

**NOMINATIONS OF DANIEL R. LEVINSON, HAROLD
DAMELIN, AND RAYMOND T. WAGNER, JR.**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

DANIEL R. LEVINSON, TO BE INSPECTOR GENERAL, DEPARTMENT OF
HEALTH AND HUMAN SERVICES; HAROLD DAMELIN, TO BE INSPEC-
TOR GENERAL, DEPARTMENT OF THE TREASURY; AND RAYMOND T.
WAGNER, JR., TO BE A MEMBER OF THE INTERNAL REVENUE OVER-
SIGHT BOARD

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FEBRUARY 17, 2005
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CONTENTS

OPENING STATEMENTS

	Page
Grassley, Hon. Charles E., a U.S. Senator from Iowa, chairman, Committee on Finance	1
Baucus, Hon. Max, a U.S. Senator from Montana	3

ADMINISTRATION NOMINEES

Levinson, Daniel R., nominated to be Inspector General, U.S. Department of Health and Human Services	5
Damelin, Harold, nominated to be Inspector General, U.S. Department of the Treasury	6
Wagner, Raymond T., Jr., nominated to be a Member of the Internal Revenue Service Oversight Board	7

ALPHABETICAL LISTING AND APPENDIX MATERIAL

Baucus, Hon. Max:	
Opening statement	3
Damelin, Harold:	
Testimony	6
Prepared statement	19
Biographical information	21
Grassley, Hon. Charles E.:	
Opening statement	1
Levinson, Daniel R.:	
Testimony	5
Prepared statement	29
Biographical information	32
Responses to questions from Senator Grassley	41
Responses to questions from Senator Baucus	46
Responses to questions from Senator Bingaman	49
Responses to questions from Senator Snowe	50
Wagner, Raymond T., Jr.:	
Testimony	7
Prepared statement	51
Biographical information	53

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OF THE INTERNAL REVENUE OVERSIGHT
BOARD**

THURSDAY, FEBRUARY 17, 2005

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

The hearing was convened, pursuant to notice, at 10 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Baucus and Wyden.

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

The CHAIRMAN. I welcome our nominees today.

I am going to apologize to the nominees and the members of the committee. Senator Baucus is going to chair the committee today because I am down the hall at a bill that I have been trying to get to the President for the last 8 years—in fact, I got it to President Clinton and he pocket vetoed it—which is bankruptcy reform legislation. We hope to get that out of the Judiciary Committee today. So, I thank everybody for joining us.

We are here to consider three nominations that are pending before the Senate Finance Committee. First, we will hear from Daniel Levinson, who has been nominated by President Bush to serve as Inspector General for the Department of Health and Human Services.

In addition to currently serving as Acting Inspector General for the Department, Mr. Levinson also concurrently serves as Inspector General for the General Services Administration. Mr. Levinson has a long and respected career in the business of oversight, and I am confident that he will serve the Department well.

Next, we will hear from Harold Damelin, who has been nominated by the President to serve as Inspector General at the Department of the Treasury.

Throughout his distinguished career, he has served in a variety of capacities within the Federal Government, including service at the Internal Revenue Service, the Department of Justice, the Senate Permanent Subcommittee on Investigations, and the Senate Governmental Affairs Committee. He currently serves as Inspector General at the Small Business Administration.

Finally, we will hear testimony from Raymond Wagner, who has been re-nominated to a position on the IRS Oversight Board. Mr. Wagner has capably served on the Oversight Board since August, 2003.

Since last September, he has served as chairman of that distinguished panel that was set up by legislation that Senator Baucus and I worked on in, I think, 1999 and 2000.

I would suggest to you only one thing as a matter of house-keeping. I do not think this will be applicable to any of you, but, if you do have questions that are unanswered here, and there are questions given to you in writing, out of respect for everybody as an individual Senator, it is good to have those questions answered before your nomination would come up. So, take that into consideration.

There is something that I can do administratively while we are also waiting for Senator Baucus, and that is to ask each of you those questions that you would be asked just out of formality.

So I would ask this first question of all three of you, and then ask each of you to answer separately.

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

Mr. Levinson?

Mr. LEVINSON. No, Mr. Chairman.

The CHAIRMAN. Mr. Damelin?

Mr. DAMELIN. No, Mr. Chairman.

The CHAIRMAN. Mr. Wagner?

Mr. WAGNER. No, Mr. Chairman.

The CHAIRMAN. Thank you.

The second question of three. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. Levinson?

Mr. LEVINSON. No, Mr. Chairman.

The CHAIRMAN. Mr. Damelin?

Mr. DAMELIN. No, Mr. Chairman.

The CHAIRMAN. Mr. Wagner?

Mr. WAGNER. No, Mr. Chairman.

The CHAIRMAN. All right.

Third, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mr. Levinson?

Mr. LEVINSON. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Damelin?

Mr. DAMELIN. Yes, Mr. Chairman.

Mr. WAGNER. Yes, Mr. Chairman.

The CHAIRMAN. Thank you.

The committee will stand at ease until Senator Baucus comes. You could chair it until Senator Baucus gets here, could you not?

Senator WYDEN. Yes, sir, I could.

The CHAIRMAN. Would you come over here, please, and do that? I suppose I could ask you to do it from there, but it would be better if you would come over here. Thank you very much for doing that.

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

Senator BAUCUS. The committee will come to order.

We are here today to consider the nominations of Daniel Levinson to be Health and Human Services Inspector General; Harold Damelin, to be Treasury Inspector General; and Ray Wagner, for another term on the IRS Oversight Board.

Mr. WAGNER. Good morning, Senator.

Senator BAUCUS. Good morning. Good morning to all three of you.

Mr. DAMELIN. Thank you. Good morning.

Senator BAUCUS. These are obviously very important positions. They require independence, skill, and judgment.

At the birth of our Nation, the Continental Congress appointed an Inspector General to oversee the army. The Continental Congress charged that Inspector with ensuring that its scarce resources were spent wisely during time of war.

There were reports, however, that then-General George Washington resented the presence of someone questioning his decisions. Nevertheless, the Continental Congress decided that there should be an Inspector General. I must say that tension between the Inspectors General and whomever it is they are inspecting has always existed and not much has changed.

Mr. Damelin, like the first Inspector General, you are charged with overseeing an entity that helps protect our freedom. The Treasury Department is in the front line of the war on terrorist financing.

The Department's efforts can stop a terror cell before it plots its next attack. Without this quiet work done with computers and diplomacy instead of tanks and guns, America and the world would be a far more dangerous place.

Despite some success on the terror financing front, much remains to be done. We must guard our resources vigorously. The government has limited resources to monitor the activities of dangerous terrorists around the globe.

But the administration has allowed its obsession with Fidel Castro to supersede the war on terror. The Treasury Department has consistently diverted funds from combatting the financing of terrorists to banning the travel of tourists. There are terrorists camped around the globe, but grandmothers traveling to Havana are not among them.

Mr. Damelin, I will look to you to provide leadership in overseeing the Treasury generally, particularly the non-tax side, but also in this arena. We need to ensure that our terrorist financing dollars are well spent. Our liberty depends on it.

Mr. Levinson, the office for which you have been nominated has had its share of troubles. Career employees were driven out, morale low, and the independence of the last Senate-confirmed HHS Inspector General is called into question.

Even apart from the controversies surrounding the office, just running the operation is extraordinarily demanding. The Inspector General must identify systemic weaknesses of waste, fraud, abuse, inefficiency, and must conduct fraud investigations whenever warranted.

Because of the number of programs and the huge financial disbursements involved, this Inspector General's office is the largest in the entire Federal Government. It employs more than 1,500 auditors, investigators and support staff spread across our country.

Your tenure will begin at a time when a great deal of attention will be focused on the office, for several reasons. First, given the current fiscal situation, the Medicare and the Medicaid programs are under ever-increasing scrutiny.

The administration has proposed cutting \$60 billion from the Medicaid program. Moreover, implementation of the prescription drug benefit and other provisions of the Medicare Modernization Act continues apace. Enrollment in the prescription drug benefit begins in less than 9 months.

Finally, concerns abound about drug safety and the FDA's role in approving and monitoring drugs. Your office has an important role to play in these, and other, issues. You will need to hit the ground running, and I expect you to be an effective, independent leader.

Mr. Wagner, I am happy to see you back.

Mr. WAGNER. Thank you, Senator.

Senator BAUCUS. You have been here before.

Mr. WAGNER. Yes.

Senator BAUCUS. The IRS Oversight Board serves a very important function, as we have discussed in previous meetings. The Board oversees the Internal Revenue Service in its administration, execution, and application of the tax laws.

I know that I have given the Oversight Board a hard time in the past, but I am glad that the board—and you, in particular—have shown real leadership.

Mr. WAGNER. Thank you, Mr. Chairman.

Senator BAUCUS. Your independence is a valued asset, and so is your willingness to confront the IRS Commissioner and the Secretary of Treasury on tough issues. Toughness and independence, like the kind you have shown, are too rare in Washington today. Congress, taxpayers, and the American people are fortunate to have you as chairman of the IRS Oversight Board.

Mr. WAGNER. Thank you.

Senator BAUCUS. I would now like to turn to each of the three of you and ask you if you have any statements you wish to make. I will begin, first, in the order in which I mentioned everybody.

Mr. Levinson, I will begin with you.

STATEMENT OF DANIEL R. LEVINSON, NOMINATED TO BE INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Mr. LEVINSON. Thank you, Senator Baucus and Senator Wyden.

I am honored to appear before you today as the President's nominee to be Inspector General of DHHS. I am grateful to the President for this nomination, and truly appreciate the opportunity to address the committee this morning. I also want to thank the committee staff for their time and attention over the past weeks.

Promoting efficiency and effectiveness and preserving the integrity of the Nation's health and welfare programs are extremely important responsibilities. As the audit and investigative head of an objective and independent arm of the Department of Health and Human Services, I pledge that, if confirmed, I will work with the approximately 1,500 staff members of the Office of Inspector General to achieve these goals to the fullest extent possible.

In these few minutes, I would like to underscore two points that I address at greater length in my prepared testimony. One, is that this is a job that cannot begin to be accomplished without building and maintaining effective relationships with a number of offices, both within and outside the Department.

It is vital that there be effective communication, for example, between the IG and the Centers for Medicare and Medicaid Services, and a good understanding of the complementary roles played in securing for beneficiaries the benefits that Congress intended.

No less important, there needs to be effective relationships with the Department of Justice to make sure that the Health Care Fraud and Abuse Control Program is performing at an optimum level, so as to punish those who would commit fraud and to deter potential offenders. This partnership is also important to ensure that the False Claims Act and its CLITAN provisions are enforced as effectively as possible.

That said, effective outreach to State and anti-fraud units and to the health care industry also is a very important dimension. The OIG has finite resources, and the OIG staff identifies many areas where the compliance and anti-fraud efforts undertaken by organizations outside the OIG are a first-line defense.

It is important to continue to maintain and strengthen strategies that build the right kind of synergy among Federal, State and private parties.

Very importantly, the OIG should look to the Congress, and especially to this committee and its staff, as well as to GAO, to assist in meeting its audit and investigative responsibilities.

If confirmed, I pledge to engage with all our clients, allies and partners to pursue our mutually shared goals of effective and efficient delivery of services in the 300 programs that comprise HHS activities, and to root out the fraud, waste, and abuse that hinders the ability to do so.

On a second, and more specific matter, I would like to note that while the OIG needs to be mindful of all HHS programs, the recently enacted MMA poses new and complex challenges that the OIG must address in timely and accurate fashion.

The success of some of that work depends on the kind of effective relationship building and maintenance that I already have ref-

erenced, and much of the OIG work mandated in the MMA already has been in progress for the past year.

I would also note, however, that success depends on the investment and allocation of OIG resources in new—in the drug pricing area, for example—and novel ways. The OIG has been given important, new responsibilities. If confirmed, I am committed to working with staff to meet those obligations effectively.

Senator Baucus, I would like to finally note that I have had the privilege of working with the HHS OIG on an acting basis for the past few months. I am pleased to share with you my strong sense that the office has many dedicated public servants who bring commitment, experience, and expertise to this important work.

In a recent book on high-performance organizations, NYU Professor Paul Light observed that “once the right talent is assembled, there are four pillars to top-notch performance: alertness, agility, adaptability, and proper alignment.”

I already see so many of these attributes exhibited by the current staff, and, if confirmed, I will work to ensure the best possible resource allocation and personnel alignment to achieve the crucial goals of this office.

I thank the committee and welcome your questions.

Senator BAUCUS. Thank you, Mr. Levinson, very much.

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

Senator BAUCUS. Mr. Damelin?

STATEMENT OF HAROLD DAMELIN, NOMINATED TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. DAMELIN. Good morning, Senators Baucus and Wyden. Thank you for the opportunity to appear before you today.

I am honored to be the President’s nominee to serve as the Inspector General of the Department of the Treasury. This is the second time President Bush has nominated me to serve in the U.S. Government. Since the Senate confirmed my previous nomination, I have served as Inspector General of the Small Business Administration for nearly 2 years.

By way of background, I was born in the Boston area and attended Boston College and Boston College Law School. Shortly after graduating from law school, I moved with my family to the Washington, DC area, where I have worked in a number of positions over the past 32 years, 18 of which have been devoted to government service.

Out of law school, I was recruited into the Honors Program of the Chief Counsel’s Office at the IRS, where I worked for approximately 1 year. For the next 13 years, I served as a Federal prosecutor, both with the Criminal Division of the Justice Department in both the Public Integrity and Fraud Sections, and as an Assistant U.S. Attorney in the District of Columbia. As a Federal prosecutor, I handled many complex and sensitive investigations.

After leaving the U.S. Attorney’s Office, I spent the next 9 years in private practice, where I specialized in white collar criminal defense work.

In 1995, I had the honor of being asked by Senator Roth of Delaware to serve as the Staff director and Chief Counsel for the U.S. Senate Permanent Subcommittee on Investigations. I accepted the position, and for the next 2 years I was responsible for conducting a number of investigations and holding a series of public hearings.

Following my work with the Senate Permanent Subcommittee, Senator Thompson of Tennessee asked me to serve as a Senior Counsel to the Senate's Special Investigation Committee, which examined allegations of improper activities surrounding the 1996 Federal election campaigns.

While serving in this position, I was responsible for overseeing major portions of the committee's investigation, participating in its public hearings, and preparing the committee's final report.

Upon completion of my work for the Special Investigation Committee, I returned once again to private practice for almost 5 years, where I continued to specialize in white collar criminal defense work until I was nominated by the President and confirmed by the Senate in March of 2003 to serve as the IG at the SBA.

I believe the knowledge and experience I have gained over these past 2 years has further prepared me for the new challenges I will surely face at the Department of the Treasury if I were to be confirmed.

At the SBA, I have led a staff of about 100 people. During this time, I have become familiar and dealt directly with the many issues faced by an IG on a daily basis. I believe that I have handled my duties and responsibilities in a highly professional and competent manner.

I understand that the responsibilities of the position to which I have been nominated are great. Based on the significant issues facing the Department of the Treasury, it is clear to me that assuring the leadership role of Inspector General will be a challenging assignment.

With my diverse experience, I feel well prepared to assume the position. If confirmed, I pledge to you that I will work hard to carry out my responsibilities.

Again, thank you for the opportunity to appear before you today, and I will be happy to answer any questions you may have. Thank you.

Senator BAUCUS. Thank you, Mr. Damelin, very much.

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

Senator BAUCUS. Mr. Wagner?

**STATEMENT OF RAYMOND T. WAGNER, JR., NOMINATED TO BE
A MEMBER OF THE INTERNAL REVENUE SERVICE OVER-
SIGHT BOARD, WASHINGTON, DC**

Mr. WAGNER. Mr. Chairman, members of the committee, I am honored to appear before this committee today as you consider my nomination to be a member of the IRS Oversight Board.

It was just 2 years ago that I first appeared before you when I was nominated to fill the term of a vacant position on the Oversight Board. I am grateful to appear before you for a second time.

Mr. Chairman, it is truly an honor to have been nominated by President Bush to serve a full term on the Oversight Board. I com-

menced service on the Board in April of 2003. I was elected chairman in September of 2004.

I now have an even greater appreciation for the vital role that the IRS plays in the lives of virtually every taxpayer. If confirmed, I am committed to serve this full term with independence, vigor, rigor, and with complete respect for the importance of this position.

For almost 10 years, I have worked at Enterprise Rent-A-Car, most recently as the legal and legislative vice president. For the last 12 years, I have also been an Adjunct Professor of Law at the Washington University School of Law, where I co-teach a course in the Master's Tax Law Program.

Prior to joining Enterprise, I spent much of my career working in the public sector in the tax administration field. I served as director of Revenue for the State of Illinois, as well as the director of Revenue for the State of Missouri. In addition, I was the general counsel for the Missouri Department of Revenue.

As a board member, and now chairman, I have watched the board continue to evolve so that it will best meet its mission. Last September, the Treasury Inspector General for Tax Administration completed an audit of the board and found that the board has made a number of valuable contributions to the governance of the IRS, such as providing continuity of management and direction, reaching out to stakeholders, and conducting surveys of taxpayer attitudes.

TIGTA recommended that the board conduct a self-assessment as a tool for understanding how to elevate the board's performance to the next level. During my chairmanship, the board conducted such a self-assessment, reorganized its committees, and is expanding its outreach program.

We solicited input from stakeholders, including tax professionals and Congressional committees about how to make improvements. We redesigned our annual public meeting to achieve a better exchange with outside stakeholders.

Prior to being elected chairman, I served as the chairman of the board's Human Capital Committee. In this capacity, I led the committee on its first comprehensive review of the IRS Training Program, and also led the committee's annual review of senior IRS executive performance and compensation.

This review evaluates whether division goals, executive goals, and actual performance are in alignment with executive performance evaluations and compensation. This is a critical issue for all organizations, whether they be public or private.

It is important for board members to listen and to understand the concerns of a variety of organizations and individuals who interact regularly with, and have outside perspectives of, the IRS.

Ensuring this communication is a personal priority of mine. In this vein, I meet regularly with many representatives of the other government organizations that have oversight responsibilities with the IRS, including TIGTA, GAO, the Treasury Department, and Congress, including members of the staff of this committee, to discuss relevant IRS issues.

Other board members and I also meet regularly with IRS employees, tax professionals, and fellow taxpayers. We attend several nationwide forums annually.

Clearly, the IRS is facing many difficult challenges. It must reduce the tax gap in an environment of limited resources, active circumvention of tax laws by some, an aging workforce, and ancient computer systems.

This is no time for the timid. Every member of the tax administration community, including many of the people in this room this morning, must all pull in the same direction if we are to meet these challenges. I want the IRS Oversight Board to have an important and meaningful role in this effort.

I welcome the opportunity to use my extensive experiences in the private and public sector to address these issues. Enterprise Rent-A-Car, as you may know, has grown to be the number-one car rental company in North America, based in large part on its founding values of customer service.

I know firsthand the positive impact of superior customer service from a large organization. Despite needed emphasis on enforcement, I will be ever mindful of the priority that this committee placed upon customer service when it established the mandates of the Restructuring and Reform Act. We cannot have the IRS lose its balance between service and enforcement.

The mission of the Illinois Department of Revenue, which we rewrote during my tenure, might best exemplify my philosophy: professional service, fair enforcement. In short, taxpayers should find compliance easy to achieve and difficult to avoid.

In summary, Mr. Chairman, I am keenly aware of the critical importance of this independent board for all of the American people. If confirmed as a member of the IRS Oversight Board, I will be committed to using my knowledge and experiences to achieve the objectives for the board as set out in the Restructuring and Reform Act.

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

Senator BAUCUS. Well, thank you very much, Mr. Wagner.

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

Senator BAUCUS. I thank all of you. Public service, as you well know, is a real sacrifice. I mean, you work hard for the right reasons and not a lot of people praise you and thank you for all that you do. It is also a joint effort, yours individually, and also with your family because they have to sacrifice a lot, too.

I would like to give you the opportunity, if you would like, to introduce your families. I will begin with you, Mr. Levinson.

Mr. LEVINSON. Thank you, Senator Baucus. Behind me is my wife, Dr. Luna Levinson.

Senator BAUCUS. Would you like to stand, please, so everybody can say hello to you?

Mr. LEVINSON. And to her left is one of my two daughters, Hannah Levinson. My other daughter, Claire, is busy at college. She could not join us this morning.

Senator BAUCUS. Well, thank you very much. I know you are very proud. We are glad you are all here. Thank you.

Mr. Damelin?

Mr. DAMELIN. Yes. I think there is strength in numbers, so I brought a number of people.

Senator BAUCUS. Oh, good for you.

Mr. DAMELIN. My wife, Harriett.

Senator BAUCUS. Everybody stand, please. Harriett.

Mr. DAMELIN. Next to Harriett is my daughter, Rachel.

Senator BAUCUS. Rachel.

Mr. DAMELIN. And my son-in-law, Rob, is next to Rachel.

Senator BAUCUS. Rob.

Mr. DAMELIN. My daughter-in-law, Farrah, and my son, Scott.

Senator BAUCUS. Great.

Mr. DAMELIN. We opted not to bring three grandchildren.

Senator BAUCUS. What ages?

Mr. DAMELIN. Four, two and 3 months.

Senator BAUCUS. Good choice. [Laughter.]

Mr. DAMELIN. Thank you.

Senator BAUCUS. Good decision.

Mr. Wagner?

Mr. WAGNER. Thank you, Senator. Unfortunately, my children are not able to be with me here this afternoon. They joined me at my first confirmation hearing.

Senator BAUCUS. Right.

Mr. WAGNER. We had the pleasure to bring them to the Inaugural activities to enjoy that governmental function, and pulling them from school a second time seemed to be a high charge. So, thank you.

Senator BAUCUS. You are very, very welcome.

I just have a few questions. First, of you, Mr. Levinson. I am just curious how you are establishing morale and getting the right morale that we all want in your office. How are you going to do this, given the problems we have had in the past in your office, at least in the HHS Inspector General's Office?

Mr. LEVINSON. Well, I have had an opportunity, Senator, for these first months, on at least a part-time basis, since I am also, as you mentioned earlier, occupying a position of GSA Inspector General, to get to know certainly the senior team and to reach out and get to know the people in Washington, as well as having gone up to Baltimore to meet our people who work directly with CMS.

I am very pleased to see how much institutional knowledge and experience exists with people who are enthusiastic about the job they are doing and about the new challenges that are faced in the implementation of the MMA.

I did feel, when I walked in the door back in the fall, that people already had their nose to the grindstone and just wanted to know, can we move forward? Do we need to take a pause? Do we need to re-think what we are doing?

My message to everyone was, the clock is running. We need to make this new law, as well as all of the other laws we are supposed to do effective oversight on, work. I am not here to slow things down. I am here to make sure that we meet all of the deadlines that Congress is looking to us to attain.

So, I have found that there is just enormous cooperation, enthusiasm, and a lot of very, very good people still in the organization and still working hard to make it happen.

Going forward, I think there probably will need to be a fresh look at allocation of resources, because the MMA does place some new responsibilities on the office.

There will be a need to re-think how some of those responsibilities in the past have been done and need to be done in the future. I am getting great cooperation both within the office, as well as with our partners in the Department.

Senator BAUCUS. What do you want to uniquely bring to the office? That is, this is Mr. Levinson's stamp. This is something new and different.

Mr. LEVINSON. Well, we need to appreciate—and having served now for 3½ years as an Inspector General—one of the most interesting challenges for an IG is to wear two hats, effectively, perform two somewhat different, and at times complementary, roles.

As the chief audit executive, one plays one role sometimes different from that of being the chief law enforcement executive. In terms of the investigative work that needs to be done, there are occasions when—and at HHS it may occur very often—you need to project heat. Heat is the term that often is used in conjunction with law enforcement. You have to apply heat to a problem to uncover fraud and abuse.

As an audit executive, you need to shed light. You need to make sure that people understand where the precious dollars that have been appropriated actually are going, and to make sure that they are going for the purpose for which Congress actually appropriated the dollars.

So the need to shed light and to project heat are somewhat different. They can be complementary. People need to understand which hat you are wearing, when. I want to make sure that people are empowered in the office in both of those roles, as well as to understand how effective we can be as an evaluative unit.

Senator BAUCUS. Now, is that something new? Is that something that you are bringing? I mean, are you saying that past IGs have not appreciated that difference, that complementarity, as well as the difference between the two sides?

Mr. LEVINSON. Well, June Gibbs Brown mentioned, in the 1990s on several occasions, the need to think in terms of “auditgators,” I think is the term that she used, to convey a sense that people need to think beyond their narrow discipline sometimes to get the job done.

I think, in terms of what she has said, that I am building on that for some of the new challenges that we face to understand better how the law enforcement function, the audit function, and the evaluation function need to work effectively as a coordinated unit, still respecting their individual jurisdictions, if you will. And that is a delicate task.

Senator BAUCUS. How do you get around the perception that some people have that, because the office is over at HHS, the Inspector General is a little too cozy, is not sufficiently independent? What do you say to that? How are you going to establish your independence?

Mr. LEVINSON. Well, I would hope to establish the independence at HHS along the lines that I feel I have established the independence at GSA. We have at GSA what I view as a very independent

office that has worked on building a very effective partnership, when it can happen, with the Agency to make the right things happen.

We are not shy about pointing out the problems that occur in the acquisition process, for example. And whether people like to hear it or not, I think we do it in a way that brings people on board to the right way to make it happen. I think you need to be tough as nails as you effectively make the case that, where there is a need for change, you will insist on making sure that people understand the change that needs to be made.

Senator BAUCUS. In my judgment, these offices all come down to the person at the top. It depends upon you, and each of you, frankly. If you are a very independent-minded, vigorous, hardworking person and you want your agency to act that way, it will happen. If, on the other hand, you are a turn-the-crank kind of guy, the agency will be kind of a turn-the-crank agency, and nothing much is really going to happen.

So, it all depends on you. It all depends on you, in establishing your separateness, your independence, and so forth. I just urge you to exercise your office vigorously, because we are all dependent upon you, too.

I have one more question, and then I will turn to Senator Wyden.

Mr. Damelin, you probably saw in this morning's *Washington Post* an article about Senator Levin, who sent some e-mails or gave some e-mails to the press.

Mr. DAMELIN. Yes, I did.

Senator BAUCUS. It was an article about a shipment of oil. The Treasury Department apparently, according to the *Washington Post* article, turned a blind eye or actually encouraged oil sales to Jordan, and maybe some other countries from Iraq, in violation of the U.N. sanctions. I would just highlight that, and I expect, if you are confirmed—and I expect you will be—to look into that. Do you have any comment on that, please?

Mr. DAMELIN. Obviously, Senator, I do not know anything more about it than what I read in the paper earlier this morning. But that is the type of thing that, as an IG, you need to be prepared for. It comes your way, and you need to make an assessment and find out what additional inquiry needs to be made in connection with a matter like that.

Senator BAUCUS. All right. It looks pretty serious. Are you going to treat it seriously?

Mr. DAMELIN. I certainly will.

Senator BAUCUS. Thank you.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman. I think you have touched on so many of the important issues, and I just have a couple of follow-up areas. I thank all of you, as well, for the service that you provide.

Let me start with you, Mr. Wagner, and eventually this question will wend its way to you, Mr. Damelin, as well.

Mr. Wagner, when Treasury Secretary Snow was here about a week or so ago, I asked him at some length about the enforcement of the tax laws. In particular, what has concerned me is, when it

comes to scofflaws, it appears that for well over 2 decades, the primary focus has been on the little guy.

And certainly the law ought to be applied equally, but it seems that for decades now, the focus on enforcement has primarily been on the little guy rather than the big guy. The people in the big companies with huge investment interests somehow get off the hook.

I want to see that pattern of enforcement change. Senators Baucus and Grassley have made, in particular, what I think is a very constructive effort over the years. Senator Baucus has gone, but both he and Senator Grassley deserve a lot of credit for saying that they want that really shaken up.

What Treasury Secretary Snow told me was that he would make sure that by the end of this year, 2005, we would see a different pattern of enforcement, so that we would start to see some of the bigger guys and the real rip-off artists targeted for enforcement. I certainly accept his sincerity and his credibility, but we have heard that before.

So what I would like to ask of you, is to supply to me, and also to the committee, by, let us say, April 1—you have got to wait until the year is over, obviously—a report from you all that would actually give us, in writing, the specifics that demonstrate that, for the first time, there has been a change in the enforcement pattern, and finally there really is an effort to target the big offenders. Would you be willing to do that?

Mr. WAGNER. Senator, I would be willing to do that, and I will commit to you to provide that report by April of 2006.

Senator WYDEN. Let me ask you this. Is April 1 a reasonable date? Perhaps it ought to be May 1 if you want to make sure you have all records from April 15. Is April 1 reasonable?

Mr. WAGNER. The issue of enforcement is something that the board is already looking into.

Senator WYDEN. Good.

Mr. WAGNER. So I would hope that, by April, we would have a good sense for the preceding year. If we need more time, then I will certainly come back and visit with you about that. But I anticipate that, by April 1, we would have a full assessment of that issue.

I will state that the issue of enforcement is something that the IRS and the Secretary, I know, are focused upon. I am aware of the perception that you have outlined, and I think that that is something, as the IRS undertakes its initiatives and allocates its resources, that they are very sensitive to.

Senator WYDEN. I appreciate that. I share Senator Baucus' appreciation for your approach to public service. This is something I feel very strongly about. There is a real sense in this country about a lack of accountability.

If you hold up a 7-11, you are pretty sure you are going to get some real penalties if you are caught, and that is as it should be. But somehow it seems that, in the corporate suites, there is not the same level of accountability, and there is a chance now to make it very different.

Senator Baucus and Senator Grassley have given the agency new tools to tackle the enforcement area, and I think it is very constructive that you all make sure that, by April 1, we can actually see

the documentation that supports Treasury Secretary Snow's constructive statement, by the way, that he is going to change it on his watch, and we will have some evidence by the end of the year.

The second question that I had that perhaps will bring you into this, Mr. Damelin, as well, is are there enough people in the enforcement area? I mean, just numerically, are there enough people to do this job? Because I think you have heard my first line of questioning.

I am very pleased about Mr. Wagner's response. But I also have questions about whether there are just physically enough bodies in order to do it. So, perhaps if we could start with you, Mr. Damelin, and then bring you into this as well, Mr. Wagner.

This is obviously a timely matter because we have got the budget coming up. I also sit on the Budget Committee. So, your responses there are also relevant to something I am following up on.

Mr. Damelin?

Mr. DAMELIN. Senator, not to deflect answering your question, but I think, based on my understanding of the jurisdictions between the Treasury IG and the IG at TIGTA, the tax enforcement IG which has more direct jurisdiction over the IRS, that question and a substantive answer may be better ascertained from that particular Inspector General than from me.

Certainly, at the present time I would not have the depth of knowledge of the staffing issues, even if it was a matter under my jurisdiction, but it is the kind of thing that I would be more than happy to talk to the TIGTA IG and communicate with him and attempt to get back to you with a response.

Senator WYDEN. Fair enough.

Mr. Wagner, have you got any thoughts on that?

Mr. WAGNER. Senator, we have developed an increasingly strong relationship with TIGTA, and certainly I can take this up with the Inspector General for Tax Administration and express your concerns.

Senator WYDEN. Do you have any sense this morning?

Mr. WAGNER. My sense is that, again, I believe the IRS is very in tune with allocation of resources for enforcement. During the course of our regular meetings that we have, both with the board and with IRS executives, we have discussed the shift of resources from areas that maybe are less efficient or less desirable toward the area of enforcement. We have carefully worked with the IRS to discuss hiring plans and how to allocate those hires with an aim toward sustaining or acquiring a minimal number of bodies, if you will, to handle the task at hand.

But I might also say that technology is improving. The use of the Internet, our computer systems, and so on, have also made for more efficiencies, where it is not just a matter of having FTE and the bodies, but also the proper technology and training, which is another key focus of our Oversight Board deliberations.

It is one thing to have a body with a pen, paper and a laptop, but it is another thing to know how to use it and to be well-trained to get the most out of that individual. So, I am sensitive, and we are working with the Commissioner.

Senator WYDEN. Very good. I look forward to working with you on the enforcement issue. And you, Mr. Damelin. I will be voting

for both of you when we have enough bodies in the committee and a distinguished chairman here as well for a vote.

Mr. Levinson, let me turn to you. Obviously, the office has fallen on some bad times here recently. I am not completely clear, and maybe you could just spell it out. What is going to change, exactly, on your watch? I heard something about allocating resources and the like, and that certainly sounds sensible to me. But that is not the main problem. It was pretty chaotic in recent years.

I would like you to tell me, particularly as it relates to management practices, what is going to change there? I think it would be very bad for the public interest to have a third round of what we have seen in the last two instances with your predecessors.

Mr. LEVINSON. Senator Wyden, I think it is terribly important, given the depth of career experience and expertise that continues to exist at the OIG, that focus be made on making sure that the people—who in many cases have been in the executive service and the managerial ranks at the OIG throughout not just the last few years, but going back earlier—have the tools, have the support so that they are able to do the first-class job that many of them are capable of doing, and I have already witnessed myself over these last few months.

My emphasis on allocation of personnel and resources—

Senator WYDEN. On that point, exactly what is going to be done differently with those experienced people? Are you going to name some advisory group of experienced people there to meet with you once a month to give you an update on management practices?

Tell me, if you would, what is going to change, other than, I gather from your statement, you are going to appreciate these high-level people. What exactly is going to change in terms of how you work with those top-level people?

Mr. LEVINSON. Well, I am still in the process at this point in my tenure in learning in more depth what occurs in these very large components that comprise the OIG.

I am assembling on a regular basis the senior management team in Washington, and I think it is important that I also, if confirmed, get around the country as well, because so many of our most gifted people are around the country in the regional offices in virtually every State of the Union.

I am, very early on, sending them a very positive signal about the importance of being able to work effectively as a team to make sure that we accomplish all of the goals of the office.

And given where we are with the MMA, it is especially important that people feel very comfortable about being able to work proactively together to make it all happen. Again, some of these folks have years of experience and have been very welcoming, saying we can work together to make this happen.

I am devoting all of my time, even in my acting capacity, to making sure that people feel empowered to be able to make the difference that so many of our existing personnel feel that they can make.

Senator WYDEN. I will not ask it a third time, but you can get a sense. I am still interested in knowing specifically what is going to change. I think it is useful that you are going to empower the people and that you are talking to them, and the like.

It all sounds very constructive, and I commend you for it. But my sense is that the management problems were pretty deep and pretty pervasive, and they are not going to get resolved by a few conversations with folks.

Let me go on to a couple of other areas. We have a number of colleagues, led by Senators Grassley and Baucus, who are very interested in health information technology.

All of us who represent States with a large rural population, as I, Senator Grassley and Senator Baucus do, know that health information technology is essential for good communication and coordination of care.

But there are a lot of barriers right now to the adoption of health information technology. A number of those barriers identified by the committee are imposed by the office's interpretation of the anti-kick-back laws and the Stark statutes.

The regulations implementing the Medicare Modernization Act and the e-prescribing provisions state that the Office of Inspector General is going to release the safe harbor language to create a specific exemption to Stark and the anti-kick-back laws for e-prescribing technologies. We would very much like to know when your office plans to release that language.

Mr. LEVINSON. I do not have an exact date to provide to you, Senator, but I know that the office is currently drafting the MMA-required safe harbor. I will be prompt about giving you a more exact timetable.

Senator WYDEN. Could we expect to have that in 60 days?

Mr. LEVINSON. I am just not sure where the office is in its timetable, but I will give you an update immediately.

Senator WYDEN. Try and get it done. This is a big deal to myself. My good friend, Senator Baucus, who has done so much on health technology, is back. We in rural areas cannot abide foot-dragging on this. This is something that is absolutely essential.

We think that the Stark and the anti-kick-back laws are presenting a real barrier to adopting health information technology to the extent that we think the potential is there. By the way, the Secretary has done some very good work, in my view, on health information technology. So, try to get it done quickly, all right?

Mr. LEVINSON. Absolutely, Senator. I am committed to, if at all possible, making it happen within the next 60 days. Our office is working with Dr. Brailer's office in a very cooperative manner to make sure that we are part of these kinds of solutions, and not barriers.

Senator WYDEN. One last question. I see Senator Baucus has come back.

Senator BAUCUS. Take your time, Senator. It is all yours.

Senator WYDEN. I thank my friend.

A number of us on the committee—and I am very grateful to my friend Max Baucus for all his counsel—voted for the prescription drug bill, and we want to make it work.

We feel passionately about how to make it work. Clearly, we are in a very difficult area now in terms of getting people signed up. The summer period is going to be key in terms of next year.

What is your sense at this point about why the costs have gone up? I am not talking about the partisan wrangle about this amount

or that amount. I am not interested in that. I am interested in what is going to make for a bipartisan alliance to preserve this law.

What is your sense about why the costs have gone up so far?

Mr. LEVINSON. Senator, the office looks to understand how the Federal dollar gets spent when it comes to prescription drugs, among other subjects. There is a substantial history in the office of expressing concern about the high cost of prescription drug reimbursement in the Medicaid program.

I know that there will be continued work on prescription drugs. In fact, we have important responsibilities under Part B. I think that we will be able to furnish useful information to both the Congress and to the Department on prescription drugs going forward. I am not sure that we have any specific—

Senator WYDEN. But do you think, then, that the history from Medicaid is relevant here? Because I happen to think it is. The history of Medicaid is, every time you turn around, the costs of the program go up, and it is largely due to the cost of medicines. I am interested in your observations. So you think that may be relevant here?

Mr. LEVINSON. Well, I am pointing out, in fact, the history of the office.

Senator WYDEN. Right.

Mr. LEVINSON. OIG work noted that using average wholesale price in the Medicaid program has driven up costs in a way that is not really effective for the program. Testimony has been provided as recently as late last year.

Senator WYDEN. And you are willing to be aggressive in terms of monitoring those cost issues?

Mr. LEVINSON. Yes.

Senator WYDEN. Good. I think that is very constructive because, for this program, particularly between now and the end of the year, this is really going to be the tell-tale time in terms of those of us who want to make this program work, who voted for it, and frankly have the welts on our backs to show for it. We want to make this work.

So, your willingness to monitor aggressively some of the pricing issues where there is some history relating to Medicaid that may very well be relevant here as well, I think that is useful.

Mr. Chairman, I thank you.

Senator BAUCUS. Thank you, Senator.

I would just like to say to each of the three of you, do not be confused or pay too much attention to the fact that there are not a lot of Senators here. Everyone in the Senate, I can assure you, and certainly on this committee, very much appreciates what you do, and we are all dependent upon you, as I mentioned earlier.

I just cannot impress upon you how important your job is. It is so important. You are about the only people who are able to help assure the integrity of a lot of our statutes, the financial integrity of a lot of our statutes, because we cannot. We do not have the resources. We do not have the personnel. We do not have the time.

Certainly, the persons that you are inspecting have an interest, but they do not have the same interest that you have in what you are doing. There is nobody else but you. You are the only person.

We rely upon you so, so much. And, more importantly, the American people do. They really do.

I just want you to know that you have our full support. You have this committee's full support in anything you do that fulfills your objective, the mandate as Inspector General, to make sure that the statutes are followed properly, and so forth.

If you need resources, let us know. Let us know. If you need changes in the law, let us know. You have got to let us know. I do not want you to go through your departments, or anything like that. I want you to draft a letter to us, request a meeting with us. Maybe we should have a hearing on the subject, or whatnot.

Let us know if you see certain impediments as you try to fulfill your objectives that we can address in Congress, and potentially correct. There have got to be some. I do not know what they are, but they are bound to be there. I just urge you to take a look at that.

I urge you to task one of the people in your organization to make a list of certain impediments that we face in our Inspector General's Office that can potentially be addressed by the Congress, and let us know what they are. It might be resources. It is almost always resources. But in addition to resources, there may be something else, too.

I have not thought this through, and I will talk to the Chairman about this, but we may want to come back and talk to you at a hearing, what you are finding, what is going on, and follow-up. Not to give anybody a hard time, but basically just to help us mutually do our job. All right?

Mr. LEVINSON. Yes. Good. Thank you, Senator.

Senator BAUCUS. I wish you very, very good luck. All the best. I expect you will be confirmed very quickly.

Mr. LEVINSON. Thank you very much.

Senator BAUCUS. And thanks again for what you are doing.

Mr. DAMELIN. Thank you.

Mr. WAGNER. Thank you.

Senator BAUCUS. I have one more housekeeping matter here, and that is to thank everyone for participating. Also, I would like to remind all of you on the panel, and the committee, that the record will be open for another 2 weeks from today if anyone would like to submit any further questions or points. You may want to say something else.

Mr. DAMELIN. No, sir.

Senator BAUCUS. All right.

Mr. LEVINSON. Senator, thank you very much.

Senator BAUCUS. Thank you very much.

The hearing is adjourned.

[Whereupon, at 10:57 a.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HAROLD DAMELIN

Chairman Grassley, Senator Baucus, and Members of the Committee on Finance, thank you for the opportunity to appear before you today and provide testimony. I am honored to be the President's nominee to serve as the Inspector General of the Department of the Treasury. This is the second time President Bush has nominated me to serve in the United States Government. Since the Senate confirmed my previous nomination, I have served as Inspector General of the Small Business Administration for nearly 2 years.

If you will permit me, I would like to take a moment to introduce the members of my family. My wife, Harriet, is here with me today. We are also blessed with two children, Scott and Rachel, their respective spouses, Fara and Rob, and three beautiful grandchildren, Leah, Rebecca and Max.

By way of background, I was born and raised in the Boston, Massachusetts area, and attended Boston College, where I majored in accounting, and Boston College Law School. Shortly after graduating from law school and completing my Army officers basic training course at Fort Gordon in Georgia, I moved with my family to the Washington, DC area where I have worked in a number of different positions over the past 32 years, 18 of which were devoted to government service. Out of law school, I was recruited into the honors program at the Chief Counsel's Office of the Internal Revenue Service, where I worked for approximately 1 year. For the next 13 years of my career, I served as a Federal criminal prosecutor, both with the Criminal Division of the United States Department of Justice, where I worked in the Public Integrity and Fraud Sections, and as an Assistant United States Attorney in the United States Attorney's Office for the District of Columbia, where I served as Deputy Chief of the Grand Jury Section. During my tenure as a Federal prosecutor, I handled numerous investigations and prosecutions, many of which were complex and sensitive.

After leaving the United States Attorney's Office in 1986, I spent the next 9 years in private practice as a partner in two different law firms. I specialized in white-collar criminal defense, representing corporations and individuals in a wide variety of complex criminal and administrative proceedings. In addition, I counseled clients with respect to the formation and implementation of compliance programs. In 1995, I had the honor and privilege of being asked by Senator William Roth of Delaware to serve as Staff Director and Chief Counsel for the United States Senate Permanent Subcommittee on Investigations. I accepted the position, and, for the next 2 years, I assembled and directed a professional staff responsible for conducting a number of investigations and holding a series of public hearings on a variety of issues, including healthcare and procurement fraud.

Following my work with the Senate Permanent Subcommittee, Senator Fred Thompson of Tennessee asked me to serve as a Senior Counsel to the Senate's Special Investigation Committee, which examined allegations of illegal and improper activities surrounding the 1996 Federal election campaigns. While serving in this position, I was responsible for overseeing major portions of the Committee's investigation, participating in its public hearings, and preparing the Committee's final report.

Upon completion of my work for the Special Investigation Committee, I returned once again to private practice for almost 5 years, where I continued to specialize in white collar criminal defense work until I was nominated by the President, and confirmed by the Senate in March of 2003, to serve as the Inspector General of the Small Business Administration.

I believe the knowledge and experience I have gained over these past 2 years as the Inspector General of the Small Business Administration has further prepared me for the new challenges I will surely face at the Department of the Treasury, if confirmed. At the Small Business Administration I have led a staff of about 100 people located throughout the country. During this time I have become familiar, and dealt directly with, the many issues faced by an Inspector General on a daily basis, and I believe that I have handled my duties and responsibilities in a highly professional and competent manner. I have also been pro-active. For example, I developed an organized effort within my office to identify and prosecute those individuals who fraudulently obtained SBA disaster loans in connection with the 9/11 tragedy.

I understand that the responsibilities of the position to which I have been nominated are great. Based on the significant issues facing the Department of the Treasury, it is clear to me that assuming the leadership role of Inspector General will be a challenging assignment. With my diverse experience, I feel well prepared to assume the position. If confirmed, I welcome the challenges I will be facing and pledge to you that I will work hard every day to carry out my responsibilities.

Mr. Chairman, thank you again for allowing me to appear here today, and I would be happy to answer any questions that you and other members of the Committee may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Harold Damelin
2. Position to which nominated:
Inspector General-Department of Treasury
3. Date of nomination:
10/7/04
4. Address: (List current residence, office, and mailing addresses.)
Residence and Mailing Addresses:
2003 Mayfair McLean Court
Falls Church, VA 22043
Office Address:
Small Business Administration
Office of the Inspector General
Suite 7150
409 3rd Street, S.W.
Washington, D.C. 20416
5. Date and place of birth:
September 14, 1946, Malden, MA
6. Marital status: (Include maiden name of wife or husband's name.)
Married, Harriet Ellen Weiner

7. Names and ages of children:

Scott Randy Damelin, 35 years old
 Rachel Beth Irish, 32 years old

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

Boston College Law School	9/69-5/72	J.D.	5/72
Boston College	9/65-6/69	B.S.	6/69
Bridgton Academy	9/64-6/65	Post Graduate H.S.	5/65
Malden High School	9/61-6/64	H.S.	6/64

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

Inspector General 4/03-Present
 Small Business Administration
 409 3rd Street, S.W.
 Seventh Floor
 Washington, D.C. 20416

Partner 2/98-4/03
 Powers Pyles Sutter & Verville
 1875 Eye Street, N.W., 12th Floor
 Washington, D.C. 20006

Senior Counsel 11/96-2/98
 Senate Committee on Governmental Affairs
 SD 340
 Senate Dirksen Office Building
 Washington, D.C. 20510

Staff Director and Chief Counsel 2/95-10/96
 Senate Permanent Subcommittee on Investigations
 SR 100
 Russell Senate Office Building
 Washington, D.C. 20510

Partner 2/91-1/95
 Cadwalader, Wickersham & Taft
 1201 F Street, N.W., Suite 1100
 Washington, D.C. 20004

Partner 5/86-2/91
 Arent Fox
 1050 Connecticut Ave., N.W.
 Washington, D.C. 20036

Deputy Chief-Grand Jury Section 5/82-4/86
 U.S. Attorney for the District of Columbia
 Judiciary Center
 555 4th Street, N.W.
 Washington, D.C. 20001

Branch Chief, Fraud Section 5/81-5/82
 Criminal Division
 U.S. Department of Justice
 10th & Constitution Avenue
 Washington, D.C. 20530

Assistant United States Attorney 3/78-4/81
 U.S. Attorney for the District of Columbia
 Judiciary Center
 555 4th Street, N.W.
 Washington, D.C. 20001

Attorney 9/73-2/78
 Public Integrity and Government Regulation Sections
 Criminal Division
 Department of Justice
 10th & Constitution Avenue
 Washington, D.C. 20530

Attorney 11/72-8/73
 Office of the Chief Counsel
 Internal Revenue Service
 1111 Constitution Ave., S.W.
 Room 3026
 Washington, D.C. 20224

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

None.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation,

company, firm, partnership, other business enterprise, or educational or other institution.)

None, other than those referred to in A9 above.

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

Assistant United States Attorneys' Association	1978-Present
American Bar Association	1986-Present
Marc Ross Scholarship Committee	1994- Present
Mayfair of McLean Homeowners Association	1999-Present

13. Political affiliations and activities:

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

None.

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

Republican National Committee, Life Member 2000-Present

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

4/22/99	Powers, Pyles, Sutter & Verville PAC	\$1250.00
6/29/99	Powers, Pyles, Sutter & Verville PAC	\$1250.00
7/1/00	Dan Flaherty for Congress	\$50.00
8/7/00	Powers, Pyles, Sutter & Verville PAC	\$1,500.00
8/21/00	Republican National Committee	\$30.00
9/10/00	Bush Cheney 2000 Compliance Committee	\$1,000.00
10/1/00	Republican National Committee	\$31.00
12/2/00	Republican National Committee	\$35.00
10/19/01	Powers, Pyles, Sutter & Verville PAC	\$500.00
1/22/02	Tennesseans for Senator Fred Thompson	\$250.00
1/31/02	Republican National Committee	\$35.00
3/20/02	Susan Collins for Senator	\$200.00
6/27/02	Ed Bryant for Senator	\$500.00
6/27/02	Republican National Committee	\$30.00
7/31/02	Republican National Committee	\$250.00
10/8/02	Republican National Committee	\$250.00
12/15/02	Republican National Committee	\$250.00
12/23/03	Bush Cheney 04	\$30.00

12/23/03	Republican National Committee	\$35.00
4/16/04	Bush Cheney 04	\$45.00
4/16/04	Republican National Committee	\$30.00
6/15/04	Republican National Committee	\$30.00
6/15/04	Bush Cheney 04	\$50.00
7/30/04	Bush Cheney 04	\$100.00
7/30/04	RNC-Victory 2004	\$30.00
9/8/04	RNC-Victory 2004	\$50.00

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)
1. Received a 3-year scholarship, based upon undergraduate record, to attend Boston College Law School.
 2. Admitted to Beta Gamma Sigma, national business honor fraternity, while at Boston College
 3. Received an Army Commendation Medal
15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)
1. "Making a Voluntary Disclosure in Order to Avoid a Corporate Integrity Agreement: Is It Worth the Risk?" (co-authored with Anthony Russo), White Collar Crime 2001 (American Bar Association).
 2. "The Metamorphosis of PRM 115: DOJ's New Attack on Aggressive Cost Reporting" (co-authored with Edith Marshall), White Collar Crime 2000 (American Bar Association)
 3. "Challenging Statistical Sampling and Extrapolation Used to Determine Liability In Health Care Fraud and Abuse Cases" (co-authored with Arthur Didio), White Collar Crime 1999 (American Bar Association)
 4. "A Practical Guide to the Sentencing Guidelines for Organizations" (co-authored by Raymond Banoun and Ronald White), White Collar Crime 1994 (American Bar Association)
 5. "Criminal Liability of Corporate Officers and Employees for Environmental Offenses" (co-authored with Raymond Banoun), The Environmental Counsel (December 1991)
 6. "Corporate and Individual Criminal Liability for Environmental Offenses: the Intent Requirement" (co-authored with Raymond Banoun and Ronald White), 2 The Corporate Analyst 104 (February 1990).
16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)
- None.

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

Prior to assuming my current position of Inspector General at the Small Business Administration in April 2003, I was a practicing attorney with over 30 years of diversified criminal fraud litigation and investigative experience. I served as a Federal prosecutor with the Criminal Division of the United States Department of Justice and with the United States Attorney's office in the District of Columbia, as a staff director and senior investigative counsel with two U.S. Senate committees, and as a partner in three private sector law firms. In these various positions, I developed extensive experience in handling large complex matters and in managing diverse groups of individuals. My management style has always been to lead by example. That is by working hard, setting clear goals and objectives, and being meticulous and fully prepared for every task I address.

I brought these skills to the Small Business Administration where, for the last eighteen months, I have managed and directed a staff of approximately 100 individuals located throughout the United States. During this period, I have also gained additional working knowledge of personnel management and budget issues. In addition, I have become actively involved in the IG community, and currently serve as a member of the President's Council on Integrity and Efficiency's Investigative and Legislative Committees.

I believe that my overall legal experience, together with the specific experience I have acquired as the IG at the SBA, qualifies me to effectively serve as the IG at the Department of Treasury.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

Not applicable, as I am currently a Federal employee.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

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

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

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

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

None.

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

None.

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

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

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

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

Not applicable.

D. LEGAL AND OTHER MATTERS

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

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

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

No.
4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No.
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. TESTIFYING BEFORE CONGRESS

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

Yes.

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

Yes.

PREPARED STATEMENT OF DANIEL R. LEVINSON

Mr. Chairman and members of the Committee, thank you for this opportunity to appear before you today as the President's nominee for Inspector General (IG) of the Department of Health and Human Services (HHS). I am grateful for the President's nomination and am mindful of the crucial role that the Finance Committee plays in a wide array of matters concerning HHS, including its Office of Inspector General (OIG). I also want to thank members of the Committee's staff who gave of their time generously in preparation for this hearing.

This Office of Inspector General is charged with protecting the integrity of HHS programs, as well as the health and welfare of beneficiaries of those programs. As in other agencies, the IG serves pursuant to the Inspector General Act of 1978 as chief audit and law enforcement executive, with dual reporting roles to the Department and to the Congress. An IG is charged with providing the Secretary and program managers objective and independent findings and recommendations to improve program efficiency and effectiveness, and to undertake investigations to identify and hold accountable those who defraud our programs and beneficiaries.

The IG must carry out a wide variety of tasks in the effective administration of many key government management laws, among them the Federal Information Security Act, the Chief Financial Officers Act of 1990, the Single Audit Act, and the Government Performance and Results Act, as well as OMB circulars and directives. The IG, through Hotlines and other integrity awareness efforts, also assists in the fulfillment of the important public policy goals embodied in the Ethics in Government Act, the Whistleblower Protection Act, and other similar laws, rules, and policies.

These are roles with which I am familiar, as it has been my privilege and honor to serve as the Inspector General of the General Services Administration for the past 3½ years. The multidisciplinary nature of IG activities always presents a challenge to integrate effectively a variety of internal tasks for the benefit of both internal and external uses. The size and scope of HHS, however, makes managerial demands of the highest order. I, therefore, am aware of the differences, as well as of the similarities, of the positions that I am leaving and for which I am being considered.

Indeed, I am cognizant that the HHS OIG is in some respects truly different from its peer organizations. Not only is it the largest office of its kind in the Federal Government, but its duties and responsibilities are unusually broad, encompassing significant regulatory and enforcement powers not typically available to OIGs elsewhere. I pledge that, if confirmed, I will devote my efforts and energies toward ensuring that the office exercises all the authorities given it by the Congress.

An important demonstration of the unique features of the HHS OIG is apparent in its role in the Medicare Modernization Act (MMA) of 2003. In making the most significant changes to Medicare in its 40-year history, the MMA, which goes fully into effect next January, both modifies the prices of drugs currently paid by the Medicare program and creates a new voluntary drug benefit for the program's 41 million beneficiaries.

As recent OIG semiannual reports indicate, within the Medicare and Medicaid programs, which are the exclusive focus of approximately 80 percent of OIG activity, prescription drugs are especially vulnerable to fraud, waste, and abuse. It is there-

fore essential that the Centers for Medicare & Medicaid Services (CMS) build a sound infrastructure for program implementation, with strong internal controls, adequate data collection to enable proper oversight, and sound financial management systems. The OIG will have a parallel responsibility to conduct audits, investigations, and evaluations that help ensure that resources are in place and that MMA implementation is on track and being accomplished in an efficient and effective manner.

To fulfill the specific responsibilities mandated by Congress to the OIG in the area of pharmaceuticals, work is underway to monitor market prices and trends of Medicare-covered drugs, audit drug manufacturers' prices, establish a safe harbor related to the electronic transmission of drug prescriptions, assess the effects of Medicare payment rates on the availability of hematology and oncology drugs, and study prices of drugs included in the end stage renal disease composite rate.

In addition to providing new responsibilities under MMA in the prescription drug area, the Congress also directed the OIG to review payment methods for training residents in nonhospital settings, and to assess notices to beneficiaries relating to hospital lifetime reserve days. The OIG already has met the statutory deadlines for this work and is planning additional projects as part of its commitment to prudent oversight of the new law.

In order to meet both the preexisting and new responsibilities faced by the OIG today, this office will require an extraordinary level of collaboration and partnership internally, with a sufficient level of resources dedicated to an unusually diverse collection of disciplines. The HHS OIG now employs over 1,400 public servants who bring to the mission an impressive expanse of experience and expertise in criminal investigations, audit and accounting, inspections and evaluations, management analysis, law, and staff support.

To maximize the reach of the OIG in its mission to protect HHS program integrity, steps should be taken not only to ensure that human capital is deployed in the most efficacious manner possible, but that sufficient resources are available for new, as well as continuing responsibilities. I will, if confirmed, work with the OIG senior management team to make these determinations and share our progress and concerns with you.

For most of the past 20 years, I have worked to promote internal integration of resources so as to improve government effectiveness. In my capacities as inspector general, general counsel, chief of staff, head of agency, and consultant to agencies and the Public Administration Academy, I have sought to find and implement policies that marshal a public organization's internal strengths and to do so, when feasible, across disciplinary lines. This is especially useful in light of the complex nature of IG responsibilities. As fraud examiners, for example, we are instructed to appreciate the interrelationship among discrete but related disciplines, including criminology, investigations, financial transactions, law and ethics, and to employ this knowledge holistically. I will endeavor, if confirmed, to apply these strategies to the HHS OIG.

My previous work in central management and public safety agencies also has sensitized me to the crucial personal investments that must be made by the office leadership in building effective bridges to other parties whose oversight or enforcement powers touch, or perhaps overlap, with one's own.

Indeed, in view of the enlarged and complex mission of this OIG, effective internal integration and collaboration only set the stage for the critical partnerships that need to be maintained between the office and external parties. In OIG's role as a health care law enforcement leader, it is critically important for the OIG and CMS to have a mutual understanding of their complementary roles in effectuating program integrity. Along similar lines, it is important that the OIG relate to other major components of the Department, such as the National Institutes of Health, the Food and Drug Administration, and the other public health agencies, in a manner that reflects an appreciation for the respective roles of each office in ensuring that the public interest in honest and effective government is promoted. If confirmed, I will devote my attention and energies to these important goals.

Successful partnerships also must be maintained beyond the Department. Congress has enacted a range of authorities empowering the OIG and the Department of Justice (DOJ) to pursue those who would undermine the beneficial purposes of our Nation's health and welfare laws through fraud or other unlawful means. Those authorities, which include the False Claims Act, particularly its *qui tam* provisions, the anti-kickback statute, the Civil Monetary Penalties Law, EMTALA, and program exclusions, typically depend on effective coordination between the OIG and DOJ, including its Civil and Criminal Divisions, the Marshals Service, and offices of the United States Attorneys nationwide. Through joint participation in the Health Care Fraud and Abuse Control Program, created in 1996 as an important

part of the Health Insurance Portability and Accountability Act, the OIG and DOJ together ensure that the Federal Government will effectively prosecute health care fraud and obtain appropriate judgments, settlements, and administrative impositions.

In a parallel manner, the OIG must work effectively with its partners at the State level, principally through the various State Medicaid Fraud Control Units, which investigate and prosecute providers charged with defrauding the Medicaid program or abusing or neglecting patients. As Medicaid has become, in terms of Federal and State outlays, larger than Medicare, it is imperative for the OIG to devote increasing attention to this program. One way this is being accomplished, as indicated in OIG's most recent semiannual reports, is to work with State auditors to conduct joint audits of Medicaid so as to help ensure more effective use of scarce audit resources in both Federal and State audit sectors.

The OIG also must maintain effective relations with the Congress and the Government Accountability Office (GAO). It is of vital importance for IGs to deliver timely and accurate information to the Congress so it can fulfill its oversight role. And in order to respect the relevant jurisdictions of the two entities, enhance coordination between them, and avoid duplicative work, it is important for the IG and GAO to share the focus and the timetable of their work plans. I remain committed to these objectives as important foundations for effective IG operations.

In view of the enormous investment that the Nation's taxpayers make in our health and welfare laws, it also is important that the OIG find effective means to maximize opportunities and incentives for the health care industry to adopt preventive policies, engage in preventive practices, and assist Government authorities in uncovering instances of fraud, waste, and abuse.

Among its outreach tools, the OIG has issued advisory opinions, special fraud alerts, special advisory bulletins, and industry specific compliance program guidance, all directed toward promoting the highest level of ethical and lawful conduct by the health care industry. The OIG also has established a set of guidelines for voluntary self disclosure, known as the Provider Self Disclosure Protocol, giving providers and suppliers a process for structuring a disclosure of conduct that appears to constitute a potential violation of Federal laws. Through these and other potential avenues, I will, if confirmed, seek to build on successful strategies that make the industry, in many instances, a first line of defense in the protection against Federal health care fraud, waste, and abuse.

The challenges involved in this position are great. For any Inspector General, they probably could not be greater. But the opportunities to make a positive difference in the lives of millions of Americans, especially those who are most needy and vulnerable, are also great. While I trace my career interests in the disciplines encompassed by Inspector General positions to my father, a lawyer and a CPA with a distinguished career as a financial executive, it is the rest of the members of my family, my mother and my siblings, who together combine over a century of service and scholarship to health and human services, that contribute so greatly in forming my personal commitment to make the HHS OIG as successful in its mission as possible.

Thank you for this opportunity to appear before you today, and I am pleased to respond to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.) Daniel R. Levinson
2. Position to which nominated: Inspector General, Department of Health and Human Services
3. Date of nomination: July 19, 2004
4. Address: (List current residence, office, and mailing addresses.) Current Residence and Mailing address, 3529 Woodbine Street, Chevy Chase, Maryland 20815. Office address, Office of Inspector General, General Services Administration, Suite 5320, 1800 F Street, NW, Washington, DC 20405.
5. Date and place of birth: March 24, 1949, Brooklyn, New York.
6. Marital status: (Include maiden name of wife or husband's name.) Married to Luna Lambert Levinson, Ph.D.
7. Names and ages of children: Luna Claire Levinson, age 18, and Hannah Louise Levinson, age 15.
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.) Attended The George Washington University, September 1976 – September 1977, Received LL.M, September 1977. Attended Georgetown University, September 1971 – June 1974, Received J.D., June 1974. Attended the University of Southern California, September 1967 – June 1971, Received A.B., June 1971. Attended Jamaica High School, New York, September 1964 – June 1967, Received Diploma, June 1967.
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Inspector General, General Services Administration, Washington, DC, August 2001 – present;
 Chief of Staff; Senior Advisor, General Services Administration, Washington, DC, January 2001 – August 2001;
 Law Offices of Daniel R. Levinson, Washington DC, June 1998 – January 2001;
 Chief of Staff, Office of U. S. Representative Bob Barr (7th District, Georgia), Washington, DC, January 1995 – June 1998;

Of Counsel, Law Offices of Shaw, Bransford & O'Rourke, Washington, DC, August 1993 – December 1994;
 Chairman, U.S. Merit Systems Protection Board, Washington, DC, August 1986 – July 1993;
 General Counsel, U.S. Consumer Product Safety Commission, Washington, DC March 1985 – August 1986;
 Deputy General Counsel, U.S. Office of Personnel Management, Washington, DC, February 1983 – March 1985;
 Partner, Law Offices of McGuiness & Williams, Washington, DC, January 1982 – February 1983;
 Associate, Law Offices of McGuiness & Williams, Washington, DC, January 1977 – December 1981;
 Adjunct Lecturer, Construction Industry Labor Relations, School of Architecture and Engineering, The Catholic University of America, Washington, DC, Fall 1982;
 Adjunct Lecturer, Legal Method, School of Law, The American University, Washington, DC, 1981 –1982;
 Confidential Law Assistant, Appellate Division, 2nd Judicial Department, Supreme Court of the State of New York, August 1974 – August 1976;
 Clerk to Administrative Law Judge William Fauver, U.S. Department of the Interior, Arlington, Virginia, July 1973 – December 1973.
 Fire Crew Member, U. S. Department of the Interior, Chimney Peak, California, July – August 1972.

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)
 Member, President's Council on Integrity and Efficiency, Human Resources Committee and Legislation Committee, 2001 – present; Editor in Chief, Journal of Public Inquiry, 2002 – present;
 Member, Board of Directors, Federal Law Enforcement Training Center, U.S. Department of Homeland Security (previously, U.S. Department of the Treasury), 2001 – present;
 Member, Study Group, "Prosecution in the 21st Century: Goals, Objectives, and Performance Measures," American Prosecutors Research Institute, National District Attorneys Association, 2003- 2004;
 Panel Member, National Academy of Public Administration Project on U.S. Department of Energy Whistleblower Retaliation Complaints, 1995-96;
 Hearing officer, Office of Fair Employment Practices, U.S. House of Representatives, 1996;
 Government Member, Administrative Conference of the United States, 1984-93;
 Member, Campaign Committee, National Capital Area Combined Federal Campaign, U.S. Office of Personnel Management, 1987 – 1992.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)
- Partner (1982 – 1983), Law Offices of McGuinness & Williams, Washington, DC;
- Of Counsel (1993- 1994), Law Offices of Shaw, Bransford & O'Rourke, Washington, DC;
- Member, Board of Directors (1993 – 1996), The Washington Hebrew Congregation, Washington, DC;
- Proprietor, Law Offices of Daniel R. Levinson (1998 – 2001), Washington, DC;
- Consultant (1998 – 2001), Koch Industries, Inc., and Koch Foundations, Washington, DC;
- Registered Lobbyist (2000), W.W. Grainger, Inc., Lake Forest, Illinois;
- Registered Lobbyist (2000), Southern States Police Benevolent Association, McDonough, Georgia.
12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)
- Member, Association of Certified Fraud Examiners;
- Principal, Council for Excellence in Government
- Member, District of Columbia Bar;
- Member, California Bar
- Member New York Bar
- Member, U.S. Supreme Court Bar
- Member, U.S. Courts of Appeals (D.C., Federal, and Fifth Circuits)
- Member, U.S. District Court for the District of Columbia
- Member, Phi Alpha Delta Law Fraternity
- Member, Tau Kappa Epsilon Fraternity
- Member, The Washington Hebrew Congregation
- Member, Institute of General Semantics
- Member, Phi Beta Kappa Society
13. Political affiliations and activities:
- a. List all public offices for which you have been a candidate.
None.
 - b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
None.
 - c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.
Year 2000: \$ 100 to the Maryland Republican Party.

Year 1999: \$ 1,000 to the Governor George W. Bush
 Presidential Exploratory Committee, Inc.

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)
 Elected Phi Beta Kappa Society, USC
 Elected Blue Key Honorary Leadership Fraternity, USC
 Elected Phi Eta Sigma Honorary Fraternity, USC
 Selected Notes and Comments Editor, *The American Criminal Law Review*, Georgetown University Law Center
 Rated "AV" by Martindale-Hubbell Law Directory.
 Presenter on Hatch Act Reform, "Current Developments in Lobbying Law, Election Law and Hatch Act Reform," February 1994, District of Columbia Bar/George Washington University National Law Center Continuing Legal Education Program.
15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)
 Introductions to the last four issues of *The Journal of Public Inquiry* (2002-2004).
 "Is Employee Grievance Process Ripe for Dramatic Reform?" *The Federal Power Curve* (Federal Personnel Management Institute 1994).
 "A Federal Firing Brigade," *The Washington Post*, October 11, 1993.
 Co-author with Jerry Shaw and Chris Okay, "Using Alternative Dispute Resolution in the Federal Government," (Federal Personnel Management Institute 1993).
 "Remarks at the Special Session of the United States Court of Appeals for the Federal Circuit Commemorating its First Ten Years," published in the *Federal Circuit Bar Journal* (Fall 1992).
 "The Federal Circuit and Federal Personnel Law," *George Mason University Law Review* (Spring 1992).
 "The Ten Commandments for Agencies," *Federal Merit Systems Reporter* (Labor Relations Publications 1992).
 "Quayle Law Reforms and the MSPB," *Federal Circuit Bar Journal* (Fall 1991).
 "Remarks on the Tenth Anniversary of the Civil Service Reform Act of 1978," *The Fifth Annual Judicial Conference of the U.S. Court of Appeals for the Federal Circuit* (West Publishing 1988).
 "The Challenge of Public Service," *Federal Managers Quarterly* (Federal Managers Association April, 1987).
 "Federal Personnel Law and the Mixed Case," *Labor Law Journal* (Commerce Clearing House, December 1986).
 "Voluntary Standards and the CPSC," *Legal Times* September 10, 1985.

“Personal Liability of Managers and Supervisors for Corporate EEO Policies and Decisions,” (Equal Employment Advisory Council Monograph 1982).

“The Evolution of Minority Business Enterprise Programs,” The George Washington University Law Review (Fall 1980).

“After Abood: Public Sector Union Security and the Protection of Individual Public Employee Rights,” American University Law Review (Fall 1977).

“Search Incident to Arrest for Minor Traffic Violations,” The American Criminal Law Review (ABA 1973).

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

None.

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

I believe that over a Washington-based career that now approaches 30 years, the positions I have held in government and the education and experience that I have accumulated in private life all help prepare me to assume the position of Inspector General of the Department of Health and Human Services.

For the past three years, I have served as Inspector General of the General Services Administration, the independent agency which functions as the federal government’s business manager for buildings, supplies, technology, and sets government wide procurement policies. GSA’s 12,000 employees annually award and administer nearly 200,000 procurements valued at over \$60 billion and involving more than 15,000 commercial firms. Focusing on GSA’s core role, my staff of nearly 300 auditors, investigators, lawyers and support personnel, and I concentrate on organizational integrity and corruption control. My office conducts internal and contract audits with impact across the federal government. Over the past six months, nearly 100 audit reports were issued identifying over \$50 million in financial recommendations on how funds could be put to better use and achieving over \$100 million in management decisions agreeing with audit recommendations, civil settlements, and direct recoveries. As an ex-officio member of GSA’s Management Control Oversight Council, my staff and I are also involved in conducting portions of the agency’s annual Financial Statement Audit.

My nationwide criminal investigative unit protects GSA programs from fraud, theft, embezzlement, diversion, and other abuses. In a recent six-month period, criminal cases originating from IG referrals resulted in a

score of successful prosecutions, and administrative referrals resulted in management debarring more than three-dozen contractors or individuals. Monetary recoveries from criminal and various forms of civil proceedings approached \$10 million.

Throughout my tenure at GSA, I have participated in efforts to strengthen the ability of the IG community government wide to respond effectively to the continuing growth in responsibilities accorded IG units by the Congress. I am serving on the Board of Directors of the Federal Law Enforcement Training Center, and assisting the President's Council on Integrity and Efficiency to develop a Management Training Institute so that the IG community can create an environment of management excellence necessary to meet current and future challenges. I previously served with an array of elected and appointed officials on a study panel to evaluate goals, objectives, and performance measures for prosecutors, under the auspices of the American Prosecutors Research Institute, the research arm of the National District Attorney's Association. I also am serving as the Editor in Chief of the Journal of Public Inquiry, the semi annual publication of the PCIE, helping to distribute literature that addresses best practices to IG offices throughout the Federal government.

Immediately prior to becoming an Inspector General, I engaged in a private practice that included the monitoring and examination of legal issues in health care regulatory and legislative proposals, as well as judicial developments. I also represented law enforcement interests on Capitol Hill and, in consultation with House and Senate staff, helped craft legislation to strengthen due process rights for state and local police.

Prior to that, I served as chief of staff to a member of the House of Representatives who served on the Judiciary and Government Reform Committees. During that period, these Committees were directly involved in the deliberations leading to passage of the Health Insurance and Portability and Accountability Act of 1996 (HIPPA), and a significant period of my tenure dealt with the criminal law aspects of the new legislation as it was considered in the Crime Subcommittee of the House Judiciary Committee.

Earlier in my career, I worked in a managerial and adjudicative capacity as Chairman of the Merit Systems Protection Board for seven years. During that period, I served as chief executive and operating officer for a quasi-judicial agency of approximately 300 employees, more than half of whom were lawyers and most of whom were administrative judges. Together with two other Members, I issued final executive branch decisions on thousands of personnel disputes, including adverse actions for misconduct, performance-based removals and downgrades, employment suitability and

legal retirement decisions, reductions in force, denials of within-grade increases, and denial of restoration to duty or reemployment rights.

Many Board cases also required adjudication of affirmative defenses implicating the full range of the nation's civil rights laws, including Title VII, the Age Discrimination in Employment Act, the Rehabilitation Act, and related statutes. I continued my work in this area after leaving the Board. While serving on staff in the House of Representatives in the mid-1990's, I was appointed by the Chairman and Ranking Member of the House Administration Committee to serve as Hearing Officer for its Office of Fair Employment Practices.

During my tenure at the Board, I also witnessed and participated in the expansion of worker due process protections, most notably with enactment of the Whistleblower Protection Act of 1989 and the Board's establishment of procedures to apply the law's new requirements. I continued my work in the whistleblower protection law area after leaving the Board. I assisted with whistleblower representation in my private practice as Counsel to a prominent federal personnel law firm. Later, during my employment in the House of Representatives, I served by invitation from the National Academy of Public Administration (NAPA) as a panel member for its Department of Energy Whistleblower Retaliation Study.

Before my service at the MSPB, my early career was devoted to matters consistently implicating the nation's broad range of health and safety laws. In the mid-1980's, I served as General Counsel of the Consumer Product Safety Commission, providing counsel on the Consumer Product Safety Act, the Poison Prevention Packaging Act of 1970, and the Federal Hazardous Substances Act. Previous to that I had served as Deputy General Counsel of the Office of Personnel Management where I worked on new rules implementing the Ethics In Government Act and legal matters arising under the Federal Employee Health Benefits Program. I began my legal career in a law firm specializing in employment law and policy matters, and worked for seven years on personnel law and compliance matters, including employee health and retirement programs.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

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

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
None.
2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
None.
3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.
1994: I assisted the firm of Shaw, Bransford & O'Rourke in its representation of American Thermaflo, Inc., of Springfield, Mass., to receive EPA approval to market its automobile refrigerant pursuant to requirements for certification under the Clean Air Act.

1995: In my capacity as former Chairman of the Merit Systems Protection Board, I testified before the Civil Service Subcommittee of the House Committee on Government Reform and Oversight concerning reform efforts to streamline the federal employee dispute resolution process.

2000: As a registered lobbyist for W.W. Grainger, Inc., of Lake Forest, Illinois, I met with government officials in an effort to strengthen

commercial incentives for companies to participate in the Javits-Wagner-O'Day (JWOD) Program so as to promote greater job opportunities for the blind and the severely disabled through increased government purchasing of services and supplies by agencies of the National Institute for the Blind and the National Institute for the Severely Handicapped.

2000: As a registered lobbyist for the Southern States Police Benevolent Association, Inc., of McDonough, Georgia, I furnished assistance in developing draft legislation and legislative strategies to promote workplace due process protections for State and local law enforcement officers otherwise subject to termination-at-will policies, through the Justice Department grant-making process. "The Law Enforcement Officers Due Process Act of 2000" was introduced in the House of Representatives on May 25, 2000 (H.R. 4550), and in the Senate on October 19, 2000 (S. 3221).

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with **two** copies of any trust or other agreements.)
I will consult with the Designated Ethics Agency Officials at the Department of Health and Human Services and, if advised, with the Office of Government Ethics, to ensure that actual, potential, or perceived conflicts of interests, if they arise, are dealt with promptly and in a manner that maintains full compliance with the letter and the spirit of all applicable ethics law, rules and policies.
5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
Please see file.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:
Not applicable.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.
No.
3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.
I was a named defendant in administrative agency proceedings and civil litigation repeatedly, but only in my official capacity as Chairman of the Merit Systems Protection Board during the period 1986 – 1993.
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.
None.
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
None.

E. TESTIFYING BEFORE CONGRESS

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

RESPONSES TO QUESTIONS FROM SENATOR GRASSLEY

MEDICARE MODERNIZATION ACT

Question: For Fiscal Year 2005, Congress appropriated \$25 million to the HHS Office of Inspector General to fight fraud, waste and abuse associated with the implementation of the Medicare Modernization Act of 2003.

Please explain how these funds will be used in order to assure the Committee and the American taxpayers that the MMA will be implemented economically, efficiently and effectively.

Answer: Acknowledging the increased workload of the OIG as a result of the enactment of the Medicare Modernization Act (MMA), the Congress authorized an additional \$25 million for the Office of Inspector General (OIG) in fiscal year 2005 to conduct MMA-related work. The President's budget has requested that the OIG be authorized to spend the \$25 million in both 2005 and 2006. Such a change would greatly assist in the management of financial resources. Assuming the OIG has both 2005 and 2006 to spend these new resources, it will be used in the following manner:

- Enhanced resources will enable the OIG to recruit the necessary personnel to assist in the newly mandated audits and inspections, as well as all new investigative work as a result of fraud uncovered in the new Medicare drug benefit program.
- Thus far, OIG has initiated 19 inspections and audits related to the MMA provisions, with three completed and 16 ongoing. As this work is completed, it is

likely that findings will generate new work related to the MMA. Closely monitoring Part B drug prices will continue in the future.

- The OIG has developed a plan for “prudent oversight” of the Part D benefit. Later this year OIG will initiate some Part D early implementation reviews that will address beneficiary protection and access issues as well as controls over the bidding and application process for drug plan sponsors. In 2006, OIG has planned work to address Part D payments to plan sponsors (including risk corridor adjustments), employer subsidies, beneficiary protection, drug access issues, and the coordination of benefits and programs, particularly Medicaid.
- Part of the resources will be spent on the investigative side, as staff expects that workload to increase as the new Part D benefit takes effect. The OIG currently spends approximately 5 percent of total investigative effort on pharmaceutical-related cases even though the Part D benefit has yet to take effect.
- As a result of MMA requirements, the OIG will be engaged in drafting safe harbor regulations in four areas, as well as providing technical assistance to CMS and other agencies on an ongoing basis.
- Where appropriate, the OIG will contract with outside parties, when it is cost effective to do so, and there is no conflict with the inherently governmental nature of our overall mission. The office contracts tasks requiring specialized professional services, such as medical reviews and expert witnesses/consultants.

FALSE CLAIMS ACT

Question: The False Claims Act is a vital piece of legislation in investigating and prosecuting cases against providers who are defrauding the Medicare and Medicaid programs.

Will you aggressively pursue and investigate such cases? Will you actively cooperate with the Department of Justice in prosecuting providers who are defrauding entitlement programs within the jurisdiction of HHS?

Answer: I believe the OIG must aggressively use its law enforcement authorities to target those who defraud and abuse our programs and beneficiaries. The False Claims Act and whistleblowers are important resources in the fight against fraud and abuse in Federal programs. The False Claims Act, particularly its *qui tam* provisions, is an essential tool in the Government’s fight against health care fraud. Many of the most significant cases of fraud against the Medicare and Medicaid programs have been brought to light thanks to False Claims Act whistleblowers. Over the past 5 years, OIG *qui tam* investigations have resulted in 342 settlements, 144 criminal convictions, over \$5 billion in HHS monetary receivables, and the execution of several hundred integrity agreements to ensure future compliance with Federal health care program requirements by those parties who have settled their False Claims Act liability with the Government.

HEALTH CARE FRAUD CONTROL PARTNERS

Question: The Health Insurance Portability and Accountability Act (HIPAA) of 1996 established a national program to coordinate Federal, State, and local law enforcement efforts to prevent, detect, and prosecute health care fraud and abuse in the public and private sectors. HIPAA also established the Health Care Fraud and Abuse Control Program fund (HCFAC) to provide funding to the Department of Health and Human Services (HHS) and the Department of Justice (DOJ) for these efforts. However, other priorities may be diluting Federal efforts to prevent, detect, and prosecute health care fraud and abuse. In October 2003, in response to our request for information, the DOJ notified the Senate Committee on Finance that since the terrorist attacks of September 11, 2001, the Federal Bureau of Investigation (FBI) had shifted some resources away from activities to address health care fraud in order to support the counterterrorism priority. As a result, we have asked GAO to review FBI’s internal controls in place to maintain accountability over HIPAA funding and the extent to which FBI expended those funds on health care fraud investigations.

To what degree has the DOJ—and especially the FBI—been an active and effective partner in working with the HHS-OIG to prevent, detect, and prosecute health care fraud and abuse?

Answer: I believe that DOJ, including the FBI, has been an active and effective partner in working with the HHS-OIG to prevent, detect, and prosecute health care fraud and abuse. The OIG has had numerous investigative cases that are worked jointly by the two offices as well as by other representatives in the law enforcement community. The OIG has found these to be productive as well as effective mechanisms to utilize scarce resources.

Question: What actions do you plan to take to strengthen the partnership with DOJ?

Answer: I believe that the OIG's partnership with DOJ is effective at the senior staff level. Senior staff from the OIG, DOJ, and CMS meet regularly to discuss issues related to fraud, waste, and abuse and to discuss coordination of resources. I want to strengthen these relationships by actively engaging my counterparts at DOJ. If confirmed, I look forward to quickly establishing open lines of communication with DOJ to address issues of mutual concern, including resource issues.

Question: If the OIG had additional funds to address health care fraud and abuse, what activities would be most critical to augment or implement?

Answer: It is critical that the OIG devote adequate resources to monitoring the implementation of the MMA and that it undertakes appropriate investigative and enforcement activities to ensure that individuals and entities do not defraud the new benefit or its beneficiaries. Any additional resources would be used to strengthen the OIG investigative, enforcement, auditing, and evaluation resources to accomplish this. As discussed earlier, OIG has developed a comprehensive plan for "prudent oversight" of the Part D benefit. It is vital to structure and implement the program in a manner that reduces its vulnerability to fraud, waste and abuse.

At the same time, it is necessary to continue OIG's vigilance in all areas of the Department's programs. The annual Work Plan articulates a wide range of projects that merit attention and resources.

MEDICARE FEE-FOR-SERVICE ERROR RATE

Question: In the recently issued FY 2004 Improper Medicare Fee-For-Service Payment Report, CMS reported that an estimated \$20 billion were overpaid by the Medicare fee-for-service program. This figure was relatively unchanged from FY 2003 and did not achieve the FY 2004 goal. CMS proposes to reduce the rate of improper payments through contractor and provider education programs.

Given the OIG's historical role in estimating Medicare fee-for-service improper payments and its current role in providing oversight, can you comment on CMS's proposed corrective actions and do you have additional recommendations for reducing improper payments?

Answer: In FY 2002, the last year that OIG developed and reported the annual Medicare fee-for-service paid claims error rate, it reported an error rate of 6.3 percent. In FY 2003, when CMS assumed responsibility for error rate development, it reported an adjusted error rate of 5.8 percent (\$11.6 billion) and an unadjusted rate of 9.8 percent (\$19.6 billion) for the fiscal year.

The unadjusted rate reflected an unusually high rate of nonresponse by providers (non-response to requests for medical records). This accounted for 54.7 percent of the 2003 error rate. CMS believed this was due to the impact of the HIPAA privacy rules that recently went into effect, as well as the fact that the record requests were made by an unfamiliar entity (the new contractor conducting the review). CMS adjusted the nonresponse rate to reflect OIG's 7 years of experience with nonresponsiveness.

In FY 2004, CMS reported in its financial statements an error rate, without adjustments, at 9.3 percent (\$19.8 billion). Although providers' nonresponse rate was substantially reduced (to 29.7 percent of the errors in the sample), the rate of "insufficient documentation" (providers failing to submit any additional requested material) increased substantially. Combined, the nonresponse rate and the rate of insufficient documentation totaled 72 percent of the overall error rate in FY 2004. Two separate reports issued by OIG demonstrate CMS has made improvements in obtaining medical records. Also worth noting is that CMS's FY 2004 Medicare fee-for-service error rate was in substantial compliance with the Improper Payments Information Act, which requires agencies to follow a number of methodological requirements when calculating error rates and improper payment estimates.

In terms of reducing the error rate, there is no magic bullet that is going to allow CMS to always make correct payments. CMS and its contractors will need to continue to focus on making further improvements in payment accuracy, in conjunction with those in the law enforcement community. OIG's past results have shown the efficacy of its Medicare work. The OIG looks forward to working with its partners to ensure that Medicare expenditures are only made to legitimate providers, for legitimate services to eligible beneficiaries.

FRAUD AND ABUSE IN DURABLE MEDICAL EQUIPMENT

Question: Both GAO and the OIG have reported on the high rates paid by Medicare for power wheelchairs, relative to other payers, and on improper and potentially fraudulent Medicare power wheelchair payments. In response, CMS is in the

process of establishing new billing codes and new payment scales for power wheelchairs. The agency also initiated several other activities in an effort to combat fraud and abuse related to Medicare power wheelchair billing.

In light of these efforts, what further activities might be taken to address this issue and what other items, if any, are also current targets of fraud and abuse?

Answer: An OIG April 2004 report on wheelchairs made a number of recommendations for administrative actions that could be taken by CMS. Specifically, it was recommended that CMS require DMERCs to conduct frequent reviews of the K0011 procedure code to ensure appropriate payments; educate ordering providers about Medicare's coverage criteria for different types of assistive devices, including power wheelchairs, manual wheelchairs, and scooters; and educate Medicare beneficiaries about coverage criteria for wheelchairs and scooters. Additionally, based on work associated with Medicare pricing of wheelchairs, Medicare payments appear excessive.

The OIG constantly monitors the medical equipment and supplies area to identify other items for review. In addition, once the new MMA requirement for competitive bidding becomes effective, implementation will be reviewed.

MEDICAID

Question: Medicaid's EPSDT (Early Periodic Screening Diagnosis and Treatment) provisions contain outreach requirements, meaning that each State must seek out eligible children and their families, inform them of the benefits of prevention and the health services and assistance available, and help them use health services.

EPSDT also requires States to do more than merely offer to cover services. States are obligated to actively arrange for treatment, either by providing the service themselves or through referral to appropriate agencies, organizations or individuals.

Given the President's push to expand health care coverage for low-income children through the "Cover the Kids" outreach effort, how would you rate the importance of children's access to screening and treatment, and given its priority, how will you approach this issue?

Answer: Children's access to screening and treatment is very important. The OIG has a long history of doing work on this topic, going back to the first days of the SCHIP (State Children's Health Insurance Program), when States' initiatives to streamline eligibility applications and determinations were examined. OIG also did groundbreaking work on Head Start's performance in ensuring that enrollees of this program received mandated screening and health insurance coverage for children receiving child support.

More recently, OIG completed two congressionally mandated studies on SCHIP—one to determine if the proper distinctions were being made between Medicaid eligible children and SCHIP, and the other to determine the methods States are using to measure their success in reducing the number of uninsured children through their enrollment in SCHIP. The Office is required to repeat these studies every 3 years. Also, OIG just started a study to determine the means by which States protect their SCHIP programs from fraud and waste, and has also begun a study of Medicaid fraud and waste related to dental services, primarily related to children. (This is also one of the top priorities of State Medicaid Fraud Control Units.)

The OIG is now wrapping up a series of reports in selected States that assessed what Medicaid services were utilized by children enrolled in foster care. Much of the emphasis on these reports is on health screening and follow-up services mandated by EPSDT. Finally, it is now beginning to plan future work in this area and is considering more work in the fields of Head Start and community health centers. The expansion of the latter is one of the President's initiatives. The OIG will continue its dual approach—safeguarding the money available for these services by ensuring their proper management of SCHIP and Medicaid and examining the effectiveness in State efforts to enroll children in these programs.

This approach is compatible with the President's new "Cover the Kids" initiative to provide \$1 billion over the next 2 years (2006–2007) to facilitate the enrollment of children in Medicaid and SCHIP.

POWER WHEELCHAIRS

Question: CMS recently announced its draft National Coverage Determination (NCD) for mobility assistance equipment. I am concerned that CMS' current interpretation of the "in the home" requirement may act as an inappropriate restriction in meeting the real-life mobility needs of Medicare beneficiaries with physical disabilities and mobility impairments. The draft NCD states that "an NCD would not be the appropriate mechanism to change [the 'in the home'] rule."

In order to ensure that the “in the home” requirement does not act as a barrier to the community for Medicare beneficiaries with disabilities and mobility impairments, I ask that you address this requirement through the regulatory process.

Additionally, I ask that if your agency concludes that the “in the home” requirement cannot be addressed through the regulatory process, that you respond with such information as quickly as possible, so that Congress may begin considering legislative alternatives.”

Answer: Because the OIG is precluded from assuming program operating responsibilities, the OIG does not have the authority to promulgate regulations affecting the “in the home” requirement. Further, the Department will have to determine whether the requirement can be modified by regulation or whether any modification would require a statutory change.

Question: What are your goals and priorities as Inspector General of HHS?

Answer: Part of my enthusiasm for the Inspector General (IG) position at HHS is to associate with an organization that has built a solid reputation as a leader in the IG community. The opportunities at the HHS OIG to make a positive difference in the lives of millions of Americans, especially those who are most needy and vulnerable, are great.

My goals and priorities include filling immediate senior management vacancies, and working to ensure my managers have the available tools and support they need to do first class work. I plan to visit agency regional offices to become immediately acquainted with all of the organization and learn from the field, their operations and staff. In addition, I’d like to implement management protocols that enable people to feel empowered in their specific job assignments. As noted by Professor Paul Light, good management includes alertness, adaptability, agility and proper alignment. These organizational characteristics can be incorporated through improvements in present systems, as well as regular dialogue with managers, their staff and all external partners.

If confirmed, my goals as Inspector General will be to build on the longstanding success that the OIG at HHS has attained. That is, to effectively and efficiently fulfill the statutory mission of the office to eliminate fraud, waste, and abuse in the Department’s programs and to promote the economy and efficiency of those operations. Because of the vital role that human services programs play, it is crucial that the OIG provide objective, accurate, and timely analysis on how those programs are working. My goal is to effectively work with partners in the law enforcement community, the Department and the Congress to attain this goal. I will endeavor to do so while upholding the vital tradition of independence that the statute affords Inspectors General.

Question: What challenges do you believe confront the office?

Answer: There are some management issues that need to be addressed, including filling a number of senior management positions that are currently staffed by individuals in an acting capacity. I think more than anything, the office needs stable and focused leadership, which can have the beneficial effect of energizing staff to build on its existing record of accomplishments.

The most pressing challenge that confronts the OIG is monitoring the implementation of the MMA. In making the most significant changes to Medicare in its 40-year history, the MMA both modifies the prices of drugs currently paid by the Medicare program and creates a new voluntary drug benefit for the program’s 41 million beneficiaries. It is, therefore essential that a sound infrastructure be built for program implementation, with strong internal controls, adequate data collection, proper oversight, and sound financial management systems. Aggressive monitoring to provide feedback on program operations is essential.

Question: What oversight challenges does the MMA present to your office?

Answer: The workload of the OIG was increased significantly by MMA, creating substantial new oversight responsibilities. There are a number of provisions that direct specific work to be conducted by the OIG. These are in addition to existing oversight responsibilities to Medicare, Medicaid and the numerous other HHS programs. The OIG has already devoted significant resources to MMA. To date, 16 reviews are ongoing, and three MMA-related reviews are completed:

- Medicare Reimbursement for ESRD Drugs. In 2003, the four largest dialysis providers paid between 12 and 68 percent less than the Medicare reimbursement amount for the 10 drugs reviewed.
- Alternative Medicare Payment Methodologies for the Costs of Training Medical Residents in Non-Hospital Settings. This report describes five alternative payment methods and the positive and negative aspects of each option.
- Medicare Lifetime Reserve Days. Eighty-six percent of hospitals provided written and/or verbal notification of lifetime reserve days to beneficiaries who have

or will use 90 days of benefits. Providing a second notice when 5 remaining days are left may not be appropriate or feasible.

In addition, the OIG published civil monetary penalties associated with the Medicare-approved drug discount card that were provided by the statute. The OIG is also investigating fraud and abuse on an ongoing basis. In one example, the OIG Hotline aided investigators in the identification of a scheme to defraud beneficiaries who have the interim drug card. The OIG is currently monitoring Part B drug prices.

The OIG has undertaken an extensive strategic planning effort to identify areas of potential program vulnerability and to plan monitoring strategy. The office has developed a plan for “prudent oversight” of the Part D benefit. Later this year, it will initiate some Part D early implementation reviews that will address beneficiary protection and access issues as well as controls over the bidding and application process for drug plan sponsors. In 2006, the OIG will continue to monitor Part B drug prices. It also has planned work to address Part D payments to plan sponsors (including risk corridor adjustments), employer subsidies, beneficiary protection, drug access issues, and the coordination of benefits and programs, particularly Medicaid.

The OIG will continue to investigate fraud and abuse of this program. It will also continue to provide advice and assistance to CMS, other offices within HHS, other government agencies, and the health care industry.

Question: Do you believe that you have the resources at your disposal to effectively discharge your responsibilities?

Answer: The Health Care Fraud and Abuse Control (HCFAC) Program under HIPAA provided regular increases to OIG and others over a period of 7 years and is now capped at 2003 levels. This represents about 80 percent of OIG funding. The OIG received approximately \$40 million through the annual appropriations process, which funds our discretionary activities. Since HCFAC funding has remained flat, the OIG faces challenges in how best to maintain enforcement and oversight responsibilities. That flat funding level has naturally resulted in an attrition of staff.

It is unfortunate timing that the cap on HCFAC funding comes when Medicare is expanding and changing under MMA. The MMA created substantial new oversight responsibilities and contains a number of provisions that direct specific work to be conducted by the OIG. Acknowledging these difficulties, the Congress authorized an additional \$25 million for OIG in fiscal year 2005 to conduct MMA-related work. This will greatly assist in continuing to fund activities for this year. However, given the uncertainty of funding levels for years beyond 2005, hiring staff for the long term is problematic. The President’s budget has requested that the OIG be authorized to spend the \$25 million in both 2005 and 2006. Such a change would greatly assist in the management of financial resources. Even with these changes, however, it will be a challenge to utilize declining resources to efficiently and effectively protect expanding HHS programs.

RESPONSES TO QUESTIONS FROM SENATOR BAUCUS

LEGAL BARRIERS TO HEALTH IT ADOPTION—STARK AND ANTI-KICKBACK

Objective: To highlight some of the potential legal impediments to adoption of health information technology.

Background: During the course of our recent work on health information technology (IT), we have heard from doctors, hospitals, lobbyists, and policy experts that the Stark and anti-kickback laws and regulations present legal barriers to moving forward with health IT. These provisions were intended to prevent unethical financial arrangements between hospitals and physicians. However, the way that they have been interpreted by the Office of the Inspector General, they inhibit hospitals from helping the physicians on their staffs or those who admit patients to acquire and use health information technology. For example, the most recent Stark II regulations allow an exemption for hospital investment in “community-wide information networks,” but because there is no clear definition of these networks, hospitals err on the side of caution and have not taken advantage of this exception.

Hospitals in Montana tell us that the use of health IT is especially important in rural areas for communication and coordination of care. They, along with Federal agencies such as MedPAC, the Institute of Medicine, and the Office of the National Coordinator for Health Information Technology (ONCHIT, Dr. Brailer’s office), have identified a need for reform of these regulations to ease the legal barriers to health IT adoption.

CMS recently released proposed regulations on e-prescribing that mirror the Medicare Modernization Act in requiring the Secretary to promulgate regulations regarding legal barriers to adoption of e-prescribing technology. The proposed e-pre-

scribing regulation states that CMS “will propose the new Stark exception for e-prescribing in a separate rulemaking to be published in the near future” and the new safe harbor language will come from the OIG. Mark McClellan has also said that CMS will be developing a plan to address the legal barriers to other forms of health IT. Neither the e-prescribing exception nor a clarification of legal barriers to adoption of other forms of health IT has been issued yet. While the Stark and anti-kickback laws and regulations are important tools in fighting fraud, waste and abuse, they should not be interpreted so restrictively that they impede progress in the adoption of health IT. The anti-fraud provisions have an exceptions process that allows for arrangements that are designed to meet legitimate and non-fraudulent purposes. Moving forward with health IT adoption is just such a purpose.

Question: Mr. Levinson, I share an interest in health information technology with Senator Grassley and many of my colleagues. In rural areas especially, health IT is essential for good communication and coordination of care. However, there are many barriers to the adoption of health IT. Some of these are legal barriers posed by the OIG’s interpretation of Stark and anti-kickback laws. The regulations implementing the MMA and e-prescribing provisions state that the OIG will release safe harbor language to create a specific exception to Stark and anti-kickback laws for e-prescribing technologies—when does your office plan to release this language? Do you believe that Stark and anti-kickback laws present a barrier to adopting forms of health IT other than e-prescribing? What aspects of this barrier can be addressed through administrative action, and what aspects will require a legislative fix?

Answer: The adoption of health information technology holds tremendous promise for improving the quality of care for patients and promoting greater efficiencies in the health care delivery system. Unfortunately, arrangements involving this technology may also present opportunities for those intent on abusing the system. The OIG’s goal in crafting safe harbor regulations is to ensure that beneficial arrangements are not chilled, while ensuring sufficient safeguards so that unscrupulous parties cannot subject our Federal health care programs or beneficiaries to fraud and abuse.

With respect to the MMA-directed prescribing exception and safe harbor, OIG is drafting the safe harbor regulation under the anti-kickback statute. The authority for interpreting the Stark statute and drafting regulatory exceptions under the statute is delegated to CMS. The Office is coordinating with CMS to ensure that the anti-kickback statute safe harbor and the Stark law exception are as consistent as possible given the underlying differences in the two statutory provisions. As required by section 101 of the MMA, OIG will also consult with the Department of Justice, which has criminal jurisdiction over the anti-kickback statute.

The OIG expects to submit a draft notice of proposed rulemaking (NPRM) to the Secretary by the end of March 2005. Once it is reviewed and approved by the Secretary, the NPRM will require clearance at OMB before being published in the *Federal Register* for public comment. As part of the NPRM, it plans to solicit public comment about extending safe harbor protection for technologies other than electronic prescribing. This will enable the OIG to make an informed determination as to whether broader safe harbor protection is needed and appropriate.

Finally, the OIG appreciates the importance of ensuring patient access to quality care in rural areas. Through the advisory opinion process, OIG has approved a number of arrangements that promote access to health care for rural and other underserved populations, including several arrangements involving telehealth. It also has promulgated safe harbors under the anti-kickback statute for rural area investments, rural area recruiting of health care practitioners, and malpractice insurance subsidies for obstetricians practicing in rural areas. The OIG is committed to ensuring that rural patients receive high quality, medically necessary care.

IMPROPER MEDICARE PAYMENTS

Background: A September 2004 audit by the OIG found that Medicare made \$187,458 in improper payments to skilled nursing facilities in Montana between 1997 and 2001. Despite a recommendation by the OIG to attempt recovery of the improper payments, CMS did not go after the money. In fact, CMS issued a directive to its Medicare contractors throughout the country not to seek recovery of monies improperly paid as a result of the data matching insufficiency like the one in Montana. This problem exists in all States to varying degrees, so the full magnitude of the problem is quite large.

In a year when money is very tight and we are looking at significant budget cuts, we should stop whatever unnecessary spending we can. Instances like this, where a failure of two computer systems to communicate resulted in improper payments, represent low-hanging fruit to curtail wasteful spending.

Question: How do you think the Office of the Inspector General, under your leadership, can better identify and address the problem of improper payments to help us make the most of Medicare dollars?

Answer: The Office of Inspector General plays a crucial role in the identification of improper payments within the Medicare program. The OIG audits and evaluations identify erroneous payments and recommend recovery of these payments. OIG investigations identify individuals and entities that have defrauded our programs and result in restitution. Equally important, OIG reviews identify systemic program vulnerabilities and make recommendations for improvement. The situation (where computer systems are inadequate to identify an ineligible beneficiary) you cited in your question is a good example. It is necessary to make programmatic and system changes to prevent improper payments from being made in the first place.

One way the OIG can maximize its effectiveness, especially in times of shrinking resources, is to work jointly with the many companion agencies who also strive to combat health care fraud and abuse. Foremost among them are the Department of Justice and the FBI. At the State level, OIG works with State auditors and with Medicaid Fraud Control Units. At the local level, OIG joins health care fraud task forces that include all of these organizations. The OIG collaborates with CMS, with GAO, with the Congress, and importantly, with industry itself to prevent improper payments. The OIG issues authoritative opinions, fraud alerts, and compliance guidance, all of which serve to assist providers in following applicable rules. This collaboration, across Federal, State, and local governments and the private sector, is the very core of the HCFAC program.

Question: How might improved information technology systems not only help identify but also help prevent improper payments?

Answer: The use of information technology and its impact on our lives has been nothing short of phenomenal. Through improved information technology, OIG has seen an increase in the automation of claims processing functions, including some medical review functions. This process is already in place at some Medicare contractors. Automation of these functions can improve consistency and accuracy as well as being both efficient and economical. However, OIG work indicates that the Medicare payment error is more a function of data input rather than data processing. For the 7 years that the OIG produced the Medicare fee-for-service error rate, the overwhelming majority (over 95 percent) of the improper payments identified were detected through medical reviews. When these claims were submitted for payment to the Medicare contractors, the claim contained no visible errors. It was only after medical review that errors were detected. The checks and edits in the Medicare contractors' claims processing systems were generally operating as intended. Very seldom did OIG find "processing" errors in which the Medicare contractors were responsible.

Question: Do you have any specific recommendations for actions Congress can take that will enhance the capacity of the Medicare and Medicaid programs to avoid improper payments?

Answer: The OIG's audit and evaluation work frequently makes recommendations for administrative or legislative action that will improve program operations and reduce vulnerabilities to fraud, waste, and abuse. The OIG issues its recommendations in its publicly available reports, and tracks the unimplemented recommendations in the *Red Book* and *Orange Book*, which are published annually. The *Red Book* contains all of OIG's unimplemented recommendations that result in cost savings. The *Orange Book* lists all unimplemented non-monetary recommendations. Both of these reports can be found on the OIG's website.

MEDICARE ADMINISTRATIVE APPEALS

Background: The OIG recommended that a separate process for Medicare administrative appeals be created within HHS over 5 years ago. Congress mandated such a transfer in the Medicare Modernization Act. HHS and SSA are currently working on effectuating the transfer. Unfortunately, the GAO reported that the level of planning may not be sufficient to guarantee a complete and timely transfer. We are also growing concerned about whether the process HHS plans to establish will comply with Congress' wishes. Given all that is at stake with the appeals process and the increased demand it will face from prescription drug benefit appeals, I wonder if the OIG has plans to renew its interest in this topic.

Question: Is the OIG planning to conduct any oversight of the Medicare administrative appeals process?

Answer: Yes. The OIG is planning a number of reviews related to the transfer of the Administrative Law Judge function for Medicare appeals from the Social Secu-

rity Administration to HHS and to the timeliness, efficiency, and effectiveness of all steps of the appeals process.

Question: Can you tell me how the OIG can help ensure that the new appeals process affords appellants due process while protecting the integrity of the judicial process and of the Medicare program?

Answer: The OIG will evaluate the appeals program using the goals and standards prescribed in the Medicare Modernization Act. It also will review the early implementation of the new appeals process to assess how well it is functioning.

PAYING PUNDITS

Background: On January 26, 2005 it was discovered that marriage advocate Michael McManus was hired as a subcontractor by HHS to promote President Bush's marriage initiative. Mr. McManus writes a syndicated column called "Ethics & Religion," which appears in 50 newspapers. McManus championed the Bush marriage initiative without disclosing to readers that he was being paid \$10,000 by HHS to promote it. The day before, it was disclosed that Maggie Gallagher, another syndicated columnist, received \$21,500 from HHS for helping draft brochures promoting marriage.

Question: Do you believe that it is appropriate for the Administration to pay commentators to advocate its policies?

Answer: In recent months, the Government Accountability Office (GAO) has cautioned Federal agencies that the use of appropriated dollars to produce and distribute pre-packaged news stories may violate the prohibition on the use of appropriated funds for publicity or propaganda purposes. In late January, President Bush, too, expressed his disapproval of this practice and verbally directed his Cabinet Secretaries to refrain from hiring columnists and newscasters to promote agency programs.

Just this month, GAO expressed its intention to notify Federal agencies about constraints on use of prepackaged news stories without clear attribution to the Federal Government, and to provide agencies with guidance on how to comply with this appropriation restriction (See, Memorandum of February 15, 2005, B-303495.2, at page 4).

Question: If not, as Inspector General, what will you do to prevent such activity regarding programs under HHS's jurisdiction?

Answer: The GIG will utilize this GAO guidance in any upcoming audits or other reviews of agency programs that involve public outreach and education.

RESPONSES TO QUESTIONS FROM SENATOR BINGAMAN

Question: The Public Health Service 340B program offers important financial assistance to providers making up our Nation's health care safety net. What level of priority is your office giving to matters relating to the 340B program, such as the widespread allegations of manufacturer overcharges and inadequate governmental oversight of the program? What resources do you plan to commit to further scrutiny of 340B program operations, administration and pricing practices in the coming year?

Answer: The OIG believes the 340B program fulfills an important role and that it should be functioning efficiently and in compliance with its statutory provisions. The office plans to devote appropriate resources to ensure that this happens.

Specifically, it intends to issue a new report on HRSA's oversight of the 340B program this summer. Despite withdrawal of the original report because of the issues with the data upon which it relied, OIG continues to believe there are systemic issues that lead to price discrepancies within the 340B program. Three of the findings from the previous report, in particular, remain important, even with the data problems. These findings are:

- HRSA's oversight of the program is inadequate in that it has no process to confirm that 340B entities receive the ceiling price.
- Participating entities cannot independently verify that they receive the 340B ceiling price due to confidentiality provisions in the authorizing statute.
- Pharmaceutical manufacturers' 340B ceiling price calculation is not verified against the Department's calculation of the 340B ceiling price.

Once the systemic weaknesses in the 340B data are addressed, OIG intends to replicate its 340B error rate work by conducting a new study with more recent data. It also has formed a new work-planning group to focus specifically on generating a variety of proposals for studies related to 340B program operations and oversight.

Additionally, given the link between the 340B program and the Medicaid drug rebate program, the OIG now routinely evaluates possible 340B program violations in cases involving alleged Medicaid drug rebate program violations.

Question: In March 2003, the OIG reported investigatory findings that five manufacturers had collectively overcharged 340B entities for 11 different drugs during fiscal 1999, yet only recently was any action taken to follow up on these findings with the involved manufacturers. Why has it taken so long for there to be any follow-up activity, and what, if any, action can be expected from the OIG if manufacturers identified as having overcharged 340B providers fail to reimburse the identified overcharges?

Answer: In response to an OIG March 2003 report, HRSA proposed an ambitious multi-point plan to contact subject drug manufacturers and request that they take a number of specific corrective actions, including providing certain information to HRSA. HRSA would be in the best position to explain its progress in implementing that plan. Any further action from the OIG will depend, in part, on the results of HRSA's actions, including any additional information gathered from the drug manufacturers.

Question: In November of last year, your office withdrew a June 2004 report finding widespread administrative deficiencies and overcharging for pharmaceutical products in the 340B program. Why did your office take the highly unusual step of withdrawing this report, and what has been done to re-evaluate and correct the report's findings? When do you expect to re-issue the report, and do you anticipate announcing expanded findings at that time, or merely limited corrections and clarifications of the original report's contents?

Answer: The OIG withdrew the report in October 2004 because it discovered problems with the underlying data used in developing its findings. After the report's publication in June 2004, a variety of stakeholders, including HRSA, congressional committees, pharmaceutical manufacturers, and 340B interest groups, expressed support for additional analysis of the findings to understand the possible reasons for these overpayments. As a result, OIG initiated a follow-up study intended to establish and explore the potential causes for the price differences. During the course of this follow-up work, OIG discovered two issues that led to the withdrawal of the report. First, it was discovered that CMS had inadvertently provided ceiling price data for the wrong timeframe. The OIG has since obtained the corrected information and is currently reanalyzing the data. Second, based on conversations with industry experts, OIG learned that some of the information CMS uses to calculate the 340B ceiling price might be incorrect.

The OIG is currently conducting a more systematic evaluation of the data used to calculate 340B ceiling prices. It is examining a variety of data issues to determine whether it can provide a revised error rate or if steps need to be taken to correct the data before OIG provides an error rate. As stated in the previous answer, OIG intends to issue a new report this summer.

Question: Even before its withdrawal, the credibility and significance of the June 2004 OIG report had been questioned by some because of the relatively small number of providers involved in the OIG's investigatory sample. Given the results of the investigations underlying the March 2003 and June 2004 OIG reports pertaining to 340B purchasing, why has there not been any more comprehensive and aggressive effort to investigate 340B pricing practices on a large scale?

Answer: The OIG initial review, as documented in the June 2004 report, involved a random sample of 340B entities. From this sample, it received invoices from which it compared prices for almost 13,000 transactions. This was an appropriate methodology to investigate this issue. The upcoming effort to evaluate 340B pricing issues will continue to consider the most appropriate methodology to examine the identified issues. In addition, as referenced above, when OIG explores the possibility that Medicaid rebates have been underpaid because drug manufacturers reported inaccurate best price data, OIG also explores the possibility that 340B entities have been correspondingly overcharged. As a result of such work, drug manufacturers paid settlement amounts that included both Medicaid and 340B program recoveries in three recent settlements.

The OIG will continue to investigate 340B-related cases when it has specific allegations resulting from its audit and inspection work or other reliable sources.

RESPONSES TO QUESTIONS FROM SENATOR SNOWE

OIG RECOMMENDATIONS ON GME PAYMENTS FOR TRAINING RESIDENTS IN NONHOSPITAL SETTINGS

Question: Mr. Levinson, the Medicare Modernization Act (MMA) included a provision dealing with Graduate Medical Education (GME) payments for volunteer physician supervision. The MMA put in place a one-year moratorium for 2004, which allowed teaching hospitals to count the time osteopathic, and allopathic family prac-

tice medical residents spent training in nonhospital locations, such as nursing homes and community health centers, without regard to the financial arrangement between the hospital and the supervisory physician.

The provision also required the Inspector General (IG) of the Department of Health and Human Services to conduct a study on the appropriateness of "alternative payment methodologies" for the costs of training residents in non-hospital settings and issue a report with recommendations to Congress, which was issued on December 8, 2004.

In its report, "Alternative Medicare Payment Methodologies for the Costs of Training Medical Residents in Nonhospital Settings," the Office of Inspector General recommended that, "CMS work with Congress to extend the moratorium, so that teaching hospitals may claim Medicare reimbursements for osteopathic and allopathic family practice residents who train in nonhospital settings without regard to the financial arrangements between the hospitals and the supervisory physicians who practice at those settings."

Nevertheless, recently a hospital in my home State of Maine was audited by CMS shortly after the moratorium expired. CMS is now claiming that this institution must repay significant graduate medical education funds as a result of their training programs in nonhospital sites.

What is your view of CMS renewing their audits and beginning to question graduate medical education payments again? What steps, if any, is the IG's office taking to ensure that CMS is pursuing the recommendations made by your office in its recent report?

Answer: The moratorium has not been extended by Congress. Thus, it is OIG's understanding that CMS has returned to operating under the regulatory requirement that all or substantially all of the training costs at non-hospital settings must be incurred by the teaching hospitals.

The OIG has had discussions with CMS concerning the findings and recommendations contained in OIG's report (*Alternative Medicare Payment Methodologies for the Costs of Training Medical Residents in Nonhospital Settings*). However, OIG has not received any direct indication from CMS regarding any actions CMS may take based on the OIG report. CMS has indicated that it intends to work with the industry to clarify those situations where no cost is associated with teaching physicians in non-hospital settings. The OIG will continue to monitor this situation.

PREPARED STATEMENT OF RAYMOND T. WAGNER, JR.

Mr. Chairman, Senator Baucus and Members of the Committee, I am honored to appear before this committee today as you consider my nomination to be a member of the IRS Oversight Board.

It was just 2 years ago that I first appeared before you, when I was nominated to fill the remaining term of a vacant position on the Oversight Board. I am grateful to appear before you a second time.

Mr. Chairman, it is truly an honor to have been nominated by President Bush to serve a full term on the IRS Oversight Board. I commenced service on the Board in April 2003, and I was elected Chairman of the Board in September 2004. I now have an even greater appreciation for the vital role that the IRS plays in the lives of virtually every taxpayer. If confirmed, I am committed to serve this full term with independence, rigor and complete respect for the importance of the position.

For almost 10 years, I have worked at Enterprise Rent-A-Car, most recently as the Legal and Legislative Vice President. For the last 12 years, I have also been an adjunct professor of law at the Washington University School of Law in St. Louis, where I co-teach a course in the masters tax law program.

Prior to joining Enterprise Rent-A-Car, I spent much of my career working in the public sector in the tax administration field. I served as Director of Revenue for the State of Illinois, as well as Director of Revenue for the State of Missouri. In addition, I was the General Counsel for the Missouri Department of Revenue.

As a Board member and now chairman, I have watched the Board continue to evolve so that it will best meet its mission. Last September, the Treasury Inspector General for Tax Administration (TIGTA) completed an audit of the Board and found that the Board has made a number of valuable contributions to the governance of the IRS, such as providing continuity of management and direction, reaching out to stakeholders, and conducting surveys of taxpayer attitudes.

TIGTA recommended that the Board conduct a self-assessment as a tool for understanding how to elevate the Board's performance to the next level. During my chairmanship, the Board conducted such a self-assessment, reorganized its committees, and is expanding its outreach program. It has solicited input from stake-

holders, including tax professional organizations and Congressional committees, about how to make improvements. We redesigned our annual public meeting to achieve a better exchange with outside stakeholders.

Prior to being elected chairman by my fellow Board members, I served as chairman of the Board's Human Capital Committee. In this capacity, I led the committee in its first comprehensive review of the IRS' training programs, and also led the committee's annual review of senior IRS executive performance and compensation. This review evaluates whether division goals, executive goals and actual performance are in alignment with executive performance evaluations and compensation. This is a critical issue for all organizations, whether in the public or private sector.

It is important for Board members to listen to and understand the concerns of a variety of organizations and individuals who interact regularly and have outside perspectives of the IRS. Ensuring this communication is a personal priority of mine. In this vein, I meet regularly with many representatives of other government organizations that have oversight responsibilities of the IRS, including TIGTA, GAO, Treasury Department, and Congress, including the staff from this committee, to discuss relevant IRS issues. Other board members and I also meet regularly with IRS employees, representatives of tax professional organizations, and fellow taxpayers. We attend several nationwide tax forums, each of which is normally attended by over 2,000 tax professionals.

Clearly the IRS is facing many difficult challenges. It must reduce the tax gap in an environment of limited resources, active circumvention of tax laws by some members of the tax professional community, an aging work force, and ancient computer systems. This is no time for the timid. Every member of the tax administration community, including many of the people in this room, must all pull in the same direction if we are to meet these challenges. I want the Oversight Board to have an important and meaningful role in this effort.

I welcome the opportunity to use my extensive experiences in the private and public sector to address these issues. Enterprise Rent-A-Car, as you may know, has grown to be the number one rental car company in North America based in large part on its founding value of customer service, and I know first-hand the positive impact of superior customer service from a large organization. Despite needed emphasis on enforcement, I will be ever-mindful of the priority that this Committee placed upon customer service when it established the mandates of the IRS Restructuring and Reform Act of 1998. We cannot have the IRS lose its balance between service and enforcement. The mission of the Illinois Department of Revenue, which we rewrote during my tenure, might best exemplify my philosophy: "Professional Service—Fair Enforcement." In short, taxpayers should find compliance easy to achieve and difficult to avoid.

In summary, Mr. Chairman, I am keenly aware of the critical importance of this independent Board for all of the American people. If confirmed as a member of the IRS Oversight Board, I will be committed to using my knowledge and experiences to achieve the objectives for the Board as set out in the Restructuring and Reform Act.

Thank you Mr. Chairman. I would be pleased to answer any questions you or other members of the Committee may have.

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

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.): *Raymond T. Wagner, Jr.*
2. Position to which nominated: *IRS Oversight Board*
3. Date of nomination: *November 16, 2004*
4. Address: (List current residence, office, and mailing addresses.)
*Residence: 313 St. Andrews Court
Ballwin, Missouri 63011
(636) 230-9020*
*Office: Enterprise Rent-A-Car
600 Corporate Park Drive
St. Louis, Missouri 63105
(314) 512-2897*
5. Date and place of birth: *June 8, 1959, St. Louis Missouri*
6. Marital status: (include maiden name of wife or husband's name.) *Married to Ann L. Wagner (nee Trousdale).*
7. Names and ages of children: *Raymond III (age 15); Stephen (age 14); Mary Ruth (age 9).*
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
 - *Washington University School of Law, 08/87-05/93, LLM-Taxation, May 14, 1993.*
 - *University of Missouri-Kansas City School of Law, 08/82-05/85, JD, May 10, 1985.*
 - *Saint Louis University School of Business, 06/82-05/84, MBA, May 12, 1984.*
 - *Saint Louis University School of Arts & Science, 08/78-05/81, May 16, 1981, (Certificate in Business received May 16, 1981).*
 - *University of Missouri-St. Louis, 05/80-08/80 Summer Finance Class.*
 - *St. Louis Community College at Meramec, 08/97-12/98; two advanced accounting classes taken.*
 - *John F. Kennedy High School, 08/73-05/77, High School Diploma, May, 1977.*
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

- *US Treasury IRS Oversight Board; Member (Chairman since September, 2004); Washington DC; 04/2003 – present.*
 - *Enterprise Rent-A-Car Company; Vice President- Legal & Legislative (most recent title); St. Louis, MO; 06/95-present.*
 - *City of Ballwin, Missouri; Municipal Judge; Ballwin, MO; 04/99-present.*
 - *Washington University School of Law; Adjunct Professor of Tax; St. Louis Missouri; 01/93-present.*
 - *Fontbonne University School of Business; Adjunct Professor in Master of Science of Tax Program; St. Louis, Missouri; Fall Semester, 2003*
 - *Illinois Department of Revenue; Director of Revenue; Springfield, IL; 08/93-06/95.*
 - *Armstrong, Teasdale, Schlafly & Davis; Counsel; St. Louis, MO; 02/93-07/93.*
 - *Missouri Department of Revenue; Director of Revenue; Jefferson City MO; 09/91-02/93.*
 - *Missouri Office of the Governor; Counsel to the Governor; Jefferson City, MO; 05/90-09/91.*
 - *Missouri Department of Revenue; General Counsel; Jefferson City MO; 05/89-04/90.*
 - *Suelthaus & Kaplan (now Polsinelli Shalton Welte Suelthaus); Associate Attorney, Clayton MO; 04/87-05/89.*
 - *Gaar & Bell (now Gilmore & Bell); Associate Attorney, Clayton, MO; 08/86-04/87.*
 - *Missouri Supreme Court; Law Clerk to Chief Justice; Jefferson City, MO. 08/85-08/86.*
 - *Missouri Court of Appeals-Eastern District; Summer Intern; St. Louis, MO; 06/84-08/84.*
 - *University of Missouri-Kansas City School of Law; Research Assistant to Professor Dyer and Professor Hood; Kansas City, MO; 03/84-05/85.*
 - *IRS Office of District Counsel, Legal Intern; Kansas City, MO; 01/85-05/85.*
 - *Univ. of Missouri-Kansas City School of Law; Legal Research Instructor; Kansas City MO; 08/83-12/83.*
 - *22nd Judicial Circuit-Juvenile Division; Summer Law Clerk; St.. Louis, MO; 06/83-08/83.*
 - *David Drury, Attorney; Law Clerk; St. Louis, MO; 06/83-08/83.*
 - *St. Louis University Department of Government Grants & Contracts Administration; Summer Intern; 05/82-08/82.*
 - *St. Louis University Busch Memorial Student Center; Weekend Manager; St. Louis, MO; 05/81-08/82.*
10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)
- *Missouri Department of Health and Senior Services Infectious Disease Advisory Committee, 10/2004 – present.*
 - *Missouri Statewide Legal Services Commission; Member since 2001.*
 - *US Dep't of Labor Transition Advisory Committee; 12/00-02/01.*

Appointed to several boards and commission during the course of my prior service in Missouri and Illinois state government, including:

- *Illinois Economic Development Coordinating Council, 1995.*
 - *Illinois New Technology Board; Member; 1994.*
 - *Illinois Geographic Information Management Technology Task Force; Member; 1994.*
 - *Multistate Tax Commission; Commissioner; 1991-1993.*
 - *Missouri Highway Reciprocity Commission; Chairman; 1991-1993.*
 - *Missouri Military Advisory Commission; Member; 1991-1993.*
 - *Missouri Governor's Ethics Commission; Chairman; 1991-1992.*
 - *Missouri Commission on Intergovernmental Cooperation; Mem.; 1991-1993.*
 - *Missouri Rural Opportunity Council; Member; 1992-1993.*
11. Business relationships: (List all positions held [for the past 10 years] as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)
- *Enterprise Rent-A-Car; Vice President and Assistant VP since 1996.*
 - *University of Missouri – St. Louis Chancellor's Council; Member since 1996; Secretary since 2002.*
 - *St. Louis Univ. School of Business Executive Advisory Board ; 1995- 06/2003.*
 - *Washington University School of Law; Adjunct Professor of Tax since 1993.*
 - *Fontbonne University School of Business; Adjunct Professor of Tax, Fall, 2003.*
 - *Armstrong, Teasdale, Schlafly & Davis Law Firm; Counsel; 02/93-07/93.*
 - *Estate of Louis P. Semich; Personal Representative; 11/00-08/02.**
 - *Estate of Delma Browne; Personal Representative; 11/00-10/01.**
 - *Vincent P. Muenster Trust; Trustee; approx 08/88-present.**
 - *Joseph P. Muenster Trust; Member of Family Advisory Group; 04/87-present.**
- ***Estates of deceased family members.
12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)
- *University of Missouri-St. Louis; Member, Chancellor's Council; 1998-present (Secretary, 2002-present).*
 - *St. Louis County Greater Economic Development Council; Member; 2001-present.*
 - *Truck Rental & Leasing Association; Member, Government Relations Committee, 2001-present.*
 - *American Car Rental Association; Chairman, Legal & Legislative Committee, 1999-2001.*
 - *Missouri Municipal & Associate Circuit Judges Assoc.; Member; 1999-2003*
 - *St. Louis Regional Chamber & Growth Association; Board Member and Vice-Chair, Government Affairs, 2000-2001; Chairman, Public Policy Council 1998-2000.*
 - *Associated Industries of Missouri; Board Member; 1995- 2003; Member, Transportation & Development Council since 2001.*
 - *Missouri Chamber of Commerce; Board Member; 1996-11/2004.*
 - *St. Louis Club; Member in Luncheon Club; 2002-present.*

- *St. Louis University School of Business & Administration Executive Advisory Board; 1995-06/2003.*
 - *St. Louis University School of Business & Administration Alumni Association, Board Member 1989-1995 (President, 1993-1995).*
 - *St. Louis University; DuBourg Society (for development support); Honorary Vice President; since approx 1988.*
 - *St Andrews Subdivision Neighborhood Association; Homeowner Member; 1997-present (President, approx. 07/98-11/99).*
 - *Missouri Bar; Member; 1985-present.*
 - *Bar Association of Metropolitan St. Louis; Member; 1986-05/2004; Chairman, Legislative Committee, 1991-present; Administrative Law Committee, Chairman, 1991-1991; Young Lawyers Section: Treasurer, 1989-1990, Chairman of Government Liaison Committee, 1990-1996, and Chairman of YLS Social Services Committee.*
 - *American Bar Association; Member; est. 1988-present; member of Taxation Section, est. 1989-present.*
 - *Illinois State Bar Association; Member; 1986-present.*
 - *Cole County Bar Association; Member, 1989-1992.*
 - *St. Louis County Bar Association; Member, 1987-1989.*
 - *National Association of Bond Lawyers, Member, 1986-1988.*
 - *United States Supreme Court, Member since 1989.*
 - *United States Tax Court; Member since 1989.*
 - *United States Court of Appeals-8th Circuit; Member since 1989.*
 - *Federation of Tax Administrators; Board Member 1994-1995.*
 - *National Institute on State & Local Taxes; Honorary Member of Advisory Board, 1993-1995.*
 - *St Clare of Assisi Catholic Church; Member, 1995-present; Coach, 8th Grade Soccer team since 1998; Co-chairman, Capital Campaign, 2000.*
 - *St. Patrick's Center for the Homeless; Board Member, 2001-present (Vice-President since 2002).*
 - *St. Louis Symphony Gov't Relations Committee: Member, 2000-2004.*
 - *Foster and Adoptive Care Coalition of St. Louis; Board Member, 1995-2001 (President 1998-2000).*
 - *CORO St. Louis Civic/Charitable Organization; Board Member, 1999-2001.*
 - *Shelter the Children, Board Member, 1988-1995.*
 - *Independent Charities of America, 1993-1995.*
 - *Big Brothers Big Sisters of Kansas City, 1984-1985.*
 - *University of Missouri-Kansas City School of Law: Delta Theta Phi Legal Fraternity, 1983-1985; Student Bar Association, 1st Year Representative, 1982-1983.*
 - *St. Louis University: Student Government Association, President 1981-1982, Vice President, 1980-1981; Chairman of Commuter Representative Committee, 1979-1980; Phi Kappa Kappa Fraternity, 1979-1981.*
 - *John F. Kennedy High School, Editor of School Newspaper, 1975-1977; Captain of Track Team and Cross Country Team, 1976-1977.*
13. Political affiliations and activities:
- a. List all public offices for which you have been a candidate. None.

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

- *Friends of Ann Wagner for Committeewoman; Deputy Treasurer; 1996-present.*
- *MOBIZ PAC; Member; approx. 1998-present.*
- *Enterprise Rent-A-Car PAC; Advisor; 1996-present.*
- *Car Rental Coalition PAC; Officer; 1998-2002.*
- *Republican National Convention; Delegate; 2000.*
- *Missouri Republican Convention; Delegate; 2000.*
- *American Values PAC; Board Member, 1998-1999.*
- *In my capacity as government affairs representative of Enterprise Rent-A-Car, I have assisted numerous political candidates in their fundraising efforts, including allowing my name to be used on "Host Committees" in connection with fundraising events.*

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

- *Enterprise Rent-A-Car PAC: \$1250; 08/04*
- *Enterprise Rent-A-Car PAC: \$1250; 12/03*
- *Missourians for Kit Bond; \$250 12/03*
- *Catherine Hanaway for Secretary of State; \$1200- 07/04; \$1200-09/04*
- *Missourians for Matt Blunt; \$1200-04/04; \$1200-10/04*
- *Bush-Cheney 2004; \$2000 09/03*
- *Enterprise Rent-A-Car PAC: \$1000; 12/02*
- *Friends of Todd Akin for Congress; \$1000; 11/00*
- *Ashcroft 2000; \$500; 12/99*
- *Ashcroft 2000; \$500 & \$500; 12/98*
- *Ashcroft 2000; \$500; 09/97*
- *Rely on Your Beliefs Fund; \$500; 07/20/01*
- *Enterprise PAC: \$500; 12/01*
- *Enterprise Rent-A-Car PAC: \$225; 12/00.*
- *Enterprise Rent-A-Car PAC: \$100; 12/99.*
- *Enterprise Rent-A-Car PAC: \$500; 12/98.*
- *Enterprise Rent-A-Car PAC: \$500; 12/97.*
- *Enterprise Rent-A-Car PAC: \$150; 12/96.*
- *Jack Jackson for Congress; \$100; 08/00.*
- *Talent for Governor; \$1125; 03/00.*
- *Talent for Governor; \$875; 09/00.*
- *Talent for Governor; \$250; 08/00.*
- *Missourians for Matt Blunt for Secretary of State; \$250; 06/00.*
- *St. Louis County Republican Central Committee; \$100; 07/00.*
- *RNC/Republican National State Elections Comm.; \$500; 02/01*
- *MO Senate Majority Fund; \$50; 06/00.*
- *John Winston Election Committee; \$211; 06/15/00*
- *Citizens for Pelican; \$50; 08/98.*
- *Committee for Jones; \$100; 02/99.*
- *Klarich for MO Senate; \$175; 08/96.*

- *Klarich for MO Senate; \$ 60; 1997.*
 - *Citizens for Bredemeier; \$100; 07/96.*
 - *Hancock for Secretary of State; \$ 200; 10/96.*
 - *Talent for Congress; \$50; 08/96.*
 - *Talent for Congress; \$100; 03/96.*
 - *Note: FEC Records show \$450 total contribution to Talent for Senate Committee as of 06/24/02; FEC Records show refund as of 08/02.*
 - *Note: Records were compiled from a review of checking account records and websites reporting FEC filings from candidates.*
14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)
- *"Health-Care Hero – Community Advocacy Award" from St. Louis Business Journal, 10/04*
 - *Distinguished Service Award from Univ. of Mo- St. Louis; 05/02*
 - *"Up and Coming Lawyer" from MO Lawyers Weekly; October 12, 1998.*
 - *"Forty Under 40" Selection from St. Louis Business Journal; 01/98.*
 - *Commendation Proclamation from Illinois Governor Edgar; 06/95.*
 - *Commendation Resolutions from MO Senate & House; 01/93.*
 - *"Statesman of the Month" from Jefferson City News Tribune, 05/92*
 - *President's Award from Bar Association of Metropolitan St. Louis; 05/92*
 - *Scholarship Foundation of St. Louis; 1983*
 - *St. Louis University Burger Scholarship, 1981.*
 - *McDonnell-Douglas Scholarship, 1977-1981.*
 - *Soroptimist Youth Citizenship Award, 1977.*
15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)
- *Missouri Taxation Law and Practice, Second Edition, 1999 Supplement Chapter 9, Sales and Use Taxes- Substantive Aspects. Published by the Missouri Bar, September 1999.*
 - *Missouri Taxation Law and Practice, Second Edition, 2002 Supplement Chapter 9, Sales and Use Taxes- Substantive Aspects. Published by the Missouri Bar, September 2002.*
 - *"Recent Legislation-How Will It Affect Your Practice?" St. Louis Lawyer Magazine; July Edition 2004. NOTE: I have written similar articles summarizing the past MO legislative session for the Bar Association of Metro St Louis for most of the past 12 years.*
 - *"Financial Interest Disclosure Requirements Outlined" MoBar Bulletin, April 1991.*
 - *E.Hood, Closely Held Corporations in Business and Estate Planning (1982); Acknowledged in supplement after serving as research assistant to Professor Hood.*
16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

Since becoming a member of the IRS Oversight Board in April, 2003, on May 4, 2004 and June 24, 2004, I appeared at a CPE meeting of US Treasury Inspector General for Tax Administration (TIGTA) employees to describe the activities of the Oversight Board. The remarks were conversational in nature and informal; no formal speech was prepared.

I also appeared before the Senate Finance Committee on July 21, 2004 to present testimony on "Bridging the Tax Gap."

Other than the foregoing, in the past five years, I have delivered no speeches on tax administration, other than classroom lectures as an Adjunct Tax Professor in State & Local Sales Tax Class at Washington University and Fontbonne University in St. Louis.

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

I hope to continue to offer value to the IRS Oversight Board based, in part, upon my current service as a member of the IRS Oversight Board, as well as my prior experiences as a tax administrator. In addition, I have an extensive background in law, tax law, business, government, legislative relations, and civic involvement. I believe my varied professional experiences and expertise will continue serve the IRS Oversight Board well.

As a Vice-President at Enterprise Rent-A-Car, I see first-hand the value of customer service. I bring an understanding of the value of information technology. I have represented the needs and concerns of individual taxpayers and small businesses throughout my career; I recognize the importance of these customers to the IRS and the revenue collection process. As a former tax administrator, I understand the importance of "doing more with less" and prioritizing in order to move the agency forward.

I am enthusiastically and fully committed to continuing to be a productive member of this Board. I am confident that I will further the goals and objectives that Congress established when this Board was created only a few years ago. I will be a strong advocate for tax administration simplification, customer service, systems modernization and efficient compliance.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.
I do not plan to sever connections with present employers, given that this appointment is a part-time position.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.
I plan to continue my current employment relationships.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details. *No.*
4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain. *Yes.*

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. *Any potential conflicts of interests have been resolved in accordance with the terms and conditions set forth in my ethics agreement with the Department of Treasury, which is documented in my letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics.*
2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. *I am aware of none.*
3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed, as an employee of the Federal government need not be listed.

Within the scope of my responsibilities at Enterprise Rent-A-Car, I have assisted and/or managed our various lobbyist and local employees in directly influencing the passage, defeat or modification of legislation affecting the car rental industry, e.g., state insurance licensing, rental taxes, liability reform, other issues directly involving the car rental industry. I have twice testified before Congress on the issue of vicarious liability reform.

Within the scope of my responsibilities with various civic or chamber boards, I have engaged in legislative relation activities, mostly in Missouri, on topics of interest to the business community.

Within my scope of serving as the Missouri and Illinois Revenue Director, within the past 10 years, I engaged in legislative activities on topics of interest to the Department of Revenue, e.g., tax law legislation, budget matters, promulgation of rules and regulations.

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

Should any actual or potential conflicts arise, I will consult with Treasury ethics officials.

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

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

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. *No.*
2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details. *While in school, in February 1983, I received a summons for a municipal moving infraction; it was dismissed.*
3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I have never been involved as a party in interest in any civil or criminal litigation in my personal capacity.

On behalf of my company, Enterprise Rent-A-Car, I have been involved in civil litigation and administrative and legislative proceedings within the car rental industry, including intellectual property type matters. I have never been a party in interest, however.

As a former state official in Illinois and Missouri, I was involved as a party in interest in many matters (perhaps thousands) involving civil, criminal, administrative or legislative proceedings. All of these matters were within the scope of my official responsibilities relating to tax laws (MO and IL) and motor vehicle laws (MO only). In these matters, government attorneys always represented me.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.
No.
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. *I am aware of no unfavorable additional information. If confirmed, I am absolutely and whole-heartedly committed to faithfully serve to the fullest extent.*

E. TESTIFYING BEFORE CONGRESS

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

