFTC

42. Please provide a table showing the budget and staff of the National Futures Association since FY 2008.

Year*	Operating Expenses	Average Staffing
2008	\$39 million	267
2009	\$40 million	270
2010	\$41 million	278
2011	\$42 million	274
2012	\$49 million	299
2013	\$62 million	330
2014	\$ 69 million	415
2015	\$79 million	471 *Projected
2016	\$85 Million	499 **Budgeted

*Fiscal Year ending June 30

43. How many regulatory staff is dedicated to regulatory compliance across the entire Self-Regulatory Structure of the futures, options, and swaps market?

The CME dedicates approximately 240 regulatory surveillance staff. ICE dedicates approximately 30 regulatory surveillance staff. The NFA has a total staff of 415.

OMB Apportionments for July 2014

44. Please submit all OMB form A-11 and other apportionment documents and memos related to the reprogramming and/or spend plan update submitted to the Committees on July 23, 2014.

A copy of the spend plan update submitted on July 23, 2014 is attached. (Attachment#8) As discussed in the memo, the Commission's original spend plan assumed it had the ability to reprogram funds within the S&E account for IT investments. Subsequent discussions with OMB determined that the Commission did not have the authority to execute such a reprogramming action. Since no reprogramming action could be taken there are no related apportionment documents to provide.

Systemically Important Financial Institutions (SIFIs)

45. Please provide a list of all the SIFIs under the CFTC's jurisdiction that have been designated as such by the Financial Stability Oversight Council. Please include Global SIFIs as identified by the Financial Stability Board.

The Financial Stability Oversight Council (FSOC) has designated CME and ICE Clear Credit as systemically important financial market utilities (FMUs.) These entities also are classified as Systemically Important Designated Clearing Organizations (SIDCOs) under CFTC rules that provide for heightened prudential standards for such organizations.

Additionally, the CFTC has jurisdiction over a number of different registrants, such as futures commission merchants (FCMs), swap dealers (SDs), and commodity pool operators (CPOs), that may be part of larger banking institutions that have been designated under the Dodd-Frank Act, or are Globally Systemically Important Banks as identified by the Financial Stability Board. Certain CFTC rules (e.g., large trader reporting, CTA/CPO registration) may also apply to certain financial end users that are part of large designated entities, such as AIG, GE Capital, and Prudential Financial, Inc.

Hand Entry of Data**46. Does the Commission still receive data via paper copies and faxes? Is this information entered by hand into computer databases?**

Any document or form required to be filed with the Commission may be emailed in lieu of paper or fax. The CFTC Portal now accepts the following forms or documents via direct electronic submission: DCM and SEF Product Certifications, DCM and SEF Product Terms and Condition Certifications, Rule Certifications for DCMs, DCOs, SEFs, and SDRs, Monthly and Quarterly Reporting for DCOs, DCMs, SEFs, and SDRs and Event specific reporting for regulated entities. Documents and forms not yet received directly through the portal are either emailed or scanned. Data entry is limited to metadata required for document control via the Filings and Actions (FILAC) system and the transfer of data from Forms 102, 40, 204 and 304 into the Integrated Surveillance System (ISS).

47. Please provide a list of all forms and data in FY 2014 that CFTC receives via paper copies, fax, or other hard copy. Please provide the number of forms received in hard copy per each form in FY 2014. Please provide the FTE and amounts expended on this function.

As noted above, any document or form may be submitted in paper form. Product Certifications, Rule Certifications, Monthly and Quarterly Reporting for DCOs, DCMs, SEFs, and SDRs and Event specific reporting for regulated entities may also be submitted through the CFTC Portal. CFTC receives the following documents and forms exclusively via email/paper/fax: Organizational registrations, Organizational events, and actions, Forms 40, 102, 204, 304. Approximately 8500 documents and forms were received in hardcopy and scanned in FY 2014. The work load is managed by the equivalent of approximately 6 FTE.

48. Please explain any obstacles to CFTC receiving these forms or data in electronic format.

The Commission continues to work toward receipt of all documents and forms via direct submission to the CFTC.gov portal. Budget constraints have slowed the pace of systems development and co-requisite business process re-engineering for this migration, but we have continued to make progress under all funding scenarios.

Legislative Proposal for User Fees

49. The President's fiscal year 2016 budget request discusses a legislative proposal to collect user fees to fund the Commission's financial regulation activities.

a. What is the current status of that legislative proposal?

The FY 2016 President's Budget request included an assumption for user fee implementation. We are aware that the Administration has worked on proposed legislation, but we do not know the current status of that legislation.

b. When does the Administration plan on submitting the legislation to the Congress?

We are not aware of a timeline.

c. When would the legislation have to be enacted for the collections to be in place in order to collect the fees?

The President's Budget request assumes that if enabling legislation were enacted early in FY 2016, issuance of a proposed rule for public comment would likely occur in FY 2016 and user fees would be collected starting in FY 2017.

d. What would the fee be based on, who would have to pay the fee and how much would the fee be?

The ultimate form and amount of any fees collected would be dependent on the language in the legislation and associated implementing rules, regulations and processes. Unless Congress specified the fees in legislation, any proposed fee schedules and structure would be determined through a rulemaking subject to public comment

Congressman Kevin Yoder – Kansas

Unionization, Pay Scales, and Lobbying

50. CFTC was recently unionized by the National Treasury Employees Union. According to the Center for Responsive Politics, the union has spent \$8 million in the past few years lobbying the Federal Government. The majority of that money has been directed towards Appropriations and some of it on this subcommittee. Negotiations are currently ongoing to increase CFTC employees pay to the tune of double digit percentage increases. This Committee has previously expressed concerns about pay being high already- 82 percent of CFTC employees make a six figure salary.

a. Do you consider it a conflict of interest that the union lobbies Congress for more money for your agency and simultaneously lobbies you to pay its employees more?

It is our understanding that the union is not legally restricted from lobbying Congress while negotiating with the Agency for increased pay and benefits.

b. Are you concerned that a higher pay scale will cripple your ability to hire the additional staff you are requesting?

An increase in employee compensation levels may impact the number of positions that can be filled under the FY 2015 and FY 2016 budgets. However, the Agency recognizes that it is important to find a balance among the interests and ensure affordability, the retention of current employees, and having qualified candidates apply for vacancies at the CFTC.

c. Can you discuss the pay comparability provision in the Federal Institutions, Reform, Recovery, and Enforcement Act and how that works? Does the union play a role in this provision?

The pay comparability provision in the Federal Institutions, Reform, Recovery, and Enforcement Act (FIRREA) states that the CFTC shall seek to maintain comparability with the other FIRREA agencies regarding compensation and benefits. The CFTC maintains contact with the other FIRREAs and stays apprised of the levels at which the other FIRREA agencies are compensating their employees in pay and benefits. The Union has an interest in ensuring that the Agency is in compliance with this provision and can use the data independently collected as part of the pay negotiations and cite pay comparability as a concern.

Congressman Thomas Rooney – Florida

Money Laundering and Terrorist Financing

51. The Treasury's Financial Crimes Enforcement Network (FinCEN) reported over 22 thousand suspicious activity reports filed in 2014, that is well above the 15 thousand reported in 2013 and just over one thousand in 2012. Last year, the Office of Foreign Assets Control stated that it will treat an entity as being subject to US sanctions if it is owned 50 percent or more in aggregate by designated persons on the sanctions list. This appears to obligate financial institutions to identify *all* ultimate beneficial owners regardless of their share of ownership, so that they can determine whether any owners are subject to US sanctions, and if so, whether they collectively own 50 percent of the entity in question. Given the sheer magnitude of transactions in securities markets and the ease of moving funds, these markets are an obvious target for laundering illegal funds. Further, the securities market can also be used to generate illegal proceeds through insider trading and market manipulation.

a. Can you share your opinion on the overall influx of suspicious activity reports in 2014 and the CFTC's share in that total? In your experience, is this trend due to the increased threat of worldwide financial crimes or greater enforcement or both?

Among CFTC-regulated entities, only futures commission merchants (FCMs) and introducing brokers (IBs) currently are subject to a SAR filing obligation, as they have been since 2004. See 68 FR 65392 (Nov. 20, 2003). FinCEN has committed to establishing SAR and other requirements applicable to CPOs. With the expansion of markets covered by the CFTC, however, we are continuing to work with FinCEN to ensure that, where appropriate, other CFTC-regulated entities, such as swap dealers, are subject to know-your-customer rules and other FinCEN rules. Many of these CFTC-regulated entities are otherwise regulated for BSA purposes, and are parts of organizations that are already covered by such rules or do not perform functions (such as accepting funds) that necessitate coverage by such rules.

CFTC is committed to working with FinCEN to ensure the markets it regulates are not used for money laundering or terrorist financing. To this end, the CFTC, as a member of the AML Task Force since October 2012, worked with other Task Force members to identify gaps in BSA coverage and ensure recommendations would be made in the Task Force's final report to cover certain CFTC-regulated entities. CFTC staff believes that effective prevention of illicit financing requires BSA coverage of all financial institutions that provide illicit actors with access to the US economy.

To better understand suspicious activity in the derivatives markets, the CFTC in 2013 requested FinCEN provide an analysis of the suspicious activity reports (SARs) filed concerning the derivatives industry to the CFTC. FinCEN provided CFTC with an analysis of SARs filed where derivatives instruments (futures or swaps) were identified in

the SAR. The analysis covered the period from 2003 through December 31, 2013. The analysis revealed an upward SAR filing trend through 2009 and then a downward trend through 2013. The decline in the latter period can be attributed to a merger of two firms. Derivatives instruments represented a very small portion of the total SARs filed in the securities and derivatives sectors, or only 5,112 of the more than 157,000 total SARs filed during these years.

In 2014, derivatives instruments again represented a small portion of the total. Specifically, of the more than 22,000 SARs filed in the securities and derivatives industries, approximately 165 of these involved derivatives products. This number was up from 2013, when 81 of the total of more than 15,000 SARs filed in the securities and derivatives industries involved securities or derivatives products. CFTC believes that the trend of SAR filing involving derivatives instruments is due to a combination of factors, including an increase in the awareness of suspicious activity by filers and an increase in enforcement activity. CFTC recognizes, however, that more work needs to be done and is conducting outreach in an effort to raise awareness through its Examinations Branch and industry supervisory self-regulatory organization (SRO) partners, the National Futures Association (NFA) and the CME Group Inc. CFTC notes increased enforcement at the SRO level. For example, in 2013, the SROs cited firms for a total of 168 AML violations under SRO rules. This number increased to 202 violations in 2014.

b. What are the CFTC's greatest challenges in ensuring compliance with OFAC's guidance on the enforcement of preventing sanctioned persons and entities from infiltrating and manipulating the market?

CFTC Regulation 1.37 requires every FCM and IB to make and keep a record of the true name and address of the person for whom such account is carried or introduced. This requirement generally focuses on the person who is the named account holder. Similarly, FinCEN's customer identification program (CIP) regulation requires the identification and verification of the identity of the customer rather than a beneficial ownership component.

The CFTC has adopted new ownership and control regulations to enhance its identification of futures and swap market participants and improve the CFTC's market surveillance and large trader reporting program. 78 FR 69178 (November 18, 2013). While not specifically aimed at improving compliance with OFAC rules, the existence of the requirement does facilitate identification and compliance with OFAC rules.

FinCEN has recently proposed a new customer due diligence regulation that will require financial institutions, including FCMs and IBs, to identify and verify the identity of the beneficial owner of any customer that is a legal entity.^[7] The proposal seeks input from

^[7] 79 FR 45151 (August 4, 2014).

the public on, among other things, whether legal entities operated by CFTC-registered commodity pool operators (CPOs) should be exempted. The CFTC believes that such an exemption for commodity pools makes sense if the CPOs that operate such commodity pools are themselves required to comply with BSA requirements. The CFTC continues to work with FinCEN to address this vulnerability.

c. Can you describe any regional trends – whether it be increased use of illegal offshore accounts or the use of trade manipulation by countries in west Africa – that pose a particularly challenging and dangerous threat to the financial market’s prevention of money laundering and/or the financing of terrorists?

CFTC-regulated entities, like all other financial institutions, are vulnerable to systemic data breaches and other methods of identity theft. This is something the Commission takes seriously. Many SARs concerning derivatives instruments involve instances of identity theft. For this reason, staff is working with NFA in an effort to raise awareness regarding identity theft and account takeover attempts via e-mail.

Staff is also concerned about the use of virtual currencies, and in 2014, it issued a Risk Alert to warn industry regarding the use of virtual currency to fund customer accounts. The Risk Alert encourages registrants to perform enhanced due diligence procedures when a customer seeks to fund an account with virtual currency. The procedures include determining whether the entity is registered with FinCEN or some other reputable foreign regulator, where the entity is based and operates, and whether such jurisdiction has been designated as being “non-cooperative” or warranting special measures due to money laundering concerns, and whether the entity has robust AML program and customer due diligence policies and procedures. If the CFTC registrant allows accounts to be funded with virtual currency, the Risk Alert says that such accounts should be considered “high risk” and subject, among other things, to heightened monitoring of cash movements and specialized training of staff to understand the risks and controls needed to monitor such accounts.

Congressman Andy Harris – MarylandNational Futures Association (NFA)**52. What functions of the CFTC could be turned over to the NFA?**

Please see response to Question 54.

53. Please provide a list of what the NFA does now as well as what the CFTC has asked them to take on.

NFA currently performs the following functions:

2. Registration:

Pursuant to authority delegated by the Commission:

- NFA processes and grants applications for registration and withdrawals from registration for all persons required to be registered under the CEA.
 - These persons include SDs, MSPs, FCMs, RFEDs, IBs, CPOs, CTAs, floor brokers, floor traders, and salespeople.
 - This processing includes:
 - Vetting the fitness of these persons through data bases maintained by, for example, the Federal Bureau of Investigation;
 - Confirming the qualifications of salespeople through the Series 3 Exam, which NFA has developed and administers; and
 - Confirming initial compliance with regulatory requirements, such as capital requirements in the case of FCMs.
 - NFA conducts proceedings to deny condition, suspend, restrict or revoke registrations.
- NFA maintains the Commission's registration records for persons it registers.
 - NFA maintains an online data base where registration information for a particular person is readily available to members of the public.
 - NFA maintains a call center that members of the public can contact to inquire about the registration status of a particular person.
 - This registration information includes disciplinary history and whether the person has claimed any registration or compliance exemptions.
- NFA processes the requests to withdraw from registration submitted by all registrants.

2. Managed Funds

NFA performs the following functions for the Commission pursuant to delegated authority:

- Receives and processes regulatory notices claiming any exemption or exclusion from the definition of a CPO or CTA under Regulations 4.5, 4.6, 4.13, and 4.14(a)(5);
- Receives and reviews commodity pool disclosure documents for compliance with Commission Regulation 4.24;

- Receives and reviews CTA disclosure requirements for compliance with Regulation 4.25;
- Receives and reviews annual financial reports that each CPO that operates a commodity pool is required to provide to pool participants for compliance with Regulations 4.7 and 4.22;
- Performs periodic examinations of CPOs and CTAs for compliance with applicable regulations;

NFA also receives for the Commission all Forms CPO-PQR and CTA-PR filed by CPOs and CTAs, respectively. These Forms are filed electronically using the NFA EasyFile filing system.

3. Foreign Futures and Part 30 of the Commission's regulations:

Part 30 of the Commission's regulations provides that the Commission may issue an exemption permitting a foreign broker to solicit U.S. persons to trade futures on foreign contract markets without registering as FCMs (a "Regulation 30.10 Exemption"). Once a foreign jurisdiction is granted a Regulation 30.10 Exemption, a foreign broker seeking to operate under the Regulation 30.10 Exemption is required to request confirmation of relief to solicit U.S. persons. NFA performs the following functions for the Commission with respect to the Regulation 30.10 Exemptions:

- NFA receives requests for confirmation of relief from foreign brokers operating in jurisdictions granted a Regulation 30.10 Exemption.
- NFA reviews basic background information on firm's seeking confirmation of Regulation 30.10 Exemption.
- NFA issues confirmation of the foreign broker relief to the foreign jurisdiction's sponsoring regulator or self-regulatory organization.

NFA also processes Forms 7-R Exempt Foreign Firm exemption requests filed by foreign entities that would otherwise have to register as IBs, CTAs, and CPOs). Such entities may not have U.S. customers and must use FCMs or Regulation 30.10 Exempt foreign brokers to access the designated contract markets. NFA performs basic background checks on a firm submitting a Form 7-R Exempt Foreign filing for any obvious regulatory issues that would raise a question on the appropriateness of granting the exemption.

NFA processes the registration withdrawals of foreign firms under both Regulation 30.10 and Regulation 30.5 if the firms fail to maintain an agent for service of process as required.

4. Financial surveillance of futures commission merchants

NFA performs several financial surveillance functions as a self-regulatory organization and a registered futures association (other SROs also perform some of the functions listed below:

- NFA performs annual detailed risk based examination of intermediary registrants, including FCMs and RFEDs;

- NFA reviews and analyzes daily financial filings by FCMs;
- NFA reviews and analyzes bi-weekly schedule of investments filings submitted by FCMs showing depositories and how customer funds are invested by FCMs;
- NFA reviews and analyzes unaudited monthly financial statement and regulatory filings submitted by FCMs and RFEDs;
- NFA reviews and analyzes daily confirmation of account balances submitted by depositories holding customer funds;
- NFA reviews and analyzes notice filings under Regulation 1.12 as received;
- NFA reviews FCM notices of withdrawals of more than 25 percent of the residual interest from segregated and secured accounts;
- NFA performs anti-money laundering examinations of FCMs and IBs;
- NFA performs general compliance and compliance and sales practices examinations of registrants;

NFA reviews acknowledgment letters submitted by depositories holding customer funds for compliance with applicable regulations.

Please see response to Question 54 below for information related to what the NFA could take on in additional responsibilities.

54. Please provide a list of any other functions that the NFA could possibly take on.

Over the last year, Commission staff, at the direction of the Chairman, has been discussing with NFA the possibility that additional responsibilities or functions could be delegated to NFA in order to allow the Commission to use its limited resources most efficiently.

The matters where the Commission and NFA are working together to expand the NFA's role include activities with respect to the review of swap dealer registration applications as well as review of financial information provided by FCMs [and swap dealers] as part of the Commission's financial surveillance activities. As noted above, the NFA already has certain responsibilities in these areas and will take on additional work to minimize the need for Commission resources in these areas, although the Commission will of course still oversee the NFA's work. These matters also include the NFA taking on greater responsibility for certain types of examinations of swap dealers and other registrants.

The Commission also has discussed with NFA taking on the responsibility of reviewing capital and margin models for provisionally registered swap dealers and major swap participants. The Commission currently does not have the resources to review capital models and without NFA taking on this function, certain SDs and MSPs would be required to use alternatives to models that are less risk sensitive and would require the SDs and MSPs to maintain a higher amount of regulatory capital. Staff is also currently working with NFA to allocate examination responsibilities over SDs and MSPs for compliance with Commission external and internal business conduct

requirements. In addition, the Commission also is in the process of transferring to NFA the responsibility to receive notices from SDs of swap valuation disputes and to investigate such notices as appropriate.

The President FY16 budget request for the CFTC assumed that the NFA would take on these types of additional responsibilities.

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Table 19: Amounts outstanding of over-the-counter (OTC) derivatives

By risk category and instrument
In billions of US dollars

Notional amounts outstanding

	Dec.09	Jun.10	Dec.10	Jun.11	Dec.11	Jun.12	Dec.12	Jun.13	Dec.13	Jun.14
Total contracts	603,900	582,685	601,046	706,884	647,811	641,309	635,685	696,408	710,633	691,492
Foreign exchange contracts	49,181	53,153	57,796	64,698	63,381	66,672	67,358	73,121	70,553	74,782
Forwards and forex swaps	23,129	25,624	28,433	31,113	30,526	31,395	31,718	34,421	33,218	35,190
Currency swaps	16,509	16,360	19,271	22,228	22,791	24,156	25,420	24,654	25,448	26,141
Options	9,543	11,170	10,092	11,358	10,065	11,122	10,220	14,046	11,886	13,451
Interest rate contracts	449,875	451,831	465,260	553,240	504,117	496,215	492,605	564,673	584,799	563,290
Forward rate agreements	51,779	56,242	51,587	55,747	50,596	65,181	71,960	86,892	78,810	92,575
Interest rate swaps	349,288	347,508	364,377	441,201	402,611	380,720	372,293	428,385	456,725	421,273
Options	48,808	48,081	49,295	56,291	50,911	50,314	48,351	49,396	49,264	49,442
Equity-linked contracts	5,937	6,260	5,635	6,841	5,982	6,313	6,251	6,821	6,560	6,941
Forwards and swaps	1,652	1,754	1,828	2,029	1,738	1,880	2,045	2,321	2,277	2,433
Options	4,285	4,506	3,807	4,813	4,244	4,434	4,207	4,501	4,284	4,508

Commodity contracts	2,944	2,852	2,922	3,197	3,091	2,993	2,587	2,458	2,204	2,206
	<u>Dec.09</u>	<u>Jun.10</u>	<u>Dec.10</u>	<u>Jun.11</u>	<u>Dec.11</u>	<u>Jun.12</u>	<u>Dec.12</u>	<u>Jun.13</u>	<u>Dec.13</u>	<u>Jun.14</u>
Gold	423	417	397	468	521	523	486	461	341	319
Other commodities	2,521	2,434	2,525	2,729	2,570	2,471	2,101	1,997	1,863	1,887
Forwards and swaps	1,675	1,551	1,781	1,846	1,745	1,659	1,363	1,327	1,260	1,283
Options	846	883	744	883	824	812	739	670	603	604
Credit default swaps	32,693	30,261	29,898	32,409	28,626	26,930	25,068	24,349	21,020	19,462
Single-name instruments	21,917	18,494	18,145	18,121	16,865	15,566	14,309	13,135	11,324	10,845
Multi-name instruments	10,776	11,767	11,753	14,288	11,761	11,364	10,760	11,214	9,696	8,617
of which index products	...	7,500	7,476	12,473	10,506	9,723	9,656	10,163	8,746	7,939
Unallocated Memorandum Item:	63,270	38,329	39,536	46,498	42,612	42,185	41,815	24,986	25,496	24,810
Gross market values	<u>Dec.09</u>	<u>Jun.10</u>	<u>Dec.10</u>	<u>Jun.11</u>	<u>Dec.11</u>	<u>Jun.12</u>	<u>Dec.12</u>	<u>Jun.13</u>	<u>Dec.13</u>	<u>Jun.14</u>
Total contracts	21,542	24,697	21,298	19,510	27,297	25,519	24,953	20,245	18,825	17,423
Foreign exchange contracts	2,070	2,544	2,482	2,336	2,592	2,249	2,313	2,427	2,284	1,722
Forwards and forex swaps	683	930	886	777	923	773	806	957	824	571
Currency swaps	1,043	1,201	1,235	1,227	1,324	1,190	1,259	1,131	1,186	939

Options	344	413	362	332	345	286	249	339	273	213
	<u>Dec.09</u>	<u>Jun.10</u>	<u>Dec.10</u>	<u>Jun.11</u>	<u>Dec.11</u>	<u>Jun.12</u>	<u>Dec.12</u>	<u>Jun.13</u>	<u>Dec.13</u>	<u>Jun.14</u>
Interest rate contracts	14,020	17,533	14,746	13,244	20,001	19,216	19,038	15,238	14,200	13,461
Forward rate agreements	80	81	206	59	67	52	48	168	108	126
Interest rate swaps	12,576	15,951	13,139	11,861	18,046	17,317	17,285	13,745	12,919	12,042
Options	1,364	1,501	1,401	1,324	1,888	1,848	1,706	1,325	1,174	1,292
Equity-linked contracts	708	706	648	702	673	639	600	692	700	666
Forwards and swaps	176	189	167	176	156	147	157	206	202	191
Options	532	518	480	526	518	492	443	486	498	475
Commodity contracts	545	458	526	470	466	379	347	384	264	269
Gold	48	45	47	50	63	51	42	80	47	32
Other commodities	497	413	479	420	403	328	304	304	217	237
Credit default swaps	1,801	1,666	1,352	1,345	1,586	1,187	848	725	653	635
Single-name instruments	1,243	993	886	854	958	715	527	430	369	368
Multi-name instruments	558	673	467	490	628	472	321	295	284	266
Unallocated Memorandum Item:	2,398	1,789	1,543	1,414	1,978	1,849	1,808	779	724	670
Gross Credit Exposure										

3,521 3,581 3,480 2,971 3,938 3,692 3,612 3,784 3,033 2,842

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Table 23A: Derivative financial instruments traded on organized exchanges

By instrument and location

Notional principal in billions of US dollars

Amounts outstanding

	<u>Jun.10</u>	<u>Dec.10</u>	<u>Jun.11</u>	<u>Dec.11</u>	<u>Jun.12</u>	<u>Dec.12</u>	<u>Jun.13</u>	<u>Dec.13</u>	<u>Jun.14</u>	<u>Dec.14</u>
Futures										
All markets	22,731	22,314	30,351	22,907	23,679	24,071	25,206	25,788	29,101	27,169
Interest rate	21,631	21,010	28,937	21,710	22,376	22,627	23,793	24,165	27,272	25,348
Currency	159	172	207	224	216	232	227	244	242	249
Equity index	941	1,132	1,208	973	1,087	1,213	1,185	1,379	1,587	1,572

Memorandum of Understanding between the National Treasury Employees
Union and the Commodity Futures Trading Commission

This memorandum is an interim agreement between the Commodity Futures Trading Commission (CFTC or Agency) and the National Treasury Employees Union (NTEU or Union) (collectively referred to as the parties). This interim agreement applies to all bargaining unit employees represented by NTEU as set forth in the Certification of Representation (Case No. WA-14-0060) issued on November 7, 2014.

1. **Duration:** This agreement shall become effective as of the date of execution by the Chairman and shall terminate at the effective date of a term collective bargaining agreement between the parties, unless the parties agree to modify this agreement.
2. **Governing Law:** The parties acknowledge the rights conferred on unions and management in the Federal Services Labor-Management Relations Statute (FSLMRS), Title VII of the Civil Service Reform Act of 1978.
3. **Designation of Union Officials:** NTEU will promptly notify the CFTC of all persons designated as Union officers or stewards authorized to act on behalf of NTEU and will provide ongoing notice of any changes to these designations.
4. **Official Time:** The Agency agrees to provide Union representatives a reasonable amount of official time to prepare for and to carry out the Union's statutory representational functions. Absent exigent circumstances, the use of official time must be requested by the employee to their supervisor no less than 24 hours in advance. The supervisor will approve the requested time, absent substantial interference with business needs as determined by management. The employee must inform the supervisor as to the best estimate of how much time will be spent on these duties at the time the request is made. The Agency will provide official time for training Union officers and new stewards, not to exceed 20 hours per representative per year.
5. **Dues Withholding:** After processing of the initial dues withholding forms, new requests for dues withholding deductions will be processed in a timely manner, normally within one pay period. The Agency will provide the NTEU National President (or her designee, her current designee being National Field Representative Richard L. Otzel) with a biweekly report of allotments withheld and the amounts.
6. **Notifications:** In matters that pertain to specific individual CFTC employees, which also require notice to the exclusive representative (e.g. individual employee grievances in which the employee has opted for self-representation), CFTC will simultaneously serve notice to the NTEU National President (or her designee, her current designee being Richard L. Otzel) and the specific CFTC employee. In matters requiring notice by the Union to the CFTC, notice shall be provided to the Chief of Workforce Relations. Notice may be by email, fax, or mail.

7. **Access to Facilities and Email:** The Agency will afford NTEU reasonable access to Agency facilities and equipment for the purposes of conducting labor-management activities. Absent substantial interference with business needs as determined by management, the CFTC also will provide the Union with reasonable access to meeting rooms for union business, subject to existing rules for reserving such rooms. The Agency will provide NTEU with an office at the headquarters of the Agency to conduct labor-management activities. The CFTC further will afford access to agency facilities by NTEU national staff representatives. Consistent with law and in conformance with existing email policies, CFTC employees designated by the Union in paragraph 3 above will be permitted use of the CFTC's email system to carry out representational activities.
8. **Formal Meetings:** The CFTC will provide the NTEU National President (or her designee, her current designee being Richard L. Otzel) notice and an opportunity to be represented at any formal meeting or discussion in accordance with 5 U.S.C. § 7114(a)(2).
9. **Changes to Conditions of Employment**
- (a) During the term of this Agreement, all current Agency policies, procedures, rules, instructions and past practices will remain in full force and effect.
- (b) Subject to paragraph (a) above, before making any changes to conditions of employment, as defined in 5 U.S.C. §7103(a)(14), the Agency will give notice by email to the NTEU National President (or her designee, her current designee being Richard L. Otzel). The union has seven (7) calendar days from receipt of official notice to request a briefing. The union has fifteen (15) calendar days from receipt of the official notice or fifteen (15) calendar days from the date of the briefing to request, in writing, to bargain and submit negotiable written proposals. The union shall submit its bargaining request and negotiable written proposals to the Chief of the Workforce Relations Office. If the union does not submit negotiable written proposals within the 15-calendar day period then the Agency may implement the proposed change(s) in working conditions.
- (c) If the Union submits negotiable written proposals prior to the expiration of the notice period, the parties will bargain in accordance with 5 U.S.C. § 7117. Union negotiable written proposals will address only the subject of the proposed change, and will not address unrelated matters. Bargaining under this section shall be subject to the following rules:
- (i) Negotiations will take place during the Agency's regular administrative work days and hours.
- (ii) Negotiations will take place on the Agency's premises.

- (iii) Official time to participate in negotiations will be granted to the same number of negotiators for the Union as the number of negotiators being utilized by the Agency.
- (iv) If an agreement is not reached between the parties sixty (60) calendar days after the union's receipt of the Agency's official notice and negotiable proposals are still outstanding then either party may declare impasse and request the services of the Federal Mediation and Conciliation Service. The parties may mutually agree to utilize the services of the Federal Labor Relations' Authority Collaboration and Alternative Dispute Resolution Program (CADRO) or any other mediation service to resolve the dispute. The parties shall equally share the costs of the mediation services. In accordance with 5 USC § 7114 agreements negotiated between the parties will be subject to either Chairman or Commission approval as appropriate.

(d) The Parties may agree in writing to reasonable extensions of time under for the deadlines set forth above.

10. Grievance Procedure:

- (a) A grievance for purpose of this agreement will be defined as set forth in 5 U.S.C. § 7103(a)(9). Additionally, the matters listed on Appendix 1 are not grievable and are excluded from this grievance process.
- (b) Informal Grievance Process
 - (i) Before an employee may file a formal grievance or NTEU files an institutional grievance, an attempt must be made to informally resolve the concerns with the management official(s) believed responsible for the matter on which the concerns are based. The informal grievance is not a meeting pursuant to 5 USC § 7114. An informal grievance must be submitted in writing or via email to the lowest level supervisor with authority to grant appropriate relief with a copy to the Chief of Workforce Relations. The informal grievance must be submitted no later than fifteen (15) calendar days of the individual(s) becoming aware of the matter which created the basis for the informal grievance. The Human Resources Branch will respond to the informal grievance no later than twenty (20) calendar days after its submission. If the parties cannot resolve the dispute informally then the employee may file a formal step one grievance.

- (ii) When the first level official for resolution is the Chairman, or if the first level official has executive responsibilities or is a Division Director or Office Head who reports to the Chairman, the informal grievance will be processed under the formal grievance procedure set forth below.

(c) Formal Grievance Process

- (i) Step One: A Step One grievance must be submitted in writing to the Human Resources Branch no later than twenty (20) calendar days from the date the grievant becomes aware of the matter being grieved if not submitted through the informal grievance process or twenty (20) calendar days from receipt of the informal grievance response. The Step One grievance must include a statement of the issue(s), including the date(s), location(s), pertinent fact(s) (which may include any witnesses to the issue(s) or incident(s) described and any supporting documentation), the requested remedy or remedies, and whether a meeting is requested. If a meeting is requested to discuss the grievance, the meeting shall occur with the management official identified by the Human Resources Branch within ten (10) calendar days of the submission of the grievance. The Step One management official will respond with a Step One decision to the Step One grievance no later than thirty (30) calendar days after the grievance has been submitted.
 - (ii) Step Two: If dissatisfied with the Step One decision, an employee or the Union may file a Step Two grievance. A Step Two grievance must be submitted in writing or via email to the Human Resources Branch no later than fifteen (15) calendar days from the receipt of the Step One grievance response. The Step Two management official must be the Step One management official's supervisor or the supervisor's designee. The Step Two grievance shall not introduce new issues or remedies that were not presented at Step One. The Step Two management official will respond with a Step Two decision to the Step Two grievance no later than thirty (30) calendar days after the Step Two grievance has been submitted.
- (d) For any meetings that take place during the formal grievance process, the number of union representatives from the Agency is limited to the number of management representatives and must be mutually agreed upon prior to any such meeting(s).
- (e) The CFTC may offer mediation at any time to resolve the matter.
- (f) Agency and Union Institutional Grievances

- (i) To increase the ability to resolve disputes expeditiously, Institutional Grievances must be raised no later than thirty (30) calendar days after the date the moving party became aware of the incident giving rise to the complaint by sending an Institutional Grievance to the Human Resources Branch if the NTEU is the moving party, or to NTEU National President (or her designee, her current designee being Richard L. Otzel) if CFTC is the moving party.

In an effort to resolve national level disputes in an expeditious manner, the parties will schedule a meeting within thirty (30) calendar days of receiving the Institutional Grievance. Within thirty (30) calendar days of this meeting, a written decision will be provided by the non-moving party to the moving party.

- (ii) If not satisfied with the resolution provided by the non-moving party, the moving party may invoke arbitration within thirty (30) calendar days of receipt of the grievance denial.

(g) Arbitration

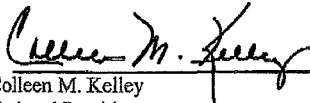
- (i) Consistent with 5 U.S.C. § 7121, binding arbitration is available as a final step in the grievance procedure. If invoked, the Union or the Agency will make a request for binding arbitration in writing within thirty (30) calendar days after the receipt of the Step Two decision.
- (ii) The moving party will, within ten (10) calendar days after invocation of arbitration, request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS). As soon as practicable after the list is received from FMCS, the parties will select an arbitrator by alternatively striking names from the list until one name remains. Which party strikes first will be determined by the date the FMCS list is issued. The Union strikes first if the date is an odd number and the Agency strikes first if the date is an even number.
 - a. Except for the specific exclusions in Appendix 1, and other administrative procedures and exclusions provided by law, the grievance procedure is the exclusive administrative procedure for resolving grievances under this agreement.
 - b. The parties will share equally the FMCS and arbitrator's costs.

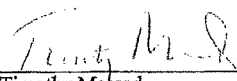
- (h) The Parties may agree in writing to reasonable extensions of time under for the deadlines set forth above in the Grievance Procedure.

11. **Bargaining Unit Lists:** Within 30 days of the effective date of this agreement, and

quarterly thereafter, CFTC will provide the NTEU National President (or her designee, the current designee being Richard L. Otzel) a list of all bargaining unit employees, including their names, position title, grade level, organizational component, official duty station (city and state), CFTC e-mail address, and salary.

12. **Precedential Effect:** The terms of this Agreement are not precedential and may not be relied upon by either party as justifying the same or similar terms in any subsequent negotiations.


Colleen M. Kelley
National President
National Treasury Employees Union

 1/13/2015
Timothy Massad
Chairman
Commodity Futures Trading Commission

Appendix 1: List of Matters Not Subject to the Grievance-Arbitration Provisions

1. The content of published government-wide regulations or CFTC policies on ethics rules and classification matters.
2. The subject of a formal complaint of discrimination which has already been filed as a formal EEO complaint.
3. A decision or action for which a notice of appeal has already been filed with the Merit Systems Protection Board.
4. A preliminary warning or notice of a proposed action that, if effected, would be covered under the grievance system.
5. The termination or expiration of a:
 - a. Time-limited excepted appointment;
 - b. Temporary or term appointment on or before the date specified on the appropriate appointing SF-52; or
 - c. Temporary or term appointment at any other time provided the employee was informed in advance of the temporary nature of the promotion and that he or she was returned to his or her former position or to a different position of equivalent grade and pay.
6. The content of job elements and performance standards that have been established in accordance with 5 U.S.C. § 430.
7. The termination of a probationary, temporary, or trial period employee for unsatisfactory performance or conduct.
8. The return of an employee serving a supervisory or managerial probation period to a nonsupervisory or non-managerial position according to 5 C.F.R. Part 315.
9. A separation or termination of a non-preference eligible from the excepted service before the employee has two years of current continuous service and acquires a right to appeal to the MSPB.
10. Grievances filed prior to the effective date of this agreement.
11. The issuance of performance improvement plans.
12. The non-selection for promotion from a properly ranked and certified list of candidates
13. An action taken in accordance with the terms of a formal agreement voluntarily

entered into by an employee, and reviewed by NTEU for compliance with applicable law or agreements, including agreements which assign an employee from one geographical location to another.

CFTC Audited Recoveries by Fiscal Year and Object Class

Object Class	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Grand Total
11120	\$44,148	\$8,615					\$52,763
11330		\$964					\$964
115G1	\$90,824	\$31,339					\$122,163
115HA		\$1,432					\$1,432
118WF	\$4,974	\$4,148					\$9,122
12190		\$267	\$226				\$492
1219A	\$98	\$154	\$443				\$695
1219B	\$3,600	\$7,238	\$31,964				\$42,802
121BA	\$211		\$175				\$386
1211C		\$170					\$170
121T0	\$5,691	\$455	\$10,766	\$61,875			\$78,787
121T1	\$89						\$89
121U0		\$57					\$57
121V1		\$2,551					\$2,551
21000	\$44,320	\$19,437	\$63,304	\$51,890		\$2,545	\$181,496
21100	\$855	\$3,115	\$1,287				\$5,258
21470				\$1,077			\$1,077
21480	\$772	\$178	\$1,070				\$2,021
21490		\$326	\$7,954	\$3,464			\$11,744
22010		\$1,299	\$3,051	\$296		\$6,008	\$10,654
23120		\$34,605	\$113	\$5,961			\$40,679
23270	\$6,689	\$1,370	\$561			\$1,215	\$9,835
23271			\$339				\$339
23380	\$520	\$659	\$1,463	\$15,734		\$1,200	\$19,576
233A0	\$622	\$19,099	\$23,935	\$627		\$3,156	\$47,439
233A0	\$755	\$3,322					\$4,076
233B1			\$66				\$66
233M0	\$129,718		\$13,811	\$597,038		\$30,256	\$770,823
233X0	\$18,692	\$9,322	\$15,063	\$15,528		\$1,906	\$60,512
24090	\$53,035	\$32,744	\$48,103	\$6,846		\$11,782	\$152,510
25100	\$96,563	\$105,352	\$508,046	\$282,310	\$3,885,172	\$1,201,164	\$6,078,607
2510A	\$161,094	\$19,896	\$108,513	\$4,661,142		\$385,624	\$5,336,269
2510C			\$130,440	\$159,635		\$1,758	\$291,833
25204	\$28,210	\$138	\$5,087	\$360			\$33,795
25215		\$125,794	\$5,907	\$2,820		\$27,076	\$161,597
25224	\$2,377	\$23,365	\$23,376	\$7,785		\$10,294	\$67,196
25258	\$12,858	\$65,247	\$18,841	\$41,412		\$68,724	\$207,083
252A1	\$653						\$653
25304			\$184				\$184
25315		\$5,709	\$14,456	\$8,019			\$28,185
25338	\$33	\$20,892	\$22,813	\$176,423		\$53,214	\$273,374
25344	\$219	\$16,154	\$85,013	\$6,333		\$1,980	\$109,699
25408	\$7,685	\$10,675	\$2,890	\$7,304		\$23,452	\$52,007
25415			\$11,417	\$16,927		\$36,665	\$65,008
25626	\$2,404	\$2,970	\$10,903	\$355		\$1,924	\$18,556
25713	\$5,992	\$1,626	\$6,530	\$1,140			\$15,289
25714	\$0	\$363	\$1,404			\$411	\$2,178
25717		\$47		\$240		\$82	\$369
26620	\$4,640	\$1,632	\$45	\$5,423		\$5,500	\$17,240
26640	\$3,883	\$1,846	\$5,393	\$0			\$11,123
26641	\$32,030	\$10,645	\$519	\$0			\$43,194
31051	\$394	\$4,321	\$318,479	\$186,476		\$4,884	\$514,555
31111	\$13,972	\$827	\$3,609			\$326	\$18,733
31310			\$60,271	\$1,464		\$9,258	\$70,993
32240		\$459	\$295	\$1,539			\$2,294
CONTF	\$104,721	\$53,884	\$0				\$158,605
ENTVX	\$402						\$402
GCTVX	\$168						\$168
IGTGX		\$41					\$41
MOTVX	\$82						\$82
PAYBE	\$35,205	\$36,584					\$71,788
PAYCO	\$11,297	\$121,562					\$132,859
Grand Total	\$930,496	\$812,898	\$1,568,125	\$6,327,442	\$3,885,172	\$1,890,406	\$15,414,540

Lease Costs - Actual and Projected

(April 24, 2015)

	CFIC Lease Payments									
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Projected FY 2015	Projected FY 2016	Projected FY 2016
Washington ^{1/}	\$8,499,005	\$8,365,628	\$11,247,036	\$14,653,555	\$14,588,204	\$14,505,150	\$13,338,993	\$16,241,036		
Chicago ^{2/}	\$1,864,000	\$1,660,207	\$1,673,703	\$2,083,105	\$2,091,151	\$2,192,084	\$2,370,229	\$2,442,185		
New York ^{3/}	\$2,437,656	\$1,331,187	\$2,476,305	\$197,190	\$1,883,408	\$2,283,945	\$2,260,422	\$2,432,606		
Kansas City (Old Lease)	\$186,500	\$187,718	\$188,413	\$237,600						
Kansas City (New Lease)				\$479,630	\$480,678	\$411,267	\$578,115	\$599,335		
Total	\$12,897,461	\$12,549,000	\$15,635,457	\$17,651,080	\$19,013,441	\$19,332,546	\$20,527,759	\$21,715,332		
Percent Change:	17.27%	-3.38%	24.60%	12.89%	7.72%	1.68%	6.18%	5.79%		

1/ 2016 Washington does not reflect \$5.5M TIA - TBD
 2/ 2012 Chicago reflects newly negotiated rental rates.
 3/ 2012 New York reflects newly negotiated rental rates.
 4/ 2011 Chicago applied \$535,344 from TIA to rent payment
 5/ 2012 DC applied \$1,165,706 from TIA to rent payment
 6/ 2013 KC applied \$78,222 from TIA to rent payment

Rentable Square Feet

	CFIC Staffing ^{1/}									
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Projected FY 2015	Projected FY 2016	Projected FY 2016
Washington	161,785	161,785	270,645	288,395	288,395	288,395	288,395	288,395	288,395	288,395
Chicago	40,750	40,750	60,412	60,412	60,412	60,412	60,412	60,412	60,412	60,412
New York	39,363	39,363	39,363	46,347	61,510	61,510	61,510	61,510	61,510	61,510
Kansas City (Old Lease)	8,066	8,066								
Kansas City (New Lease)				24,362	24,362	24,362	24,362	24,362	24,362	24,362
Total	249,864	249,864	378,486	419,516	434,679	434,679	434,679	434,679	434,679	434,679
Average Cost RSF	\$52	\$50	\$41	\$42	\$44	\$44	\$47	\$49	\$49	\$49

CFIC Staffing ^{1/}

	CFIC Staffing ^{1/}									
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Projected FY 2015	Projected FY 2016	Projected FY 2016
Washington	378	324	441	397	432	432	489	457	462	450
Chicago	101	87	132	109	132	128	136	128	130	130
New York	72	68	83	76	82	83	79	80	76	76
Kansas City	20	18	23	22	23	22	22	21	21	21
Minneapolis	1	1	1	1	1	1	1	1	1	1
Customer Protection (DC) ^{2/}										
Total ^{3/}	572	498	680	666	732	695	695	692	701	696
Contractor FTE Equivalents	107	153	212	212	282	190	295	261	261	261

- 1/ 2016 assumes the FY2016 President's Budget is enacted.
- 2/ The Consumer Protection Fund includes Consumer Outreach and Whistleblower staff.
- 3/ As of FY2015-96
- 4/ On-board and FTE totals exclude seasonal interns and detailees at all locations.

	CFTC Deferred Lease Costs										
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016 - Proj	FY 2016 - Proj	FY 2016 - Proj	FY 2016 - Proj
Deferred Costs (TVA)	\$0	\$0	\$6,303,367	\$6,254,873	\$1,234,223	\$0	\$0	\$0	\$0	\$0	\$0
Beginning Balance, October 1	\$0	\$0	\$5,701,194	\$2,868,370	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TVA Received	\$0	\$6,629,880	\$5,701,194	\$2,868,370	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TVA Used	\$0	-\$6,265,513	-\$6,749,868	-\$7,888,970	-\$1,234,223	\$0	\$0	\$0	\$0	\$0	\$0
Ending Balance, September 30	\$0	\$6,303,367	\$6,254,873	\$1,234,223	\$0	\$0	\$0	\$0	\$0	\$0	\$0



U.S. COMMODITY FUTURES TRADING COMMISSION

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**Office of the
General Counsel**

PRIVILEGED & CONFIDENTIAL
MEMORANDUM

TO: Anthony Thompson
Executive Director

Mary Jean Buhler
Chief Financial Officer

FROM: Jonathan L. Marcus *J.L.M.*
General Counsel

Heather C. Gottry *H.C.G.*
Deputy General Counsel for General Law

DATE: March 31, 2015

SUBJECT: Guidance on FY 2015 Line Item Appropriation for the Office of the
Inspector General

I. Introduction

The Financial Management Office (FMO) has requested guidance from the Office of the General Counsel (OGC) concerning language in the Commodity Futures Trading Commission (CFTC or Commission) fiscal year (FY) 2015 appropriation in The Consolidated and Continuing Appropriations Act of 2015, P.L. 113-235. Specifically, FMO asks whether the line item appropriation for the Office of the Inspector General (OIG) within the agency's lump sum appropriation should be viewed as a minimum floor (*i.e.*, a minimum dollar amount to be spent on the purpose of the line item appropriation) or simultaneous minimum and maximum (*i.e.*, an exact dollar amount to be spent on the purpose of the line-item appropriations). If the appropriation for the OIG is a minimum floor, FMO further seeks guidance on both the implications of the transfer authority language in the FY 2015 appropriation and on whether the Commission can reprogram funds from its Salaries and Expenses (S&E) appropriation to pay for certain OIG expenses if needed and appropriate. Finally, FMO requests guidance on whether certain overhead expenses for the OIG can be charged against either the line item appropriation for the OIG or the general S&E appropriation.

After carefully reviewing the Commission's FY 2015 appropriation, other relevant statutes, Comptroller General decisions, Office of Management and Budget guidance, as well as agency past practice and prior appropriations decisions, OGC has determined that:

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- (1) the OIG line item appropriation in the FY 2015 CFTC appropriation is properly interpreted as a minimum floor;
- (2) the CFTC does not have the authority to transfer funds into or out of the OIG line item appropriation;
- (3) the CFTC has the discretion and authority to reprogram funds within its S&E appropriation to pay for certain OIG expenses consistent with the requirements of Section 608, P.L. 113-235;
- (4) the CFTC has the discretion and authority to charge overhead expenses for the OIG either to the OIG line item appropriation or the general S&E appropriation; and
- (5) if the CFTC decides to charge overhead expenses to the OIG line item appropriation, then there are several options available to effectuate the charges against the appropriation.

II. OIG Line Item Appropriation in the CFTC FY 2015 Appropriation is a Minimum Floor and the CFTC May Not Transfer Funds into or out of the OIG Line Item Appropriation

On December 16, 2014, the Commission received its FY 2015 appropriation, including the line item appropriation for the OIG, which provides as follows:

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to include multiple year leases), in the District of Columbia and elsewhere, \$250,000,000, including not to exceed \$3,000 for official reception and representation expenses, and not to exceed \$25,000 for the expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, of which not less than \$50,000,000, to remain available until September 30, 2016, shall be for the purchase of information technology *and of which not less than \$2,620,000 shall be for the Office of the Inspector General*: Provided, That not to exceed \$10,000,000 of the amounts provided herein may be moved between the amount for salaries and expenses and the amount for the purchase of information technology subject to reprogramming procedures under section 608 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section. Title V, P.L. 113-235 (emphasis added).

In comparison to the prior year's language, there are several important changes within the CFTC's FY 2015 appropriation. First, the "not less than" language used in the information technology ("IT") and OIG line item appropriations or carve outs clearly represents Congressional intent to establish express floors or minimum amounts to be spent on the purposes of the respective carve outs. Indeed, Government Accountability Office (GAO) has opined that the phrase "not less than" establishes a minimum amount of money to be spent (but not a maximum ceiling). *Principles of Federal Appropriation Law (Redbook) Vol. II*, (3d ed. 2006), page 6-32. Therefore, the CFTC is directed by the OIG carve out to spend at least \$2.62 million

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on the expenses required to operate and support the OIG, but the CFTC also has the discretion to spend more on the OIG in FY 2015 if the expenditures are consistent with the purposes authorized in Title V, P.L. 113-235 and with the reprogramming and other requirements of appropriations law.¹ Second, the carve out for IT expenses is two-year money which expires on September 30, 2016. By contrast, the S&E appropriation and all other carve outs in the FY 2015 appropriation expire on September 30, 2015. Third, the FY 2015 appropriations language provides transfer authority of \$10,000,000 only between the S&E and the IT appropriations. The transfer language does not provide authority for the CFTC to transfer funds between the S&E appropriation and the OIG appropriation.

III. The CFTC Has the Discretion to Reprogram Within the S&E Appropriation to Pay for Certain OIG Expenses

Consistent with the conclusion that the OIG line item appropriation is properly interpreted as a minimum floor (*i.e.*, a minimum dollar amount to be spent on the purpose of the line item appropriation), the CFTC has the discretion and authority to reprogram funds within the S&E appropriation to pay for certain OIG expenses in accordance with the requirements of Section 608, P.L. 113-235.

It is well settled under applicable Comptroller General decisions and GAO materials that reprogramming is a “[s]hifting of funds within an appropriation or fund account to use them for purposes other than those contemplated at the time of appropriation... [it is] shifting of funds within an account.” *GAO’s Glossary of Terms Used in the Federal Budget Process* at 85, GAO 05-734SP, September 2005; *See also Commodity Futures Trading Commission Reprogramming Notification* at 3, B-323792 (Jan. 23, 2013) (“[R]eprogramming is a shifting of funds from one purpose to another within a single appropriation.”); *John D. Webster, Director, Financial Services Library of Congress* at 3, B-278121 (November 7, 1997) (“We use the term ‘reprogramming’ to refer to the utilization of funds within an appropriation account for purposes different than those budgeted or projected at the time of appropriation.”). GAO has also noted that agencies can reprogram funds without specific statutory authority and are “free to reprogram unobligated funds as long as the expenditures are within the general purpose of the appropriation and are not in violation of any other specific limitation or otherwise prohibited.” *Redbook* page 2-31. A specific limitation, for example, would include language in an appropriation that conditions a reprogramming. *See, e.g., Honorable Glenard P. Lipscomb House of Representatives*, B-123469 (May 9, 1955) (Before the National Park Service could reprogram its funds, the agency had to consider certain criteria (*e.g.*, is the work minor, is there a possibility of a conflict of opinion with Congress, etc.)).

¹ Title V, P.L. 113-235 does not expressly define or otherwise limit the type of expenditures intended to be covered by the OIG line item appropriation. However, the OIG’s FY 2015 Budget Request of \$1,951,132.73, which was submitted to the Commission and was subsequently increased to \$2,574,033 in the President’s FY 2015 Budget Request for the CFTC, incorporates the costs of salaries and benefits, contracts, travel, training and projected overhead expenses. *See Attachment A - Memorandum from A. Roy Lavik, Inspector General, to Mark Wetjen, Acting Chairman, re: FY 2015 President’s Budget* (Mar. 7, 2014) (*Lavik Memo re: FY 2015 President’s Budget*). Consistent with this, as discussed further in Part IV, it would be appropriate for the agency to charge the OIG line item appropriation for these and others costs related to the OIG.

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The procedures that the Commission must follow before it can reprogram funds for certain purposes or in certain amounts are set forth in Section 608 of P.L. 113-235.² The language in this section requires the Commission to obtain approval from Congress when it wishes to reprogram or transfer funds for certain specified purposes such as creating a new program or reorganizing offices or employees, or “augment[ing] existing programs, projects, or activities” by more than a particular dollar amount. Section 608, P.L. 113-235. Please note that the Commission is not required to follow the procedures set forth in Section 608 when the reprogramming does not meet any of the seven criteria set forth there.

It is important to note that the question whether the CFTC can reprogram funds within its general S&E appropriation to the OIG line item appropriation in FY 2015 is different from the question previously addressed in a December 13, 2011, memorandum from OMB to the CFTC, in which OMB’s then-General Counsel, Boris Bershteyn, determined whether the CFTC could reprogram its IT investments for general expenses. *Memorandum for the Director Re: CFTC Reprogramming Authority for IT Investments in FY 2012* at 1 (Dec. 13, 2011) (*OMB Memo*). The OMB General Counsel informed the CFTC that the CFTC did not have the authority in its FY 2012 appropriation to reprogram funds from its IT investments appropriation to its general S&E appropriation and that the agency needed statutory transfer authority in order to move funds from its IT investments appropriation to its general S&E appropriation. OMB noted that agencies are “free to reprogram unobligated funds as long as the expenditures are within the general purpose of the appropriation . . . [and they] are not in violation of any other specific limitation or otherwise prohibited.” *OMB Memo* at 2, quoting *Redbook Vol. 1*, page 2-31 (3d ed. 2004). OMB then explained that the language of the CFTC FY 2012 appropriation set forth in The Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55) – which provided that “of which \$55,000,000 shall remain available for information technology investments until September 30, 2014” – prohibited the agency from using the funds for any purpose other than for IT investments. *OMB Memo* at 2. Accordingly, OMB concluded that the

² Section 608 states: “Except as otherwise provided in this Act, none of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2015, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

- (1) creates a new program;
- (2) eliminates a program, project, or activity;
- (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress;
- (4) proposes to use funds directed for a specific activity by the Committee on Appropriations of either the House of Representatives or the Senate for a different purpose;
- (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is less;
- (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less;
- (7) creates or reorganizes offices, programs, or activities unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate

unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate. Provided, that prior to any significant reorganization or restructuring of offices, programs, or activities, each agency or entity funded in this Act shall consult with the Committees on Appropriations of the House of Representatives and the Senate.

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Commission was precluded from using its reprogramming authority to move funds from between its IT investments appropriation to its general S&E appropriation. *Id.* Here, by contrast, the Commission would not be seeking to reprogram funds out of a specific line item appropriation; instead, it would be seeking the flexibility to reprogram funds within its S&E appropriation, which is a general lump sum appropriation, to cover expenses that are also allowed to be charged to a specific appropriation. Thus, the *OMB Memo*'s specific conclusion is not directly applicable to the issue presented here, and the *OMB Memo*'s general observation that unobligated funds may be reprogrammed provided the expenditures fit the general purpose of the appropriation supports the conclusion that the Commission has the discretion and authority to reprogram funds within its general S&E appropriation to pay for certain OIG expenses.

Based on the language of the FY 2015 appropriation and applicable Comptroller General decisions, OGC concludes that the CFTC has the authority to reprogram within its S&E appropriation to cover certain OIG expenses, subject to the reprogramming restrictions of Section 608, P.L. 113-235, because the CFTC would in this case be simply shifting funds within the general S&E appropriation to cover certain OIG expenses that could properly be charged either to the OIG line item appropriation or the general S&E appropriation. Indeed, prior to Congress' inclusion of the OIG line-item appropriations in FY 2014 and FY 2015, the CFTC funded all OIG expenses from its S&E appropriation. In FY 2015, the S&E appropriation is currently available to pay for administrative expenses related to CFTC staff such as salaries, travel, contracts, and general operation as well as overhead expenses; accordingly, the S&E appropriation is also available at the CFTC's discretion to cover OIG expenses in addition to the \$2.62 million provided in the OIG line item appropriation. The CFTC could properly reprogram funds within its S&E appropriation for certain OIG administrative expenses including salaries, travel, IT, and contracts for audits, as well as overhead expenses. Therefore, at the CFTC's discretion, the agency can reprogram certain funds within its S&E appropriation for certain OIG expenses so long as the reprogramming does not create a new program, or eliminate a project or activity, or increase funds for a project or activity for which Congress has denied or restricted funds consistent with the limitations set forth in Section 608 of P.L. 113-235.

IV. The CFTC May Charge Either the OIG Line Item Appropriation or S&E Appropriation for OIG Overhead Expenses

After reviewing the Commission's FY 2015 appropriation, other relevant statutes, Comptroller General decisions, OMB guidance, as well as agency past practice and prior appropriations decisions, OGC has determined that the Commission has the discretion and authority to charge the OIG's overhead expenses either to the OIG line item appropriation or to the general S&E appropriation.

A. The CFTC's FY 2015 Appropriation Authorizes the Charging of Either the OIG Line Item Appropriation or S&E Appropriation for OIG Overhead Expenses

As reflected in the Commission's FY 2015 appropriation in Title V, P.L. 113-235, Congress authorized the agency to cover the necessary expenses of the agency out of a general S&E appropriation and further established a line item appropriation directing the agency to

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spend a minimum of \$2.62 million on the OIG. Certain administrative expenses such as salaries, travel, contracts, and general operation as well as overhead expenses related to the OIG can be charged either to the OIG line item appropriation or to the S&E appropriation. In reaching this conclusion, OGC applied the well-established rule that before appropriated funds can be expended by an agency, there must be a determination made as to whether the funds can be used for a particular purpose consistent with the specific appropriation to be charged. See *Redbook, Vol. I*, page 4-6. Specifically, the Comptroller General has stated that “when Congress makes an appropriation for a particular purpose, by implication it authorizes the agency involved to incur expenses that are necessary or incident to the accomplishment of that purpose.” *CFTC-Customer Protection Fund (CFTC-CPF)*, 2013 U.S. Comp. Gen. LEXIS 224, at 1. When determining whether an expense is necessary or incident to the accomplishment of a purpose, GAO uses a three-part test: “(1) the expenditure must bear a logical relationship to the appropriation sought to be charged; (2) the expenditure must not be prohibited by law; and (3) the expenditure must not be provided for by another appropriation.” *Id.* at 5.

In *CFTC-CPF*, the Comptroller General was asked whether funds from the Consumer Protection Fund (CPF) could be used to pay for travel expenses incurred by Whistleblower Office personnel for speaking engagements and attending conferences at which the public would be educated and informed consistent with 7 U.S.C. § 26(g)(2). The Comptroller General decided that the CPF could be used for such purposes because: (1) based on a reasonable agency explanation, the costs were necessary and incident to the fund’s purpose and thus bore a logical relationship to the fund; (2) there was no law prohibiting the expenditure; and (3) while the CFTC’s lump sum appropriation could be available to cover administrative and personnel costs, the better view is that the CPF is the “more specific appropriation for expenses incidental to customer education initiatives . . .”. *Id.* at 5-6. The Comptroller General also noted that agencies have “reasonable discretion to determine how to carry out the objects of its appropriation.” *Id.* at 5.

Applying the three factors set forth in *CFTC-CPF*, OGC has concluded that the CFTC has discretion to charge OIG overhead expenses either to the OIG line item appropriation or the general S&E appropriation.³ First, OGC has determined that OIG overhead expenses are necessary and incident to and bear a logical relationship to both the OIG line item appropriation and the general S&E appropriation, each of which is available for the necessary expenses of the OIG. Indeed, as noted above (please see note 1), the OIG’s FY 2015 budget request expressly contemplated that the amount requested would be used to cover projected OIG overhead expenses. *Attachment A - Lavik Memo re: FY 2015 President’s Budget*. Consistent with this, it would be appropriate for the agency to charge either the OIG line item appropriation for these and others costs related to the OIG, or to charge the general S&E appropriation as part of the necessary expenses of the agency.

³ Similar to other Federal agencies, the Commission allocates overhead expenses for office space, supplies, and services necessary for operations to all divisions/offices throughout the agency. The CFTC uses a percentage of agency Full Time Equivalents (FTE) as the basis to distribute all overhead costs to divisions/offices. Overhead consists solely of training, leasing, and other contracted operating costs (e.g., financial and payroll systems). Overhead costs have been included in the OIG’s annual budget request that is submitted by the President and considered by Congress. See note 1 above.

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Second, OGC has determined that the charging of overhead expenses either to the OIG line item appropriation or the general S&E appropriation meets the second factor of the purpose test in *CFTC-CPF* because there is no law prohibiting the expenditure of funds from either appropriation for OIG overhead expenses. Specifically, there is no language in the FY 2015 general S&E appropriations, the OIG line item appropriation, or the Inspector General Act of 1978, 5 U.S.C. App. I, as amended (IG Act), that prohibits the charging of OIG overhead expenses either to the OIG line item appropriation or the general S&E appropriation. As discussed in Section III, the stated purpose of the lump sum appropriation of \$250 million provided in CFTC's FY 2015 S&E appropriation is the necessary expenses of the Commission, and the obvious purpose of the OIG line item appropriation is to fund the OIG. Additionally, as discussed in Section II, the language in the OIG's FY 2015 line-item appropriation directs the CFTC to spend a *minimum* of \$2.62 million on OIG expenses in FY 2015 and does not exclude any expenses of the OIG from being covered by the general S&E appropriation.

The IG Act also contains no language that prohibits the CFTC from charging OIG overhead expenses either to the OIG line item appropriation or the general S&E appropriation. Further, there is no language in the IG Act that grants the OIG independent budgetary or fiscal control over the OIG budget nor is there language in the IG Act that grants the OIG the authorities of an agency Chief Financial Officer (CFO). Rather, the IG Act requires each individual agency OIG to develop a budget and submit it to his or her respective agency head⁴ for review. IG Act § 6f(1). Specifically, within the proposed budget, the OIG must:

specify the aggregate amount of funds requested for such fiscal year for the operations of that Inspector General and shall specify the amount requested for all training needs, including a certification from the Inspector General that the amount requested satisfies all training requirements for the Inspector General's office for that fiscal year, and any resources necessary to support the Council of the Inspectors General on Integrity and Efficiency. IG Act § 6f(1).

Additionally, once the agency head receives the OIG's proposed budget, the agency head must then include within its agency budget submission to the President, the OIG's aggregate budget request, the amount the OIG seeks for training and for support of the Council of the Inspector General on Integrity and Efficiency, and any comments by the Inspector General regarding the proposed budget. IG Act § 6(f)(2). In the President's transmittal of the budget to Congress, the President is also required to include similar budget information regarding each agency OIG.⁵

⁴ The agency head with regard to certain matters concerning the OIG is the Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111-20.

⁵ IG Act § 6(f)(3), which contains the President's responsibilities regarding OIG budget proposals, provides as follows:

(3) The President shall include in each budget of the United States Government submitted to Congress—

- (A) a separate statement of the budget estimate prepared in accordance with paragraph (1);
- (B) the amount requested by the President for each Inspector General;
- (C) the amount requested by the President for training of Inspectors General;
- (D) the amount requested by the President for support for the Council of the Inspectors General on Integrity and Efficiency; and

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The CFTC and the OIG for the Commission follow the process required by the IG Act. For example, on March 7, 2014, the OIG provided the Commission with comments on the President's FY 2015 Budget Request, which increased the requested funding of the OIG from \$1,951,132.73 to \$2,574,033. *Attachment A - Lavik Memo re: FY 2015 President's Budget.*⁶ As noted above (see note 1), both the original and the increased FY 2015 funding requests for the OIG include the costs of salaries and benefits, contracts, travel, training and projected overhead expenses for the OIG. Additionally, the CFTC's FY 2015 President's Budget and Performance Plan which was prepared for the Committees on Appropriations stated that the total OIG budget included a "proportional share of all estimated indirect costs, such as training, lease of space, utilities, communications, printing, supplies, equipment and other services . . ." See *Attachment B - CFTC President's Budget and Performance Plan FY 2015*, page 82 (Mar. 2014).

Third and finally, OGC has determined that the charging of the OIG overhead expenses either to the OIG line item appropriation or S&E appropriation meets the third factor of the purpose test in *CFTC-CPF* because there is no language in the FY 2015 appropriation or elsewhere that requires OIG overhead expenses to be charged to a specific appropriation. While there is language in the IG Act that requires agencies, including the CFTC, to provide the agency OIG with space, equipment, and facilities, the IG Act does not expressly require the agency to use a specific appropriation for OIG expenses. Specifically, Section 6(c) of the IG Act provides as follows:

Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein. IG Act § 6(c).

(E) any comments of the affected Inspector General with respect to the proposal if the Inspector General concludes that the budget submitted by the President would substantially inhibit the Inspector General from performing the duties of the office.

⁶ The inclusion of projected overhead expenses in the comments and original budget request as set forth by the OIG to the Commission in the *Lavik Memo re: FY 2015 President's Budget* (see *Attachment A*) is also consistent with the following recommendations made in a 2011 Peer Review report issued by Lynne A. McFarland, Inspector General, Federal Election Commission, to A. Roy Lavik, Inspector General:

In addition, currently, the method used by the agency to develop and report budget values allocates all costs, except salaries, as overhead based on the number of full time equivalents (FTEs). The IG could better demonstrate its financial independence by preparing a detailed budget request based on actual funding levels needed to meet its business needs, including training and contract funds, and retaining the information to show compliance with the Inspector General Act, as amended (IG Act). Once the agency's allocation of overhead has been performed, the IG should then certify that the final budget values meet or exceed the initial request. *Letter from Lynne A. McFarland, Inspector General, Federal Election Commission, to A. Roy Lavik, Inspector General, re: Final report and comment letter for the Audit Peer Review of the Commodity Futures Trading Commission's Office of Inspector General & Final Report of the System Review Report (Peer Review) of the U.S. Commodity Futures Trading Commission's Office of Inspector General*, page 2 (Mar. 31, 2011).

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for the Office of the Inspector General

The IG Act thus establishes a requirement that the CFTC provide the OIG with adequate, appropriate, and necessary facilities and supplies in order for the OIG to carry out its duties and responsibilities, but the law is silent on the source of funding to support that requirement. Because both the OIG line item appropriation and the general S&E appropriation are available for OIG overhead expenses, the CFTC has the discretion to determine which appropriation is most appropriate for charging OIG overhead expenses. Indeed, GAO has stated that where there are two appropriations available for the same purpose, it is in the agency's discretion to determine which appropriation it will charge for the particular expenditure. *See Redbook, Vol. I, page 2-23. See also CFTC-CPF at 5.*

In sum, OGC has determined that certain administrative expenses such as salaries, travel, contracts, as well as other overhead expenses related to the OIG can properly be charged by the agency either to the OIG line item appropriation or the general S&E appropriation under the Commission's FY 2015 appropriation in Title V, P.L. 113-235.

B. The CFTC Has the Authority to Determine Whether the OIG Line Item Appropriation or S&E Appropriation Should Be Charged for OIG Overhead Expenses in FY 2015

As discussed above, since either the OIG line item appropriation or the general S&E appropriation can appropriately be charged for OIG overhead expenses, the CFTC has the authority to determine which appropriation should be charged. The Commission is authorized by Section 2(a)(6)(A) of the Commodity Exchange Act (CEA) to establish and approve budget categories, plans, programs, and priorities for the agency. The Chairman is further authorized by that Section to direct the executive and administrative functions of the Commission, including the use and expenditure of funds "according to budget categories, plans, programs, and priorities established and approved by the Commission." 7 U.S.C. § 2(a)(6)(A). The Chairman's budget execution authority under Section 2(a)(6)(A) is further "governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make." 7 U.S.C. § 2(a)(6)(B). Accordingly, consistent with the budget execution authority provided to the Chairman in Section 2(a)(6)(A) and subject to the Commission's role as set forth in sections 2(a)(6)(A) and 2(a)(6)(B), the Chairman has the exclusive authority to make decisions concerning the expenditure and allocation of appropriated funds among the CFTC's offices and divisions, including the determination of whether the OIG line item appropriation or the general S&E appropriation should be charged for OIG overhead expenses in FY 2015.

V. Available Options for Charging the OIG's Overhead Expenses to the OIG Line Item Appropriation

If the CFTC decides to charge overhead expenses to the OIG line item appropriation, then there are several options available to effectuate the charges against the appropriation. First, FMO could directly charge the OIG line item appropriation for the OIG overhead expenses. In that case, there would be no movement of funds between the OIG line item appropriation and the

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for the Office of the Inspector General

S&E general appropriation, and no augmentation of any existing appropriation, because the OIG line item appropriation would be directly charged for OIG overhead expenses.

As a second option, FMO could use the authority provided by 31 U.S.C. § 1534, also known as the Account Adjustment statute, to temporarily charge the general S&E appropriation for the OIG's overhead expenses. The Account Adjustment statute authorizes an agency to temporarily charge one appropriation for costs that benefit other appropriations in a single agency provided that:

- (1) there are available funds in both the appropriation to be charged and in the benefiting appropriation,
- (2) the accounts are adjusted to reimburse the initially charged appropriation during or as of the close of the same fiscal year, and
- (3) the transaction complies with the limitations of the applicable appropriations. 31 U.S.C. § 1534. *See also Redbook, Vol. III*, page 12-77 (“[A]n agency procuring equipment to be used jointly by several of the agency’s bureaus or offices that are funded under separate appropriations may initially charge the entire cost of this equipment to a single appropriation and later allocate the cost among the appropriations of the benefiting components.”)

For example, in *Matter of: Payment of U.S. Army Civilian Appellate Review Agency (USACARA) Investigative Travel and Per Diem*, B-242199 (June 28, 1991) (*USACARA Opinion*), the Comptroller General was asked whether USACARA’s appropriation was improperly augmented when USACARA charged certain expenses, such as travel and per diem for USACARA investigators,⁷ to a separate U.S. Army Medical Research and Development Command (AMRDC) appropriation. *Id.* at 1. The Comptroller General determined that there was no augmentation because 31 U.S.C. § 1534 authorizes the allocation of common service type costs between two separate appropriation accounts. *Id.* at 3. Specifically, the Comptroller General noted that “[t]he payment of travel, per diem, and related support costs of USACARA personnel . . . is precisely the kind of situation contemplated by section 1534.” *Id.*

The *USACARA Opinion* is instructive as to how FMO can temporarily charge the OIG’s overhead expenses to the general S&E appropriation before the funds are reimbursed from the OIG line item appropriation. Just as the USACARA and AMRDC appropriations in the *USACARA Opinion* are separate appropriations, the general S&E appropriation and OIG line item appropriation are separate appropriations. Overhead expenses are costs common to the OIG as well as all other CFTC offices and divisions. Accordingly, should FMO decide that this is the

⁷ When U.S. Army commands or activities cannot locally resolve complaints, grievances, and appeals, under the Army grievance resolution procedures for civilian personnel, these complaints, grievances, and appeals are referred to USACARA for investigation and resolution. *USACARA Opinion* at 1. Prior to the Comptroller General’s opinion, it had been the practice of the various commands and activities to cover the costs of a USACARA investigator’s travel and per diem, and also to “provide administrative, manpower, and logistical support for the . . . investigator.” *Id.*

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for the Office of the Inspector General**

best option, it could initially charge the OIG's overhead expenses for FY 2015 to the general S&E appropriation and then adjust the OIG line item appropriation and general S&E appropriation prior to the end of FY 2015.

As a final option, FMO could seek to implement an Economy Act agreement to pay for the OIG's overhead expenses in FY 2015. The Economy Act of 1932, as amended, 31 U.S.C. § 1535, permits Federal Government agencies to purchase goods or services from other Federal Government agencies or other major organizational units within the same agency. An Economy Act purchase is permitted only if: (1) amounts for the purchase are actually available; (2) the purchase is in the best interest of the Government; (3) the ordered goods or services cannot be provided by contract from a commercial enterprise (*i.e.*, the private sector), as conveniently or cheaply as could be by the Government; and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services. 31 U.S.C. § 1535.

While the Economy Act, in most cases, is used by agencies for inter-agency transactions, the Act can also be used for intra-agency transactions. 31 U.S.C. § 1535. *See Redbook, Vol. III*, page 12-33 (“[I]t is important to note that the Economy Act authorizes intra-agency as well as interagency, transactions.”). However, the Comptroller General has also stated that the Economy Act does not apply “where . . . two units are funded under the same appropriation.” *See Redbook, Vol. III*, footnote 24, page 12-33. Specifically, if there is an Economy Act transaction within an agency, in order to use the Economy Act, the transaction must occur between two separate appropriations. In describing what is considered to be a separate appropriation, GAO has explained that a line item is a separate appropriation from a lump sum appropriation. *Redbook, Vol. II*, page 6-26 (“[A] line item is an appropriation that is dedicated for a specific purpose, rather than an amount *within* a lump-sum appropriation.”).

It is clear that the OIG appropriation is a line item appropriation that is separate from the lump sum appropriation of \$250 million and that the Economy Act could be used to pay for the OIG's overhead expenses provided that other requirements for implementing the Economy Act are also met. Specifically, there must also be a binding Economy Act agreement between the CFTC and the OIG. 31 U.S.C. § 1501(a). *See also Department of Homeland Security's Use of Shared Services within the Preparedness Directorate B-308762* (Dec. 17, 2007). At the CFTC, the CFO and the Chairman are the only CFTC officials with the authority to sign binding Economy Act agreements. Since the Inspector General (IG) is not an individual with binding contractual authority, in order for the CFTC to execute an Economy Act agreement with the OIG, there must first be a delegation from the Chairman to IG that grants the IG the authority to execute an Economy Act agreement.

VI. Conclusion

After carefully reviewing the Commission's FY 2015 appropriation, other relevant statutes, Comptroller General decisions, Office of Management and Budget guidance, as well as agency past practice and prior appropriations decisions, OGC has determined that:

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OGC Guidance on FY 2015 Line Item Appropriation
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- (1) the OIG line item appropriation in the FY 2015 CFTC appropriation is properly interpreted as a minimum floor;
- (2) the CFTC does not have the authority to transfer funds into or out of the OIG line item appropriation;
- (3) the CFTC has the discretion and authority to reprogram funds within its S&E appropriation to pay for certain OIG expenses consistent with the requirements of Section 608, P.L. 113-235;
- (4) the CFTC has the discretion and authority to charge overhead expenses for the OIG either to the OIG line item appropriation or the general S&E appropriation; and
- (5) if the CFTC decides to charge overhead expenses to the OIG line item appropriation, then there are several options available to effectuate the charges against the appropriation.

Attachment A to
*CFTC OGC Memorandum re: Guidance on FY 2015 Line Item Appropriation
for the Office of the Inspector General (Mar. 31, 2015)*



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the
 Inspector General

March 7, 2014

TO: Acting Chairman Wetjen
 FROM: A. Roy Lavik *ARL*
 Inspector General
 SUBJECT: FY2015 President's Budget

Pursuant to section 6(f)(2)(D) of the Inspector General Act of 1978 (IG Act), as amended, "in transmitting a proposed budget to the President for approval, the [Chairman] shall include ... any comments of the affected Inspector General with respect to the proposal." We are submitting comments for inclusion in the FY2015 President's Budget.

Section 6(f)(3)(A) of the IG Act requires that "[t]he President shall include in each budget of the United States Government submitted to Congress—(A) a separate statement of the budget estimate prepared [by the Inspector General]. The CFTC's FY2015 President's Budget does not include the budget estimate prepared by my Office.

My Office requested \$1,951,132.73 for FY2015, which amount included all anticipated expenses for FY2015. However, the FY2015 President's Budget now requests \$2,574,033 for my Office – a significant increase. Please note that these comments are not submitted pursuant to section 6(f)(3)(E) of the IG Act; my Office is not objecting to the CFTC's increased request. On the contrary, the extra funding may partially reflect updated Agency-wide assumptions and may be efficiently used to enhance our mission. But however welcome, it does not change the Agency's obligation under the IG Act to notify Congress of the existence of the original request. Accordingly, a copy my Office's original budget request is attached along with a brief explanatory note.

We appreciate your attention to this matter.

Attachment

cc: Mary Jean Buhler, Chief Financial Officer

Attachment A: OIG Budget Request

FY 2015 CFTC OIG Budget	
Budget Elements	Subtotals
Salaries and Benefits for 7 FTEs	\$1,427,536.44
Contract Audits	\$316,679.74
Travel	\$25,700.00
Training	\$15,196.41
Projected Overhead Costs	\$161,267.08
Subtotal	\$1,946,379.67
CIGIE of .2442%	\$4,753.06
Total Budget Request	\$1,951,132.73

Explanatory Note

My Office received notice of this new budget formulation on March 4, 2014. We contacted the Office of Financial Management (OFM) on March 5, to discuss. Due to scheduling conflicts, we have not been able to meet with OFM to discuss the rationale behind the changed budget. We will continue to work with OFM to understand the rationale behind the adjustment, and will remain compliant with the IG Act regarding all budget actions involving my Office.

Attachment B to
*CFTC OGC Memorandum re: Guidance on FY 2015 Line Item Appropriation
for the Office of the Inspector General (Mar. 31, 2015)*

FY 2015 President's Budget & Performance Plan

APPENDIX 3**Inspector General**

The Office of Inspector General (OIG) is an independent organizational unit at the CFTC. The mission of the OIG is to detect waste, fraud, and abuse and to promote integrity, economy, efficiency, and effectiveness in the CFTC's programs and operations. As such it has the ability to review all of the Commission's programs, activities, and records. In accordance with the Inspector General Act of 1978, as amended, the OIG issues semiannual reports detailing its activities, findings, and recommendations.

In accordance with the Inspector General Act, as amended, the following amounts are included in the FY 2015 President's Budget and Performance Plan:

FY 2014	Total Budget¹³	Training Budget Estimate	FTE
	\$2,028,128	\$8,000	6
FY 2015	Total Budget	Training Budget Estimate	FTE
	\$2,574,033	\$8,000	7

¹³ Total Budget includes estimated direct salary and benefit costs of six (6) FTE in FY 2014 and seven (7) FTE in FY 2015 and a proportional share of all estimated indirect costs, such as training, lease of space, utilities, communications, printing, supplies, equipment and other services; including an estimated contribution of \$5,070 and \$6,178 FY 2014 and FY 2015 respectively to support the Council of the Inspectors General on Integrity and Efficiency.

Commodity Futures Trading Commission

Current Base Rate

Grade	CT Minimum	CT Maximum	GS, Step 10 or	
			GS, Step 1 or SES	SES
1	\$21,579	\$30,422	\$18,161	\$22,712
2	\$24,260	\$34,496	\$20,419	\$25,698
3	\$26,470	\$38,879	\$22,279	\$28,966
4	\$29,715	\$43,640	\$25,011	\$32,517
5	\$33,246	\$48,825	\$27,982	\$36,379
6	\$37,059	\$54,431	\$31,192	\$40,552
7	\$41,182	\$60,491	\$34,662	\$45,057
8	\$45,609	\$66,990	\$38,387	\$49,907
9	\$50,375	\$73,992	\$42,399	\$55,116
10	\$55,475	\$81,485	\$46,691	\$60,695
11	\$60,949	\$89,533	\$51,298	\$66,688
12	\$73,050	\$107,299	\$61,486	\$79,936
13	\$86,869	\$127,599	\$73,115	\$95,048
14	\$102,652	\$150,784	\$86,399	\$112,319
15	\$120,751	\$177,359	\$101,630	\$132,122
16**	\$139,706	\$205,205	\$121,956	\$183,300
17**	\$161,640	\$237,423	\$121,956	\$183,300
18**	\$187,017	\$274,696	\$121,956	\$183,300

*Total Pay Capped at Vice President's
Salary of \$233,000 effective January 2014

**Since there are no GS equivalents, used Certified SES System salaries

**CFTC and GS
Locality Rates**

Washington, DC	24.22%
Chicago, IL	25.10%
New York, NY	28.72%
Kansas City, MO	14.16%

**Commodity Futures Trading Commission
Office of the Executive Director
Counsel
Proceedings
Attorney-Examiner (Judgment Officer)
CT-0905-15**

I. INTRODUCTION

This position is located in the Proceedings, responsible to the Commission through the administrative auspices of the Office of the Executive Director. Proceedings is responsible for the review and adjudication of administrative proceedings of the Commission and customer reparation complaints against persons or entities registered under the Commodity Exchange Act. The incumbent serves as a Judgment Officer and presides over Voluntary and Summary Decisional Proceedings and has complete and independent responsibility for all the necessary steps of the proceeding process and in the issuance of decisions.

II. MAJOR DUTIES AND RESPONSIBILITIES:

The incumbent administers proceedings similar to that of a judge of a court of record or arbitration proceeding. The record consists of all written statements, exhibits, or oral testimony introduced in evidence. Thus, the obtaining of a clear and concise record containing all relevant, but excluding all immaterial, evidence, is a requisite. Prompt and thorough appraisal of the issues must be made by the Judgment Officer before testimony is adduced. The Judgment Officer must frame the issues upon the basis of documentary evidence, the pleadings, statements and arguments, of the parties or their counsel. With the issues thus defined, the Judgment Officer may permit or obtain stipulations of fact which shortens the proceedings and avoids disputes among counsel, thereby obviating cumulative testimony. When necessary to expedite the -proceeding and adequately develop the record, the Judgment Officer may also direct the parties to produce additional documents or additional written testimony, or order an oral hearing. Initiative and judgment on the part of the Judgment Officer often result in the amicable settlement of the controversy during the proceeding.

The incumbent:

- Conducts pre-decision conferences for the settlement or simplification of the issues based on the incumbents discretion.
- Issues orders for the production of documents and tangible things and orders written testimony.
- Rules on all discovery-related motions and takes appropriate action if a party fails to comply with a discovery order or notice.
- Issues subpoenas to non-parties for production of documents and/or written or oral testimony.
- Rules on all motions involving questions of law and procedure that may arise, including motions to dismiss the proceeding, in whole or in part., on jurisdictional grounds, or insufficiency of proof, or for such other reasons as may be appropriate to effectuate the orderly conduct of the proceeding.
- Issues orders of default for good cause shown against any party who fails to participate in the proceedings, or to comply with any provision of the rules.
- Rules on motions to dismiss entire proceeding or for summary disposition, and within his or her sound discretion defines the legal and factual issues.
- Receives submissions of proof which includes the authority to regulate the sequences of the

- submissions; in a summary decisional proceeding, may order oral hearing to resolve issues raised in the written record and/or determine the credibility of the parties and their witnesses.
- When presiding over an oral hearing, governs conduct of parties, their witnesses and their representatives, controls the order of proof submitted, and regulates the course of the hearing.
 - When presiding over an oral hearing, calls, examines, and cross-examines witnesses, and calls for introduction into the record additional documentary or other evidence as deemed necessary for the full development of the record.
 - In a voluntary decisional proceeding, evaluates the written record and issues a final decision containing a conclusion as to whether any violations have occurred and a determination of the amount of damages.
 - In a summary decisional proceeding, evaluates the record and issues an initial decision which must include a brief statement of findings of fact, a determination as to any violations, a determination of damages, award of costs and pre-judgment interest, an order fixing liability and a determination of a bond requirement in the event an appeal is filed.
 - Provides extensive assistance on procedural matters to attorneys and non-attorneys practicing before the Commission under the Commission's reparation rules.
 - Responds to substantive legal inquiries from the public and other federal, state, or local government agencies with respect to regulations, practices, and proceedings of the Office of Proceedings. Conducts extensive legal research, and prepares formal legal responses.
 - Evaluates existing rules and regulations governing the operations of Proceedings, and determines the need for and drafts new rules, regulations, and amendments pertaining to Part 12 of the Commission's regulations as adopted under Section 14 of the Commodity Exchange Act.
 - Conducts legal research and prepares formal and independent interpretations and recommendations regarding legal matters affecting other subdivisions of Proceedings, including the Proceedings Clerk and Complaints Specialist.
 - Represents Proceedings in contacts with other Divisions and Offices concerning major legal issues.

Level of Responsibility

The incumbent reports to the Director of Proceedings who provides administrative guidance and supervision. The Judgment Officer works independently, with unusual latitude for the exercise of discretion and independent judgment in the conduct of the hearings and the determination of all issues of law and fact. The incumbent is responsible for the technical legal accuracy of the work. The incumbent is called upon to apply novel legal theory to difficult legal matters, many of which have not been previously before the Commission.

Qualifications

The incumbent must possess a background of general administrative law. He or she must be a member of the Bar.



U.S. Commodity Futures Trading Commission
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Timothy G. Massad
Chairman

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July 23, 2014

The Honorable Barbara Mikulski
Chairwoman
Committee on Appropriations
U.S. Senate
Washington, D. C.

The Honorable Harold Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D. C.

The Honorable Richard Shelby
Vice Chairman
Committee on Appropriations
U.S. Senate
Washington, D. C.

The Honorable Nita Lowey
Ranking Member
Committee on Appropriations
U.S. House of Representatives
Washington, D. C.

Subject: FY 2014 Congressional Spend Plan - Update on Status of Reprogramming

Dear Chairwoman Mikulski, Senator Shelby, Chairman Rogers and Representative Lowey:

As required by the FY 2014 Omnibus Appropriation Act (the Act), the Commission submitted its FY 2014 Congressional Spend Plan (Plan) to Congress based on the FY 2014 appropriation on February 27, 2014.

The Act specified that \$35 million of the Commission's budget was for the purchase of information technology. In the Plan, the Commission notified Congress of its intent to reprogram up to \$7.9 million within Salaries and Expenses so that it could enhance the Information Technology budget and up to \$400 thousand to fully fund the Office of the Inspector General.

After discussing the CFTC's noticed reprogramming, the Office of Management and Budget (OMB) communicated an opinion to CFTC staff that the Act did not provide the CFTC with authority to reprogram additional funds for Information Technology and the Office of the Inspector General. In light of OMB's opinion, the Commission will not be executing the reprogramming actions as indicated in our original spend plan. We have attached a revised spend plan reflecting this change.

If you have any questions regarding this matter, I would be pleased to discuss them with you.

Sincerely,

Timothy G. Massad

Attachment: Updated FY 2014 Congressional Spend Plan

cc:

The Honorable Tom Udall
Chairman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
U.S. Senate
Washington, D. C.

The Honorable Robert Aderholt
Chairman
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D. C.

The Honorable Mike Johanns
Ranking Member
Subcommittee on Financial Services
and General Government
Committee on Appropriations
U.S. Senate
Washington, D. C.

The Honorable Sam Farr
Ranking Member
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D. C.

**Commodity Futures Trading Commission
Updated FY 2014 Congressional Spend Plan**

July 23, 2014

Program	Appropriated Amount (\$K)
Salaries and Expenses	178,580
Inspector General	1,420
IT Investments	35,000
Total	215,000

Description of Revisions

In light of OMB's opinion that the Commission does not have the ability to reprogram funds as previously noticed in our February 27, 2014 spend plan, the Commission will not execute the reprogramming. In lieu of the previously proposed reprogramming (of up to \$7.9M within the Salaries and Expenses (S&E) account to enhance the funds provided for IT investments), the Commission will utilize approximately \$5.3M to fund ongoing facilities operations and library/information services. The remaining \$2.6M will be utilized for enforcement expert witnesses and swap dealer risk analyses.

The exhibits attached to this plan have been revised to incorporate these changes for FY2014.

FY 2014 Enacted Funding Overview

Salaries and Expenses

The Salaries and Expenses program provides funding for all Commodity Exchange Act (CEA) related activities, except for information technology investments. This includes funding for federal staff salaries and benefits, leasing of facilities, travel, training, and general operations of the Commission.

Office of Inspector General

The Office of the Inspector General (OIG) program provides funding for OIG staff salaries and benefits, travel, training, and general operations.

Information Technology Investments

The IT Investments program provides funding for hardware, software, contractor support, and other related information technology requirements per OMB Circular A-11 and OMB Guidance on Exhibits 53 and 300 – Information Technology and E-Government. The salaries and benefits, travel, and training of federal IT staff are funded in the S&E account.

The following exhibits provide additional insight into how CFTC plans to allocate FY 2014 funds.

Exhibit A: CFTC FY 2014 Estimated Obligations by Object Class

Object Class	\$ millions
Personnel Compensation	99.3
Personnel Benefits: Civilian	29.3
Travel & Transportation of Persons	1.9
Transportation of Things	0.1
Rental Payments to Others	20.3
Comm., Utilities & Miscellaneous	3.2
Printing and Reproduction	1.2
Other Services	51.7
Supplies and Materials	1.0
Equipment	7.0
Total	215.0

Exhibit B: CFTC FY 2014 Estimated Staffing

Federal Staff by Organization (Annualized)	9/30/2014	
	Projected Headcount	Projected FTE
Agency Direction	30	23
Administrative Management & Support	79	77
Chief Economist	11	9
Clearing & Risk	64	56
Data Technology	90	80
Enforcement	153	150
General Counsel	50	48
International Affairs	12	12
Inspector General	7	5
Market Oversight	112	109
Swap Dealer & Intermediary Oversight	90	82
Total	698	651

Contractor FTE Equivalents by Organization (Annualized)	FY14 Estimate
Agency Direction	0
Administrative Management & Support	64
Chief Economist	1
Clearing & Risk	0
Data & Technology	140
Enforcement	19
General Counsel	0
International Affairs	0
Inspector General	1
Market Oversight	0
Swap Dealer & Intermediary Oversight	5
Total	230

Exhibit C: CFTC FY 2014 Estimated Information Technology Investments

	\$ millions
Surveillance	14.7
DME	4.4
Services	4.1
FTE	0.3
O&M	10.3
Services	3.3
FTE	7.0
Enforcement	4.0
DME	0.1
Services	0.1
FTE	0.0
O&M	3.9
Services	3.1
FTE	0.8
Other Mission Support	1.3
DME	0.6
Services	0.6
FTE	0.0
O&M	0.7
Services	0.7
FTE	0.0
Management and Administrative Support	2.0
DME	0.1
Services	0.0
FTE	0.1
O&M	2.0
Services	0.9
FTE	1.1
Data Infrastructure and Technology Support	29.9
DME	3.3
Services	3.0
FTE	0.3
O&M	26.7
Services	19.3
FTE	7.4
Total IT Budget Authority	51.9
Total Services	35.0
Total FTE	16.9

Information Technology Investment Definitions:

DME – Costs related to the development, modernization, and enhancement of technology.

O&M – Costs related to the operations and maintenance of technology.

Surveillance – supports market, trade practice, and financial and risk oversight. Success in this area is highly dependent on the ability to acquire large volumes of data and the development of analytics to identify trends and/or outlying events that warrant further investigation.

Enforcement – provides a variety of critical automated litigation and investigation support services to facilitate the overall management of documents and data. Enforcement technology also provides the ability to rapidly query and retrieve information about investigations and litigation and perform analytics.

Other Mission Support – provides services that are vital to CFTC's regulatory mission activities including: Registration and Compliance, Product Review and Assessment, Examinations, Legal and Economic Analysis, and International Policy Coordination.

Management and Administrative Support – includes IT service to commission-wide general support activities that do not require specialized or dedicated IT service components, for example, financial management, payroll and personnel services, training, hiring and logistics support.

Data Infrastructure – supports all mission areas by providing the underlying infrastructure for IT services including: messaging, communications, network security, database administration, business continuity, and data storage management. The data infrastructure effort also provides transparency through the CFTC.gov website, staff collaboration and knowledge management, as well as document and records management.

**Testimony of the Honorable Jill Long Thompson
Chair and Chief Executive Officer
Farm Credit Administration
Before the Subcommittee on Agriculture,
Rural Development, Food and Drug Administration, and Related Agencies
U.S. House of Representatives Committee on Appropriations
February 2, 2015**

Mr. Chairman and Members of the Subcommittee, I am Jill Long Thompson, Board Chair and Chief Executive Officer of the Farm Credit Administration (FCA or Agency). On behalf of my colleagues on the FCA Board, Kenneth A. Spearman of Florida and Leland A. Strom of Illinois, and all the dedicated men and women of the Agency, I am pleased to provide this testimony.

Before I discuss the Agency's role, responsibilities, and budget request, it is my privilege to thank the Subcommittee staff for its assistance during the budget process. As the Subcommittee knows, FCA does not receive a Federal appropriation. The funds used by FCA to pay its administrative expenses are assessed and collected annually from the Government-sponsored enterprises we regulate and examine—the Farm Credit System (FCS or System) made up of banks, associations, and service corporations, and the Federal Agricultural Mortgage Corporation (Farmer Mac).

The Agency is submitting a proposed total budget request of \$69,400,000 for fiscal year (FY) 2016. FCA's proposed budget for FY 2016 includes funding from current and prior-year assessments of \$68,800,000 on System institutions, including Farmer Mac, and \$600,000 from anticipated reimbursable work for the Farm Credit System Insurance Corporation, the U.S. Department of Agriculture, and the National Consumer Cooperative Bank. Almost all this amount—84.4 percent—goes for salaries, benefits, and related personnel costs.

A key factor driving the FY 2016 budget is the Agency's need to hire and train qualified individuals to replace the many employees—especially examiners—who have begun to retire. We must ensure that our staff has the skills it needs to address changes in the agricultural industry and the complexities of agricultural finance. Also, changes in the organization and structure of the System itself are presenting challenges. As System institutions continue to merge and grow larger and more complex, the Agency must dedicate more resources to acquire technology and hire skilled staff to examine and oversee these institutions. The funding we have requested for FY 2016 will allow us to hire, train, and retain the people we need to properly examine, oversee, and regulate the System.

MISSION OF THE FARM CREDIT ADMINISTRATION

As directed by Congress, FCA's mission is to ensure a safe, sound, and dependable source of credit and related services for all creditworthy, eligible persons in agriculture and rural America. The Agency accomplishes its mission in two important ways. First, FCA protects the safety and soundness of the FCS by examining and supervising all FCS institutions, including Farmer Mac, and ensures that the institutions comply with applicable laws and regulations. Our examinations and oversight strategies focus on an institution's financial condition and any material existing or potential risks, as well as on the ability of its board and management to direct its operations. We also evaluate each institution's compliance with laws and regulations and evaluate whether it serves all eligible borrowers, including young, beginning, and small farmers and ranchers. If a System institution violates a law or regulation or operates in an unsafe or unsound manner, we use our supervisory and enforcement authorities to ensure appropriate corrective action is taken. Second, FCA develops policies and regulations that govern how System institutions conduct their business and interact with customers. FCA's policy and regulation development focuses on protecting System safety and soundness; implementing the Farm Credit Act; providing minimum requirements for lending, related services, investments, capital, and mission; and ensuring adequate financial

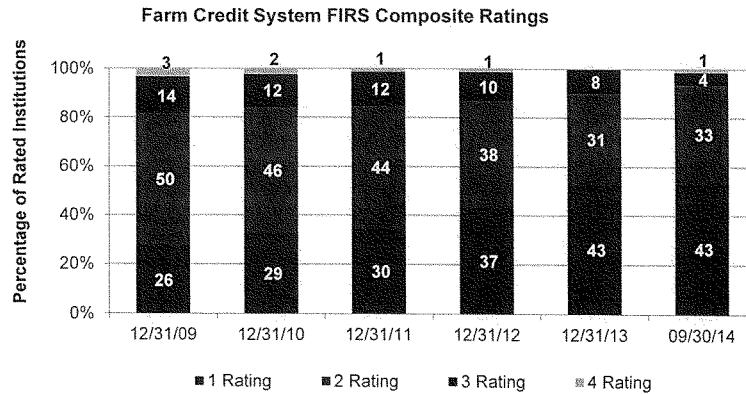
disclosure and governance. The policy development program includes approval of corporate charter changes, System debt issuance, and other financial and operational matters.

EXAMINATION PROGRAMS FOR FCS BANKS AND ASSOCIATIONS

To help ensure the safety and soundness of FCS institutions, FCA uses examination and supervision processes to address material and emerging risks at the institution level and across the System. The Agency bases its examination and supervision strategies on institution size, existing and prospective risk exposure, and the scope and nature of each institution's business model. We monitor agricultural, financial, and economic risks that may affect groups of institutions or the entire System. Given the increasing complexity and risk in the System and human capital challenges at FCA, we continue to implement a number of initiatives to improve operations, increase examination effectiveness, and enhance staff expertise in key examination areas.

The frequency and depth of examination activities vary based on risk, but each institution is examined at least once every 18 months and receives a summary of examination activities and a report on its overall condition. FCS institutions are required to have effective loan underwriting and loan administration processes, to properly manage assets and liabilities, to establish high standards for governance, and to provide transparent disclosures to shareholders. FCA's examination and supervision program promotes accountability in FCS institutions by working to ensure institutions identify and manage risks. In addition, FCA is closely watching real estate values that have risen rapidly in certain sections of the country in light of significant volatility in certain crop prices. FCA may use its enforcement powers to effect changes in an institution's policies and practices to correct unsafe or unsound conditions or violations of law or regulations.

The Agency uses its Financial Institution Rating System (FIRS) to assess the safety and soundness of each FCS institution. The system provides a framework of component and composite ratings to help examiners evaluate significant financial, asset quality, and management factors. FIRS ratings range from 1 for a sound institution to 5 for an institution that is likely to fail. As the chart below indicates, the System remains financially strong overall. At the present time, institutions are well capitalized, and the FCS does not pose material risk to investors in FCS debt, the Farm Credit System Insurance Corporation, or to FCS institution stockholders.



Source: FCA's FIRS Ratings Database. The above chart includes only the System banks and their affiliated direct-lender associations. It does not include Farmer Mac. The figures in the bars indicate the number of institutions by FIRS rating.

Although the System's condition and performance remain satisfactory overall, several institutions are experiencing stress that requires special supervision and, in some cases, enforcement actions. Factors causing the stress include weaknesses in the Nation's economy and credit markets, a rapidly changing risk environment in certain agricultural segments, and, at times, management's ineffective response to these risks or other operational challenges. We have increased supervisory oversight at a number of institutions and dedicated additional resources in particular to the five institutions rated 3 or worse. Although these institutions represent less than one percent of System assets and do not materially affect the System's consolidated performance, they require significantly greater Agency resources to oversee. As of September 30, 2014, three FCS institutions were under formal enforcement actions, but no FCS institutions are in conservatorship or receivership.

REGULATORY AND CORPORATE ACTIVITIES

Regulatory Activities—Congress has given the FCA Board statutory authority to establish policy, prescribe regulations, and issue other guidance to ensure that FCS institutions comply with the law and operate in a safe and sound manner. The Agency is committed to developing balanced, flexible, and legally sound regulations. Current regulatory and policy projects include the following:

- Revising the capital regulations to make them consistent with Basel III, as appropriate
- Revising regulations on flood insurance to conform to the Biggert-Waters Flood Insurance Reform Act of 2012
- Revising regulations on eligibility and creditworthiness of FCS institution investments
- Clarifying and strengthening standards-of-conduct regulations
- Clarifying and enhancing voting procedures related to tabulating votes, using teller committees, and handling ballots
- Revising regulations related to FCS bank and association mergers and consolidations
- Revising regulations on eligibility and creditworthiness of Farmer Mac investments
- Revising the corporate governance requirements for Farmer Mac

Corporate Activities—Because of mergers, the number of FCS institutions has declined over the years, but their complexity has increased, placing greater demands on both examination staff resources and expertise. Generally, these mergers have resulted in more cost-efficient and better-capitalized institutions with broader, more diversified asset bases, both by geography and commodity. As of January 1, 2015, the System had 76 direct-lender associations, four banks, five service corporations, and two special-purpose entities.

CONDITION OF THE FCS

The System remained fundamentally safe and sound in 2014 and is well positioned to withstand the continuing challenges affecting the general economy and agriculture. Total Generally Accepted Accounting Principles (GAAP) capital increased to \$45.8 billion at September 30, 2014, up from \$41.7 billion a year earlier. The ratio of total capital to total assets increased to 16.9 percent at September 30, 2014, compared with 16.5 percent the year before, as strong earnings allowed the System to continue to grow its capital base. Total GAAP capital includes the Farm Credit Insurance Fund of about \$3.7 billion, which is restricted capital. The Fund is administered by the Farm Credit System Insurance Corporation, which is an independent Government-controlled corporation established by Congress to insure the timely payment of principal and interest on Systemwide and consolidated debt obligations.

The System experienced moderate loan growth this past year. There was a 7.1 percent increase in the System's outstanding loans from September 2013 to September 2014. Real estate loans rose 4.5 percent during the period, while production loans rose 5.7 percent. Nonperforming loans decreased modestly to \$1.8 billion at the end of FY 2014, representing 3.9 percent of total capital, down from 5.4 percent a year earlier.

The FCS earned \$3.6 billion in the first nine months of 2014, a 2.0 percent increase from the same period in 2013. Return on assets remained favorable at 1.3 percent during this period. The System's liquidity position decreased to 174 days as of September 30, 2014, from 194 days at the end of 2013, but remained significantly above the 90-day regulatory minimum. The quality of the System's liquidity reserves also improved in 2014.

The System, while continuing to record strong earnings and capital growth, remains exposed to a variety of risks associated with its portfolio concentration in agriculture and rural America. Grain and oilseed prices fell below four-year lows as USDA is projecting record large harvests for 2014. This decline is largely due to farmers enjoying mostly favorable growing conditions for two consecutive years on their large planted acres. Grain and soybean producers are facing the likelihood of leaner profit margins in 2015.

While lower grain prices significantly reduce the near-term financial prospects for crop producers, they have been beneficial to the protein, dairy, and ethanol industries. After struggling with high input costs the past several years, these industries are now looking forward to a more favorable profitability outlook. The agricultural sector remains subject to future risks such as a significant farmland price correction, a rise in interest rates, weather-related catastrophes, and volatility in worldwide demand for agricultural products. The housing sector continues to improve, albeit at a slow pace, and should translate into improved credit conditions for the housing-related sectors such as timber and nurseries.

The System benefited from long-standing domestic accommodative monetary policies and persistent global economic weakness which continued to foster low interest rates. Investor demand for System debt has remained favorable across the yield curve. Although interest rates did fluctuate higher at various times, overall risk premiums continued to be very favorable on newly issued System debt. Also, the System was able to exercise the options on a significant quantity of callable bonds as interest rates fluctuated, however, to a much reduced extent than FY 2013. Going forward, expectations for higher interest rates are building. Despite this development, the System fully expects the capital markets will continue to meet its financing needs.

FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Congress established Farmer Mac in 1988 to create a secondary market for agricultural real estate and rural housing mortgage loans. Farmer Mac has authority to create and guarantee securities and other secondary market products that are backed by agricultural real estate mortgages and rural home loans, USDA-guaranteed farm and rural development loans, and rural utility cooperative loans. Through a separate office mandated by statute (Office of Secondary Market Oversight), the Agency regulates, examines, and supervises Farmer Mac's operations.

Farmer Mac is committed to enhancing the availability of reasonably priced credit to agriculture and rural America through its secondary market activities. Under specific circumstances defined by statute, Farmer Mac may issue obligations to the U.S. Treasury Department, not to exceed \$1.5 billion, to fulfill the guarantee obligations on Farmer Mac guaranteed securities. Farmer Mac is not subject to any intra-System agreements and is not jointly and severally liable for Systemwide debt obligations. Moreover, the Farm Credit Insurance Fund does not back Farmer Mac's securities.

Farmer Mac's financial condition improved during 2014 with two significant issuances of high-quality equity capital totaling \$146 million. GAAP net income was down from FY 2013 due

primarily to unusually high unrealized gains on derivative positions in the prior year. However, core earnings, a measure based more on cash flow, were up by 8.0 percent over FY 2014 to \$55.3 million. As of September 30, 2014, Farmer Mac's core capital totaled \$761.3 million, which exceeded its statutory requirement of \$332.9 million. The total portfolio of loans, guarantees, and commitments grew 1.6 percent to \$14.0 billion.

Credit quality trends remained favorable and credit quality in all program business lines remained satisfactory. Credit risk was manageable as adversely classified volume declined and the percentage of acceptable loan volume increased, while delinquencies remained low. As of September 30, 2014, substandard loans were 2.4 percent of total direct credit exposure, compared with 3.8 percent a year earlier. Loans more than 90 days delinquent remained low, declining to 0.46 percent from 0.66 percent the year prior.

CONCLUSION

We at FCA remain vigilant in our efforts to ensure that the Farm Credit System, including Farmer Mac, remains financially sound and focused on serving agriculture and rural America. It is our intent to stay within the constraints of our FY 2016 budget as presented, and we continue our efforts to be good stewards of the resources entrusted to us. In addition, we have met all of the requirements of the GPRA Modernization Act that apply to our Agency. Our budget proposal identifies our goals and the performance measures we have developed to help ensure that we use our resources efficiently and effectively. We are proud of our record and accomplishments; and I assure you that the Agency will continue its commitment to excellence, effectiveness, and cost efficiency and will remain focused on our mission of ensuring a safe, sound, and dependable source of credit for agriculture and rural America. This concludes my statement. On behalf of my colleagues on the FCA Board and at the Agency, I thank you for the opportunity to share this information.

**FARM CREDIT ADMINISTRATION
QUESTIONS FOR THE RECORD
HOUSE AGRICULTURE APPROPRIATIONS SUBCOMMITTEE
MAY 12, 2015**

QUESTIONS SUBMITTED BY CHAIRMAN ROBERT ADERHOLT

1. Please provide a list of all Farm Credit Administration (FCA) field offices and indicate the number of staff associated with each office. Were there any significant changes in the number of staff at each office in the last year?

Number of FCA Staff by Office Location	
Headquarters	158
Sacramento Field Office	18
Denver Field Office	41
Bloomington Field Office	32
Dallas Field Office	33
Rest of U.S.	6
Total	288

There were no significant changes in the number of staff at any of the field offices.

2. Please provide a table showing the agency's FTEs by office for the past 10 fiscal years and include the estimated levels for fiscal year 2016.

Full-Time-Equivalent Staffing Levels by Office FYs 2006–2016											
Organizational Unit	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 Est.*	FY 2016 Est.
Board	9.8	9.5	9.9	8.9	8.6	9.8	9.3	9.4	10.0	10.0	10.0
Office of the Chief Executive Officer (CEO)	3.5	1.8	1.2	1.9	1.7	2.0	3.0	2.8	2.3	2.0	3.0
Congressional and Public Affairs	5.0	6.1	5.9	5.0	6.1	6.6	5.0	5.1	5.0	5.2	7.6
Examination	135.7	141.1	139.2	149.8	163.6	171.2	172.6	163.7	166.9	163.3	173.0
General Counsel	13.7	13.8	14.1	13.6	12.9	13.6	13.1	13.5	13.8	14.1	15.0
Management Services	51.0	46.9	46.5	48.8	50.7	49.9	50.4	48.1	48.9	49.3	55.0
Inspector General	3.9	4.2	4.6	4.6	4.6	4.6	4.6	4.0	4.2	6.0	6.0
Secondary Market Oversight	4.0	3.9	4.0	4.0	4.0	3.7	4.6	4.2	4.7	5.0	5.0
Regulatory Policy	25.4	26.1	26.0	24.2	24.3	25.0	25.0	22.6	22.1	24.7	28.0
Total	252.0	253.4	251.4	260.8	276.5	286.4	287.6	273.4	277.9	279.3	302.6
*The FY 2015 estimated FTE total is lower than the Board-approved ceiling of 295.7 primarily due to the congressionally lowered limitation on expenditures from assessments.											

3. Please provide a table showing the ratio of managers and supervisors to other personnel for the past 10 fiscal years and estimated levels for fiscal year 2016.

Ratios of Managers and Supervisors to Other Personnel FYs 2006–2016	
Fiscal Year	Ratio
2006	1:6
2007	1:6
2008	1:6
2009	1:6
2010	1:6
2011	1:6
2012	1:5
2013	1:6
2014	1:6
2015 Est.	1:6
2016 Est.	1:6

4. Please provide a table showing FCA obligations by office for the past 10 fiscal years and include the estimated levels for fiscal year 2016.

FCA Obligations by Office, FYs 2006–2016 (in Thousands)											
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 Est. ¹	FY 2016 Est.
Board	\$1,768	\$2,058	\$2,030	\$1,966	\$2,172	\$1,990	\$1,926	\$1,897	\$2,090	\$2,418	\$2,454
Office of the Chief Executive Officer	703	440	347	346	405	505	730	677	628	990	1,004
Congressional and Public Affairs	894	1,075	1,050	946	1,237	1,440	1,219	1,239	1,306	1,860	1,900
Examination	19,166	19,841	21,193	23,270	26,469	27,987	27,698	27,072	28,862	32,374	33,444
General Counsel	2,527	2,502	2,744	2,752	2,756	2,976	3,029	3,275	3,511	4,036	4,250
Management Services	8,832	9,885	10,264	10,174	11,210	11,669	11,696	11,145	12,539	15,121	16,647
Inspector General	711	814	934	985	1,038	1,067	1,096	948	1,006	1,357	1,636
Secondary Market Oversight ²	941	881	1,009	1,002	1,078	966	1,074	1,038	1,280	1,435	1,536
Regulatory Policy	3,811	4,104	4,304	4,246	4,545	4,777	4,720	4,522	4,599	6,009	6,529
Total obligations	\$39,353	\$41,600	\$43,875	\$45,687	\$50,910	\$53,377	\$53,188	\$51,813	\$55,821	\$65,600	\$69,400
¹ The FY 2015 estimates, which include reimbursable work, are based on the FCA Board-approved budget, which was passed before Congress lowered the limitation on expenditures from assessments to \$60.5 million. FCA will stay within the limitation imposed by Congress. ² Excludes costs of certain offices, such as Examination and General Counsel, which assist in the examination and supervisory activities of Farmer Mac. Note: To realize efficiencies, FCA offices share resources to accomplish various tasks and activities. These shared resources are not reflected in the individual office obligations.											

5. What is the cost of operating the agency to Farm Credit System institutions and Farmer Mac?

The estimated fiscal year 2016 operating costs of the Agency are \$66.4 million for the Farm Credit System and \$2.4 million for Farmer Mac. Borrowers of the Farm Credit System incurred a net cost of 1.8 basis points, or 1.8 cents for every \$100 of assets held, to pay for Agency operations in FY 2014. This rate is down from 2.6 basis points 10 years earlier.

6. Please provide a table showing assessments on Farm Credit System institutions and Farmer Mac for the previous 10 fiscal years and estimated for fiscal year 2016.

FCS Assessments FYs 2006–2016 (includes Farmer Mac)	
Fiscal Year	Assessment (In Millions)
2006	\$40.5
2007	\$41.5
2008	\$42.5
2009	\$45.1
2010	\$49.1
2011	\$52.5
2012	\$54.1
2013	\$50.0
2014	\$50.0
2015	\$51.5*
2016 est.	\$59.4
*Assessment was reduced by \$3.0 million for the fourth quarter.	

Farmer Mac Assessments FYs 2006–2016	
Fiscal Year	Assessment (In Millions)
2006	\$2.35
2007	\$2.20
2008	\$2.05
2009	\$2.05
2010	\$2.25
2011	\$2.20
2012	\$2.25
2013	\$2.38
2014	\$2.38
2015	\$2.40
2016 est.	\$2.40
Note: As required by regulation, the assessment will be reconciled and adjusted after the fiscal year-end to reflect the actual amount expended. The assessment for FY 2016 is not yet available because FCA will not complete the FY 2015 budget and estimation of examination, oversight, and regulatory costs pertaining to Farmer Mac until September 2015.	

7. Please provide a table showing the total carryover available at the end of each fiscal year beginning in 2002. What is the estimate of carryover for 2016?

Total Carryover at End of Each Fiscal Year FYs 2002–2016	
Fiscal Year	Assessment Carryover Amount (In Millions)
2002	\$10.0
2003	\$8.4
2004	\$5.6
2005	\$6.2
2006	\$9.8
2007	\$12.5
2008	\$12.9
2009	\$13.6
2010	\$13.5
2011	\$13.2
2012	\$16.5
2013	\$16.0
2014	\$11.7
2015 est.	\$4.8
2016 est.	\$1.7

8. Please provide a table showing the amount of refunds or reduced assessments to Farm Credit System Institutions and Farmer Mac for the previous 10 fiscal years and estimate for fiscal year 2016.

Assessment Reductions and Refunds FYs 2006–2016		
Fiscal Year	Assessment Reduction (In Millions)	Refund (In Millions)
2006	\$0.0	\$0.0
2007	\$0.0	\$0.0
2008	\$0.0	\$0.0
2009	\$0.0	\$0.0
2010	\$0.0	\$0.0
2011	\$0.0	\$0.0
2012	\$0.0	\$0.0
2013	\$0.0	\$0.0
2014	\$0.0	\$0.0
2015	\$3.0	\$0.0
2016 est.	\$0.0	\$0.0

9. FCA also receives funds from interest earned on investments with the Treasury and uses the interest earned to build and maintain an Agency reserve. Please provide a table showing the balance in the reserve for each fiscal year since it was established.

FCA Interest Reserve	
Fiscal Year	Balance (In Millions)
2007	\$8.0
2008	\$9.0
2009	\$9.5
2010	\$10.0
2011	\$10.6
2012	\$11.1
2013	\$11.5
2014	\$11.8

10. How much did FCA spend on reception and representation expenses in fiscal years 2013 and 2014 and estimated for fiscal year 2015?

For fiscal year 2013, FCA budgeted \$7,000 for reception and representation expenses and spent \$974. For fiscal year 2014, FCA budgeted \$7,000 for reception and representation expenses and spent \$312. FCA has budgeted \$6,500 for fiscal year 2015.

11. Did any FCA employees travel internationally in fiscal years 2014 and 2015 to date? Please provide an explanation of the purpose of the trip and cost.

During FY 2014 and 2015 to date, no FCA Board members or employees traveled internationally on official business.

12. Please provide a table showing FCA's reimbursable agreements for fiscal years 2013 through 2015.

FCA Reimbursable Agreements Fiscal Years 2013-2015			
Agreement	FY 2013	FY 2014	FY 2015 (YTD)
U.S. Department of Agriculture (USDA)	\$150,000	\$83,305	\$170,000
Farm Credit System Insurance Corporation (FCSIC)	\$419,935	\$334,230	\$400,000
National Consumer Cooperative Bank (NCB)	\$287,087	\$295,592	*

Note: FCA is required under 12 USC, Chapter 31, Sec. 3025, to perform annual examination and audit work for the NCB. In accordance with this statute, FCA must be reimbursed for costs incurred but must not obtain funds in advance.

13. Please provide a list of outstanding recommendations from FCA's Inspector General for which management decisions are pending as of May 1, 2014.

Because of two recent Inspector General audits, we have 12 outstanding recommendations as shown in the tables below. We are now working to comply with each recommendation.

Audit Report on FCA's Special Supervision and Enforcement Processes	
A-1	Develop a training program for special supervision and enforcement actions to ensure the organization has the knowledge to react to the changing FCS environment.
A-2	Emphasize the requirement of FCA Regulation 612, Subpart B, and provide training and/or education to examiners on the role and responsibility FCA has regarding the criminal referral form and to ensure institutions are filing the form as required.
A-3	Address the use of informal ratings and other supervisory letters by either expanding or changing current directives and/or processes to include when they are appropriate and how they will be used.

Audit Report on FCA's Commissioning Program	
A-1	Identify and track specific commissioning costs to evaluate the cost of the program and identify cost-saving opportunities and consider timekeeping code revisions, with OMS assistance in implementation.
A-2	Establish a process to verify time charged by Associate Examiners complies with work performed and timekeeping guidance.
A-3	Analyze the costs and benefits of streamlining and consolidating current testing and assessment milestones through the elimination of the final Commissioning Test simulations.
A-4	Establish a plan to compete Commissioning Program contractor services to manage risks of reliance on one source and ensure the best value to the Agency.
A-5	Ensure current Commissioning Program contracts are well-defined in regards to general and administrative and hourly rates.
A-6	Ensure the invoice approval process for the Commissioning Program covers the requirements of the contract and review by all Agency personnel necessary to verify work performed before approval and payment.
A-7	Assess strategies to identify the cause of hiring shortfalls and employee attrition to meet commissioned examiner goals and maximize Agency investments.
A-8	Evaluate opportunities to implement Service Agreements or another type of comparable reimbursement arrangement to protect Agency investments in Commissioning Program training and certification.
A-9	Revise processes to provide feedback to every Associate Examiner on Technical Evaluations and Commissioning Test multiple-choice test performance.

14. Has FCA contracted for any studies or analyses with private entities or other governmental entities during the past five fiscal years? If so, please describe the studies and/or analyses and include information on the cost of the study or analysis.

FCA Contracts Fiscal Years 2010–2014			
FY	Contractor	Services Provided	Price
2010	Towers Watson	Compensation consulting services	\$102,000
	Ross Cook	To provide consulting services to FCA Board for strategic planning	\$53,000
2011	Oliver Wyman	Consultant for FCS merger	\$172,500
2012	Towers Watson	Compensation consulting services	\$4,000
	CRW Management Consultants	Analyze and assess the needs of the human resource department in automating processes	\$41,800
	Connie Harshaw	To serve as a human resource consultant	\$100,000
2013	Towers Watson	Compensation consulting services	\$38,260
2014	Towers Watson	Compensation consulting services	\$19,000

15. Please provide FCA's compensation scale by classification level for staff.

2015 Salary Range Structure					
Grade	1st Quintile	2nd Quintile	3rd Quintile	4th Quintile	5th Quintile
VH45	183,315 to 207,157	207,158 to 230,988	230,989 to 254,822	254,823 to 278,653	278,654 to 302,486
VH44	159,273 to 179,978	179,979 to 200,683	200,684 to 221,389	221,390 to 242,094	242,095 to 262,800
VH43	140,059 to 158,266	158,267 to 176,473	176,474 to 194,681	194,682 to 212,888	212,889 to 231,096
VH42	122,421 to 138,335	138,336 to 154,249	154,250 to 170,165	170,166 to 186,079	186,080 to 201,994
VH41	107,004 to 120,914	120,915 to 134,824	134,825 to 148,736	148,737 to 162,646	162,647 to 176,556
VH40	93,528 to 105,686	105,687 to 117,844	117,845 to 130,004	130,005 to 142,162	142,163 to 154,321
VH39	81,750 to 92,377	92,378 to 103,004	103,005 to 113,632	113,633 to 124,259	124,260 to 134,887
VH38	71,453 to 80,742	80,743 to 90,030	90,031 to 99,320	99,321 to 108,608	108,609 to 117,897
VH37	62,457 to 70,576	70,577 to 78,695	78,696 to 86,815	86,816 to 94,934	94,935 to 103,053
VH36	54,591 to 61,688	61,689 to 68,784	68,785 to 75,882	75,883 to 82,978	82,979 to 90,075
VH35	47,715 to 53,918	53,919 to 60,120	60,121 to 66,324	66,325 to 72,526	72,527 to 78,729
VH34	41,706 to 47,127	47,128 to 52,549	52,550 to 57,971	57,972 to 63,393	63,394 to 68,814
VH33	36,454 to 41,193	41,194 to 45,932	45,933 to 50,672	50,673 to 55,411	55,412 to 60,150
VH32	34,716 to 39,229	39,230 to 43,742	43,743 to 48,256	48,257 to 52,769	52,770 to 57,282
VH31	33,066 to 37,364	37,365 to 41,663	41,664 to 45,961	45,962 to 50,260	50,261 to 54,558
VH30	31,491 to 35,584	35,585 to 39,678	39,679 to 43,772	43,773 to 47,866	47,867 to 51,959
<p>Note: Total compensation is currently capped at \$278,668.</p> <p>The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires Federal financial regulators to strive to achieve comparability in compensation and benefit programs. Section 1206 of FIRREA directs FCA and other Federal bank regulatory agencies (FBRAs) to "seek to maintain comparability regarding compensation and benefits." These provisions enable FBRAs to attract and retain qualified staff. The Agency annually surveys the other FBRAs and adjusts its employees' compensation and benefits consistent with FIRREA. The Agency also surveys the private sector, the System banks, and the General Schedule agencies for purposes of general comparison. FCA's compensation policy provides compensation at a level similar to the average market rate provided by other FBRAs.</p>					

16. Please provide tables showing the loan volume and net income of Farm Credit System institutions for the past five fiscal years.

Farm Credit System Loans and Net Income (In Millions)		
Year	Gross Loans	Net Income
2010	\$175,351	\$3,495
2011	\$174,664	\$3,940
2012	\$191,904	\$4,118
2013	\$201,060	\$4,640
2014	\$217,054	\$4,724

Source: FCS Annual Information Statement.

17. Please update the Committee on FCA's opinion of the financial health of the Farm Credit System. Provide an explanation of the top five risks to the System and what factors work to mitigate this risk and what factors can increase this risk.

The financial health of the Farm Credit System

The System continues to be fundamentally safe and sound and is well positioned to meet the challenges affecting the general economy and agriculture. The System's condition and performance remained strong in 2014, with increased earnings, higher capital levels, and strong credit quality in its loan portfolio.

Total System assets grew to \$282.8 billion, up \$22.0 billion or 8.4 percent from 2013. Loan growth was strong. Gross loan volume increased by 8.0 percent, mainly because of increases in agribusiness and production and intermediate-term lending.

Credit quality in the System's loan portfolio is strong. As of December 31, 2014, 96.4 percent of System loans outstanding were rated acceptable as compared with 94.5 percent at year-end 2013. Nonperforming loans declined to \$1.7 billion or 0.8 percent of gross loans outstanding, down from \$2.0 billion or 1.01 percent the prior year. However, lower commodity prices are expected to sharply reduce profits for crop producers and put downward pressure on farmland values. This could result in additional credit stress at some System institutions.

The System again reported strong earnings in 2014, up 1.8 percent to \$4.7 billion. The increase in earnings was the result of gains in net interest income and noninterest income, partially offset by an increase in provisions for loan losses and higher noninterest expenses. Net interest income increased by \$130 million in 2014 because higher average earning asset balances offset the effect of lower net interest margins. Driven largely by growth in loan volume, average earning assets grew by \$17.2 billion, or 7.1 percent, to \$257 billion in 2014. Net interest margin decreased 14 basis points to 2.64 percent as a result of competitive pressures and loan volume repricing at lower rates.

The System continues to maintain a strong capital position. At December 31, 2014, total System capital equaled \$45.7 billion, up from \$42.6 billion a year earlier. The ratio of total

capital to total assets was 16.2 percent, compared with 16.3 percent at year-end 2013. Earned surplus, the most stable form of capital, represented over 82 percent of total capital at the end of 2014. Further strengthening the System’s financial condition is the Farm Credit Insurance Fund, which totals nearly \$3.8 billion. Administered by the Farm Credit System Insurance Corporation, this fund protects investors in Systemwide consolidated debt obligations.

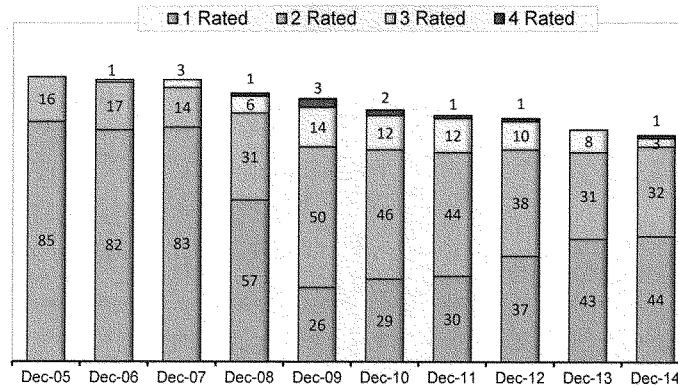
System banks maintain liquidity reserves to ensure they can withstand market disruptions from adverse economic or financial conditions. As of December 31, 2014, the System’s liquidity position equaled 173 days, down from 194 days at year-end 2013, and significantly above the 90-day regulatory minimum.

Although the System’s financial condition remains sound, certain System borrowers were adversely affected by the decline in grain and oilseed prices, the drought in California, and the continuing spread of damaging disease in the citrus sector. As a result, the risk for some institutions has increased.

The Agency uses the Financial Institution Rating System (FIRS) to assess the safety and soundness of each FCS institution. FIRS provides a framework of component and composite ratings to help examiners evaluate significant financial, asset quality, and management factors. FIRS ratings range from 1 for a sound institution to 5 for an institution that is likely to fail.

As the chart below indicates, ratings improved in 2014, and the System continues to be fundamentally safe and sound. As of December 31, 2014, one institution was rated 4, and three institutions were rated 3. In total, these institutions represent less than 1 percent of System assets and do not materially affect the System’s consolidated performance.

Composite FIRS Ratings--System Banks and Associations



Top Five Risks to the System

1. **A substantial correction of farm real estate values.** Real estate mortgage loans accounted for about 45 percent of the System's total loan portfolio on December 31, 2014. Farm real estate serves as the primary collateral for these loans. Therefore, a substantial correction in farm real estate values, after years of rapid appreciation, could leave a significant portion of these loans with insufficient collateral.

However, FCA oversight of System institutions indicates that the amount System institutions have been willing to lend on farm real estate has generally been restrained during this period of rising values. For example, institutions have used lending caps, sustainable lending value models, and shortened lending terms to minimize lending risk associated with the higher valuations. This conservatism will help mitigate the financial fallout to the System from a large correction in values.

Major factors that could elevate this risk would be a substantial and swift rise in long-term interest rates and continued low prices for major grains and oilseeds. These factors, especially occurring together, would likely lead to a sizable decline in farm real estate values.

2. **Protracted period of low grain and soybean prices.** Following the 2012 drought, U.S. farmers harvested back-to-back bountiful grain and soybean crops in 2013 and 2014. In addition, past high crop prices have encouraged significant increases in global crop production.

Many analysts are now projecting an extended period of relatively low grain and soybean prices as a result of more plentiful world supplies and weaker demand. Current grain prices are already below the cost of production for many producers.

While many grain and soybean producers have the financial wherewithal to survive a few lean years, farmers who have not taken steps to preserve their working capital may find the next few years very challenging. Cash grain farms account for about 18 percent of the System's total loan portfolio, making it the largest commodity risk for the System.

3. **Rapid rise in interest rates.** Interest rates, both short- and long-term, are poised to rise later this year. The Board of Governors of the Federal Reserve System appears likely to raise short-term rates before the end of the year, and higher long-term rates are likely as the economy strengthens and inflationary expectations rise.

The greatest risk to System institutions would occur if rates rise too much, too rapidly. This could cause assets, such as farmland or housing, to lose value quickly. The dollar would also strengthen in value relative to the currencies of other nations, putting U.S. farm exports at a disadvantage. If these developments occur, the System could experience a spike in credit problems because of falling collateral values and higher debt servicing costs.

One mitigating factor is that a large percentage of the System's real estate loan portfolio has been made with fixed rates. These loans are protected from rising rates until they reprice or mature.

These potential credit problems could be exacerbated if rising interest rates lead to slower economic growth, choking off the demand for high-valued agricultural products and reducing the incomes of farmers producing those products.

4. **A continuation of California's drought for several more years.** The California drought is now in its fourth year, and it is likely to go into a fifth year. Some experts also suggest that the California drought could extend for many more years.

If the drought continues unabated, it will curtail more and more production, and some producers will not survive. Indeed, the System may face some very difficult decisions as it assesses the risk facing producers who have limited access to water. Many current borrowers may be deemed to be un-creditworthy because of limited water access. This would likely lead to loan losses for the System.

A mitigating factor is the resourcefulness Californians have learned from long experience with droughts and water distribution issues. Nevertheless, political factors make it challenging to find a solution to the serious water distribution issues now facing the state. This is a risk for the System because nearly 10 percent of its total loan portfolio consists of loans made in California.

5. **A weakening in Chinese demand for agricultural exports.** China has become the top export market for U.S. agricultural products. Although China's economy is still strong, it is now growing more slowly and faces numerous challenges ahead. Slower growth will likely weaken China's export demand. Its efforts to rebalance its economy to depend more on the consumer sector and less on export markets may further weaken this demand.

China's economy also faces serious risks and imbalances in its financial and real estate sectors. Some experts believe that wealth distribution issues may lead to future social unrest. If China were to experience serious economic problems or if it were to abruptly change its trade policy, its demand for U.S. farm products would probably drop swiftly. This outcome could quickly translate to lower U.S. farm prices and incomes.

However, because of its vast foreign exchange reserves, China does have the wherewithal to continue purchasing U.S. farm products even if its domestic economy experiences turmoil. These reserves would allow China to maintain purchases necessary to keep ample food stuffs available to its citizens, at least for a while.

18. Are there any System institutions that are under heightened scrutiny or examination by FCA? Please provide a summary of each situation.

There are currently five System institutions, representing .06 percent of System assets under examination,¹ operating under special supervision or enforcement supervision as of April 30, 2015. This level does not materially affect the System's safety and soundness. We are dedicating the necessary resources to ensure the institutions take prompt and effective actions to address negative conditions. The following table summarizes the number of System institutions under FCA's three supervisory classifications.

Number of Institutions by Supervisory Classification			
Supervisory Classification	Number of System Banks and Associations¹	Assets Under Examination² (in millions)	Percent of Assets Under Examination
Normal Supervision	75	\$414,166	99.4%
Special Supervision	2	\$1,327	0.3%
Enforcement Supervision	3	\$1,191	0.3%
Total	80	\$416,684	100.0%

¹Supervisory classifications as of April 30, 2015.
²"Assets under examination" represent the total assets of all System institutions prior to the elimination of interrelated transactions between System banks and associations as of December 31, 2014. System assets (net of eliminations) totaled \$260.8 billion as of December 31, 2014.

The following information describes the three supervisory classifications in the preceding table.

- Normal supervision means the institution is operating in a safe and sound manner, and it is in substantial compliance with applicable laws and regulations. An institution under normal supervision typically has a composite FIRS (Financial Institutions Rating System) rating of 1 or 2. Any weaknesses in areas such as risk identification, business operations, internal controls, governance, standards of conduct, and management practices are addressed in the institution's normal course of business and through FCA's normal oversight and examination activities.
- Special supervision means the institution is operating under supervisory requirements imposed by FCA. This supervisory process allows the institution an opportunity to correct identified problems and potentially avoid the need for a formal enforcement action. An institution under special supervision typically has a composite FIRS rating of 3.
- Enforcement supervision signifies that we have taken one or more formal enforcement actions to correct unsafe or unsound conditions, practices, or violations of laws and

¹"Assets under examination" represent total assets of all System institutions prior to the elimination of interrelated transactions between System banks and associations.

regulations at the institution. An institution under enforcement supervision may have a composite rating of 3, 4, or 5. Enforcement Actions are further defined in Part C of the Farm Credit Act of 1971, as amended.

Institutions operating under special supervision or enforcement supervision require significant examination and supervisory resources. We have dedicated the needed resources to ensure compliance with the supervisory actions within a reasonable period of time. System institutions have been responsive to these actions. As a result, we expect the number of institutions under special supervision or enforcement supervision to continue to decline over the next two years.

Because of our confidentiality requirements, we cannot disclose institution-specific examination and supervision information in this communication. However, we can meet with Committee staff to provide more specific and confidential information.

19. Please update the Committee on FCA's opinion of the financial health of Farmer Mac.

Farmer Mac's financial condition and performance is strengthening, with moderate program volume growth, sound credit quality, and improved overall quality of capital.

On December 31, 2014, Farmer Mac's net worth (that is, its equity capital determined using generally accepted accounting principles [GAAP]) was \$781.8 million, compared with \$574.5 million a year earlier. Net worth was 5.5 percent of on-balance-sheet assets as of December 31, 2014, compared with 4.3 percent at the end of 2013. The ratio increased because of a substantial increase in overall quality of capital driven by the issuance of \$150 million in preferred stock during 2014 and a \$32 million increase in retained earnings.

When Farmer Mac's off-balance-sheet program assets (that is, essentially its guarantee obligations) are added to its total on-balance-sheet assets, net worth was 4.3 percent as of December 31, 2014, compared with 3.3 percent in 2013. As of December 31, 2014, Farmer Mac continued to be in compliance with all statutory and regulatory minimum capital requirements.

Farmer Mac's total program activity increased to \$14.6 billion on December 31, 2014, from \$14.0 billion a year earlier. Farmer Mac experienced steady growth in its Farm & Ranch loan purchases, as well as its AgVantage products. AgVantage transactions are general obligations of the issuing financial institution that are purchased or guaranteed by Farmer Mac. In addition to the general obligation of the financial institution, each AgVantage security is secured by eligible loans under one of Farmer Mac's programs in an amount at least equal to the outstanding principal amount of the security.

On December 31, 2014, \$132.6 million of the Farm & Ranch program portfolio was substandard, representing 2.45 percent of the principal balance of Farm & Ranch loans purchased, guaranteed, or committed to be purchased. This compares with \$194.9 million, or 3.78 percent, on December 31, 2013. Assets are considered to be substandard when they

have a well-defined weakness or weaknesses that, if not corrected, are likely to lead to some losses.

As of December 31, 2014, Farmer Mac's 90-day delinquencies improved for the fourth consecutive year to \$18.9 million, or 0.35 percent of non-AgVantage Farm & Ranch loans, compared with \$28.3 million, or 0.55 percent as of December 31, 2013. Real estate owned as of December 31, 2014, was \$0.42 million, down from \$2.6 million a year earlier. Farmer Mac reported no delinquencies in its pools of rural utility cooperative loans.

Farmer Mac reported net income available to common stockholders of \$38.3 million (in accordance with GAAP) for the year ended December 31, 2014, down from \$71.8 million reported at year-end 2013. Core earnings for 2014 were \$53.0 million, compared with \$54.9 million in 2013.² Net interest income, which excludes guarantee fee income, was \$60.8 million in 2014, down from \$98.6 million in 2013. Guarantee fee income was \$25.2 million, compared with \$27.0 million in 2013.

20. Please respond to recent criticisms from the American Bankers Association (ABA) that the FCS no longer serves a demonstrated market need; looks to major U.S. corporations as its customers; operates without transparency; and is directly competing with larger financial institutions.

The Farm Credit Administration is established under the Farm Credit Act to serve as the safety and soundness regulator of the Farm Credit System. We examine each System institution at least every 18 months to review its fundamental safety and soundness, including its capital, assets, management, earnings, liquidity, and interest rate sensitivity. These reviews also evaluate regulatory and statutory compliance, as well as the institution's effectiveness in serving eligible borrowers and implementing cooperative principles. The Farm Credit Act gives us a range of enforcement authorities to identify deficiencies and take action when needed, and it gives System institutions specific lending and other authorities so that it can meet its public mission.

Under the Farm Credit Act, System institutions are chartered to compete directly with commercial banks and other financial institutions in providing credit and other products and services to farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, rural utilities, certain rural homeowners, and farm-related businesses. In establishing the System, one of the primary objectives of Congress was to address the need for longer-term agricultural loans for farmers and ranchers. The System also provides the benefits that come from competition in the marketplace for agricultural credit. The System is recognized as a dedicated lender that must continue to serve its mission regardless of market conditions. All System institutions are established as cooperatives and owned by their borrowers. Consistent with cooperative principles, System borrowers own, control, and directly benefit from their member institutions.

² Core earnings provide a non-GAAP measure of financial results that excludes the effects of certain unrealized gains and losses and nonrecurring items. Farmer Mac reports core earnings to present an alternative measure of earnings performance. The components included in core earnings calculations are at Farmer Mac's discretion.

The ABA's criticism that the System no longer serves a demonstrated market need implies that the System's status as a Government-sponsored enterprise (GSE) is no longer warranted or appropriate. However, we have not seen a study or analysis indicating that competing commercial lenders are in a position to meet all of the congressional objectives and purposes that the System meets. How or whether farmers and ranchers would benefit from the loss of a lender on which so many rely is not apparent. In our view, elimination of the System's GSE status would reduce competition, increase the cost of agricultural credit, and reduce the level of services—especially in areas with few agricultural credit providers and during times of adverse market conditions.

As a GSE, the Farm Credit System provides many benefits to the U.S. farm economy, including the following:

- **Maintains access to credit for higher-risk borrowers.** In the absence of the System's mission requirement, new entrants to agriculture, small operations, or highly specialized farm enterprises could see reduced access to credit and would likely have to pay more for the credit they receive. Non-GSE lenders are not required to have programs for providing financial services to higher-risk producers, such as young, beginning, and small farmers.
- **Maintains liquidity in rural credit markets.** In the absence of a dedicated GSE lender, liquidity in rural credit markets would likely suffer during downturns in the economy—whether those downturns occurred in the farm, rural, or the broader economy. During cyclical farm sector downturns, some banks have reduced agricultural lending and increased lending in more profitable areas. For example, while aggregate bank farm lending grew in 2009, small agricultural banks and large nonagricultural banks reduced their farm loan portfolios. Also, national financial crises can lead to liquidity shortages, just as the 2008 financial crisis led to a tightening of underwriting standards for all bank lending, including agricultural and rural lending. During the 2008 crisis, for example, the System was able to meet the grain industry's immediate and critical need for additional credit. Like other lenders, the System had challenges during this period, but it also had the market access to ensure that funds were available to meet demand, and it had the commitment to stay with its owner-borrower customer base.
- **Maintains access to fixed-rate and longer-term loan products.** The System's GSE funding status allows it to be a reliable provider for longer-maturity loan products. Longer maturities with fixed-rate payment terms remain problematic for many banks, especially smaller community banks that still provide a large share of total agricultural credit. Therefore, interest costs on certain loan products would likely rise, or those products would become less available, if the System's GSE status were changed or eliminated.

FCA recognizes the importance of both commercial lenders *and* the Farm Credit System in meeting the agricultural credit needs of the country. The most current market share information from USDA shows that the System holds 42.5 percent of total farm business debt, while commercial lenders hold 40.1 percent.

Does the Farm Credit System look to major U.S. corporations for customers? Generally, eligibility under the Farm Credit Act is not restricted by ownership form or structure, and the size of the organization or its status as a corporation are not statutory criteria for determining eligibility. Certain lending authorities under Title III are limited to agricultural cooperatives. However, rural utility lending under Title III is not limited to a cooperative structure, and many providers of utilities in rural America are large U.S. corporations. Also, while many System customers are large agricultural operations, including both corporations and cooperatives, the System is required by the Farm Credit Act to serve all eligible and creditworthy borrowers, including young, beginning, and small farmers. FCA provides an annual report to Congress on the System's YBS activities.

Does the Farm Credit System operate without transparency? Under authority of the Farm Credit Act and its implementing regulations, FCA has full and complete access to all books and records of System institutions in the course of institution examinations. Requirements for disclosures to System shareholders and FCA are detailed in FCA regulations at 12 CFR, part 620. FCA disclosure regulations are on par with required disclosures for public companies by the Securities and Exchange Commission. Banks, associations, and the Federal Farm Credit Banks Funding Corporation must prepare and file quarterly and annual reports with FCA that meet FCA requirements. These reports must also be made available to shareholders, along with special disclosures for significant or material events. One such report is the annual information statement, which is published by the Funding Corporation. This report provides significant and detailed information about most aspects of the Farm Credit System. The quarterly and annual information statements are available on the Funding Corporation's website at www.farmcreditfunding.com. Information from institution quarterly reports of condition and performance is available on FCA's website.

Is the Farm Credit System directly competing with larger financial institutions? As noted above, the System was established by Congress to directly compete with commercial banks and other lenders to meet the agricultural and other credit needs that are authorized under the Farm Credit Act. Clearly, the System does compete with domestic and international lenders of all sizes to meet the credit needs of eligible borrowers. The ABA is the trade association that represents many of the commercial banks that compete with System institutions. These member banks have a great deal of market strength and hold more than \$15 trillion in total assets. In addition to competing with commercial banks and other lenders, the System also cooperates with them—partnering with them to extend credit through participations and syndications. In doing so, the System provides additional business opportunities to these lenders, and it expands its ability to meet its mission to serve agriculture and rural America.

21. Please update the Committee on FCA's efforts to recruit and retain staff, especially examiners.

FCA recruits and hires entry-level examiners through the Office of Personnel Management's Pathways Program. For fiscal year 2015, we continued to refine the recently implemented and improved application process. The recruiting season began in fall 2014 and ended in spring 2015.

Our recruiters attended more than two dozen recruiting events, almost half of which were held at land-grant universities. To help increase the diversity of our workforce, our recruiters attended several events at institutions classified as historically black/1890 universities, Hispanic-serving institutions, or universities with high minority enrollment.

Because of our need to attract more entry-level examiners, 2015 was the heaviest recruiting season we've had in several years. As a result of our vigorous recruiting efforts, we hired 21 associate examiners and 12 summer interns, including a wide range of diverse candidates.

With respect to retention, we continue to explore various ways to keep staff engaged, productive, and motivated to continue on their career development path.

22. Please inform the Committee of any deviations from the FCA FY 2015 Spend Plan as of May 2015.

Congress passed a limitation of \$60.5 million on expenditures from assessments. To keep our spending within this limitation, we have taken several measures.

- We established a conservative pay-for-performance employee compensation matrix, which was below that of other agencies covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- We have slowed the rate of hiring replacements for positions outside the examiner ranks until later in the fiscal year.
- To leverage information technology for the cost savings it can provide, we will make significant investments in our risk monitoring systems, human capital systems, and infrastructure.
- To remain on target with our commitment to reduce the carryover to a minimal amount by the end of FY 2016, we plan to reduce the assessments to institutions by \$3.0 million for the fourth quarter.

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