

**NOMINATIONS OF JUSTIN G. MUZINICH  
AND MICHAEL J. DESMOND**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

**ONE HUNDRED FIFTEENTH CONGRESS**

**SECOND SESSION**

ON THE

NOMINATIONS OF

JUSTIN G. MUZINICH, TO BE DEPUTY SECRETARY, DEPARTMENT OF  
THE TREASURY; AND MICHAEL J. DESMOND, TO BE CHIEF COUNSEL,  
INTERNAL REVENUE SERVICE, AND ASSISTANT GENERAL COUNSEL,  
DEPARTMENT OF THE TREASURY

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JULY 26, 2018  
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**THURSDAY, JULY 26, 2018**

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

The hearing was convened, pursuant to notice, at 9:34 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Thune, Portman, Toomey, Cassidy, Wyden, Cantwell, Menendez, Carper, Cardin, Bennet, Casey, and Whitehouse.

Also present: Republican staff: Jeffrey Wrase, Staff Director and Chief Economist; Chris Armstrong, Chief Oversight Counsel; Becky Cole, Policy Director; and Nicholas Wyatt, Tax and Nominations Professional Staff Member. Democratic staff: Joshua Sheinkman, Staff Director; Michael Evans, General Counsel; Ian Nicholson, Investigator; Greta Peisch, International Trade Counsel; Tiffany Smith, Chief Tax Counsel; and Jayme White, Chief Advisor for International Competitiveness and Innovation.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,  
A U.S. SENATOR FROM IOWA**

Senator GRASSLEY [presiding]. I am not Senator Hatch. He will be here shortly. He asked me if I would start the meeting.

Welcome to today's hearing for the nominations of Justin Muzinich to be Deputy Secretary and Michael Desmond to be Chief Counsel for the IRS and Assistant General Counsel for the Department of Treasury.

I am going to enter into the record for Senator Hatch an opening statement that he would make.

[The prepared statement of Chairman Hatch appears in the appendix.]

Senator GRASSLEY. I would like to welcome everybody to this morning's hearing and especially extend a very special welcome to our nominees and to congratulate you. I thank both of you for your

willingness to serve in the Treasury Department and Internal Revenue Service at a time of great importance for both positions.

The President has nominated Mr. Muzinich to be a Deputy Secretary of Treasury where, if confirmed, he will have a key leadership role across the Department's activities.

The President has nominated Mr. Desmond to be Chief Counsel for the IRS and Assistant General Counsel for the Treasury Department.

As I have already done, I welcome you now a second time to this hearing.

Senator Wyden?

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Mr. Chairman, thank you.

Would you also, in our tradition, like to give our guests the opportunity to welcome their families?

Senator GRASSLEY. I am going to introduce them.

Senator WYDEN. Oh, I see. All right, after my opening statement?

Senator GRASSLEY. Yes.

Senator WYDEN. Okay, very good.

I too would like to welcome our nominees. We are going to be considering the nomination of Justin Muzinich to be Deputy Secretary of the Treasury and Mr. Michael Desmond to be Chief Counsel at the Internal Revenue Service.

Here is where I think things are now: the committee has faced unprecedented levels of stonewalling from the administration on letters and policy issues that I never expected I would see. We would get similar answers from the Treasury if we posed our questions to the statue of Alexander Hamilton outside the Department's headquarters.

It does go back to Secretary Mnuchin's very first appearance before the committee. I asked then that he work with me to crack down on the abuse of shell companies, a magnet for all manner of shadowy, illicit conduct. Mr. Mnuchin told me that Treasury would get right on it. But a year and a half has passed, and it is business as usual at Treasury on shell companies.

And let us be clear, this is not something that is a partisan issue. I have written bipartisan legislation on this matter with Senator Rubio, obviously an influential Republican.

Today we are going to ask Mr. Muzinich what he is going to do to end the Treasury stonewalling if he is confirmed. Now I enjoyed our visit a few days ago, and I was particularly struck when you said that you saw yourself simply as being a "building manager" as Deputy Secretary.

And so I went and read the newspaper articles about you, these glowing articles praising your financial expertise, previewing your expansive role on tax policy, debt management, and more. It is clear that people "in the building" have a different perspective. Their accounts suggest to me that calling the nominee, Mr. Muzinich, the "building manager" is a little bit like saying an NBA all-star is going to be a nice role-player off the bench. It is clear to me that the nominee, if confirmed, would be the Secretary's

right-hand man, and that is why we expect answers as to how he is going to fix these long-running problems.

Bottom line on the stonewalling matter: committee members and I are not firing off nasty-grams demanding the resignation of everybody who has come within 25 feet of Paul Manafort. We are not asking for anybody's high school diaries. What we are trying to do is get information that is key to uncovering corruption and protecting our democracy from foreign interference.

That includes working to determine the extent of the relationship between Alexander Torshin, a Russian national with close ties to Vladimir Putin, and the NRA. It includes a request for information that would help determine the extent of Michael Cohen's influence-peddling.

And because the President refuses—even though all of his predecessors for a full 40 years did so—to release his tax returns, we have also had a request for information that would help shed light on questionable Trump real estate deals with Russian individuals. The list goes on from there.

At some point, this ceases to be a case of the Treasury Department being slow to respond, and it looks more like actively abetting the cover-up of corruption and illegal activity.

The committee also needs to know whether Mr. Muzinich agrees with the recent decision to open the floodgates for more dark money into American politics. This was a significant tax-policy change, and our nominee says he is a tax-policy guy.

So there may be an effort to downplay the significance of the decision. Maybe, again, we will hear it spun as a harmless policy update, but let us be real clear what this is going to mean. If your dark money policy gives oligarchs in Moscow reason to throw back celebratory vodkas, and if their friends at the NRA have a green light to flood the airwaves with even more election secrecy, you made the wrong call.

Last Monday night, the Trump administration wrested even more control of our democracy from the hands of American people. Furthermore, if the Trump White House is ordering hasty changes to tax administration policies without public debate in ways that threaten the legitimacy of our elections, are those changes going to stand? After all Mr. Desmond, if confirmed as IRS Chief Counsel, is going to be responsible for carrying out this decision, and any proposed changes to IRS rules will have to go through him.

Mr. Desmond must demonstrate to this committee that he will remain independent and unswayed by political pressure from the Trump White House on this and other issues.

In closing, one final tax policy matter that I discussed with Mr. Muzinich. A year ago, members of this committee on this side of the aisle said loud and clear, our preference is to have a bipartisan tax reform bill. Every single member on this side of the dais said that was their preference. We put it in writing.

As I mentioned to you, I wrote two full bipartisan bills—one of them with a member of the Trump administration who used to sit right down there, Senator Dan Coats. But what we got from the administration is that they did not want to work on tax reform in a bipartisan way.

People like Bill Bradley—who sat over here when he was in the Senate—flew all over the country trying to work with Republicans on a bipartisan bill. And in this case, a year ago, Republicans would not even walk down the hall to work with these Democrats who said that they wanted to have a bipartisan tax plan.

Now we are hearing that there is a new effort for yet another tax bill that would once again be completely partisan. The House is working on it, apparently uninterested in learning from the consequences of strictly partisan tax policy.

And you and I talked about that. You do it partisan, you do not get certainty. You do not get predictability, and it makes it harder for middle-class people to get those jobs that pay higher wages for the long term.

The Trump tax law has been in place for months, and the quarterly numbers from the Bureau of Labor Statistics have shown that real wages fell over the first half of this year. So now it looks like we are just going to do a repeat of what was done last year, a big windfall for the high fliers, even more goodies for the most fortunate, while so many typical families are just trying to figure out how to get ahead.

To me, it looks like once again the administration is taking the tax code and continuing to split it in two. People who work for a wage—no special deals for them. Their taxes come right out of their paycheck. If you are a high flier, you can almost figure out what you want to pay and when you want to pay it.

So our view is, going down the partisan route is not the way to go, and once again, I think you are going to hear from my colleagues that their preference is to pursue serious tax policy in a bipartisan way. And as I told you, I put years and years of my own time into this cause. So this is an important hearing.

Senator Grassley, acting chairman, I am glad you are going to have the introduction of our nominees, and we will get on with it.

Senator GRASSLEY. Okay.

[The prepared statement of Senator Wyden appears in the appendix.]

Senator GRASSLEY. This is the way we will do it to start out. I am going to introduce our two nominees, and then they are going to be able to make their opening statements and introduce family and friends. And then I have the usual obligatory questions that we ask all nominees, and then I am going to give my time to Senator Portman, and then we will go to Senator Wyden.

Before working at the Treasury Department, Mr. Muzinich served as president of a company named after him. It was an investment firm. While running his company, he also taught at the Columbia Business School. He earned his BA and MBA from Harvard and his J.D. from Yale, where he was an Olin fellow.

In early 2017, he was appointed a Counselor to the Secretary at the Treasury, where he has advised Secretary Mnuchin on several policy issues, including the tax reform. We often saw our nominee up here last year alongside the Secretary as we worked to create a tax reform bill that would best help the American taxpayers. And we appreciate your help in that very historic piece of legislation.



His work with the Treasury Department has shown him to be a quick learner and a good listener, skills that, if confirmed, will be an integral part of his new role.

Mr. Desmond has run his own law firm focused on tax controversy matters in Santa Barbara, CA. Before that, he was a partner at the international law firm of Bingham McCutchen LLP.

He earned his BA from the University of California, Santa Barbara, and his J.D. from Catholic University of America. Mr. Desmond served as a law clerk for a Federal judge in Los Angeles and then, as I mentioned earlier, went on to serve as a trial attorney with the Attorney General's honor program at the U.S. Department of Justice.

Following this, Mr. Desmond worked at a law firm in Washington, DC, where he soon became partner. In 2005, Mr. Desmond returned to government service and served as Tax Legislative Counsel at the Treasury Department.

He was a Senior Legal Advisor on several domestic tax issues and worked with the IRS Commissioner and the IRS Chief Counsel to implement a broad range of tax policy. Mr. Desmond's previous work in government service as well as his continued work representing individual businesses in the tax space will serve him well in his new position, should he be confirmed.

So, Mr. Muzinich, go ahead.

**STATEMENT OF JUSTIN G. MUZINICH, NOMINATED TO BE DEPUTY SECRETARY, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. MUZINICH. Chairman Grassley, Ranking Member Wyden, and distinguished committee members, I am honored to appear before you today as the nominee to be Deputy Secretary of the Treasury. I am grateful to Secretary Mnuchin for his confidence and support in recommending me for this position.

I would like to take a moment to introduce my wife Eloise who, on top of being a talented physician, is a wonderful mother to our two children.

Senator WYDEN. Where is your spouse?

Oh, good morning. I could not see you.

Mr. MUZINICH. I would also like to acknowledge my parents, my sister Lauren, and my brother Adrian. Their love and support have made all the difference in my life.

My own family fled communism for the liberty of this country, and my wife's family has a proud history of military service, including a grandfather who served as a General in the Air Force. So I sit before you today with a profound appreciation for the freedoms this country stands for and the sacrifice that has gone into protecting them.

It has been a privilege to meet with many of you and your staffs over the past several months as a nominee, and over the past year and a half in my role as Counselor to the Secretary. I pledge that, if confirmed, I will be committed to dialogue and engagement with you, and I look forward to accomplishing more together.

The Treasury Department is tasked with oversight of some of the most critical issues facing our country and the world. From safeguarding our financial system and implementing sanctions to driv-

ing economic growth and opportunity, administering the tax system, printing the Nation's currency, and managing the balance sheet of the U.S. Government—the role of the Department is vast.

None of this work would be possible without Treasury's tremendously dedicated career staff. During my time at the Department, I have developed a deep respect for their expertise and commitment to moving the country forward—putting in long hours, making sacrifices, and seeking no recognition. They are the pillars of the building, and it is a privilege to serve side by side with them.

If confirmed, I will assist Secretary Mnuchin in carrying out the Department's mission by bringing to bear my perspectives from working in finance and teaching, as well as a first-hand knowledge I have gained over the past year and a half serving as Counselor to the Secretary.

My experience at Treasury has affirmed my long-held belief in the importance of public service, of actively participating in our great democratic debate, and giving back to the country. If confirmed, I will strive to live up to all that Treasury and this great country stand for.

I look forward to your questions.

Senator GRASSLEY. Thank you.

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

Senator GRASSLEY. Now, Mr. Desmond.

**STATEMENT OF MICHAEL J. DESMOND, NOMINATED TO BE CHIEF COUNSEL, INTERNAL REVENUE SERVICE, AND ASSISTANT GENERAL COUNSEL, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. DESMOND. Good morning, Senator Grassley, Ranking Member Wyden, and members of the committee. It is an honor for me to appear before you as the President's nominee to be Chief Counsel for the Internal Revenue Service.

I would like to take a moment to introduce my wife, Kristen Desmond, and my parents, Walter and Ann Desmond, who are with me here today. Kristen has given me her unwavering support through more than 20 years of marriage, and without my parents' life-long commitment to public service and education, I would not be appearing before you here today.

I have spent over 2 decades in positions involving tax enforcement, policy, and administration and working in private practice representing a broad range of taxpayers in disputes pending before the Internal Revenue Service and in litigation. In my first job as a tax lawyer at the Tax Division of the U.S. Department of Justice, I saw first-hand the challenges faced by taxpayers and the Internal Revenue Service alike when complexity and uncertainty in the law, combined with breakdowns in the audit and administrative appeals process, lead to time-consuming and expensive litigation.

That early experience helped shape my view of tax administration, recognizing that while litigation is sometimes inevitable, resolving disputes early in the process and taking steps to avoid those disputes in the first place should be of paramount importance.

As Tax Legislative Counsel at the U.S. Department of the Treasury, I worked with a group of lawyers and accountants responsible for guidance on all aspects of the domestic tax law. I also worked closely with the staff of this and other congressional committees in formulating and implementing tax legislation, an important exercise that, if confirmed, I would bring to bear at the Office of Chief Counsel.

Although the Tax Legislative Counsel position focuses on policy, my prior background in tax practice and procedure gave me the unique opportunity in that job to also work with the IRS on matters relating to tax administration. As one example, I served as the point person at the Treasury Department for implementing the disaster relief and recovery provisions that Congress enacted as part of the Gulf Opportunity Zone Act of 2005.

My current work focuses on representing individuals and small and mid-sized businesses in resolving tax disputes. My clients include sole proprietors with discrete reporting problems, individuals with complex domestic and cross-border compliance issues, and larger businesses that are under regular scrutiny from the IRS.

I balance this work with active representation of pro bono clients and leadership roles in the Section of Taxation of the American Bar Association and the American College of Tax Counsel.

My experience working in government and with clients of all sizes has shown me that complexity and uncertainty in the tax law create challenges for even the smallest taxpayers that can be as difficult to resolve as those faced by the largest businesses. Regardless of their size or level of sophistication, I firmly believe that for all taxpayers, the issuance of timely and accurate guidance is the best way to address those challenges, avoid disputes, and foster compliance with the tax law.

The Office of Chief Counsel plays a central role in that effort, and, if confirmed, I look forward to doing my part to advance it.

I am grateful for the opportunity to appear before you here this morning and look forward to answering your questions.

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

Senator GRASSLEY. First, the obligatory questions.

Is there anything that either of 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. MUZINICH. No.

Mr. DESMOND. No, Senator.

Senator GRASSLEY. Okay.

Do either of 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. MUZINICH. No, Senator.

Mr. DESMOND. No.

Senator GRASSLEY. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Mr. MUZINICH. I do.

Mr. DESMOND. Yes.

Senator GRASSLEY. Okay.

Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. MUZINICH. I do.

Mr. DESMOND. Yes, I do.

Senator GRASSLEY. On that last point, I know you are very sincere in your answer to the question. But I would like to suggest to you—having worked with dozens and dozens, or maybe hundreds and hundreds of people who have sat there and said the same thing and then not answered letters fully and sometimes not answered at all—that maybe your answer should have been “maybe.”

[Laughter.]

Senator Portman?

Senator PORTMAN. Senator Grassley, thank you. Thank you for your indulgence, my friend. I appreciate it. I will be brief. I have another markup right now, a markup of my legislation I need to get to.

First of all, both of you, thank you for your service. It is good to have people coming into these jobs who have the experience you have.

Mr. Muzinich, in particular as Counselor, you went through tax reform. You saw what our attempt was here in Congress.

My first question is, of course, about that. You have a lot of issues, but swift implementation and proper implementation of this historic tax law change is critical. We have already seen a lot of positive developments.

CBO has just, as you know, said we are going to grow this year at 3.3 percent instead of 2 percent since the tax bill passed. Non-supervisory wages are up 2.8 percent in the last year. That is the most in 9 years, which I am glad to see. Seventy-five percent of businesses in Ohio say they are hiring and they are optimistic this quarter. So it is making a difference. I have talked to dozens of small businesses back home who believe that.

But there is some uncertainty about some of the delay we have had on some of the implementation, particularly on the international side. So can you commit today that you will work with us in a way that is timely to get some of these regulations out to fully implement this tax law?

Mr. MUZINICH. Absolutely, Senator.

Senator PORTMAN. The second question is also for you. It has to do with IRS reform.

Senator Cardin and I are going to be at other hearings. I think he had to leave to get on to one of these hearings as well.

But I appreciate the fact that Senator Wyden and Senator Hatch have allowed us and encouraged us to go forward on a hearing today on tax administration. But the Deputy Secretary typically plays a huge role at the IRS, specifically with Oversight Board membership, and is involved with day-to-day administration at the IRS.

Will you commit today that you will try to make that Oversight Board more effective, and that you will indeed roll up your sleeves and get involved with day-to-day IRS administration issues?

Mr. MUZINICH. Absolutely. I look forward to it.

Senator PORTMAN. Thank you.  
I look forward to working with both of you.  
Thank you, Mr. Chairman.

Senator GRASSLEY. Senator Wyden?

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Muzinich, let us start with a couple of “yes” or “no” questions. Do you believe that the Treasury Department has a role in preventing foreign actors from interfering in our elections?

Mr. MUZINICH. Senator, I believe we do not want foreign actors interfering in our relations.

Senator WYDEN. So that is a “yes”? The Treasury Department has a role. Pretty simply question.

Mr. MUZINICH. Senator, I would have to look at Treasury’s specific statutory authorities. But I certainly believe we do not want foreign actors in our elections.

Senator WYDEN. The answer is “yes.”

Last Monday, hours after a Russian national, Ms. Butina, was indicted for using a gun rights organization as a conduit to undermine our democracy, the Treasury Department announced that it would no longer require large, dark money political donor groups to tell the IRS where they get their money.

“Yes” or “no,” do you believe last Monday’s action is going to help the Treasury Department combat foreign influence in our elections?

Mr. MUZINICH. Senator, I believe the action you are referring to was a tax administration action. Unfortunately, I believe it has become very politicized over the last few weeks, but the intent was to further efficient tax administration.

Senator WYDEN. So is it going to help us combat foreign influence in our elections, “yes” or “no”?

Mr. MUZINICH. Senator, the point of the action was to further efficient tax administration.

Senator WYDEN. Well, that just is not right.

What this action has done is essentially blindfold intelligence officials and law enforcement folks who want to combat foreign election interference. And without this information—as far as I can tell—the IRS would have to randomly go out and try to figure out who to audit.

And my view is, what has really changed here is the IRS is not going to get information about big donors. And that is going to make it harder than it already is to go after fraud and foreign influence.

So one last question: how is it not in the public interest for both the IRS and the American people to have these large donations disclosed?

Mr. MUZINICH. Again, Senator, the action taken was to further efficient tax administration. It has become very politicized. It was an action also recommended by the IRS Commissioner under Pre-  
sident Obama.

He testified about it. So it has become very partisan, and that is unfortunate. But it was something which the Obama IRS recommended as well.

I can walk through why I think it makes sense if that is helpful. But it really was meant to further efficient tax administration.

Senator WYDEN. I have not seen anything that the American people consider partisan about disclosure. And I have asked you three simple questions, and it sure looks like you are going to fit in really well down there with what we have seen over the last year and a half.

So I am going to move on. But I would sure like to see if we could actually make some progress that would resemble being sensitive to the public interest.

Now I mentioned Ms. Butina and the shell companies. When Secretary Mnuchin sat where you are a year and a half ago, he said he would tackle the issue of anonymous shell companies. Sixteen months later, he has yet to come to me or to the committee with any kind of concrete proposal to address the problem.

So when will we hear from the Treasury Department on how the abuses of shell companies are going to be stopped? Now you could, for example, if you wanted to be responsive this morning, say, well, bipartisan bill in the Senate, Senator Rubio, Senator Wyden, bipartisan bill in the House, two senior members, what I would like to do is tell the Finance Committee on a bipartisan basis we are going to support those bills and make sure that the beneficial owners of the shell companies are known at the outset.

So let me give you another chance to be responsive, rather than just giving us some answer about how everything you are doing is designed to promote efficiency.

Mr. MUZINICH. Senator, thanks. It is a very important question, a very important issue.

As the Secretary recently testified, it is one we are committed to. We do think there are significant law enforcement benefits to solving beneficial ownership.

We have not commented publicly on specific bills, but it is something we are committed to working with you very, very closely on and do want to solve.

Senator WYDEN. If you compare what you just said to what Secretary Mnuchin said a year and a half ago, it is almost identical. And what you have said, both with respect to protecting the American people from dark money and passing on an opportunity to come out this morning for actual action on shell companies, looks to me like more of the same that we have seen over the last year and a half.

I am going to close by way of saying I noted Senator Grassley talking about all of the times that you were up on the Hill talking about tax reform and working with legislatures. My colleagues and I were not a part of that. And I think that is the heart of the problem.

Thank you, Senator Grassley.

And I see we have the return of our chairman, Senator Hatch. The CHAIRMAN. Thank you.

Senator GRASSLEY. Mr. Muzinich, as you just heard from the other side of this dais, making hay out of this 501(c)(3) nonprofits reporting or not reporting donor names and addresses—is it not true that this decision had also been under consideration during the Obama administration?

Mr. MUZINICH. Yes, absolutely.

Senator GRASSLEY. Was this decision not based on the determination that this information was unnecessary for tax administration purposes and imposed unnecessary costs on both the IRS and the taxpayers?

Mr. MUZINICH. Yes, that is right.

Senator GRASSLEY. Is it also not true that requiring these organizations to provide the IRS with this information needlessly put private taxpayer information at risk, resulting in at least 14 occasions since 2010 that this information was improperly disclosed to the public?

Mr. MUZINICH. That is right, Senator.

Senator GRASSLEY. Okay.

And then also for you: President Trump has rightly made economic growth and job creation a focal point of domestic policy. Tax reform was obviously a big part of that agenda, and its positive effects are being felt, as we see in statistics coming out of the economy.

As Deputy Treasury Secretary, you will have a seat at the table on many of the important economic policy decisions, including tax, trade, domestic and international finance, and addressing our growing national debt. What policy area or areas do you think deserve the most attention by Congress and the administration as we seek to build upon the economic success of the tax cuts?

Mr. MUZINICH. Thanks for the question, Senator.

We will have a number of priorities going into next year and for the remainder of this year. Tax implementation is one of them. We would love to work closely with you on that, and we are coordinating. Certainly housing reform is another, and regulatory reform is another.

Senator GRASSLEY. Okay.

For decades, tax regulations generally skipped the review process other agencies had to follow in submitting significant regulations to the Office of Information and Regulatory Affairs for a cost-benefit analysis. However, this changed in April with a release of a memorandum of agreement between Treasury and OMB that puts in place that review process for tax regulations.

Do you see this additional layer of review by OIRA for significant tax regulations as a positive or negative? And please explain your answer.

Mr. MUZINICH. Sure, Senator.

We think the process is working. It is a matter of balancing speed with oversight of the regulatory process, and we feel like we have struck the right balance.

Senator GRASSLEY. Mr. Desmond, I did not direct it to you, but I would like to have your comment.

Mr. DESMOND. Thank you, Senator.

I am familiar with the memorandum of understanding from reading about reports in the past few months. Certainly from my position as Tax Legislative Counsel when I was at the Treasury Department, I saw some problems with the regulatory review process.

I do know from that experience that OMB and OIRA were involved. And I think that having them involved now in the memorandum of understanding certainly should not be an impediment to getting timely guidance out.

I do think there is a lot of work that can be done to expedite the guidance process. And that starts from square one in the Office of Chief Counsel, where most guidance originates.

Senator GRASSLEY. Let me ask you, Mr. Desmond, something that you know I have played a leadership role in in getting the IRS whistleblower program as a means of addressing tax evasion. Over the years, I have had some concerns with the Chief Counsel's Office taking an overly narrow interpretation of the statute to the detriment of whistleblowers and the program generally. When there is detriment to whistleblowers, I think it means that we are not collecting all of the taxes we should.

What, if any, experience do you have with the IRS whistleblower law or related laws such as the False Claims Act?

Mr. DESMOND. Thank you, Senator.

I did have the privilege when I was at Treasury of working with your staff on changes to the whistleblower statute that this committee and this Congress passed back a number of years ago.

Since that time, I have also represented several whistleblowers in private practice. And I have seen the benefits that can be achieved by having information come in from whistleblowers, and I have also seen the challenge that they face in getting that information to the IRS, making sure the IRS is effectively utilizing that information and collecting more tax, which I think is the goal of the provisions and your interest in that statute and changes in the statute.

Senator GRASSLEY. My time is up, but let me give you one bit of advice on that. What I have seen as one of the most frustrating parts of the whistleblower program is the IRS not keeping the whistleblowers actively up to date on the status of their whistleblowing and what is going through the IRS.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you.

Senator Casey?

Senator CASEY. Thanks, Mr. Chairman.

Mr. Muzinich and Mr. Desmond, we are grateful you are here, and grateful for your willingness to serve. And I know that you both have your families here. We are appreciative of that.

I want to go back to the line of questioning that Senator Wyden was pursuing with regard to this change which alters a policy that, prior to the change, required organizations to report to the IRS the identity of any donor who contributed more than \$5,000.

I think if you are going to eliminate that disclosure requirement, it should be based upon a considered determination that such a change is in the public interest. I do not know how having less transparency, less sunlight, benefits the public. To use the old expression: sunlight is the best disinfectant, is among the best ways to prevent corruption.

So, Mr. Muzinich, I will start with how the determination was made. And I would ask you this because you were a Counselor, so I assume you are familiar—and as I know you answered the earlier question, you seemed to be familiar with why this decision was made.



The first question is: did Treasury consult with the Financial Crimes Enforcement Network, sometimes known as FinCEN, prior to making this decision?

Mr. MUZINICH. Senator, thanks for the question.

Just for the record, I was not a decision-maker on this. I have familiarized myself with the issue because I knew it would be of interest to the committee. So I am happy to talk about the policy rationale behind it, but cannot speak precisely to the decision-making process.

Senator CASEY. So you do not know if anyone in Treasury consulted with the Financial Crimes Enforcement Network prior to the decision?

Mr. MUZINICH. That is right. I do not know.

Senator CASEY. Number two, did Treasury consult with the IRS's Criminal Investigation Division prior to making this decision?

Mr. MUZINICH. Again, I just cannot speak to the decision-making process.

Senator CASEY. Well, I hope we will get some clarity on this, because I think if you are going to be concerned, as we all are, people in both parties, about dark money making its way into our system, corrupting our system, that that should be part of the inquiry.

So I am hoping that we can get information about any consultation. If there was none, then that is troubling, obviously. If there was consultation, we would like to know what was the determination made by both FinCEN and the IRS's Criminal Investigation Division.

I point by way of reference to one expert, among many I am sure who had this kind of a front row seat, Marv Friedlander, former IRS official with 40 years' experience at the IRS, including its tax-exempt organizations work. He talked about corruption, that he personally saw corruption up close.

And then he said this, and it is interesting the way he phrased this. He said, "The ability to begin by looking at large donations, whether tax-deductible or not, was a useful tool in pursuing the possibility of corruption." A useful tool—I am really at a loss to understand how changing that rule somehow advanced the policy on having more sunlight on dark money.

I think people in both parties would agree that we have far too much dark, unaccountable money in our system already. So we just want to make sure that not only is there accountability and sunlight, we want to make sure that foreign agents are not part of that.

I think there is a lot of evidence on the record that there has been far too much foreign involvement, not just in the election where the Russian Federation, at the direction of Vladimir Putin, was interfering in our election, but it goes below that level as well.

I guess the other question, Mr. Muzinich, because you are a Counselor at the Treasury Department, is, why would you not be involved or consulted in this determination?

Mr. MUZINICH. Senator, I have been focused really on tax reform and tax implementation. This was a tax administration issue, not reform or implementation.

After I was nominated for this role, just out of deference to this process and this committee, I just remained working only on what

I was doing before, which was tax reform and tax implementation. I did not broaden my portfolio, just out of deference to the process.

Senator CASEY. So a complete examination of the record would reveal that there is—on this determination, with regard to your involvement, if any, we will not find any memos, any emails, any evidence of conversations where you were consulted on this?

Mr. MUZINICH. That is broadly right.

We do meet with the Secretary about once a day on tax reform. The issue was raised in a meeting, but I was not driving the process or driving that—

Senator CASEY. I understand that, but you said “broadly right.” What do you—

Mr. MUZINICH. It would have been discussed in meetings where I was present, but—

Senator CASEY. Okay.

Mr. MUZINICH [continuing]. Other people were in the lead.

Senator CASEY. Well, that is significant.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Toomey?

Senator TOOMEY. Thank you, Mr. Chairman.

While we are on this topic, Mr. Muzinich, just by way of clarification, first of all this rule change that we have been discussing—and thanks for being here and for your willingness to serve.

Is it true that this applied to certain tax-exempt organizations and that what we are talking about is not requiring that these organizations submit names and addresses of taxpayers who made donations, right? That is what we are talking about here.

Mr. MUZINICH. Exactly.

Senator TOOMEY. Right.

So these—and this category of organizations to which some people made donations, is it not true that those contributions are not tax-deductible?

Mr. MUZINICH. That is right.

Senator TOOMEY. Right.

So since the mission of the IRS is to determine what people owe in taxes, and since these contributions have nothing to do with what people owe in taxes, it is really not the business of the IRS to be trying to police who contributed what to these organizations in a series of contributions that have no tax consequences. Is that not fair to say?

Mr. MUZINICH. That is right, Senator.

Senator TOOMEY. Right.

Now it might be entirely appropriate for other enforcement organizations within this vast Federal Government to look into if there is a suspicious series of transactions, but I see no reason why that is the role of the IRS.

Furthermore, is it not the case that if the IRS for some reason felt the need to audit one of these organizations, or the individuals contributing, that the information has to be retained and the IRS would discover the information upon auditing it. Is that true?

Mr. MUZINICH. That is true, Senator.

Senator TOOMEY. That is what I thought. Thank you.

Let me also thank you for your work on tax reform, because the evidence is just abundantly obvious. It has been enormously suc-

cessful—tremendous economic growth, the extraordinary situation in which there are more job openings in America than there are people looking for work in America. I mean, it is just terrific.

My colleague must have misspoken. I thought I heard him say that wages were somehow declining. The fact is, over the last 6 months of this year, the first year in which this tax reform was in effect, wages are up. The average wages are up 2.8 percent. Inflation is up by less than that. That means by definition there are gains. And that is an average of all wages when you take into account the fact that new entrants into the workforce typically come in at below-average wages, and new entrants have been coming in. That tells you that people who are continuously employed have been experiencing even higher wage gains.

So I am very pleased we were able to get this done. And I thank you for your role in helping with it.

There are a couple of outstanding issues that I hope we are going to be able to address. One of them I know you are familiar with. It is the qualified improvement property.

There is a technical correction that I think is necessary here. And as a result of, frankly, a drafting error, there is the completely unintended consequence of stretching out the cost recovery period for improvements inside real estate. This is particularly problematic for restaurants and retailers who typically make substantial renovations when they take on a space.

So I have introduced to the appropriations bill an amendment that would actually correct this. I trust my colleagues on both sides of the aisle, however you felt about the tax reform, would not want to visit this honest mistake upon a very important sector of our economy. I do not know what the outcome of this amendment vote will be, but I also think that there is some ambiguity that might be something the Treasury can resolve.

So my question is, if you are confirmed, will you work with us to try to address these and other technical issues to ensure that, where there is ambiguity, the congressional intent is achieved through guidance and rulemaking?

Mr. MUZINICH. I will.

Senator TOOMEY. Thank you.

I also want to bring up something we did not touch in our tax reform, and that is the idea of indexing capital gains. As you know, as a matter of policy we define a gain on an asset that a taxpayer holds as the difference between the sale price and the purchase price. And then we force the person to pay a tax on that difference, when in fact, in the vast majority of cases, a portion of that difference, if it is a positive number, results from inflation. So the investor did not gain anything from the component of the price rise that was just a reflection of inflation. And yet we tax the person on that, despite the fact.

So in fact, it routinely happens that people have a nominal gain that is nothing more, or in fact, less than even inflation. So they actually lost on their investment. And we tax them anyway.

It is my view that the Treasury has the authority to redefine cost to include the real cost adjusted for inflation. And I would just ask you to work with us to see if we could not implement that at Treasury, where I think the authority lies.

Mr. MUZINICH. Yes, Senator, I would be very happy to work with you on it.

Senator TOOMEY. Great. Thank you very much.

Thanks, Mr. Chairman.

The CHAIRMAN. Senator Thune is next.

Senator THUNE. Thank you, Mr. Chairman.

Thank you to both of you for your willingness to serve, and for being here today along with your families. And we thank them for their commitment to public service as well. We know that they all contribute to the work that you all do.

As a follow-up to Senator Toomey's questions, there were a couple of clear drafting errors on a couple of issues that are pretty important in the tax bill, which I hope we can get fixed. I also hope we can have bipartisan cooperation to fix both the qualified improvement property issue and a net operating loss issue, both of which are just straightforward drafting errors, and each of which has significant impacts that I hope we can get addressed.

It was clearly congressional intent, as Senator Toomey pointed out, with respect to qualified improvement property, that businesses be able to take advantage of the shorter depreciation period. And whether the solution he has proposed as part of the appropriations process gets adopted or not, I hope that we can get the long-term fix in place as well.

I also just want to say that the new tax law—like any major change in the tax code, requires guidance to implement the reforms across individual and family situations as well as the broad range of business types, industries, and circumstances. And each of you will have a role in that process.

The tax code is unique in that Congress has provided broad regulatory authority in section 7805, which has existed for decades. A significant reason for this grant of authority is that the statutory rules in the tax area cannot always envision every particular circumstance in which they will need to be applied.

And I can tell you, having just worked on the Tax Cuts and Jobs Act, that we specifically envisioned that the Treasury Department and the IRS will use that broad authority, as well as specific authority, where we wanted to stress particular issues to implement the new statutory rules for all taxpayers.

So the question is, do you agree that this authority, along with specific authority provided to stress particular issues, should be used broadly to implement the tax law based on congressional intent in the statute and in the legislative history?

Mr. Muzinich, or whomever would like to take this first. Mr. Desmond?

Mr. DESMOND. Thank you, Senator.

I certainly am familiar with provisions in section 7805. When I was at Treasury, that was the statutory authority that we relied upon in many instances for issuing regulations.

There are certain instances where the scope of the statutory authority is unclear. But I think it is certainly a tool that can be applied very broadly, and in my experience, has been applied broadly to interpret congressional intent and implement that through the regulatory process.

Senator THUNE. Mr. Muzinich?

Mr. MUZINICH. I agree with that.

Certainly, we want to work to interpret the law in a manner consistent with the law, and in a manner consistent with congressional intent. And the Department and the Office of Tax Policies are working very, very hard to get regulations out.

Senator THUNE. Good.

I know that, and I hope that they will continue to work aggressively to make sure that that guidance does get out. There are a lot of taxpayers across the country, businesses and individuals, who are very interested in that guidance.

The Chief Counsel's Office makes legal determinations and provides legal advice across the agency in its various divisions, including the Office of Appeals. So the question is, from your experience as a practitioner, do you think that the relationship between Chief Counsel and Appeals is working appropriately and effectively, and does it affect the ability of the Office of Appeals to be an independent arbiter between taxpayers and the IRS auditors?

Mr. DESMOND. Thank you, Senator.

I think the process can work more efficiently. All processes can work more efficiently in terms of getting Chief Counsel to advise Appeals and help move cases through Appeals and get them settled.

There are issues in the relationship that people have noted over the years about the ex parte prohibition and ensuring the Chief Counsel is not inappropriately being used as a conduit for communication between examined appeals. That is an issue I have written about, that I am very aware of. I have certainly seen issues come up in representing my clients with ex parte communications.

So I think that the system does work. I think that Appeals, in particular, and that ex parte rule—the most important part of that is the appearance of inappropriate influence from exam on settlement offices at Appeals. So it is very important, and I think there are some improvements that can always be made, and I look forward to working with the Office on that, the Office of Appeals.

Senator THUNE. Okay. All right.

Mr. Chairman, my time has expired. Thank you.

The CHAIRMAN. Senator Whitehouse is next.

Senator WHITEHOUSE. Thank you very much, Mr. Chairman.

Mr. Desmond, it is a crime to make a material false statement to the government under 18 U.S.C. 1001. The Department of Justice has the practice of not prosecuting those cases unless there has been a referral from the IRS where it relates to materially false statements in tax filings.

That gives the IRS a chokehold on those prosecutions. If you are confirmed, will you pledge to me that you will let me know what the number of those referrals has been in recent years and explain any policy related to those referrals?

Mr. DESMOND. Senator, yes.

I am not familiar with the numbers or what—

Senator WHITEHOUSE. I am not asking you that now. I am asking you if you will get me the numbers once you are in, and if you will explain the policy behind—I suspect there are practically no referrals. And I am interested in the actual number and what the policy is that justifies whatever that number is.

Mr. DESMOND. Sure, Senator.

I think that information is out there. I have seen that. And certainly, if I am confirmed and I have access to that—the only hesitation I have is if there is any prohibition on disclosure of that. But other than that—

Senator WHITEHOUSE. I am not asking for the referrals themselves, just the number.

Mr. DESMOND. Understood.

Senator WHITEHOUSE. Mr. Muzinich, shell corporations—in what context should we be looking at the proliferation of anonymous shell corporations? Is there a law enforcement context with respect to shell corporations that we should attend to?

Mr. MUZINICH. Yes, Senator.

I mentioned earlier—perhaps before you arrived—that I do think it would be helpful for law enforcement purposes to fix the beneficial ownership issue you are referring to.

Senator WHITEHOUSE. And it is a serious problem in law enforcement.

Mr. MUZINICH. Senator, I have not seen law enforcement data myself, so I cannot speak to how serious it is.

Senator WHITEHOUSE. How about national security? Are there any national security ramifications to anonymous shell corporations operating in the United States?

Mr. MUZINICH. Again, Senator, I have not seen any national security data on that, so I cannot speak to it.

Senator WHITEHOUSE. Wow. Okay.

How about dark money? The ability of unknown entities to plow money into our elections? Is there any law enforcement or national security concern that you would see to that going on?

Mr. MUZINICH. Again, Senator, I just have not seen any national security data. So I cannot speak to that.

Senator WHITEHOUSE. Well, just from a logical point of view as a human being, if we do not know the source of large amounts of money flowing into elections, what prevents that from being a foreign source, for instance?

Mr. MUZINICH. Senator, I certainly agree with you that we do not want foreign money in elections.

Senator WHITEHOUSE. And the Treasury has a role in facilitating the flow of dark money or trying to put some light onto that flow of dark money, does it not?

Mr. MUZINICH. Senator, that question was asked earlier. I am not familiar with Treasury statutory authorities on that point.

Senator WHITEHOUSE. Wow. Okay.

So, last question: the IRS publishes information on tax returns. And it publishes these days the top .001 percent. It aggregates them. It is 1,400 returns for individuals.

On average, those are individuals who make \$152 million dollars per year. The IRS also reports that, on average that group pays a 24-percent overall tax rate, which is about what a registered nurse pays.

We seem to have a very serious problem of the highest-income earners paying considerably lower tax rates than many people who earn a tenth or even a hundredth of their income, which does not seem fair or efficient.

My concern is that this data was before the big tax bill which many of us view as a huge handout to those very high-income shareholders. And what I would ask both of you to pledge is that you will not stop the reporting of this aggregate tax return income if it should show that this tax bill has been a huge windfall for those .001-percent high-income earners.

Will we continue to get those reports even if it shows the windfall?

Mr. MUZINICH. Senator, I do not know of any plans to stop reporting that data.

Senator WHITEHOUSE. Will you pledge to keep doing it? Having no plans to stop it allows you to stop it tomorrow.

Mr. MUZINICH. Senator, again, I would have to spend some time on the issue, but it seems reasonable to me.

Senator WHITEHOUSE. Okay. Thanks.

Thanks, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Cassidy?

Senator CASSIDY. Hi, gentlemen.

Either of you can answer this, because it seems like both of you have experience that may speak to it, but perhaps not.

I am very interested in trade-based money laundering and the way by which transnational criminal organizations or terrorist organizations such as Hezbollah move dollars outside of the U.S. to wherever they wish to take them.

Can you speak to the information sharing between the IRS and the Treasury Financial Crimes Enforcement Network, otherwise known as FinCEN, for identifying these illicit activities?

Mr. DESMOND. Senator, I cannot speak to that specifically. I am aware that there are both treaty provisions and information sharing agreements the United States has with other countries. I, in practice, have not had experience with those. But I do know those are out there.

Senator CASSIDY. In your previous experience in a previous administration, did you have any kind of involvement with this?

Mr. DESMOND. I did not, Senator. I was on the domestic side when I was at Treasury. There was an Office of International Tax Counsel that may have had experience, but I was on the domestic side at Treasury.

Senator CASSIDY. And you, Mr. Muzinich?

Mr. MUZINICH. Senator, I cannot speak directly to it, but I am happy to follow up.

Senator CASSIDY. Let me ask, because this may be something that, despite that, you could still speak to.

Can you imagine that—and I am not arguing against them, but I am just asking—the tax privacy rules under the IRS code section 6103 prevent Treasury from further enhancing this information sharing?

Mr. DESMOND. My reaction to that question, Senator, is “no.” In the treaty provisions that I am familiar with, the information sharing provisions, those are tax provisions. So sharing information under those provisions would be permissible because it is for tax enforcement purposes. And that would be permissible under the 6103 provisions.

Senator CASSIDY. Mr. Muzinich?

Mr. MUZINICH. Senator, I cannot speak to it.

Senator CASSIDY. And do either of you in your experience—again going along with my concern regarding the trade-based money laundering—do you have any awareness of what steps Treasury is taking to better detect criminal and terrorist organizations and their activities in money laundering?

Mr. DESMOND. I am not familiar with those activities, Senator.

Mr. MUZINICH. I know it is something FinCEN is quite focused on. It has not been in my portfolio, but I know they are quite focused on trade-based money laundering.

Senator CASSIDY. Okay. The next question is on duty drawback.

Mr. Muzinich, the Trade Facilitation and Trade Enforcement Act of 2015 was explicit that regulations be promulgated by February 24, 2018. But U.S. manufacturers still are waiting on guidance on the duty drawback, which is as you know—but for context—the refund of duties, taxes, and fees on imports when those items or like-kind items are exported. The refund process allows U.S. manufacturers to compete on a level playing field with foreign countries—pro-U.S. jobs, pro-manufacturing, pro-export.

I understand Treasury and CBP are continuing to process regulations in this area. But a simple question: if you are confirmed, will you support U.S. manufacturers by fulfilling the intent of the Trade Facilitation and Trade Enforcement Act with respect to duty drawback, which again, was supposed to be released by February 24th? And the absence of release is impacting the transition period.

Mr. MUZINICH. Yes, I can commit to that. The Treasury staff has made me aware it is important to you. And we are working very hard on it.

Senator CASSIDY. Yes.

Thank you both, and thank you for offering your service.

I yield back, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Bennet is going to yield to the ranking member for his next questions.

Senator WYDEN. Thank you very much, Mr. Chairman. I thank my colleague for doing this and for stepping in when I have to go to something else.

First, Mr. Chairman, I would like to put into the record now a news release from the Bureau of Labor Statistics on wage growth. My colleagues on the Republican side have said several times that wages are up. This news release from the Bureau of Labor Statistics says that that is not the case; wages actually went down from June 2017 to June 2018. And the Pay Scale Index reports that wage growth for the second quarter is down.

So I would ask unanimous consent that at least we correct the record.

The CHAIRMAN. Without objection.

[The document appears in the appendix on p. 92.]

Senator WYDEN. Thank you.

Mr. Muzinich, I will tell you I am just stunned that you seem to be unaware of the enormous authority the Department has in terms of dealing with shell companies and national security. I asked that question. Senator Whitehouse asked the question.



These are matters that are in the morning newspaper—talking about Ms. Butina using a shell company. So I am just going to leave that there. And maybe you want to say something else. But to me, when I ask a question that is just a no-brainer, where the Treasury Department has a role in preventing foreign actors from interfering in our elections, and you will not answer what is so obviously a “yes,” that does not demonstrate the kind of progress that I talked to you about.

So let me ask you about Treasury and IRS priorities. Most of our Nation’s businesses are small businesses. The 20-percent tax deduction could impact about 20 million people. The fact is, our small businesses are really in the dark about how these rules are going to apply.

The IRS released a new postcard tax form. And I would like to hear what the discussions were, because this is a tax policy issue. You have said you are the tax policy guy.

Why was so much effort put into this question of the postcard, the new postcard which was supposed to simplify taxes? In fact, it adds six new schedules to the calculation of taxes for many people. Why has the focus been on matters like that new form, rather than the IRS and Treasury getting out guidance to the millions of small businesses that have told me that because the guidance is not out, they cannot even do an estimate of their taxes?

Why was that not put first, the needs of the small businesses that wanted the guidance, rather than all of this flurry of activity on the postcard, which I know was a campaign promise?

Mr. MUZINICH. Sure, Senator. Thanks for the questions.

Just for the record, I am well-aware of Treasury’s authorities in sort of what you call the “shell companies” and am delighted to follow up with you on that.

On taxes—

Senator WYDEN. Well, that indicates we may have made a tiny bit of progress today. You would not take a position on the bipartisan bills to require disclosure of the beneficial ownership—the bill in the House, the bill in the Senate. You would not answer my question or Senator Whitehouse’s question whether you all had a role in preventing foreign actors. But at least we have now got to the point where you will acknowledge that there is FinCEN. So that is, I guess, making some progress.

Tell me now about the decision to go forward with the postcard, rather than getting the small business people the guidance they need on the pass-throughs.

Mr. MUZINICH. Senator, I would respond in two ways. First, we do think the postcard will simplify life for many Americans. A typical family just taking the standard deduction with simple tax filing will benefit from a very straightforward filing process with a postcard.

In terms of time allocation—which is, I think what you are getting at—between the postcard and other priorities, we think they both are important. They are both led by the IRS, and they are led by different groups at the IRS. So working on the postcard is done by a different group than, for instance, 199A guidance, which is I think what you are referring to.

On 199A guidance, we do hope to have that out very soon. And the team is working very hard on it.

Senator WYDEN. I am going to ask one other question, but the reality is, today we have something which is not simpler. In fact, I characterize it as "simply complicated" for many people with the six schedules. But we have not gotten answers for our small businesses. And I think that is a set of misplaced priorities.

One last point that I talked to you about is, we have had essentially zero responsiveness in terms of our letters on the big issues: the question of documents, NRA and Russia, letters to FinCEN about Michael Cohen. The reality has been that, while the nominees come forward and say they are going to cooperate, we never get anything.

So again, in the name of making some progress, what are you going to do to change things, if anything?

Mr. MUZINICH. Thanks, Senator.

I would love to have a good dialogue with you. In terms of correspondence, as I mentioned when we met 2 days ago, that has not been within my portfolio, but I did talk to the team about it after our meeting, emphasized the importance of it. I believe we got one of your letters answered yesterday. So I hope that was helpful.

And all I can give you is my good faith commitment to work with you on it.

Senator WYDEN. One last point: mention was made of the dark money rule at one point. My colleague Senator Casey asked a question about, were you ever aware of this, essentially. And you said you were in the room, but you did not have any involvement in it.

I would like you to state in writing for the record what happened when it was brought up. And I would like you to state specifically whether you and Secretary Mnuchin ever talked about the change in the dark money rule that would make it harder for the IRS to run down fraud.

I would like you to state in writing whether you and Secretary Mnuchin ever talked about it, and if so, when and what the circumstances were.

Okay. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bennet?

Senator BENNET. Thank you. Thank you, Mr. Chairman.

Thank you, gentlemen, for your willingness to serve. It is nice to see you.

Mr. Muzinich, last year, as you know, Secretary Mnuchin predicted that not only would this tax plan pay for itself, but it would pay down our debt.

Next year, we are going to have a trillion-dollar deficit, the largest deficit that we have ever had as a percentage of our GDP outside of war or a recession, since World War II. CBO projects that our debt will be more than 100 percent of GDP in the next 10 years.

Do you still defend the Treasury Department's position that the tax cuts will pay for themselves despite every mainstream analysis predicting they will add massively to our deficit?

Mr. MUZINICH. Senator, I point you to CEA's 40-page analysis on this, sort of explaining why it will pay for itself, and also a letter signed by 130 economists agreeing with that.

Senator BENNET. I am not asking what other economists say. I am asking you——

Mr. MUZINICH. I agree with that.

Senator BENNET. Your position is that the tax cuts will pay for themselves and reduce our deficit? That is your position?

Mr. MUZINICH. Yes.

Senator BENNET. Will you come back here and testify next year if that turns out not to be the case?

Mr. MUZINICH. I am happy to come back and testify.

Senator BENNET. Good. We would like to have you.

As you also know, because you have been at Treasury, it serves as a powerful stabilizing force for our country. And part of that stability is preserved by insulating Treasury from politics, which is central, I think, to the role of the Deputy Secretary.

I would like to ask whether you agree that Treasury's work to combat illicit financial activity, impose sanctions, and conduct national security reviews through the CFIUS process should be free from political interference?

Mr. MUZINICH. Yes, I agree with that.

Senator BENNET. And would you agree that that would be true even if a company or an individual is affiliated with President Trump, his closest associates, or family members?

Mr. MUZINICH. Yes.

Senator BENNET. Do you believe the same is also true for tax administration and enforcement by the IRS?

Mr. MUZINICH. I believe administration should be free from politics, yes.

Senator BENNET. Would you notify this committee, the chairman of the committee, if inappropriate political interference occurs in any of these areas?

Mr. MUZINICH. Senator, in principle yes, but before making a commitment, I just sort of want to make sure I——

Senator BENNET. I appreciate that, and I appreciate the principle.

Will you commit to standing up for the independence of monetary policy in the Federal Reserve from inappropriate meddling by the executive branch? Do you think that is important?

Mr. MUZINICH. I believe Fed independence is important, yes.

Senator BENNET. Thank you.

Mr. Muzinich, do you think that trade wars are easy to win? Do you think they are great and easy to win?

Mr. MUZINICH. Senator, I am not sure what you mean by "easy to win," but I think that through our tariffs we are trying to open markets. And I hope that leads toward free trade.

Senator BENNET. I'm sorry?

Mr. MUZINICH. I hope that leads toward free trade.

Senator BENNET. Do you believe these tariffs are consistent with free trade?

Mr. MUZINICH. I believe the point of the tariffs is to open markets.

Senator BENNET. Eighty percent of the wheat in Colorado is exported. And all of the growth for our dairies, and our farmers, and our ranchers is trade. And when Ambassador Lighthizer was sitting there, he said that our farmers and ranchers had his sym-

pathy because they would be the ones likely to be retaliated against in a trade war.

Now we see the President defying the views of, I think, members of his own party, basically doling out \$12 billion to make up for the disaster that has been caused to our farmers and ranchers as a result of these trade policies.

Do you think these trade policies have helped open markets for our farmers and ranchers?

Mr. MUZINICH. Senator, I think it is an ongoing process.

Senator BENNET. Do you think they have helped open markets for our farmers and ranchers?

Mr. MUZINICH. I was happy to see the EU opening up a bit yesterday.

Senator BENNET. Let us hope that turns out to be true.

Mr. Chairman, I will yield back 13 seconds.

Thank you very much.

The CHAIRMAN. Senator Menendez, you are the last one.

Senator MENENDEZ. Thank you, Mr. Chairman.

To both of you, congratulations on your nominations.

Mr. Muzinich and Mr. Desmond, as taxpayers attempt to navigate their way through the tax code, they need to be able to rely on a consistent and uniform interpretation of the Nation's tax law. They need to know that rulings made yesterday will still apply today and that a small business in Louisiana will be treated the same as one in New Jersey.

Do you both pledge to adhere to longstanding precedents that have been established by the Treasury Department and the IRS?

Mr. DESMOND. Senator, with respect to published guidance, yes. Revenue rulings, regulations, those kinds of things are things that should be followed consistently unless they are changed going forward.

Senator MENENDEZ. Mr. Muzinich?

Mr. MUZINICH. I agree with that.

Senator MENENDEZ. Okay.

Do you both pledge to give taxpayers the same fair treatment regardless of what State they are from?

Mr. DESMOND. Yes, I do.

Mr. MUZINICH. Yes.

Senator MENENDEZ. Good.

So from my perspective, they were both the right answers. So let us apply this agreed-upon principle to an issue currently facing States like New Jersey.

New Jersey recently joined 32 other States and the District of Columbia in offering local tax credits as an incentive for residents to donate to approved nonprofits. Many of the other 32 States ran similar programs for years, which have been both blessed by the IRS and the United States Supreme Court.

Indeed, in 2011 the IRS Chief Counsel released an advisory memo clarifying that State tax credits given in return for charitable contributions do not—I repeat do not—prohibit taxpayers from writing off the full value of their charitable donations. In other words, getting a tax break does not mean you earned more money, and thus you should not have to be taxed more as a result.

The Supreme Court confirmed this interpretation with a 2011 ruling that found that State tax credits given for charitable donations should not be considered a thing of value and instead are, to quote Justice Kennedy, “the government declining to impose a tax.”

This decision confirmed two things: (1) State tax benefits, even dollar-for-dollar credits, do not reduce the value of Federal charitable deductions; and (2) such donations do not constitute a satisfaction of tax liability.

But in plain English, it is simply illogical, impractical, and fundamentally backwards to tax people on the value of a tax break that they receive. But despite 32 other States running similar programs for many years, despite these programs being specifically blessed by the IRS in 2011, and despite the U.S. Supreme Court further confirming this interpretation, the IRS is now threatening New Jersey taxpayers and others with potential consequences for participating.

So can you commit to reversing course and stopping the IRS and Treasury Department from targeting taxpayers in States like New Jersey, and instead pledge to apply the law equally, regardless of what State a taxpayer is from?

Mr. DESMOND. Senator, I am certainly very familiar with the issue, being a resident of California. And I know that there are some authorities that you referenced, case law in particular, and also case-specific guidance that the IRS has issued in the past. Obviously, I was not a part of that.

But I am familiar with that, some of the discussion that has been happening recently. So I do commit to looking into and understanding the issue more carefully. It is a complicated issue involving issues of donative intent. You had referenced the quid pro quo concepts that are also involved.

So I do commit to looking into the issue and ensuring that I understand it.

Senator MENENDEZ. Well, can you point to me anywhere that the law has changed, either through an IRS guidance and memo, or through a Supreme Court decision?

Mr. DESMOND. Sitting here today, Senator, I cannot point to any change in the charitable donation laws in section 170. I think this issue is being driven currently in the States by changes to other provisions in the code dealing with the deductibility of State and local taxes.

Senator MENENDEZ. I challenge you to show me, for example, where in the Trump tax bill that passed into law did it prohibit State tax credit programs for charitable donations, because it is not there. I sit on this committee. I can tell you what is in it and what is not.

So I read the bill, and nothing in it prevents the 32 States that are already doing this from continuing to operate their programs, or additional States from developing new programs on their own.

So here is what my problem is going to be, gentlemen: you either treat my State and States similarly situated the same as the 32 other States, or you take it away from the 32 States, which happen to be very red States. This is called the United States of America, not the red and blue States of America.

So until I have a sense of satisfaction that that is where we are headed, and being treated fairly and not having the IRS weaponized against certain States, I will have a problem with these nominations—not in your competency, but on the question of the substance of how you will approach this.

I have to understand that there is fairness here at the end of the day.

Thank you, Mr. Chairman.

The CHAIRMAN. All right. At the request of Senator Scott, I ask that the following two documents be printed in the record of this hearing: (1) October 2017 Priority Guidance Plan from the Treasury Department that makes reference to the FATCA reporting reforms, and (2) a letter from the South Carolina Treasurer regarding the claim of around \$250 million in U.S. savings bonds belonging to South Carolinians.

[The documents appear in the appendix beginning on p. 73.]

The CHAIRMAN. With that, I would like to thank you all for your attendance today and participation.

And I would like, once again, to thank Mr. Muzinich and Mr. Desmond for their patience and willingness to serve in these important roles.

We here at the committee appreciate the new and large tasks that you are going to have before you, and should you be confirmed, we trust that you will serve your respective agencies well. Now, you are both excellent people and excellent choices as far as I am concerned.

I ask that any member who wishes to submit questions for the record do so by close of business tomorrow, Friday, July 27th.

So with that, we are grateful to you folks for being here, and this hearing is adjourned.

[Whereupon, at 10:55 a.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF MICHAEL J. DESMOND, NOMINATED TO BE CHIEF COUNSEL, INTERNAL REVENUE SERVICE, AND ASSISTANT GENERAL COUNSEL, DEPARTMENT OF THE TREASURY

Good morning, Chairman Hatch, Ranking Member Wyden, and members of the committee. It is an honor for me to appear before you as the President's nominee to be Chief Counsel for the Internal Revenue Service. I would like to take a moment to introduce my wife, Kristen Desmond, and my parents, Walter and Ann Desmond, who are with me here today. Kristen has given me her unwavering support through more than 20 years of marriage, and without my parents' life-long commitment to public service and education, I would not be appearing before you here today.

I have spent over 2 decades in positions involving tax enforcement, policy, and administration and working in private practice representing a broad range of taxpayers in disputes pending before the Internal Revenue Service and in litigation. In my first job as a tax lawyer at the Tax Division of the U.S. Department of Justice, I saw first-hand the challenges faced by taxpayers and the Internal Revenue Service alike when complexity and uncertainty in the law, combined with breakdowns in the audit and administrative appeals process, lead to time-consuming and expensive litigation. That early experience helped shape my view of tax administration, recognizing that while litigation is sometimes inevitable, resolving disputes early in the process and taking steps to avoid those disputes in the first place should be of paramount importance.

As Tax Legislative Counsel at the U.S. Department of the Treasury, I worked with a group of lawyers and accountants responsible for guidance on all aspects of the domestic tax law. I also worked closely with the staff of this and other congressional committees in formulating and implementing tax legislation, an important experience that, if confirmed, I would bring to bear at the Office of Chief Counsel. Although the Tax Legislative Counsel position focuses on policy, my prior background in tax practice and procedure gave me the unique opportunity in that job to also work with the IRS on matters relating to tax administration. As one example, I served as the point person at the Treasury Department for implementing the disaster relief and recovery provisions that Congress enacted as part of the Gulf Opportunity Zone Act of 2005.

My current work focuses on representing individuals and small and mid-sized businesses in resolving tax disputes. My clients include sole proprietors with discrete tax reporting problems, individuals with complex domestic and cross-border compliance issues, and larger businesses that are under regular scrutiny from the IRS. I balance this work with active representation of pro bono clients and leadership roles in the Section of Taxation of the American Bar Association and the American College of Tax Counsel.

My experience working in government and with clients of all sizes has shown me that complexity and uncertainty in the tax law create challenges for even the smallest taxpayers that can be as difficult to resolve as those faced by the largest businesses.

Regardless their size, I firmly believe that for all taxpayers, the issuance of timely and accurate guidance is the best way to address those challenges, avoid disputes, and foster compliance with the tax law. The Office of Chief Counsel plays a central role in that effort, and, if confirmed, I look forward to doing my part to advance it.

I am grateful for the opportunity to appear before you here this morning and look forward to your questions.

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April 5, 2018

The Honorable Senator Orrin Hatch  
Dirksen Senate Office Building, Suite 219  
Washington, DC 20510

The Honorable Senator Ron Wyden  
Dirksen Senate Office Building, Suite 219  
Washington, DC 20510

Dear Senator Hatch and Senator Wyden:

I served as Chief Counsel for the Internal Revenue Service a number of years ago, and I have been in touch with nine other former Chief Counsels who would like their praise of the selection of Mike Desmond to serve in that capacity to be known and who would like his confirmation to be undertaken as soon as possible. The attached letter reflects those views. If there are any questions, please have them directed to me.

Sincerely,

N. Jerold Cohen

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April 5, 2018

The Honorable Senator Orrin Hatch  
Dirksen Senate Office Building, Suite 219  
Washington, DC 20510

The Honorable Senator Ron Wyden  
Dirksen Senate Office Building, Suite 219  
Washington, DC 20510

Dear Senator Hatch and Senator Wyden:

The undersigned are all former Chief Counsels or Acting Chief Counsels of the Internal Revenue Service, and we are writing to both applaud the nomination of Michael Desmond to be Chief Counsel and recommend that he be confirmed as quickly as possible.

Mike is an excellent tax lawyer with the skills, understanding of the tax laws and tax practice, and background to be a superb Chief Counsel. He has been very active in the American Bar Association's Tax Section, has spoken throughout the country on numerous occasions, and has served as a trial lawyer with the Department of Justice's Tax Division and as the Treasury Department's Tax Legislative Counsel. The legal tax community was thrilled with his nomination and now hopes that he will assume the position shortly.

Having served as Chief Counsel in the past, and being well aware of Mike's qualifications, we think his assuming the Chief Counsel position would be a great contribution to the Internal Revenue Service and the country at this critical time.

Very truly yours,

B. John Williams  
William J. Wilkins  
Abraham N.M. Shashy, Jr.  
Clarissa Potter  
Emily A. Parker

William F. Nelson  
Fred T. Goldberg  
Lawrence B. Gibbs  
Donald L. Korb  
N. Jerold Cohen



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June 8, 2018

The Honorable Orrin Hatch  
 Chairman  
 U.S. Senate  
 Committee on Finance  
 219 Dirksen Senate Office Building  
 Washington, DC 20510-6200

The Honorable Ronald Wyden  
 Ranking Member  
 U.S. Senate  
 Committee on Finance  
 219 Dirksen Senate Office Building  
 Washington, DC 20510-6200

Re: Nomination of Michael Desmond to serve as Chief Counsel, Internal Revenue Service

Dear Chairman Hatch and Ranking Member Wyden:

As president of Tax Executives Institute, I write to convey TEI's unqualified support for the confirmation of Michael Desmond to serve as IRS Chief Counsel. Mike possesses the technical depth, policy experience, and interpersonal skills necessary to effectively lead the Office of Chief Counsel. TEI urges his swift confirmation.

Over a 20-year career, Mike has developed sophisticated tax, policy, and litigation experience both inside and outside the Federal Government. His service as a trial attorney in the Tax Division of the Department of Justice, Tax Legislative Counsel in the Department of the Treasury, and partner in private practice has exposed him to the broad range of technical and administrative challenges that confront taxpayers, policymakers, and regulators. Notably, Mike recognizes the importance of listening to stakeholders, understanding diverse and often divergent points of view, and working faithfully to achieve reasonable and realistic solutions.

TEI is a global membership organization founded in 1944 to support the educational, networking, and advocacy needs of the in-house tax professional community worldwide. Our membership is comprised of over 7,000 individual members who work for over 3,200 companies, and is dedicated to the development and effective implementation of sound tax policy, to promoting the uniform and equitable enforcement of the tax laws, and to reducing the costs and burdens of administration and compliance on both taxpayers and the government.

TEI had frequent opportunities to engage with Mike and his team during his tenure as Tax Legislative Counsel (2005-2008). In every instance, Mike demonstrated himself to be a thoughtful practitioner and a careful listener, capable of recognizing the many sides and nuances to a given issue or a proposed interpretation. And, as important, Mike always provided a fair hearing, no matter the policy decision or outcome.

Since leaving the Treasury Department, Mike has practiced law as a tax controversy specialist and litigator, involved in tax matters at every stage of the tax controversy life cycle. While in private practice, Mike has been a regular speaker at TEI's educational conferences and programs, bringing his sophisticated expertise and practicality along with an open and engaging manner.

At this critical juncture in U.S. tax administration, it is vital to have a tax lawyer of Mike's background and experience to lead the Office of Chief Counsel. He possesses the technical depth to effectively oversee the broad range of regulatory issues which will arise during the implementation of the Tax Cuts and Jobs Act, the judgment to recognize and embrace compromise and accommodation as essential elements of sound tax administration, and the personal manner to lead a diverse cadre of 1,400 attorneys assigned among the IRS National Office and various operating divisions. Mike is ideally suited to confront the duties and challenges that lay ahead, and, accordingly, TEI urges his swift confirmation.

If you need additional information concerning TEI's experiences with Mike, please contact TEI's executive director, Eli J. Dicker, at 202-464-8354 or edicker@tei.org.

Respectfully submitted,  
 Tax Executives Institute, Inc.  
 By: Robert L. Howren  
 International President

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FEDERAL BAR ASSOCIATION  
 Section on Taxation

1220 North Fillmore Street, Suite 444  
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April 11, 2018

The Honorable Orrin G. Hatch  
 Chairman  
 U.S. Senate  
 Committee on Finance  
 219 Dirksen Senate Office Building  
 Washington, DC 20510

The Honorable Ron Wyden  
 Ranking Member  
 U.S. Senate  
 Committee on Finance  
 219 Dirksen Senate Office Building  
 Washington, DC 20510

Re: Letter in Support of Michael J. Desmond, nominee for Chief Counsel of the Internal Revenue Service

Dear Chairman Hatch and Ranking Member Wyden:

The Federal Bar Association's Section on Taxation (the "Tax Section") writes to express its support<sup>1</sup> for Michael J. Desmond for the position of Chief Counsel of the Internal Revenue Service ("IRS") and urges the Senate Finance Committee to approve his nomination swiftly. Mike's broad experience in the practice of tax law, as an attorney in various roles in the government, and as a private practice lawyer, give him the necessary credentials to be the IRS's top legal advisor.

The Tax Section is a nonpartisan organization, the primary goals of which are to promote the welfare, interests, education, and professional growth and developments of its members; promote high standards of professional competence and ethical conduct in the practice of Federal tax law; and to provide opportunities of interaction between tax practitioners in public service and the private sector.

The Chief Counsel is the chief law officer of the IRS and is an integral figure in determining and coordinating the litigation positions of the IRS as well as, among other things, promulgating regulations and other guidance. These responsibilities, as well as the others to which the Chief Counsel is obligated by statute, will require capable coordination with the Treasury Department, the Commissioner of Internal Revenue, and the Department of Justice ("DOJ").

Mike is uniquely suited to the job of Chief Counsel. He has firsthand knowledge of the regulatory process, having served as Tax Legislative Counsel—the Treasury Department's top legal advisor on domestic tax issues—from 2005 to 2008. Mike's encyclopedic knowledge of the regulatory process has also benefited the broader tax bar, and by extension, taxpayers as well.<sup>2</sup> Mike has deep litigation experience as a trial attorney for the DOJ Tax Division and as an attorney in private practice, having worked for mid-size and large law firms and, most recently, as a lawyer in a solo practice. This breadth of expertise is important and gives Mike a perspective of practitioner and client issues across a broad spectrum.

Currently, the IRS is faced with the challenge of implementing the Tax Cuts and Jobs Act, while administering and enforcing the law. The Chief Counsel will need to work closely with the tax experts at the Treasury Department to promulgate reg-

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<sup>1</sup>This letter in support of Mr. Desmond's nomination is in the name of the Tax Section itself, and is not on behalf of the Federal Bar Association. This letter also may not reflect the views of all members of the Tax Section, its members' employers, or the Federal Bar Association.

<sup>2</sup>Mike's remarks at a 2011 forum on the regulatory process, sponsored by Tax Analysts, were made into an article that is routinely referred to by practitioners. See Michael J. Desmond, "Former Official Summarizes the Formal Guidance-Making Process," 132 *Tax Notes* 639 (August 8, 2011).

ulations and other guidance for a new, complex law that is largely already in effect. The Chief Counsel will also need to ensure that the IRS's position is well-represented in court.

The Tax Section believes that Michael J. Desmond's experience in government and in private practice gives him the necessary perspective to be an effective Chief Counsel that can give the IRS competent legal advice. We fully support Mike's nomination and urge the Committee on Finance to approve him swiftly.

Respectfully submitted,

Shamik Trivedi  
Chair, Section on Taxation  
Federal Bar Association

cc: Anne R. Gordon  
Chair Elect

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Michael Joseph Desmond.
2. Position to which nominated: IRS Chief Counsel and Assistant General Counsel, U.S. Department of the Treasury.
3. Date of nomination: March 6, 2018.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: July 28, 1968, Santa Monica, California.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):
 

Georgetown University Law School (September 2000–August 2001). Graduate coursework, no degree sought or received.

Catholic University, Columbus School of Law (September 1991–May 1994). Juris Doctor, *magna cum laude* granted May 1994.

New York University (June 1990–August 1990). Graduate coursework, no degree sought or received.

University of California, Santa Barbara (August 1986–June 1990). Bachelor of arts in political science and history granted June 1990.

Mesa Community College, San Diego, California (July 1989–August 1989). Undergraduate coursework, no degree sought or received.

Point Loma High School, San Diego, California (September 1982–June 1986). High school diploma granted June 1986.
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 for each job):
 

January 2012 to present: founder and shareholder, Law Offices of Michael J. Desmond, APC, Santa Barbara, California.

March 2000 to December 2004 and June 2008 to January 2012: partner and senior associate, Bingham McCutchen LLP and its predecessor firm, McKee Nelson LLP; Washington, DC, New York, New York and Los Angeles, California.

January 2005 to May 2008: Tax Legislative Counsel, U.S. Department of the Treasury, Office of Tax Policy, Washington, DC.

October 1995 to March 2000: Trial Attorney, U.S. Department of Justice, Tax Division, Washington, DC.

August 1994 to August 1995: Law Clerk, Hon. Ronald S.W. Lew, U.S. District Court for the Central District of California, Los Angeles, California.

May 1992 to August 1992 and May 1993 to August 1993: summer law clerk, Columbus Community Legal Services, Washington, DC.

February 1991 to June 1991: Special Assistant to the Chief of Staff, House Committee on Veterans' Affairs, Washington, DC.

September 1990 to January 1991: Legislative Assistant, Congressman Douglas H. Bosco, Washington, DC.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

None, other than those listed above.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partners, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Adjunct professor of law, Georgetown University Law Center (2007–2014).

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

American Bar Association, Section of Taxation (2000–present). Council director (2017–present); chair and vice chair, Standards of Tax Practice Committee (2012–2017); chair and vice chair, Tax Shelters Committee (2008–2012).

District of Columbia Bar Association, Tax Section (2000–2008). Chair and vice chair, Tax Audits and Litigation Committee (2001–2004).

American College of Tax Counsel (2008–present). Regent (2016–present).

University of California Santa Barbara Alumni Association (1990–present). Member, board of directors (2017–present).

Santa Barbara Athletic Association (2012–present). Treasurer and member, board of directors (January 1, 2018–present).

Santa Barbara Triathlon Club (2012–present).

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

Informal tax and economic advisor to Neel Kashkari for Governor 2014.

- 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 prior to the date of your nomination.

Neel Kashkari for Governor 2014, \$500 (January 2014).

John McCain for President 2008, \$1,000 (September 2008).

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 received since the age of 18):

Chambers USA: America's Leading Lawyers for Business, Tax, and Tax Controversy.

The Best Lawyers in America, Leading Lawyer in Tax Law.

IRS Commissioner's Award (2008).

IRS Chief Counsel's Award (2008).

Treasury Secretary's Honor Award (2007).

U.S. Department of Justice, Tax Division Award for Sustained Superior Performance (1998).

15. Published writings (list the titles, publishers, dates, and hyperlinks (as applicable) of all books, articles, reports, blog posts, or other published materials you have written):

Author, Foreword to Jasper L. Cummings, Jr.'s, "The Supreme Court's Federal Tax Jurisprudence," American Bar Association (2d ed. 2016).

Principal drafter, American College of Tax Counsel Comments on Recent Changes to IRS Appeals Conference and Settlement Practices (October 2016).

Contributing author, ABA Section of Taxation Comments on Partnership Tax Audit and Litigation Regime Revisions (November 2015).

Contributing author, ABA Section of Taxation Comments on 2014 Offshore Voluntary Disclosure Program and the Streamlined Program (October 2015).

Author, "Legislative Authority to Regulate Paid Tax Return Preparers: The Focus Turns to Congress to Act," Procedurally Taxing Blog (February 2015).

Author, "Is There a Future Role for Circular 230 in the IRS's Efforts to Improve Tax Compliance?," Procedurally Taxing Blog (October 2014).

Author, "Final Circular 230 Written Tax Advice Regulations," Procedurally Taxing Blog (June 2014).

Author, "The Continuing Evolution of Circular 230: Proposed Regulations Repealing the 'Covered Opinion' Standards, Imposing General Competence Requirements and Expanding Existing Procedures to Ensure Compliance," *CCH Journal of Tax Practice and Procedure* (December 2013–January 2014).

Principal drafter, ABA Section of Taxation Comments on Proposed Regulations Relating to Practice Before the Internal Revenue Service (November 2012).

Contributing author, ABA Section of Taxation Comments on Notice 2011–62, *Ex Parte* Communications Between Appeals and Other Internal Revenue Service Employees (August 2011).

Contributing author, ABA Section of Taxation Comments on Notice 2010–62 Regarding Implementation of the Economic Substance Legislation (January 2011).

Author, "Revisiting the Broad Definition of Return Preparer," *Tax Notes* (January 2011).

Contributing author, ABA Section of Taxation Comments on Circular 230 Sections 10.2, 10.3, 10.4, 10.5, 10.6, 10.30, and 10.34 (December 2010).

Co-author, "Practical Considerations for Schedule UTP . . . an Addendum," *The Tax Executive* (October 2010).

Co-author, "Practical Considerations in Preparing for the Impending Schedule UTP Filing Requirement," *The Tax Executive* (September 2010).

Author, "Resolution of Financial Products Tax Controversies," Practicing Law Institute (2009).

Co-author, "Improving Compliance Through Changes to the Return Preparer Regulations," *BNA* (2008).

Author, "Opinion Standards for Tax Practitioners Under U.S. Department of the Treasury Circular 230," *Tax and Corporate Governance* (Wolfgang Schon ed.) (2008).

Author, note, "Limiting a Defendant's Peremptory Challenges," 42 *Cath. U.L. Rev.* 389 (1993).

16. Speeches (list all formal speeches and presentations (e.g., PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

All speeches and presentations delivered in the past 5 years are listed on Attachment A.

**Attachment A: Speeches and Presentations (2013–2018)**

Organization	Conference/Seminar	Date	Location	Topic
ABA Section of Taxation (Administrative Practice Committee)	Third Wednesday Series	January 16, 2013	Teleconference	Update on Annual IRS Ruling Guidance
ABA Section of Taxation	Midyear Meeting	January 25–26, 2013	Orlando, FL	(1) Circular 230 Redux: What the Changes Mean for EO Practitioners; (2) The Proposed Amendments to Circular 230; and (3) Changes in Opinion Practice After the Amendments to Circular 230
Practising Law Institute	Tax Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures, and Other Strategic Alliances	May 2, 2013	Chicago, IL	Economic Substance—Understanding the Limits and Effects of Codification: Partnership Anti-Abuse Rules and Tax Shelters
CalCPA Channel Counties Chapter	Luncheon Seminar	August 27, 2013	Santa Barbara, CA	Circular 230 and the Regulation of Tax Advisors: Expansion, Pushback, and Hot Topics
ABA Section of Taxation	Midyear Meeting	September 19–21, 2013	San Francisco, CA	Circular 230 Prohibition on Contingent Fees
American Law Institute	Handling a Tax Controversy: Audit, Appeals, Litigation, and Collection	October 17–18, 2013	Washington, DC	(1) Handling a Tax Controversy: Audit, Appeals, Litigation, and Collection; (2) Tax Practice Ethics for Preparers and Advisors
UCLA School of Continuing Education	3rd Annual Tax Controversy Institute	October 22, 2013	Beverly Hills, CA	The Continuing Evolution of Circular 230: Written Tax Advice, Competence, and Other Proposed Changes to the Rules
ABA Section of Taxation (Administrative Practice Committee)	Third Wednesday Series	November 20, 2013	Teleconference	IRS Priority Guidance Plan Update
ABA Section of Taxation	3rd Annual Institute on Tax Controversy	December 11–13, 2013	Las Vegas, NV	Ethical Issues in Tax Practice
ABA Section of Taxation	Midyear Meeting	January 23–24, 2014	Phoenix, AZ	Ensuring Compliance With Circular 230: Responsibilities of Firm Management

## Attachment A: Speeches and Presentations (2013–2018)—Continued

Organization	Conference/Seminar	Date	Location	Topic
USC Gould School of Law	Tax Institute	January 28, 2014	Los Angeles, CA	Partnership Tax Ethics: The Changing Landscape
Practising Law Institute	Tax Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures, and Other Strategic Alliances	May 1, 2014	Chicago, IL	Economic Substance, Judicial Doctrines, and Ethics
American Law Institute	Webcast Series	May 29, 2014	Webcast	Practical Tax Opinions
ABA Section of Taxation	Webcast Series	August 12, 2014	Webcast	Everything Is Fine Until it Isn't: Ethical Issues in a Tax Practice
ABA Section of Taxation	Annual Meeting	September 19, 2014	Denver, CO	What's Going on With Circular 230? Recent Regulatory and Litigation Developments and the Question of What's Next
American Law Institute	Handling a Tax Controversy: Audit, Appeals, Litigation, and Collection	October 17, 2014	Washington, DC	Tax Court Procedures
Insurance Tax Institute	39th Annual Insurance Tax Conference	November 14, 2014	Chicago, IL	Standards of Tax Practice Update
ABA Section of Taxation (Administrative Practice Committee)	Third Wednesday Series	November 19, 2014	Teleconference	IRS Notice on Codified Economic Substance (no outline)
ABA Section of Taxation	4th Annual Institute on Tax Controversy	December 10–12, 2014	Las Vegas, NV	Civil Enforcement Priorities
ABA Section of Taxation	Midyear Meeting	January 30–31, 2015	Houston, TX	(1) Litigating Financial Products Cases; (2) Special Issues Representing Partners and Partnerships; and (3) Presentation to the Plenary Session on Proposed Statutory Amendments Relating to the Regulation of Tax Return Preparers (no outline)
University of Virginia School of Law	Tax Study Group	March 27, 2015	Charlottesville, VA	Reforming the TEFRA Partnership Audit Procedures
Practising Law Institute	Tax Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures, and Other Strategic Alliances	April 29, 2015 and June 10, 2015	Chicago, IL and San Francisco, CA	Economic Substance, Judicial Doctrines, and Ethics

## Attachment A: Speeches and Presentations (2013–2018)—Continued

Organization	Conference/Seminar	Date	Location	Topic
Tax Executives Institute	Audits and Appeals Seminar	May 20, 2015	Chicago, IL	Document Retention
United States Tax Court	Judicial Conference	May 20–22, 2015	Durham, NC	(1) Privileges and Waivers; and (2) Conflicts and Chaos: The Importance of Timely Recognizing and Managing Conflicts of Interest in Tax Litigation
NYU School of Professional Studies	7th Annual Tax Controversy Forum	June 5, 2015	New York, NY	A Debate About the Future of Tax Ethics
ABA Section of Taxation (Administrative Practice Committee)	Third Wednesday Series	June 17, 2015	Teleconference	Exceptions to the Assessment Limitations Period
ABA Section of Taxation	Annual Meeting	September 18, 2015	Chicago, IL	Conflicts and Chaos: The Importance of Timely Recognizing and Managing Conflicts of Interest in Tax Litigation
American Law Institute	Handling a Tax Controversy: Audit, Appeals, Litigation, and Collection	October 8–9, 2015	Washington, DC	(1) Examinations of TEFRA Partnerships; and (2) FOIA: From Request to Litigation
New York University	74th Institute on Federal Taxation	November 19, 2015	San Francisco, CA	Ethical Issues for Tax Practitioners: Good Tax Planning, Aggressive Tax Advice, or Criminal Tax Evasion?
ABA Section of Taxation	5th Annual Institute on Tax Controversy	December 10, 2015	Las Vegas, NV	Conflicts and Chaos: The Importance of Timely Recognizing and Managing Conflicts of Interest in Tax Litigation
USC Gould School of Law	2016 Tax Institute	January 26, 2016	Los Angeles, CA	Tax Practitioner Penalties—Section 6694, Circular 230, and Beyond
ABA Section of Taxation	Midyear Meeting	January 29, 2016	Los Angeles, CA	APA and the Administrative Process: How Has Altera Altered the Landscape?
Tax Executives Institute	IRS Audit and Appeals Conference	May 18, 2016	Santa Clara, CA	Is That What Your Appeals Protest Looks Like?



## Attachment A: Speeches and Presentations (2013–2018)—Continued

Organization	Conference/Seminar	Date	Location	Topic
Practising Law Institute	Tax Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures, and Other Strategic Alliances	May 28, 2016 and June 9, 2016	Chicago, IL and San Francisco, CA	Economic Substance, Judicial Doctrines, and Ethics
New York University	75th Institute on Federal Taxation	November 17, 2016	San Diego, CA	Ethical and Penalty Issues for Tax Practitioners: When Good Tax Planning Turns Bad
ABA Section of Taxation	6th Annual Institute on Tax Controversy	December 8, 2016	Las Vegas, NV	The New Partnership Audit Rules
ABA Section of Taxation	Midyear Meeting	January 20, 2017	Orlando, FL	(1) Implementation of the New BBA Partnership Audit Rules; and (2) Form 1099 Information Reporting Issues
USC Gould School of Law	2017 Tax Institute	January 23, 2017	Los Angeles, CA	From IRS Contact to Final Judgment: Preparing for and Handling a Tax Dispute
Practising Law Institute	Tax Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures, and Other Strategic Alliances	May 4, 2017 and June 8, 2017	Chicago, IL and San Francisco, CA	Economic Substance, Judicial Doctrines, and Ethics
ABA Section of Taxation	May Meeting	May 12–13, 2017	Washington, DC	(1) Unauthorized Practice of Law and the Practice of Benefits Law; and (2) Ethical Issues in Representing Tax Professionals
ABA Section of Taxation	Webcast Series	September 19, 2017	Webcast	Unauthorized Practice of Law—Issues for Employee Benefit Lawyers
Practising Law Institute	Tax Strategies for Corporate Acquisitions	October 20, 2017	New York, NY	Limits of the Evolving Economic Substance and Business Purpose Doctrines and Related Ethical Issues
UCLA School of Continuing Education	Tax Controversy Institute	October 24, 2017	Beverly Hills, CA	Dealing With the “New” IRS Appeals
Cambridge Forums	Forum on International Tax Disputes	November 8–10, 2017	Surrey, U.K.	Recent Developments in U.S. Tax Disputes

## Attachment A: Speeches and Presentations (2013–2018)—Continued

Organization	Conference/Seminar	Date	Location	Topic
Loyola Law School	Tax Policy Colloquium	November 13, 2017	Los Angeles, CA	Comments on Structural Inequities of Exchange Traded Funds
ABA Section of Taxation	7th Annual Institute on Tax Controversy	December 8, 2017	Las Vegas, NV	Ask the Judges: Trial Tips and Traps
ABA Section of Taxation	Midyear Meeting	February 9, 2018	San Diego, CA	(1) A Comparison of the California Rules of Professional Conduct and the ABA Model Rules; and (2) Taxation of Damages Received Pursuant to a Settlement

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

I have nearly 2 decades of experience working in positions of tax enforcement, policy, and administration and working in private practice representing a broad range of individual and business taxpayers in disputes pending before the Internal Revenue Service and in litigation.

As a trial attorney at the Tax Division of the U.S. Department of Justice, early in my career I saw the challenges faced by taxpayers and the IRS alike when complexity and uncertainty in the tax law, combined with breakdowns in the audit and administrative appeals process, lead to litigation. While litigation is one focus of the job of IRS Chief Counsel, resolving disputes early in the process and taking steps to avoid those disputes in the first instance should be of paramount importance.

At my current firm, my work focuses on representing individuals and small and medium-sized businesses with pass-through income. My clients range from low-income individuals and sole proprietors with discrete tax reporting problems to high net worth individuals with complex domestic and cross-border compliance matters. I also represent a number of large businesses on discrete procedural issues and tax disputes, balancing that work with active pro bono representation, including work with the Tax Court's calendar call program in Los Angeles.

In my prior work as a partner and senior associate at a global law firm, my practice focused on corporate clients involved in large-dollar tax disputes. Although that work gave me an appreciation for a different client base, I fully understand that the challenges faced by the largest businesses in complying with the tax law are not unique. Working closely with the IRS's taxpayer service, examination, and collection functions, the IRS Office of Chief Counsel plays an important role in mitigating these challenges, and my experience working with taxpayers of all sizes and backgrounds qualifies me to lead in that role.

Although my early career in government and my work in private practice have focused on resolution of tax controversies, those experiences are complemented by my tenure as Tax Legislative Counsel at the U.S. Department of the Treasury. In that role, I supervised a group of lawyers and accountants responsible for guidance on all aspects of the domestic tax law, working in coordination with Treasury's International Tax Counsel and Benefits Tax Counsel. In collaboration with the Assistant Secretary (Tax Policy) and others in the administration, I also worked with staff of the congressional tax writing committees and the Joint Committee on Taxation on formulating tax legislation, an experience that I would bring to bear in working as Chief Counsel to implement and enforce the tax law.

With a background in tax procedure, as Tax Legislative Counsel I also worked closely with colleagues at the IRS on matters of tax administration. As one example, I served as the point person at the Treasury Department for implementation of the disaster relief and recovery provisions enacted in the Gulf Opportunity Zone Act of 2005. In that role, I worked with IRS Small Business and

Self-Employed Division personnel throughout the country and was given the Treasury Secretary's Award for my work. This and similar experiences working with the IRS to implement and administer the law in a manner that achieves policy objectives while taking practical enforcement challenges into account give me a unique skill set for the IRS Chief Counsel position. My experience working at the intersection of tax policy and administration would also help to ensure that, as Chief Counsel, my office would operate in a constructive and collaborative manner to implement and enforce the law while always keeping in mind congressional purpose in enacting that law.

#### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections (including participation in future benefit arrangements) 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 current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

If confirmed by the Senate, I would terminate all client relationships and, under applicable conflict rules, recuse myself from any matters connected with past or current client engagements. Outside of my work as an attorney representing clients in disputes with the Internal Revenue Service and subject to the divestitures set forth in my agreement with the Office of Government Ethics, neither I nor my spouse have any investments, obligations, liabilities, or other relationships that could raise conflict of interest issues with the position of IRS Chief Counsel.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), 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.

Over the past 10 years I have represented clients in IRS audits, administrative appeals, and litigation. If confirmed by the Senate, I would terminate all client relationships and, under applicable conflict rules, recuse myself from any matters that involve past client engagements.

3. Describe any activity during the past 10 years (prior to the date of your nomination) 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.

As described in section A, paragraph 15, above, over the past 10 years I was the principal or a contributing author on several comment letters submitted to the U.S. Congress or the Internal Revenue Service on behalf of the ABA Section of Taxation and the American College of Tax Counsel.

In 2009 I was engaged, through my law firm, by a U.S. company engaged in international shipping activities to submit a comment letter to the U.S. Depart-

ment of Treasury on regulations relating to nonqualified deferred compensation plans. The comment letter was made publicly available and published in the tax press and is being provided.

In 2011 I was engaged, through my law firm, by a company in the financial services industry to submit a comment letter to the U.S. Department of Treasury on regulations relating to the use and reporting of identification numbers by tax return preparers. The comment letter was made publicly available and published in the tax press and is being provided.

4. Explain how you will resolve any potential conflict of interest, including any that are disclosed by your responses to the above items.

If confirmed by the Senate, I would terminate all client relationships and, in consultation with IRS ethics officials, under applicable conflict rules, recuse myself from any matters connected with past or current engagements.

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.

Copies have been provided.

#### 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 (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

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? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? 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.

While working as an associate at McKee Nelson LLP, I represented the Ernst and Young LLP accounting firm in an IRS audit of the firm's potential liability for civil tax penalties. In December 2002, I was named as a defendant in a civil lawsuit brought by clients of Ernst and Young—seeking among other relief—to prevent the firm, and me as one of its attorneys, from responding to a summons issued by the IRS that sought the names of individuals who had participated in a specified type of structured tax transaction (*Camferdam v. Ernst and Young LLP, et al.*, Case No 1:02-cv-10100-BSJ (S.D.N.Y.)). The only relief sought against me in the case was an injunction prohibiting a response to the IRS summons. I was dismissed as a defendant in the case on June 10, 2003. The Court never acted on the plaintiffs' request for injunctive relief against me or my law firm.

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.

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QUESTIONS SUBMITTED FOR THE RECORD TO MICHAEL J. DESMOND

QUESTIONS SUBMITTED BY HON. JOHN CORNYN

*Question.* Earlier this year, approximately 2,500 households in northwest Dallas were impacted by an emergency gas shutdown for the replacement of gas mains and service lines. The gas company provided direct financial assistance to these households in the amount of \$250 a day, which was based on input from the Dallas Office of Emergency Management. In addition to direct financial assistance, the gas company repaired or replaced the in-home gas lines and equipment for those families whose homes did not meet the current code requirements so that service could be restored. I have been told that the total amount of assistance was over \$15 million.

In IRS Announcement 2016–25, the Obama administration explicitly excluded from income similar payments to displaced customers of the Southern California Gas Company (SoCal Gas). Like the residents in Announcement 2016–25, residents in northwest Dallas were displaced from their homes by a natural gas emergency and received reimbursement for their displacement. The payments made by the Dallas gas company were designed to cover lodging and food costs, which stands in stark contrast to tax-exempted payments by SoCal Gas, which included, *inter alia*, pet boarding, Internet service, interior and exterior air filtration and purification expenses, and vehicle detailing expenses.

As of today, in stark contrast to the SoCal incident and absent IRS guidance, the financial assistance provided to my constituents could constitute income. Although the Dallas payments are analogous to qualified disaster relief payments, they are not clearly excludable under section 139 because it is uncertain whether the events precipitating the payments were a “qualified disaster.”

What are your views of the merits of explicitly exempting disaster relief payments under Announcement 2016–25, but not providing similar relief to my constituents?

*Answer.* As a tax practitioner, I think that similar treatment of similarly situated taxpayers should be a basic principle of tax administration. From my experience at the Treasury Department assisting in the implementation of disaster relief legislation, I also think that it is important for the tax law be administered in a way that provides appropriate relief to those whose lives are impacted by disasters. If confirmed, I will work to ensure that the Office of Chief Counsel provides impartial and consistent guidance to your constituents and look forward to working with you on this issue.

*Question.* Does a smaller scale of the displacement with respect to the number of displaced customers or length of displacement justify not issuing the same relief provided in the SoCal Gas situation?

*Answer.* I am not aware of any provision in the tax law that would provide a different result based on the scope of the disaster. If confirmed, I will consult with subject matter experts in the Office of Chief Counsel to understand the issue and be sure that impartial and consistent guidance is provided to your constituents.

*Question.* Will you commit to review this announcement exemption request, consider the merits, and make it a priority to issue guidance as soon as possible?

*Answer.* Yes.

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QUESTIONS SUBMITTED BY HON. SHELDON WHITEHOUSE

*Question.* What role does the IRS play in identifying, investigating, and preventing money laundering?

*Answer.* It is my understanding that the IRS Criminal Investigation Division investigates money laundering related to tax crimes and coordinates with other law enforcement agencies when appropriate and authorized by law.

*Question.* Is there a national security threat posed by foreign money entering U.S. elections? If so, please describe.

*Answer.* I have not worked on this issue in my prior career in government or the private sector, but I am aware of public reports of this threat, which I believe should be taken seriously.

*Question.* The IRS has said that collecting beneficial ownership information would “ease tax examinations by enabling the IRS to look through artificial structures and more clearly determine if the tax payer was compliant with the tax laws as well as laws related to money laundering.”

Do you agree the United States’ lack of beneficial ownership collection presents a serious shortcoming in our anti-money laundering regime?

*Answer.* As a practitioner, I am aware of certain beneficial ownership reporting requirements, particularly in the context of foreign entities. If confirmed, I will seek to better understand how this issue relates to the work of the IRS in investigating tax crimes relating to money laundering and consider how the Office of Chief Counsel can better assist in that work.

*Question.* How can shell companies be used by criminals to avoid paying taxes?

*Answer.* It is my understanding that by hiding beneficial ownership, criminals can more easily hide their ill-gotten gains and avoid associated tax liabilities.

*Question.* Would having access to beneficial ownership information make it easier for the IRS to investigate tax evasion and other crimes?

*Answer.* I believe so. If confirmed, I will work with the Commissioner to examine the impact that access to this information might have in practice and how the Office of Chief Counsel might provide assistance on this important issue.

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QUESTIONS SUBMITTED BY HON. BILL NELSON

*Question.* In your view, what sort of questions arising from the new tax law (Pub. L. 115–97) do you think you could help with?

*Answer.* The Office of Chief Counsel plays a central role in the issuance of guidance to taxpayers. If confirmed, I would review the Priority Guidance Plan issued by the Department of Treasury and the IRS to ensure that wherever possible, questions arising under the new tax law are promptly answered, focusing in particular on questions that have an impact on the broadest number of taxpayers.

*Question.* How will you work to stop corporations from using the new tax law (Pub. L. 115–97) to avoid paying their fair share?

*Answer.* If confirmed, I will work to identify areas of non-compliance with the new law and examine how to address them through additional guidance and appropriate enforcement efforts.

*Question.* Recently, the Treasury Department and the IRS changed the rules for tax-exempt entities, removing the requirement for 501(c)(4) groups and other tax-exempt groups to share their major funding sources with the IRS. Given this change, how will you advise the IRS to ensure foreign actors are not using tax-exempt groups to undermine our political process?

*Answer.* The Federal Election Commission and the Department of Justice are charged with enforcing Federal election laws, while the IRS is charged with implementing the tax law. In making this change, I understand that the Treasury Department and the IRS explained that the IRS was previously making no systematic use of Schedule B donor information. If confirmed, I will seek to understand all of the factors that went into the decision to make the change.

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QUESTIONS SUBMITTED BY HON. MICHAEL B. ENZI

*Question.* The Internal Revenue Service continues to experience significant challenges in updating its technology. For example, in 2009, the IRS began developing the Customer Account Data Engine (CADE 2) to replace the Individual Master File for managing taxpayer accounts. Since then, the agency has spent more than \$1 billion on the project, but has only completed one phase, has significantly scaled back other phases, and has delayed CADE 2’s estimated completion date.

In your position at either Treasury or the IRS, how would expect your role to address these challenges?

Answer. The management and development of IT systems is within the purview of the Commissioner. Over my career as a tax practitioner, I have seen the impact of these challenges on taxpayers. If confirmed, I will assist the Commissioner whenever possible to ensure that the IRS strengthens its IT systems while responsibly managing tax dollars.

*Question.* A July 2017 Treasury Inspector General for Tax Administration report came to following conclusion. "The IRS has not effectively updated or implemented hiring policies to fully consider past IRS conduct and performance issues prior to making a tentative decision to hire former employees, including those who were terminated or separated during an investigation of a substantiated conduct or performance issue."

In your position at either Treasury or the IRS, how would expect your role to address these challenges?

Answer. If confirmed, I will assist the Commissioner in any way I can to ensure that the IRS maintains a talented and dedicated workforce.

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QUESTION SUBMITTED BY HON. ROBERT P. CASEY, JR.

*Question.* As reflected in section 6103, the IRS currently provides the Social Security Administration with taxpayer data to facilitate the mailing of Social Security statements. These statements educate Americans about their earned Social Security benefits and provide information on deciding when to claim benefits. There is growing concern that Americans are not similarly and appropriately educated about their earned Medicare benefits and the program's enrollment rules. SSA is responsible for certain aspects of Medicare administration, specifically as it relates to eligibility. In your view, does the current statute and existing data-sharing agreements between SSA and IRS permit SSA to add additional content to the Social Security statements on Medicare enrollment rules and benefits? Would SSA be permitted to add a stand-alone Medicare notice to the Social Security statement mailings?

Answer. If confirmed, I will examine all of the factors pertaining to this issue and work to ensure that the IRS coordinates with the Social Security Administration to better serve taxpayers while furthering tax administration.

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QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

*Question.* Mr. Desmond, you have strong practice and Federal agency experience. You have represented individuals and small, medium, and large businesses before the IRS. You have served as the Tax Legislative Counsel at the Treasury and as a trial attorney in the tax division at the Justice Department. The Treasury is about to undertake the largest regulatory project in a generation to put in place the regulations for the recently passed \$1.5-trillion tax bill.

What are your biggest concerns about implementing the tax bill regulations?

Answer. As a practitioner, my biggest concern is avoiding expensive and time-consuming disputes over how to apply the new tax law, particularly for individuals and small businesses who may not have the resources to handle those disputes. The tax reform legislation impacts every taxpayer. Consequently, all taxpayers must receive clear and expeditious guidance from the IRS and Treasury in order to comply with and benefit from the new provisions. I am aware that the IRS and Treasury are working to issue additional guidance. If confirmed, I will work with the IRS and Treasury to issue the guidance in as timely a manner as possible.

*Question.* In many surveys, small business owners repeat that the new tax law is complicated, complex and takes time away from growing their business or hiring new employees. The new pass-through deduction has only added to the problems. Many of these pass-throughs are also small businesses which do not have tax departments and cannot afford to hire tax professionals to provide highly technical tax advice.

Small business owners need clear guidance to be able to comply with the new law. For example, they need to be able to make sure their estimated tax payments reflect their tax liability so they don't overestimate their payments, which lowers their abil-

ity to invest or underestimate these payments and end up getting hit with a big tax bill and penalty the next year.

Will the IRS provide detailed guidance so that these business owners have the tools they need to plan for the future while complying with the new tax law as they run their businesses today?

Answer. If confirmed, I will make sure that all taxpayers, including small business owners, have the guidance they need to comply with the new law, including making appropriate and timely estimated tax payments.

*Question.* While many of the “pass-throughs” are actually quite large businesses, what can we do to help the truly small business understand this new and complex system?

Answer. Although the issuance of timely and accurate guidance is important for taxpayers of all sizes, for smaller businesses it is also important for that guidance to be widely distributed and explained through outreach to tax practitioners and others. This is particularly true for small businesses that can benefit from the deduction provided for under new section 199A. I understand that Treasury and the IRS are about to issue guidance on that statute. If confirmed, I will work to expedite the guidance process and disseminate guidance as broadly as possible once it is issued.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

SYNDICATED CONSERVATION EASEMENT TAX SHELTERS

*Question.* In December 2016, IRS issued Notice 2017–10 identifying certain conservation easement syndication transactions as abusive tax shelters and requiring participants to disclose their involvement to the IRS. On March 29, 2017, I wrote to IRS Commissioner John Koskinen about the growth in abusive tax shelters involving the syndication of conservation easements. I asked the IRS to provide a report on the nature and scope of this problem. From the IRS’s responses, we know that more than 550 abusive tax shelters have been sold, involving 1,500 promoters, 38 appraisers, and 15,000 investors. The IRS says that more than \$20 billion in improper charitable deductions have been claimed which equates to the loss of \$8 billion in tax revenue. I am concerned that promoters and participants continue to engage in these transactions despite IRS labeling them an abusive tax shelter.

Will you commit to work with this committee to put an end to abusive conservation easement syndications described in Notice 2017–10?

Answer. As a tax practitioner, former Treasury Department official, and former Justice Department trial lawyer, I am keenly aware of the threat that abusive tax shelters pose to the integrity of the tax law. If confirmed, I will make addressing and preventing tax shelters a high priority. I believe that the conservation easements provisions in the Internal Revenue Code provide an important incentive and should be protected. I share your concern that syndicated transactions could threaten the integrity of this incentive. You have my full commitment to working with you and the committee to address this problem.

*Question.* Do you believe the IRS currently has the authority, tools, and resources necessary to put an end to these abusive transactions?

Answer. I have not investigated these issues in detail but do know from experience in both government and the private sector the challenges the IRS can face when combating marketed tax strategies. If confirmed, I look forward to working with the committee on this issue.

*Question.* If you find that the IRS does not have the authority, tools, or resources necessary to put an end to these abusive transactions, will you commit to providing the committee recommendations on legislative proposals to ensure the IRS has sufficient ability to prevent the abuse of this critical conservation tool?

Answer. Yes.

DONOR DISCLOSURE NECESSARY FOR TAX ADMINISTRATION

*Question.* You are viewed as an expert in the tax community, and, if confirmed as Chief Counsel of the IRS, you will be responsible for providing advice to the IRS Commissioner on all matters pertaining to the interpretation, administration, and enforcement of the Internal Revenue laws. Accordingly, I would like you to answer



the following questions to clarify matters relating to tax-exempt donor disclosure requirements.

Please indicate “yes” or “no” (in each case where I ask for a “yes” or “no” answer, you are of course welcome to also provide a brief explanation): is the IRS responsible for enforcement of the prohibition on private inurement under IRC section 501(c)(4) and the rules under IRC section 4958 related to self-dealing?

Answer. Yes. As part of its responsibility for tax enforcement, the IRS is responsible for enforcement of the prohibition on private inurement and the excise taxes related to self-dealing.

*Question.* Please indicate “yes” or “no”: is it true that IRC section 4958 and the regulations promulgated thereunder impose taxes on self-dealing transactions between 501(c)(4) organizations and “substantial contributors” in certain cases?

Answer. Yes. Although I am not an expert in this area of the tax law, I understand that section 4958 imposes an excise tax on excess benefit transactions between tax-exempt organizations (including 501(c)(4) organizations) and certain disqualified persons, which can include major contributors to those organizations.

*Question.* Please indicate “yes” or “no”: isn’t it true that without donor information provided on Schedule B of form 990, the IRS will have limited ability to identify substantial contributors who may have engaged in self-dealing, without subjecting the organization to an audit?

Answer. No, not necessarily. In making the recent change, I understand that the Treasury Department and the IRS explained that the IRS was previously making no systematic use of Schedule B donor information in connection with its enforcement of code provisions dealing with excess benefit transactions or otherwise. I am also aware, however, that Schedule L of Form 990 requires reporting of the names of disqualified persons engaged in transactions with 501(c)(4) organizations, including excess benefit transactions with substantial contributors.

PROPOSED TREASURY ACTION TO INDEX CAPITAL  
GAINS TO INFLATION THROUGH REGULATION

*Question.* One of your chief responsibilities is to advise the IRS Commissioner on all matters pertaining to the interpretation of internal revenue laws and related statutes. During your nomination hearing, Senator Toomey requested that Mr. Muzinich, in his role as Deputy Secretary of the Treasury, should he be confirmed, enlist Treasury to authorize indexing of capital gains to inflation through regulations. I would like to refer you to a May 24, 2018 letter to Treasury from eight Finance Committee Democratic members and myself, in which we argue that indexing capital gains to inflation requires legislative action and so exceeds Treasury’s rule-making authority.

If confirmed as IRS Chief Counsel, do you pledge to interpret our Nation’s internal revenue laws faithfully, regardless of any policy and political directives made to you by the Secretary of the Treasury, the Deputy Secretary of the Treasury, the Treasury Assistant Secretary for Tax Policy, or the IRS Commissioner?

Answer. If confirmed, I will work to apply the tax laws impartially and consistent with congressional intent.

*Question.* In your faithful interpretation of U.S. internal revenue laws and related regulatory authority, has Congress granted Treasury the authority to write new rules that impose capital gains taxes only on real gains, and not nominal gains, as has been the law—and the interpretation, to our understanding—since the Revenue Act of 1918? If so, can you cite what IRC statute(s) extends such authority to Treasury?

Answer. In section 7805 and other provisions of the Internal Revenue Code, Congress has authorized the Treasury Department to prescribe rules and regulations needed for the enforcement of the tax law. I have not had occasion to examine how that authority might apply in the context of recent suggestions that capital gains could, by regulation, be indexed for inflation.

*Question.* Legal opinions written by the Treasury and Justice Departments in 1992 under President George H.W. Bush concluded that Congress intended the word “cost” to mean the price paid in nominal dollars without adjustment for inflation. That plain language definition of cost appears in IRC section 1012—Basis of Property. Can you explain then why the 1992 Treasury and DOJ legal opinions are wrong?

Answer. I am aware of the legal opinions but have not had reason to evaluate them and do not have any view on, or explanation for, whether the conclusions they reach are correct or incorrect. If confirmed, I will consult with subject matter experts in the Office of Chief Counsel to better understand the issue.

*Question.* Does the language of IRC section 1012 contain sufficient ambiguity to permit rule-making by Treasury that interprets basis to be measured in real terms as opposed to nominal terms?

Answer. If confirmed, I will consult with subject matter experts in the Office of Chief Counsel to better understand the issue.

*Question.* Finally, please supply the legal argument for why inflation indexing is explicitly provided in statute, such as with respect to income tax bracket amounts described in IRC sections 1 and 11.

If such indexing to inflation were absent, in your interpretation, would Treasury have rule-making authority to allow for such indexing?

Answer. I am aware of arguments made by academics and other commentators on this issue, but have not examined them in detail and have not formed a view on the merits of those arguments. If confirmed, I will consult with subject matter experts in the Office of Chief Counsel to better understand the issue.

*Question.* The new tax law passed at the end of last year changed the measure of inflation used to index individual income tax brackets and other tax provisions from CPI-U to chained CPI. In your faithful interpretation, did Treasury already possess sufficient rule-making authority to index provisions of the tax code to whatever measure of inflation it deemed fit, without congressional action?

Answer. If confirmed, I will consult with subject matter experts in the Office of Chief Counsel to better understand the issue.

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QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* I have been particularly interested in how the IRS enforces its charitable hospital regulations to ensure companies are not gaming the system. A few years ago, I discovered one charitable hospital had incorrectly charged millions of dollars to low-income people. After a year of aggressive oversight, that charitable hospital eventually forgave almost \$17 million worth of bills. That situation should have never happened in the first place.

The IRS has provided wide latitude to charitable hospitals to determine what a "community benefit" is, which can include cash contributions to third party groups and hard to define "community building" activities. It seems the true test of a charitable hospital is how much free and discounted medical care they offer to patients with a legitimate need for it.

Should the IRS take additional steps to ensure that charitable hospitals qualify more of their patients for actual charitable medical care?

Answer. If confirmed, I would work to ensure that IRS enforcement efforts consistent with statutory law and regulation, including IRC section 501(r) and the regulations thereunder. I look forward to working with the committee to determine if there are additional areas of guidance in this area that should be developed.

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QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

*Question.* You have been around Washington and have worked in the Treasury Department. If you are confirmed to this role, you will have broad authority and responsibilities, especially in providing public guidance as well as technical and legal advice to IRS personnel. What lessons have you drawn from your past experience, and what changes or improvements would you seek to accomplish, should you be confirmed?

Answer. In my previous experience at Treasury, Justice, and in the private sector, I have seen the important role that the Office of Chief Counsel play in impartially interpreting tax law. This is the cornerstone of everything that the Office of Chief Counsel does, whether it is issuing guidance, advising the IRS or litigating tax cases. I believe that the most pressing goal is to issue guidance in as timely a manner as possible so that taxpayers can comply with the new tax law.

*Question.* How will you ensure that guidance and information are made available in a reasonable time period to assist taxpayers in complying with the tax code?

*Answer.* I understand that Treasury and the IRS are working expeditiously to issue guidance on tax reform. If confirmed, I will examine this process and will work with the IRS and Treasury to facilitate the issuance of the most significant guidance in as timely a manner as possible so that taxpayers can comply with the law.

*Question.* One of the responsibilities of the Office of Chief Counsel is to deal with United States Tax Court litigation. Do you think you might be able to lessen your workload, and the workload of the Tax Court, through timely and thorough public guidance, which is another responsibility of the Office of Chief Counsel?

*Answer.* I agree that published guidance helps to reduce tax controversy and litigation, however, it cannot eliminate it. If confirmed, I will work to find ways to address compliance issues earlier and more strategically.

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QUESTIONS SUBMITTED BY HON. BENJAMIN L. CARDIN

*Question.* Under the Taxpayer Bill of Rights adopted by the IRS and codified at IRC section 7803(a)(3), the very first right is “The Right to Be Informed.” Historically, the IRS Office of Chief Counsel has often sought to keep its legal advice confidential under the “deliberative process” or other exceptions from disclosure rules. While there are circumstances in which nondisclosure is justifiable, the public and Congress generally benefit from maximum transparency.

In 2007, the IRS entered into a settlement agreement to resolve litigation with Tax Analysts. Under that agreement, the IRS committed to disclose certain categories of advice to National Office officials. The IRS initially released a significant number of Chief Counsel memos, but it has been releasing a declining number of advice memos in recent years. If confirmed, will you commit to reviewing the Office of Chief Counsel’s disclosure guidelines and how they are implemented, in consultation with the National Taxpayer Advocate, and do so with a bias in favor of transparency?

*Answer.* Although I believe that the issuance of published guidance that taxpayers can rely on in taking positions on their tax returns should be the highest priority, I also recognize the need for transparency consistent with the Freedom of Information Act and other public disclosure rules. If confirmed, I will work to ensure that I understand the disclosure guidelines and consult with the Taxpayer Advocate to be sure they draw an appropriate balance.

*Question.* In 2006, the National Taxpayer Advocate requested that the Office of Chief Counsel provide a sample of unreleased legal memos so she could assess whether the public would benefit from their disclosure. The Chief Counsel at that time initially declined to provide access, and it was only after public criticism that the IRS reversed its position. The National Taxpayer Advocate’s office has a statutory responsibility to assess IRS programs and report to Congress. If confirmed, will you commit to working with the National Taxpayer Advocate and ensuring she is given immediate access to Chief Counsel memos (with the understanding that the Advocate follows the IRS’s determinations regarding public disclosure)?

*Answer.* If confirmed, I will work with the Taxpayer Advocate’s office to be sure that it has the information it needs from the Office of Chief Counsel to assess IRS programs and report to Congress.

QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

*Question.* The IRS’s stability and credibility is preserved by keeping it free from political influence.

Do you agree that the IRS’s work to administer and enforce the tax code should be free from political interference (even if—and especially if—a company or individual affiliated with President Trump, his close associates, or family members is involved)?

*Answer.* Over the course of my career—both as a civil servant at the Departments of Justice and Treasury and as a tax practitioner—I have developed an appreciation for the need to insulate the IRS from improper political interference. The IRS must treat all taxpayers impartially.

*Question.* Would you notify me and the bipartisan membership of the Finance Committee if inappropriate political interference occurs, from the White House, Treasury, or otherwise?

*Answer.* It is unlawful for the President, Vice President, or any employee of the Executive Office of the President to take certain actions with respect to the operation of the IRS. If confirmed, I will work to uphold the law and take appropriate steps to address any violations.

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PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today offered the following opening statement at a Treasury nominations hearing.

Today we will consider the nominations of Justin Muzinich, to be Deputy Secretary of the Treasury, and Michael Desmond, to be Chief Counsel for the IRS and Assistant General Counsel in the Department of the Treasury. I would like to extend a warm welcome to both of our nominees here today and thank you both for your willingness to serve in these important positions.

Mr. Muzinich, should you be confirmed, the Treasury Department will not be an entirely new workplace for you. You have been serving at the Treasury Department as a Counselor to the Secretary, advising the Secretary on several domestic and international policy initiatives, including tax reform. As I know you are aware, this committee has a special interest in the new tax reform policies that have already started to improve the lives of many Americans through higher wages, bonuses, and increased business optimism.

If confirmed as Deputy Secretary, you will be responsible for assisting Secretary Mnuchin with the administration of the Treasury Department, including implementing the recently passed tax reform law.

Mr. Desmond, if confirmed, will serve as Chief Counsel for the IRS and Assistant General Counsel in the Department of the Treasury. In similarity to Mr. Muzinich, government service is not unfamiliar to you, Mr. Desmond. From 2005 to 2008, you worked at Treasury as a tax legislative counsel and, before that, you had worked in the Justice Department as a trial attorney.

If confirmed, Mr. Desmond will be the chief legal advisor to the IRS Commissioner on all matters relating to interpretation, administration, and enforcement of the tax code. The chief counsel oversees an office responsible for providing IRS agents, and taxpayers, with guidance on how to comply with our tax laws. This is no easy task, but especially given Mr. Desmond's work in the Treasury Department, I believe he is a good candidate for the job. We thank you and look forward to having you back in government service again.

Before we begin, I want to address something that I suspect my colleagues from across the aisle will bring up during today's hearing. Just a few weeks ago, the Treasury Department released new regulations which caused some dramatic responses from the Democratic members of this committee.

Today, our Democratic colleagues may argue against these nominees on the basis of these recent policy changes, which were made to streamline information returns by certain tax-exempt organizations. As I explained on the Senate floor yesterday, what this regulatory change actually does is far different than the characterization coming from my colleagues.

So, let me repeat myself and re-explain the facts behind this change. Earlier this month, the Treasury Department changed a Nixon administration regulation that required social welfare organizations, labor organizations, and Chambers of Commerce to report the names and addresses of their donors.

This rule was a problem for several reasons. The IRS doesn't need this information for tax administration, since these donations aren't tax-deductible. If the IRS decides it does need the information, it is still available to them upon request.

The Nixon-era rules required a lot of time and resources both at the IRS, which had to redact the information to protect it against improper disclosure, and at the tax-exempt organizations. The rules put taxpayer information at risk. Indeed, the IRS knows of at least 14 instances where this information was improperly released since 2010.

So while our Democratic friends will pretend this is some conspiracy theory to overthrow democracy or cloak the political world in so-called dark money, in reality this was a simple change to improve IRS efficiencies and protect taxpayer data. And, on the heels of IRS taxpayer-information abuses during the Obama administration, attention to taxpayer protection is a must.

On top of that, the recent change in regulations isn't even really a newfound Republican idea. Under the Obama administration, the IRS sought to make an even more extensive change on Schedule B reporting.

So let's keep that in mind when our Democratic colleagues inject politics into our nomination proceedings and into what is in reality a common-sense regulatory change.

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PREPARED STATEMENT OF JUSTIN G. MUZINICH, NOMINATED TO BE  
DEPUTY SECRETARY, DEPARTMENT OF THE TREASURY

Chairman Hatch, Ranking Member Wyden, and distinguished committee members, I am honored to appear before you today as the nominee to be Deputy Secretary of the Treasury. I am grateful to Secretary Mnuchin for his confidence and support in recommending me for this position.

I would like to take a moment to introduce my wife Eloise who, on top of being a talented physician, is a wonderful mother to our two children. I would also like to acknowledge my parents, my sister Lauren, and my brother Adrian. Their love and support have made all the difference in my life.

My own family fled communism for the liberty of this country, and my wife's family has a proud history of military service, including a grandfather who served as a General in the Air Force. So I sit before you today with a profound appreciation for the freedoms this country stands for and the sacrifice that has gone into protecting them.

It has been a privilege to meet with many of you and your staffs over the past several months as a nominee, and over the past year and a half in my role as Counselor to the Secretary. I pledge that, if confirmed, I will be committed to dialogue and engagement with you, and look forward to accomplishing more together.

The Treasury Department is tasked with oversight of some of the most critical issues facing our country and the world. From safeguarding our financial system and implementing sanctions to driving economic growth and opportunity, administering the tax system, printing the Nation's currency, and managing the balance sheet of the U.S. Government, the role of the Department is vast.

None of this work would be possible without Treasury's tremendously dedicated career staff. During my time at the Department, I have developed a deep respect for their expertise and commitment to moving the country forward—putting in long hours, making sacrifices, and seeking no recognition. They are the pillars of the building, and it is a privilege to serve side-by-side with them.

If confirmed, I will assist Secretary Mnuchin in carrying out the Department's mission by bringing to bear my perspectives from working in finance and teaching, as well as the first-hand knowledge I have gained over the past year and a half serving as Counselor to the Secretary.

My experience at Treasury has affirmed my long-held belief in the importance of public service—of actively participating in our great democratic debate and giving back to the country. If confirmed, I will strive to live up to all that Treasury and this great country stand for.

I look forward to your questions.

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

**A. BIOGRAPHICAL INFORMATION**

1. Name (include any former names used): Justin George Muzinich.
2. Position to which nominated: Deputy Secretary of the Treasury.
3. Date of nomination: April 10, 2018.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: November 5, 1977, Zurich, Switzerland.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):  
Groton School, 1993–1996, high school diploma received in June 1996.  
Harvard College, 1996–2000, bachelor's degree received in June 2000.  
London School of Economics, 2000–2001, master's degree received in May 2001.  
Harvard Business School, 2003–2007, M.B.A. received in May 2007.  
Yale Law School, 2004–2007, Juris Doctor degree received in May 2007.
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):  
U.S. Department of Treasury, Counselor to the Secretary, Washington, DC, 2017–present.  
Muzinich and Co., president, New York, NY 2010–2017.  
Jeb 2016/Right to Rise, policy director, New York, NY, 2015–2016.  
Columbia Business School, adjunct professor, New York, NY 2014–2016.  
Romney Transition Team, Washington, DC, 2012 (2 months).  
Alta Investors, co-founder, New York, NY, 2010–2011.  
Lazio for Governor, policy director, New York, NY, 2010 (3 months).  
EMS Capital, managing director, New York NY, 2007–2010.  
CR Intrinsic Investors, intern/analyst, New York, NY, 2006–2007 (3 months full-time as analyst).  
Department of Defense, intern OGC, Arlington, VA, 2006 (2 months while grad student).  
Department of Defense, intern CT policy, Arlington, VA, 2005 (3 months while grad student).  
White House, intern NEC, Washington, DC, 2004 (3 months while grad student).  
Senate Republican Policy Committee, intern, Washington, DC, 2003 (3 months).  
Morgan Stanley, analyst, New York, NY 2001–2003.
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, other than those listed above.
11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, com-

pany, firm, partnership, other business enterprise, or educational or other institution):

The Buckley School, director.

New York Presbyterian Hospital, trustee.

2012 Stock Trust, trustee.

Henry R. Breck 2016 Insurance Trust, trustee (resigned).

2008 Muzinich Family Trust, trustee (resigned).

Muzinich 2011 GST Exempt Family Trust, trustee (resigned).

Muzinich and Co., director (resigned).

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

Council on Foreign Relations, member of a membership committee.

Harvard Club, New York.

Tuxedo Club, New York.

Lyford Cay Club, Nassau.

River Club, New York.

Metropolitan Club, DC.

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.

Lazio for Governor, policy director, New York, NY, 2010.

Romney Transition Team, Washington, DC, 2012.

Jeb 2016/Right to Rise, policy director, 2015–2016.

- 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.

Date	Amount	Recipient
October 17, 2016	\$2,700.00	Gallagher, Mike (R)
June 13, 2016	\$2,700.00	Gallagher, Mike (R)
May 23, 2016	\$2,700.00	Stefanik, Elise (R)
March 24, 2016	\$1,000.00	Starrett, Grant (R)
November 19, 2015	\$250.00	Zeldin, Lee (R)
June 23, 2015	\$2,700.00	Bush, Jeb (R)
January 16, 2015	\$500.00	Zeldin, Lee (R)
January 9, 2015	\$5,000.00	Right To Rise PAC (R)
November 3, 2014	\$500.00	Zeldin, Lee (R)
November 2, 2014	\$1,000.00	Stefanik, Elise (R)
June 6, 2014	\$2,600.00	Moll, Thomas (R)
March 31, 2014	\$2,600.00	Cotton, Tom (R)
March 31, 2014	\$2,600.00	Cotton, Tom (R)

Date	Amount	Recipient
March 29, 2014	\$1,000.00	Zeldin, Lee (R)
March 28, 2014	\$5,200.00	Cotton, Tom (R)
March 26, 2014	\$2,600.00	McConnell, Mitch (R)
December 30, 2013	\$2,600.00	Stefanik, Elise (R)
August 18, 2013	\$2,600.00	Moll, Thomas (R)
August 18, 2013	\$2,600.00	Moll, Thomas (R)
October 19, 2012	\$2,500.00	Romney, Mitt (R)

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):

Phi Beta Kappa, Harvard College.

Baker Scholar, Harvard Business School.

Olin fellow in law, economics, and public policy, Yale Law School.

15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):

“Sisyphus Just Needs a Hand,” *Foreign Policy*, January 27, 2015 (with Admiral Jim Stavridis).

“Beware Regulatory Concentration Risk,” *American Banker*, February 25, 2014 (with Glenn Hubbard).

“A New Mandate for the Federal Reserve,” *Washington Post*, October 11, 2013 (with Glenn Hubbard).

“North Korea’s Surprising Sense of Vulnerability and Hopes for Change,” *Huffington Post* (with Vishaka Desai).

“Credit Where Credit Is Due,” *Longitude*, February 2013 (with Richard Greco).

“The Nuke in the Cargo Hold,” *Hoover Policy Review*, August 2010.

“Nuclear Free Seas,” *The New York Times*, September 23, 2009 (with Thomas Lehrman).

“A Better Approach to Foreign Aid,” *Hoover Policy Review*, June 2008 (with Erik Werker).

“Global Tax Credit,” *The New York Times*, October 20, 2007 (with Eric Werker).

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

None.

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

If confirmed, I would bring to the job of Deputy Secretary a unique combination of policy experience, an understanding of domestic and international finance, and a working knowledge of Treasury.

I have been involved in complex public policy issues, including at the State level, presidential level, and through writing about policy, for over a decade. I have held leadership roles directing policy for campaigns and managed teams responsible for a broad range of policies in high-pressure environments.

I have also worked in domestic and international finance for much of my career, having held jobs on both the sell side (advisory) and buy side (investing). I have managed global teams and navigated numerous market and economic environments. I have also created and taught a course on credit markets at Columbia Business School. I believe my understanding of markets and finance would allow me to bring a real-world perspective to the Deputy role.



In addition, should I be confirmed by the Senate, I will have already been at Treasury for over a year and a half serving as Counselor to the Secretary. I believe my relationships within the building, including with the Secretary and the leadership team, would allow me to be uniquely effective in the Deputy role.

#### **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.

As I am currently employed by the Department of the Treasury, I will continue my connection to my current employer.

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.

I have consulted with the Office of Government Ethics and the Department of the Treasury's designated agency ethics official to identify any potential conflicts of interest. All such potential conflicts have been resolved in accordance with the terms of my ethics agreement.

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 have consulted with the Office of Government Ethics and the Department of the Treasury's designated agency ethics official to identify any potential conflicts of interest. All such potential conflicts have been resolved in accordance with the terms of my ethics agreement.

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, beyond the activities performed as an employee of the Federal government.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

I have consulted with the Office of Government Ethics and the Department of the Treasury's designated agency ethics official to identify any potential conflicts of interest. All such potential conflicts have been resolved in accordance with the terms of my ethics agreement.

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.

Copies have been provided.

**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.

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**QUESTIONS SUBMITTED FOR THE RECORD TO JUSTIN G. MUZINICH**
**QUESTIONS SUBMITTED BY HON. MARIA CANTWELL****TRADE**

*Question.* In your role as Deputy Secretary, your portfolio is broader than it was as Counselor. As the number two person at the Treasury Department, you will have a role not limited to tax policy, but also in domestic finance, terrorism and illicit finance, financial sanctions, and international economic policy, including the administration of U.S. trade and economic sanctions.

The administration's end game to resolve trade issues with China, like concerns about intellectual property protection, remains unclear. The President's tariffs have resulted in Chinese retaliation that is hurting Washington State exporters. The Comprehensive Economic Dialogue (formerly called the Strategic Economic Dialogue) remains frozen and appears unlikely to be revived by this administration.

Why are there no ongoing dialogues on economic and commercial issues between the United States and China?

*Answer.* To the extent that China is prepared to make serious efforts to make structural changes to end unfair trade practices, the Treasury Department and the administration are available to discuss those. Large formal dialogues such as the Strategic Economic Dialogue and Strategic and Economic Dialogue, however, have not been effective in addressing unfair Chinese trade and investment practices.

*Question.* What role is the U.S. Treasury Department going to be playing in getting China back to the table to resolve economic and trade disputes?

Answer. Secretary Mnuchin has played, and will continue to play, a leadership role alongside Ambassador Lighthizer and Secretary Ross in our economic discussions with China.

#### AFFORDABLE HOUSING

*Question.* We have a lack of affordable housing in my State of Washington and across the country. We know that there is a shortage of 7.2 million affordable rental homes nationwide for extremely low income renters. Only 35 affordable and available rental homes exist for every 100 extremely low income renter households on a national basis. The solution to this crisis is the Low-Income Housing Tax Credit, which is a partnership between the Federal and State governments and the private sector that provides incentive to build more affordable housing.

The Low-Income Housing Tax Credit is a cost-effective program that creates jobs. This bipartisan program was enacted as a part of the 1986 Tax Reform Act. It is responsible for 90 percent of the affordable housing built in this country.

I am working with Chairman Hatch and many of my colleagues on a bill that would provide a permanent 50-percent increase in the Low-Income Housing Tax Credit, fix the 4-percent floor, and make numerous other important reforms, such as helping homeless students, and building more affordable housing in Indian Country and in rural areas.

If confirmed, will you work with me and this committee to address the affordable housing crisis in this country?

Answer. Thank you for your leadership on this issue. Yes, I certainly agree about the importance of affordable housing. I congratulate you on the progress made in the Consolidated Appropriations Act of 2018. I look forward to working with you on this issue, including to better understand the Cantwell-Hatch legislation discussed in your question.

*Question.* Would you support Congress taking action on pressing tax priorities, including energy and housing, before the end of the year?

Answer. Yes, if confirmed as Deputy Secretary, I will work to ensure the Department provides technical assistance and other feedback as you and your colleagues draft legislation related to these and other committee priorities.

#### DODD-FRANK OVERSIGHT AND THE ROLE OF FSOC

*Question.* In the wake of one of the most damaging financial crises in our history, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, (Dodd-Frank) to address the abuses which caused that crisis and put in place a framework to protect against future financial sector crises. The Dodd-Frank Act established the Financial Stability Oversight Council (FSOC) to bring together all the prudential financial regulators and help protect the safety and soundness of our financial system. I support the work that the FSOC does.

Your experience at EMS Capital was right in the middle of the crisis. This experience should give you a perspective on many of the issues addressed at the FSOC, including risk tolerance, over-leveraging, and capital requirements.

Since the 2008 market crisis, the interconnectedness in the financial services sector has increased. Additionally, recently there have been several changes that I believe increase risk in our financial system, including changes to the Volker rule, capital requirements, and a loosening of the prudential regulatory standards for financial institutions with assets between \$100 billion and \$250 billion for example.

How will you approach evaluating and managing the systemic risk as a part of the role that Treasury plays on the FSOC?

Answer. I support Secretary Mnuchin's view that the convening authority of FSOC is valuable in coordinating the activities of our key prudential and market regulators to increase communication, identify and decrease unnecessary regulatory overlap and burden, and take steps to ensure the safety and soundness of the financial system. FSOC plays a particularly important role in monitoring financial stability and cross-sector issues that may arise from time to time. I support the policy of the administration, reflected in the recently passed bipartisan banking bill, of promoting effective and efficient regulation and oversight and appropriate tailoring of regulatory requirements.

*Question.* What kinds of risk do you see as posing potential systemic risk to our financial system?

*Answer.* The U.S. banking system is well-positioned to serve the needs of consumers and businesses, which is critical to supporting economic growth. Regulatory enhancements since the financial crisis have significantly improved the quantity and quality of both capital and liquidity in the banking system. Disciplines imposed by the regulators, such as stress testing and resolution planning, have improved both the readiness of the system to absorb shocks as well as promoted a significant increase in transparency. As the business cycle matures, it is critical that the regulators continue to be vigilant in monitoring the credit and counterparty risk profile of the banking system, as I believe they are.

A risk that we are very focused on at Treasury is cybersecurity and the potential vulnerabilities of our financial institutions and financial markets. While significant gains have been made as a result of government and industry working together, the financial system increasingly relies on technology and mobile communication, which presents ever-changing scenarios to consider. Treasury is approaching this challenge by advocating for increased collaboration among regulators, leveraging FBIIC, which the Secretary chairs, and improving international coordination with our G7 and G20 partners. Advancing real-time information sharing and the development of a common lexicon are just two components that can decrease vulnerabilities. If confirmed, I look forward to assisting the Secretary in engaging with all FBIIC members to improve the cybersecurity of the U.S. financial system.

*Question.* How can you accurately assess systemic risk or the riskiness of any one financial institution given all the changing variables?

*Answer.* I support the use of transmission channels assessment adopted by FSOC in determining the extent to which the material distress of an individual firm could pose a threat to U.S. financial stability, namely counterparty exposure, implication of asset liquidations and the inability to provide critical functions or services for which there are no ready substitutes. I also believe that the approach adopted by the Federal Reserve to calculate the overall measure of systemic importance, linked to 12 financial indicators, provides a regular and useful update to look at systemic risk across a broad set of U.S. banking institutions. These indicators cover several categories including asset size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity. Since the financial crisis, this has been an area of active research, and that research continues at the FSOC as well as at the Federal Reserve, the IMF and in academia with many scholars publishing research through the Bureau of Economic Research.

#### CDFIS

*Question.* The Community Development Financial Institution (CDFI) Fund promotes economic revitalization and community development in low-income communities and helps build affordable housing. I was very disappointed to see the President's budgets for fiscal years 2018 and 2019 eliminate funding for the CDFI program entirely. Last year, across the country, CDFI participants made over 120,000 loans or investments worth over \$5 billion to more than 12,000 small businesses. CDFIs also financed nearly 28,000 affordable housing units last year. In my State of Washington, there are 25 CDFIs which have made 6,068 loans, worth \$425 million, 120 New Markets projects, leveraging \$556 million in investments, and the Native American CDFI Assistance Program has provided \$10.6 million in loans and assistance.

CDFIs are an incredibly effective economic development tool for rural and urban communities across the country. If confirmed, will you support full funding for this program as a part of next year's budget?

*Answer.* CDFIs do important work. The CDFI Fund will continue to certify financial institutions. Not only does certification make an entity eligible for multiple programs at the CDFI Fund, it also serves as a qualifier for other Federal government programs such as the Small Business Administration's Community Advantage Program and Federal Home Loan Bank membership.

In addition, the budget provides funding for the CDFI Fund to continue to operate the non-grant programs, such as the New Markets Tax Credit Program, which provide support for CDFIs and other community organizations lending and investing in economically distressed communities across the country. Since 2001, the New Markets Tax Credit Program has allocated \$54 billion in tax credit allocations in urban and rural areas. The budget also proposes to reauthorize the Bond Guarantee

Program to allow \$500 million in new guarantees in FY 2019. This program provides capital to CDFIs at no cost to the taxpayer. Effectively managing those resources will ensure that CDFIs have access to capital to continue to support urban and rural distressed communities.

*Question.* I have also heard concerns from local Community Development Enterprises (CDEs) in my State that are concerned that locally based CDEs are losing out to national CDEs for New Markets allocations.

If confirmed, will you commit to working with local CDEs to ensure that they can compete against the national CDEs, and will you make the CDFI staff available to review applications if the CDE does not get an award?

*Answer.* If confirmed, I will commit to exploring this issue and the process around CDFI award procedures and communications to ensure that they are consistently fair and transparent.

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QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

*Question.* The IRS plays a critical role in identifying and investigating suspicious financial activities. Do you agree?

*Answer.* The mission of the IRS is to administer and enforce the Federal tax laws. If in the course of its examination activities the IRS discovers evidence of a possible violation of Federal criminal law outside its jurisdiction, on a case by case basis, the IRS may refer the matter to “the appropriate Federal agency charged with the responsibility of enforcing such law” (26 U.S.C. § 6103).

*Question.* If an individual or organization were receiving large amounts of money—including from foreign sources—that the IRS found suspicious, the IRS should investigate the matter or refer the matter to another authority for investigation, as appropriate. Do you agree?

*Answer.* Yes, the IRS should refer evidence of serious potential violations of Federal criminal law to “the appropriate Federal agency charged with the responsibility of enforcing such law” (26 U.S.C. § 6103).

*Question.* There may be instances where suspicious tax returns raise red flags with the IRS about the violation of non-tax laws; for example, suspicious tax returns may suggest to the IRS that an individual is involved in money laundering, terrorist financing, or drug trafficking, in violation of U.S. laws governing fraud, importation, terrorism, or controlled substances. Do you agree?

*Answer.* Yes, the IRS should refer evidence of serious potential violations of Federal criminal law to “the appropriate Federal agency charged with the responsibility of enforcing such law” (26 U.S.C. § 6103).

*Question.* If the IRS plays a key role in identifying suspicious activity that may be related to money laundering, terrorist financing, or drug trafficking, the IRS may also play a key role in identifying suspicious financial activity that could be related to violation of our election laws. Do you agree?

*Answer.* The Federal Election Commission and the Department of Justice are charged with enforcing Federal election laws. If in the course of its examination activities the IRS finds evidence of serious potential violations of Federal criminal law, it should refer that evidence on a case by case basis to “the appropriate Federal agency charged with the responsibility of enforcing such law” (26 U.S.C. § 6103).

*Question.* Without automatically receiving the names of large-scale donors, will it be more difficult for the IRS to determine if a single donor or group of related donors has made suspicious contributions to multiple tax-exempt organizations?

*Answer.* The mission of the IRS is to administer and enforce the Federal tax laws, including whether a donor claiming a charitable tax deduction under section 170 of the Internal Revenue Code qualifies for such a deduction, or whether an organization claiming tax-exempt status is operated for exempt purposes. There is no limitation under the Federal tax laws preventing a donor or group of related donors from making contributions to multiple tax-exempt organizations, although there are limitations on whether such contributions may be deductible under the Internal Revenue Code. If in the course of its examination activities the IRS finds evidence of serious potential violations of Federal criminal law, it should refer that evidence on a case by case basis to “the appropriate Federal agency charged with the responsibility of enforcing such law” (26 U.S.C. § 6103).

*Question.* Do you agree with Secretary Mnuchin and IRS Acting Commissioner Kautter's decision to roll back donor transparency requirements for certain tax-exempt entities?

*Answer.* Tax-exempt entities should not be required to report on their annual returns to the IRS information that the IRS does not need in that form to administer or enforce the Federal tax laws. The new policy announced by the IRS will protect taxpayers by reducing the risk of inadvertent disclosure or misuse of confidential information and will save both taxpayer and government resources. It is worth noting that the Schedule B modifications resulted in no change to data that is disclosed publicly, and the IRS retains its ability to access all data it had before.

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QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL

*Question.* China is still the world's largest steel producer and accounts for half of all global steel output. Steel overcapacity is still a global concern.

What steps should the Treasury Department pursue to address the global steel overcapacity problem?

*Answer.* The Treasury Department, along with the rest of the administration, supports the need for effective policy solutions that enhance market functions and reduce excess capacity. The administration is actively engaged with steel producing nations, including China, to address the systemic issues that led to the creation of steel excess capacity, particularly government subsidies and other support measures. The administration is working to coordinate efforts with like-minded trading partners, including the European Union, Japan, Mexico, and Canada, to reduce or eliminate subsidies and other government supports for steel and to support other measures that will improve the functioning of market mechanisms in the steel sector. The administration also supports bilateral and multilateral engagement on solutions to the excess capacity problem and is working with trading partners to address its root causes, for example in the Global Forum on Steel Excess Capacity.

*Question.* Will you commit to addressing steel overcapacity through multilateral or bilateral negotiations? If yes, please specify what timeline you recommend for these negotiations.

*Answer.* China's and other countries' market-distorting practices hurt firms around the world. Many like-minded countries have long shared these concerns about excess capacity, which leads to excess production, as well as subsidies and dumping. As noted above, the administration supports bilateral and multilateral engagement on solutions, and is working to address the excess capacity problem through the Global Forum on Steel Excess Capacity. It is time for all countries to take concrete action to fight market distortions in steel and aluminum at its source. Continued international efforts to combat global excess capacity and overproduction are welcome.

*Question.* The administration's tariffs on imported steel and aluminum are devastating to Missouri's manufacturers. Is there a particular goal or other trigger point for the U.S. economy before the administration will turn off the tariffs that are so disruptive to downstream manufacturing?

*Answer.* Global excess production and resulting excessive imports in the steel and aluminum industries have already harmed the U.S. economy. To address impacts on industries that rely on imports, the Department of Commerce has put in place a product exclusion process. The administration is also working with countries to address the underlying problem.

*Question.* Treasury officials repeatedly promised that the 2017 tax law would pay for itself. Just months later, the Congressional Budget Office projects the deficit will be \$804 billion in fiscal year 2018, a 21-percent increase to the \$655-billion deficit at the end of fiscal year 2017.

What assumptions or rationale did the Congressional Budget Office get wrong in order to arrive at a dramatically different conclusion regarding the fiscal impact of tax law?

*Answer.* I do not know the assumptions underlying the CBO estimate. I do agree with the analysis of the Council of Economic Advisors, which suggests that the Tax Cuts and Jobs Act and other policies of this administration will lead to increased investment, growth, and tax revenue. In addition, other outside analyses have found that the proposals that underpinned the tax bill will produce significant economic

responses including higher wages for the average American household (e.g., Laurence Kotlikoff of Boston University and others).

*Question.* Data released by the Bureau of Labor Statistics concluded that real average hourly earnings for all workers were unchanged, from June 2017 to June 2018.

What policy changes do you recommend to generate a positive trend in wage growth?

*Answer.* The policies that were just enacted in the Tax Cuts and Jobs Act are expected to increase capital investment, thereby increasing labor productivity and resulting in wage growth. If confirmed, I look forward to working with you on additional tax and other reforms to increase productivity and wages.

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QUESTIONS SUBMITTED BY HON. MICHAEL B. ENZI

*Question.* The Internal Revenue Service continues to experience significant challenges in updating its technology. For example, in 2009, the IRS began developing the Customer Account Data Engine (CADE 2) to replace the Individual Master File for managing taxpayer accounts. Since then, the agency has spent more than \$1 billion on the project, but has only completed one phase, has significantly scaled back other phases, and has delayed CADE 2's estimated completion date.

In your position at either Treasury or the IRS, how would you expect your role to address these challenges?

*Answer.* IRS IT modernization is a complex and challenging issue. Secretary Mnuchin has made this a priority. He and his senior staff meet regularly on the subject with the Department's CIO and IRS officials. As he has mentioned in recent testimony, he has directed the IRS to develop a 5-year plan to modernize its core systems, including completing CADE II. IRS is working on this 5-year plan with help from the Department's CIO. If confirmed as Deputy Secretary, part of my role would be to assist the Secretary in the management and oversight of the Department's programs including IRS IT.

*Question.* A July 2017 Treasury Inspector General for Tax Administration report came to the following conclusion: "The IRS has not effectively updated or implemented hiring policies to fully consider past IRS conduct and performance issues prior to making a tentative decision to hire former employees, including those who were terminated or separated during an investigation of a substantiated conduct or performance issue."

In your position at either Treasury or the IRS, how would you expect your role to address these challenges?

*Answer.* If confirmed, I would be happy to discuss this with the IRS and to work with your office to help address these challenges.

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QUESTIONS SUBMITTED BY HON. BILL NELSON

*Question.* In your view, what sort of questions arising from the new tax law (Pub. L. 115-97) do you think you could help with?

*Answer.* I expect to continue to work closely with the Office of Tax Policy to implement various provisions of the Tax Cuts and Jobs Act. As questions arise with implementation, I will help manage Treasury to ensure the best possible outcome.

*Question.* Do you have any concerns about how the new tax law (Pub. L. 115-97) impacts the Nation's debt? If not, why not?

*Answer.* The Nation's debt is something that we must all take very seriously. I support the administration's position that the Tax Cuts and Jobs Act and other policies of this administration will lead to increased investment, incomes and tax revenue. The Council of Economic Advisors has published a white paper explaining this economic reasoning in depth.

*Question.* How will you work to stop corporations from using the new tax law (Pub. L. 115-97) to avoid paying their fair share?

*Answer.* The Tax Cuts and Jobs Act lowered tax rates on American taxpayers, including American corporations, which will reduce the incentives to engage in tax-

planning and instead encourage increased investment in the United States. In addition, the new tax law also contains provisions that will significantly reduce base erosion associated with international tax planning. The need to address this was at the forefront of concerns from the last administration as well.

*Question.* Do you believe tax-exempt groups could be used by Russia or other adversaries to interfere with our elections? If not, why not?

*Answer.* I have not seen data regarding tax-exempt groups and foreign money in elections. As I understand it, Treasury does not track this type of data. I would refer you to the Federal Election Commission, the independent regulatory agency charged with administering and enforcing the Federal campaign finance law.

*Question.* Recently, the Treasury Department and the IRS changed the rules for tax-exempt entities, removing the requirement for 501(c)(4) groups and other tax-exempt groups to share their major funding sources with the IRS. Do you think it makes sense to hamstring the IRS's ability to ensure 501(c)(4) groups and other tax-exempt groups are not being used by foreign states to undermine our democracy? If so, please explain why.

*Answer.* The mission of the IRS is to administer and enforce the Federal tax laws. The Federal Election Commission and the Department of Justice, not the IRS, are charged with enforcing Federal election laws. Nevertheless, it is worth noting that the Revenue Procedure resulted in no change to data that is disclosed publicly, and the IRS retains its ability to access all data it had before.

*Question.* What metrics should we use to judge the performance of the administration's trade policies?

*Answer.* The administration is working to ensure balanced trading relationships in which U.S. firms and workers are protected against unfair foreign trade practices. Our firms and workers should be able to compete on a fair and level playing field globally. It is in this context that trade policy actions should be viewed.

*Question.* What are the top three lessons you learned from the 2008 financial crisis?

*Answer.* While it is difficult to rank the many important lessons from the financial crisis, here are three that I think are key. First, make sure that our largest financial institutions have adequate quantity and quality of both capital and liquidity that can be assessed by the regulators and the market continually on a very transparent basis. Second, promote market regulation that encourages transparency, efficiency, and the orderly flow of capital and effective management of counterparty risk through central clearing, disclosure of trade data and rigorous margin requirements. Third, promote communication among regulators, to identify emerging risks and to deal, on a timely basis, with market shocks or dislocations.

*Question.* What do you believe is the greatest threat to the global economy?

*Answer.* A risk that we are very focused on at Treasury is cybersecurity and the potential vulnerabilities of our financial institutions and financial markets. While significant gains have been made as a result of government and industry working together, the financial system increasingly relies on technology and mobile communication, which presents ever-changing scenarios to consider. Treasury is approaching this challenge by advocating for increased collaboration among regulators, leveraging FBIIC which the Secretary chairs, and improving international coordination with our G7 and G20 partners. Advancing real-time information sharing and the development of a common lexicon are just two components that can decrease vulnerabilities. If confirmed, I look forward to assisting the Secretary in engaging with all FBIIC members to improve the cybersecurity of the U.S. financial system.

*Question.* What do you believe are the top three issues/risks facing international finance that need to be addressed?

*Answer.* It is difficult to precisely rank risks, but here are three that are important. First, a significant concern to the Treasury Department is the lack of transparency with respect to the indebtedness of governments worldwide, particularly among developing countries. Existing regimes to compile and publish sovereign debt statistics have serious deficiencies. Many government liabilities are excluded from official debt statistics, thereby masking the actual amount of leverage in the public sector of many economies. Hidden liabilities often include obligations incurred by public and private entities guaranteed by the government, the debts of state-owned enterprises (SOE), and financing secured by government commitments and forward sales of commodities. Second, rising interest rates will necessarily raise debt serv-



icing costs for governments, at best crowding out other areas of public investment and at worst moving countries toward debt crises. This can be compounded by movements in exchange rates. Finally, the threat of debt crisis is potentially exacerbated by the provision of easy credit from emergent creditors, such as China, which are motivated by geopolitical ambitions rather than development economics and principles of debt sustainability.

*Question.* What would you do if the President asked you to do something unethical or morally questionable?

*Answer.* If confirmed as Deputy Secretary, I will work to set an example by upholding the ethical standards that apply to all senior Department officials.

*Question.* If the President said something publicly that was factually untrue, what would you do to correct the record?

*Answer.* If confirmed as Deputy Secretary, I will work to ensure the Department engages as an honest broker with Congress and the American people.

*Question.* Do you disagree with any of the Trump administration's trade policies, regulatory policies, or tax policies? If so, please explain which ones.

*Answer.* I agree with the agenda of driving economic growth through tax reform, deregulation, and achieving free and fair trade. Within my area of responsibilities, if I were to have a disagreement on a specific policy, I would share this privately with the appropriate person.

*Question.* Do you believe climate change is a threat to the long-term interests of the United States?

*Answer.* The Treasury Department is not the lead agency charged with responding to climate change. If confirmed, I will work to ensure the Department provides appropriate support to those agencies charged with responding.

*Question.* What effect do you believe the U.S.'s withdrawal from the 2015 Paris Agreement on Climate Change will have on the U.S. economy over the long run?

*Answer.* I have not studied this question, and I am not aware of any analysis from the Department on this matter. If confirmed, I would be happy to work with you on this issue.

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#### QUESTIONS SUBMITTED BY HON. SHELDON WHITEHOUSE

*Question.* At the hearing, you said you were unable to answer questions about the national security threat that shell companies pose because you had not seen relevant national security data.

After reviewing the data, what is the national security threat shell companies pose to the United States?

*Answer.* The 2015 U.S. National Money Laundering Risk Assessment found that one of the main methods used to move dirty money involves creating legal entities without accurate information about the identity of the beneficial owner. Bad actors may more easily hide illicit funds and avoid detection through business entities because the true owner is masked. Treasury recognizes the vulnerabilities that exist in corporate formation without the disclosure of beneficial ownership information.

U.S. companies with hidden beneficial owners have been used by arms dealers, narco-traffickers, proliferators of weapons of mass destruction, and facilitators of massive health care and mortgage frauds, among other abuses. As one example, Viktor Bout, a Russian arms dealer, used at least 12 companies incorporated in the United States to carry out his arms dealing. Similarly, Samark Lopez Bello, the primary frontman for Tareck El Aissami, the former Venezuelan Vice President and current Minister of Industries and National Production (both designated pursuant to the Foreign Narcotics Kingpin Designation Act in February 2017), created five U.S. LLC companies in Florida to hold real estate or other U.S. assets in Lopez Bello's name.

*Question.* What role does Treasury play in identifying, investigating, and preventing money laundering?

*Answer.* Treasury is fully dedicated to combating all aspects of money laundering at home and abroad, through the mission of the Office of Terrorism and Financial Intelligence (TFI). TFI utilizes the Department's many assets—including a diverse

range of legal authorities, core financial expertise, operational resources, and expansive relationships with the private sector, interagency, and international communities—to identify and attack money laundering vulnerabilities and networks across the domestic and international financial systems. Treasury’s Financial Crimes Enforcement Network (FinCEN) is the administrator of and lead regulator for the Bank Secrecy Act (BSA), the primary anti-money laundering law of the United States.

The BSA reporting that financial institutions provide is used in a variety of ways in support of law enforcement and FinCEN’s important missions, including:

- Serve as tips to initiate investigations;
- Expand existing investigations by pointing to the identities of previously unknown subjects;
- Promote international information exchange through the Egmont Group of Financial Intelligence Units; and
- Identify significant relationships, trends, and patterns.

*Question.* Currently no jurisdiction in the United States requires shell companies to disclose their beneficial ownership. Jennifer Fowler, the Deputy Assistant Secretary, Office of Terrorist Financing and Financial Crimes at Treasury recently told the Judiciary Committee that the lack of beneficial ownership information for shell companies is “a vulnerability.” John Cassara, a former Treasury Special Agent and FinCEN Agent, agreed saying, “[R]equiring the real owner of a U.S. company to be named during the incorporation process will cut down, in dramatic fashion, the ability of criminals to finance their crimes.”

Do you agree the United States’ lack of beneficial ownership collection presents a serious shortcoming in our anti-money laundering regime?

*Answer.* Treasury recognizes the vulnerabilities that exist in corporate formation without the disclosure of beneficial ownership information. Illicit actors may more easily hide funds and avoid detection through business entities because the true owner is not disclosed. The collection of beneficial ownership information is critical both at the time of account opening and when a company is being incorporated. Treasury’s Customer Due Diligence Rule, which went into effect in May 2018 for financial institutions, requires those institutions to identify and verify the identity of the beneficial owners of their legal entity customers at the time of account opening. This change assists financial institutions in managing risks and law enforcement in pursuing criminals who launder illicit proceeds through legal entities. It is an important step forward. Treasury is evaluating various options in the area of collecting beneficial ownership at the time of company formation, and we look forward to working with Congress to support legislation that addresses this issue.

*Question.* Is there a national security threat posed by foreign nationals spending money in U.S. elections? If so please describe.

*Answer.* I have not seen data regarding tax-exempt groups and foreign money in elections. As I understand it, Treasury does not track this type of data. I would refer you to the Federal Election Commission, the independent regulatory agency charged with administering and enforcing the Federal campaign finance law.

*Question.* What is Treasury’s role in preventing foreign money from entering our elections?

*Answer.* The Federal Election Commission, not Treasury or the IRS, is charged with enforcing Federal election laws. If in the course of its examination activities the IRS discovers suspicious financial or other activities, on a case by case basis, the IRS may coordinate with other Federal agencies.

*Question.* The IRS has the ability to audit 501(c)(4) organization’s donor lists. For what purposes would the IRS need this information?

*Answer.* It is my understanding that the IRS makes no systematic use of Schedule B donor information filed by section 501(c)(4) organizations for the purpose of tax administration. If donor information is needed for the purposes of an examination, the IRS retains the ability to obtain the information directly from the organization. Such information may be relevant, on a case by case basis, to audit excess benefit transactions under section 4958 and to audit the organization’s tax exempt status under the general prohibitions on private inurement and private benefit.

*Question.* You said that you were not involved in the deliberative process regarding Revenue Procedure 2018–38, which allows certain tax-exempt organizations to no longer report donor information to the IRS.

Who at Treasury was involved?

*Answer.* Revenue Procedure 2018–38 addresses a matter of tax administration, which is primarily a matter for the IRS. As with most tax guidance, the Office of Tax Policy works with the IRS on guidance that is issued. The decision-makers were Secretary Mnuchin and Acting Commissioner Kautter.

*Question.* Today is it easier or more difficult for the IRS to know whether foreign nationals are behind politically active non-profit organizations than it was before Revenue Procedure 2018–38?

*Answer.* The mission of the IRS is to administer and enforce the Federal tax laws. The Federal Election Commission, not the IRS, is charged with enforcing Federal election laws. Nevertheless, it is worth noting that the Revenue Procedure resulted in no change to data that is disclosed publicly, and the IRS retains the ability to access all data it had before.

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QUESTIONS SUBMITTED BY HON. TIM SCOTT

OPPORTUNITY ZONES

*Question.* The Department of Treasury and Internal Revenue Service formally certified nominations from States, the District of Columbia, and all possessions of the United States to designate Opportunity Zones in their areas of jurisdiction.

This is great news! Securing this provision in the tax bill was a huge legislative win for the millions of Americans living in struggling communities in need of a renaissance.

This provision will help to create permanent and positive change that will benefit generations to come.

I look forward to further guidance for the investors and entrepreneurs on establishing the investment vehicles and identifying qualified investments most likely to drive jobs and economic activity.

Can I count on you prioritizing this project?

*Answer.* Yes. Thank you for your leadership on this issue.

FATCA AND P&C PREMIUMS

*Question.* I've also raised the issue with Secretary Mnuchin: FATCA in relation to property and casualty insurance premiums.

Anyone with a background in insurance like myself knows that these payments don't have a cash value and can't be used to evade taxes.

Treasury put out a PGP (Priority Guidance Plan) indicating it was evaluating the need to report such payments under FATCA.

I hope you and your team will keep on this in the future. Will you commit to working with me on this issue?

*Answer.* Yes. I look forward to working with you on this issue.

REDEEMING UNCLAIMED TREASURY BONDS

*Question.* South Carolina's Treasurer wrote me a letter in which he describes our State's struggle to obtain legal title to over \$250 million in matured and unredeemed U.S. savings bonds owned by South Carolinians.

As you can imagine, South Carolina wants to reunite its citizens with their unclaimed assets.

If the State cannot do so after a rigorous search process, the proceeds from the bonds will go to our general treasury for the benefit of South Carolina's schools, hospitals, and roads.

Senator Moran has discussed this issue with Secretary Mnuchin.

Will I have your attention to it should you be confirmed?

Answer. Yes, if confirmed, you will have my attention on this issue.

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QUESTION SUBMITTED BY HON. DEAN HELLER

*Question.* Nevada has become a hotbed for technology companies because of its business-friendly environment and collaborative approach toward attracting investment. In fact, the Silver State is now a key player in the development of cutting-edge technologies like mission-critical data centers, drones, and autonomous cars and trucks, just to name a few. Internet and technology companies are not only a critical component of Nevada's economy, but also the American economy, contributing an estimated 6 percent to U.S. GDP. Because these companies are a core source of U.S. economic strength, an increasing number of foreign nations have imposed or are considering imposing unilateral taxes on American digital companies to solve their domestic fiscal challenges and to promote domestic digital competitors. These taxes violate the spirit of our tax treaties, may conflict with international trade rules, and in some cases could directly expropriate revenue owed to the U.S. Treasury.

If confirmed, please comment on how the Treasury Department should push back on digital taxation proposals emerging in the international arena.

Answer. The administration firmly opposes proposals by any country to single out digital companies. Such proposals are based on an unprincipled distinction between digital companies and non-digital companies. Treasury will continue to engage through the Organization for Economic Cooperation and Development's Task Force on the Digital Economy, which it co-chairs, as well as in bilateral discussions with our trade partners.

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QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

*Question.* If confirmed by the Senate as Deputy Secretary, part of your role will be to ensure that the many offices of the Treasury Department are functioning in concert with one another. What past experience do you have that will help you manage the Treasury building, and how has the time spent as a Counselor to the Secretary helped you prepare for the position you are nominated to?

Answer. In my previous roles in the private sector I have managed teams across a number of offices, often dispersed globally. This experience has taught me a lot, including that managers must establish credibility, act as fair arbiters, and maximize their own effectiveness by seeking to make those who report to them most effective. My time serving as Counselor has been very valuable in allowing me to build an understanding of how the Department works and form strong working relationships within the Department.

*Question.* As you know, this committee is very active in engaging with the Treasury Department, conducting oversight of its activities, and working to ensure that regulations the Department issues are in line with the legislation Congress has passed. Describe for the committee how you envision the relationship between the Department generally, and you if confirmed as Deputy Secretary specifically, and this committee.

Answer. I think it is very important that the Department (and I, if confirmed) have a strong working relationship with the committee. Frequent dialogue is an important part of a strong relationship, so I would envision a close and continuous dialogue with the committee.

*Question.* The European Commission has proposed new digital services taxes. Although such proposals are facially neutral, I am concerned that their actual effect would be to single out U.S. high-tech companies for onerous taxation, contrary to the spirit, if not the letter, of various international commitments. As such, these taxes take aim at a core source of U.S. economic strength. Please comment on how the U.S. Treasury Department should push back on digital taxation proposals emerging in the international arena.

Answer. The administration firmly opposes proposals by any country to single out digital companies. Such proposals are based on an unprincipled distinction between digital companies and non-digital companies. Treasury will continue to engage on this basis through the Organization for Economic Cooperation and Development's

Task Force on the Digital Economy, which it co-chairs, as well as in bilateral discussions with our trade partners.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

INVOLVEMENT WITH IRS DARK MONEY DONOR DISCLOSURE RULE CHANGE

*Question.* In responding to Senator Casey's question during your nomination hearing, you stated that while you were "not the decision maker" with respect to the IRS's recent decision to exempt dark money groups from disclosing donor information to the IRS (Revenue Procedure 2018-38), you were aware of the issue and present at meetings with Secretary Mnuchin where the issue was discussed. Please State in writing for the record.

(a) The dates and locations of any meetings you attended in which any matter relating to the disclosure of donor information by tax-exempt entities was discussed. Of these meetings, please specify which meetings Secretary Mnuchin attended.

*Answer.* To the best of my recollection, tax-exempt organization reporting of information on Schedule B of Form 990 was discussed in a handful of meetings between March 2018 and July 2018.

*Question.* (b) The names and titles of any individuals attending a meeting described in (a) above.

*Answer.* The above meetings were regularly scheduled tax meetings hosted by the Secretary to discuss a variety of tax-related items. Those regularly invited to the meetings include officials from the Office of Tax Policy, the IRS, the Office of General Counsel, the Office of Legislative Affairs, the Office of Public Affairs, and other senior Treasury officials.

*Question.* (c) The names and affiliations of any individuals associated with an outside group attending a meeting described in (a) above.

*Answer.* None.

*Question.* Please provide any memoranda, meeting summaries, or other documents produced in connection with the meetings described in (a) above.

*Answer.* These documents, if any, would be deliberative in nature.

*Question.* Please provide any documents Treasury Department staff received or distributed in connection with any meeting described in (a) above.

*Answer.* These documents, if any, would be deliberative in nature.

*Question.* Please provide descriptions of any statements you made related to any matter relating to the disclosure of donor information by tax-exempt entities during any meeting described in (a) above.

*Answer.* These statements, if any, would be deliberative in nature. As I stated during my confirmation hearing, my role on this issue was limited.

*Question.* On July 16, 2018, the Treasury Department issued a press release related to the administration's decision to eliminate donor disclosure rules for tax-exempt organizations (<https://home.treasury.gov/news/press-releases/sm426>). The press release includes a statement from Secretary Mnuchin. Please describe whether you reviewed or were otherwise involved in the development of that press release or statement. Please provide any emails, memoranda, or other documents related to any involvement you may have had in review or development of the press release or statement.

*Answer.* I was not involved in the development of the press release. The press release was shared by Acting Commissioner Kautter with Secretary Mnuchin at one of the above-mentioned regular tax meetings, but I did not comment on it, as far as I can remember.

*Question.* Please provide any emails, memoranda, or other documents related to donor disclosure of tax-exempt organizations which were authored by you, which you were involved in developing, or which you reviewed.

*Answer.* I did not author any documents, nor was I involved in their development. I recall documents being circulated, though I did not engage substantively in their review.

*Question.* Please identify who the “decision-maker” was with respect to the Treasury Department’s decision to eliminate donor disclosure rules for tax-exempt organizations.

*Answer.* The decision-makers were Secretary Mnuchin and Acting Commissioner Kautter.

#### OBAMA ADMINISTRATION POSITION ON TAX-EXEMPT DONOR DISCLOSURE

*Question.* I am concerned that a statement you made in response to one of my questions relating to dark money disclosure during your confirmation hearing did not accurately reflect the facts surrounding this issue. As such, I would like to provide you the opportunity to clarify the matter. Specifically, in relation to the Trump administration’s decision to exempt dark money groups from disclosing the identities of major donors to the IRS you stated: “It was an action also recommended by the IRS Commissioner under President Obama. He testified about it. So it has become very partisan and that’s unfortunate. But it was something which the Obama IRS recommended as well.”

It has been widely reported that the IRS was exploring whether to eliminate Schedule B donor reporting in 2015 and consulting with stakeholders, including State tax administrators, on whether to recommend removing the donor disclosure requirement.<sup>1</sup> IRS’s exploration of this issue was discussed by Commissioner Koskinen in a July 2015 Senate Judiciary Committee hearing. However, I am not aware of any instance where any Commissioner or Treasury Secretary under the Obama administration made any official statement explicitly recommending elimination of the donor disclosure requirement for tax-exempt entities. Please provide me with a copy of any documents on which you based this statement.

*Answer.* As you note, Commissioner Koskinen, in his July 2015 testimony before the Senate Judiciary Committee, stated that the IRS was trying to change the requirement on Form 990 to list donors. In addition, in 2014, 2015, and 2016, the Priority Guidance Plan published by Treasury and the IRS listed as an item, “Guidance under § 6033 relating to the reporting of contributions.” The Priority Guidance Plan is a joint statement issued annually by the Treasury Assistant Secretary for Tax Policy, the IRS Chief Counsel, and the IRS Commissioner regarding the priorities for tax issues that should be addressed in regulations, revenue rulings, revenue procedures, notices, or other published administrative guidance. Finally, Treasury and the IRS’s spring 2016 unified regulatory agenda submitted to OIRA describes anticipated regulations to address this issue. Specifically, the agenda lists guidance under section 6033 regarding the reporting of contributors’ names and addresses to be issued as proposed regulations. The agenda abstract states in relevant part:

#### Guidance Under Section 6033 Regarding the Reporting of Contributors Names and Addresses (TEMP)

Current regulations under the Internal Revenue Code and related reporting forms require many tax-exempt organizations to report detailed information regarding contributions received and their contributors. Some of this information is required by law. Most is required by regulations adopted by the IRS under 26 U.S.C. 6001 and 6033. The IRS has determined that for many organizations, the reporting of such information is no longer necessary for the efficient administration of the internal revenue laws. The proposed regulations will eliminate the current reporting requirements for most organizations. The current reporting requirements relating to contributions and contributors will be retained for private foundations and supporting organizations. Organizations that will no longer be required to report such information will continue to be required to collect it and maintain it in their books and records so that it will be available to the Internal Revenue Service upon request. The proposed regulations also will be published simultaneously as temporary regulations effective for information returns filed for taxable years beginning after December 31, 2015.

This entry is available at <https://reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=1545-BN29>.

*Question.* Please indicate “yes” or “no” (in each case where I ask for a “yes” or “no” answer, you are of course welcome to also provide a brief explanation): is it true, as has been reported, that while the IRS was exploring whether to eliminate

<sup>1</sup> Fred Stokeld, “IRS Considers Ending Required Reporting of EO Contributions,” *Tax Notes*, December 14, 2015.

Schedule B reporting in 2015, the agency had made no final decision, and was consulting with stakeholders including State regulators because they have an interest in the information on the Schedule B?

Answer. I have no information concerning why the Treasury Department in the previous administration did not take final action on this reform.

*Question.* Please indicate “yes” or “no:” did the IRS or Treasury Department under the Obama administration issue any formal regulation, revenue procedure, or other guidance eliminating the Form 990 Schedule B donor disclosure requirement?

Answer. No.

*Question.* Please indicate “yes” or “no:” did the Obama administration issue a Statement of Administration Policy *opposing* H.R. 5053 (114th Congress), which would have generally eliminated Schedule B donor disclosure, because eliminating donor reporting would constrain the IRS in enforcing tax laws?

Answer. Yes.

*Question.* Please indicate “yes” or “no:” as has been reported, the IRS explored whether it was appropriate to eliminate the Schedule B donor reporting requirement in 2015 and consulted with various stakeholders, including State tax administrators who regularly use Schedule B information for State tax administration. The IRS and Treasury Department under the Obama administration ultimately did not propose eliminating the donor disclosure requirement. Did the IRS or Treasury Department under the Trump administration provide State tax administrators an opportunity for notice and comment before issuance of Revenue Procedure 2018–38? If not, why didn’t the Trump administration consult with States about this change as the Obama administration had done?

Answer. Revenue Procedure 2018–38 addresses an issue of Federal tax administration and is a matter of agency procedure.

*Question.* Does the Treasury Department/IRS plan to submit Revenue Procedure 2018–38 to the Senate for review under the Congressional Review Act?

Answer. As a matter of general practice, the IRS ordinarily submits revenue procedures and other guidance to Congress for review, even when not required by the Congressional Review Act. It is my understanding that Revenue Procedure 2018–38 was submitted to the congressional offices on July 24th.

#### DONOR DISCLOSURE NECESSARY FOR TAX ADMINISTRATION

*Question.* I am concerned that an exchange you engaged in with Senator Toomey may not accurately reflect the facts surrounding donor disclosure as it relates to tax administration. As such, I would like to provide you the opportunity to clarify the matter.

With respect to Revenue Procedure 2018–38, Senator Toomey asked you: “This category of organizations to which some people made contributions, isn’t it true that those contributions are not tax deductible?” You responded: “That’s right.”

Please indicate “yes” or “no:” while individuals’ contributions to 501(c)(4) and (c)(6) organizations are generally not tax-deductible, isn’t it also true (as is stated clearly on the IRS website<sup>2</sup>) that contributions to such organizations by a corporation, partnership, or other person may be tax-deductible as a trade or business expense?

Answer. Yes, if the payment independently meets the requirements of a trade or business expense and the requirements for deductibility of such expenses.

*Question.* Senator Toomey also stated: “Since the mission of the IRS is to determine what people owe in taxes, and since these contributions have nothing to do with what people owe in taxes, it’s really not the business of the IRS to be trying to police who contributed what to these organizations in a series of contributions that have no tax consequences. Isn’t that fair to say?” You responded: “That’s right, Senator.”

Please indicate “yes” or “no:” is the IRS responsible for enforcement of the prohibition on private inurement under IRC section 501(c)(4) and the rules under IRC section 4958 related to self-dealing?

<sup>2</sup> <https://www.irs.gov/charities-non-profits/other-non-profits/donations-to-section-501c4-organizations>.

Answer. Yes.

*Question.* Please indicate “yes” or “no:” is it true that IRC section 4958 and the regulations promulgated thereunder impose taxes on self-dealing transactions between 501(c)(4) organizations and “substantial contributors” in certain cases?<sup>3</sup>

Answer. Yes.

*Question.* Please indicate “yes” or “no:” isn’t it true that without donor information provided on Schedule B of Form 990, the IRS will have limited ability to identify substantial contributors who may have engaged in self-dealing, without subjecting the organization to an audit?

Answer. No. The IRS makes no systematic use of the information regarding section 501(c)(4) organization’s donor lists for purposes of tax administration. If the information is needed for the purposes of an examination, the IRS retains the ability to obtain the information directly from the organization.

PROPOSED TREASURY ACTION TO INDEX CAPITAL  
GAINS TO INFLATION THROUGH REGULATION

*Question.* During your nomination hearing, Senator Toomey requested that you, in your role as Deputy Secretary of the Treasury, enlist Treasury to authorize indexing of capital gains to inflation through regulations. You replied to Senator Toomey that you believed Treasury has the authority to index capital gains through regulations without needing Congress to take legislative action. I would like to understand the basis of this authority. I refer you to a May 24, 2018 letter to Treasury from eight Finance Committee Democratic members and myself, in which we argue that indexing capital gains to inflation requires legislative action and so exceeds Treasury’s rule-making authority.

If confirmed as Deputy Secretary of the Treasury, do you pledge to interpret our Nation’s internal revenue laws faithfully, regardless of any policy and political directives made to you by the Secretary of the Treasury?

Answer. Yes.

*Question.* In your faithful interpretation of U.S. internal revenue laws and related regulatory authority, has Congress granted Treasury the authority to write new rules that impose capital gains taxes only on real gains, and not nominal gains, as has been the law—and the interpretation, to our understanding—since the Revenue Act of 1918? If so, can you cite what IRC statute(s) extends such authority to Treasury?

Answer. In response to Senator Toomey’s request to work with him to determine whether the Treasury Department could implement regulations to tax real capital gains instead of nominal capital gains, I committed to work with him on the issue. This Treasury Department has not taken a position on the issue, and the Department’s Office of General Counsel would need to evaluate the issue.

*Question.* Legal opinions written by the Treasury and Justice Departments in 1992 under President George H.W. Bush concluded that Congress intended the word “cost” to mean the price paid in nominal dollars without adjustment for inflation. That plain language definition of cost appears in IRC section 1012—Basis of Property. Can you explain then (a) why the 1992 Treasury and DOJ legal opinions are wrong?

Answer. The Treasury Department’s Office of General Counsel would need to evaluate this issue.

*Question.* (b) Why the language of IRC section 1012 contains sufficient ambiguity to permit rule-making by Treasury that interprets basis to be measured in real terms as opposed to nominal terms?

Answer. Section 1012 of the Internal Revenue Code provides that the basis of property is generally its “cost” but does not provide a definition for that term. To provide certainty for taxpayers and the IRS, the Treasury regulations under section 1012 interpret the term “cost” generally to be “the amount paid for such property in cash or other property” (see 26 CFR § 1.1012–1(a)). Beyond this, the Treasury Department’s Office of General Counsel would need to evaluate this issue.

<sup>3</sup>26 CFR § 53.4958–3(e)(2).



*Question.* Finally, please supply the legal argument for why inflation indexing is explicitly provided in statute, such as with respect to income tax bracket amounts described in IRC sections 1 and 11.

If such indexing to inflation were absent, in your interpretation, would Treasury have rule-making authority to allow for such indexing?

*Answer.* The Treasury Department's Office of General Counsel would need to evaluate this issue.

*Question.* The new tax law passed at the end of last year changed the measure of inflation used to index individual income tax brackets and other tax provisions from CPI-U to chained CPI. In your faithful interpretation, did Treasury already possess sufficient rule-making authority to index provisions of the tax code to whatever measure of inflation it deemed fit, without congressional action?

*Answer.* Where Congress has already provided a specified measure of inflation to be used to index amounts provided in particular provisions of the tax code, the Treasury Department would be required to use that measure.

#### CURRENCY MANIPULATION

*Question.* During his candidacy, President Trump repeatedly promised to name China a currency manipulator. Almost immediately after being inaugurated, he seems to have changed course, and every currency report issued by the Treasury Department has declined to label China as a currency manipulator. Just last week, the President again tweeted that China, as well as "the European Union and others have been manipulating their currencies and interest rates lower, while the U.S. is raising rates while the dollar gets stronger and stronger with each passing day."

Do you agree with the President that China and the EU are manipulating their currencies?

*Answer.* The Treasury Department issued its most recent semiannual currency report to Congress on April 13th. As noted by the Senator, the Department did not find any country had manipulated its currency in the period covered by that report. On October 16th, the Treasury Department will deliver to Congress its next semiannual currency report, which will examine the currency policies of all major U.S. trading partners.

*Question.* What do you take from the President's statement about how you and other Treasury officials should be evaluating countries that are manipulating their currency?

*Answer.* I take from the President's statement that securing stronger and more balanced global growth requires that countries avoid policies that facilitate unfair competitive advantage. The Treasury Department continues to track closely the foreign exchange and macroeconomic policies of all major U.S. trading partners in order to monitor where unfair currency practices may be emerging.

#### TRADE DEFICITS

*Question.* What do you believe trade deficits reflect about our trade relationships?

*Answer.* Large trade imbalances can reflect underlying trade distortions resulting from unfair trade practices. It is critical that the administration enforce the trade agreements we have as well as address unfair practices that hurt our firms and workers, in order to bring about free and fair trade.

*Question.* Do you agree with the President's apparent position that trade deficits are *per se* detrimental to the United States?

*Answer.* As previously stated, to the extent large and continuing trade imbalances arise from unfair and distortive trade actions by our trading partners, they are likely to be detrimental to U.S. firms and workers.

*Question.* Do you think there is a relationship between our increasing budget deficit, which is driven by the Republican tax cuts, and the trade deficit since much of our budget deficit is financed from foreign purchases of U.S. Government debt?

*Answer.* As previously stated, large trade imbalances can reflect underlying trade distortions resulting from unfair trade practices. At a macroeconomic level, trade balances—or more accurately, current account balances, discussed in the next response—reflect the imbalance between saving and investment within an economy. Countries where saving is higher than investment have current account (and typi-

cally trade) surpluses, whereas countries like the United States where overall investment is higher than saving (including consumers, businesses, and the government), have current account (and typically trade) deficits.

*Question.* What is the relationship between the current account balance and the trade balance?

*Answer.* The trade balance is one component of the current account balance, which also includes the net income balance. In the majority of economies—including the United States—the trade balance is the largest component of the current account balance. In 2017, the U.S. current account balance stood at a deficit of \$449 billion (or 2.3 percent of GDP). This overall current account deficit was made up of a trade deficit of \$552 billion and an income surplus of \$103 billion.

#### CURRENCY ADVISORY COMMITTEE

*Question.* Dealing with the issue of currency manipulation is something this committee has spent a lot of time on. In the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, or “TPA,” we included two new negotiating objectives to address currency manipulation in trade agreements—something we haven’t heard a lot about from the Treasury Department in the context of NAFTA. Thanks to Senator Bennet and others, we also strengthened enforcement tools to combat currency manipulators in the Customs bill, which became law in 2016.

As part of the Customs bill, we created a new Advisory Committee on International Exchange Rate Policy. That committee has yet to be established, even though Democrats in the House and Senate have recommended members.

If confirmed, will you commit to work to set up the Advisory Committee to assist the Treasury Department on international currency topics?

*Answer.* Section 702(c) of the Customs bill required termination of the Advisory Committee 2 years after its enactment in February of 2016. During the Obama administration and the present administration, no members were appointed to the Advisory Committee per the procedures described in section 702(b). The issue of currency manipulation remains important, and the Treasury Department looks forward to continuing to work closely with Congress to ensure our major trading partners do not engage in currency policies that distort trade and hurt American firms and workers.

#### CHINA STRATEGY

*Question.* There is widespread agreement that we have major problems in our trade relationship with China, but there are also many questions about what the administration’s strategy is, or whether there is a strategy at all. At times it is not clear to our trading partners or to Congress who is calling the shots on trade negotiations with China—sometimes it’s Secretary Mnuchin, sometimes it’s Secretary Ross, Ambassador Lighthizer, or Mr. Navarro. And they are rarely sending a consistent message on behalf of the United States.

If confirmed, part of your responsibilities will be to oversee trade policy. What role will you play in helping to implement a coherent China trade policy? Do you agree with the current China trade policy?

*Answer.* I support the administration’s efforts to create a more fair and reciprocal trade relationship with China and, as appropriate, will work with Secretary Mnuchin and other senior officials to push China to address its unfair trade practices.

#### CONSULTATIONS ON CHINA STRATEGY AND TRADE MATTERS

*Question.* Other appointees to this administration have promised to consult with Congress and be responsive to questions from this committee about China and other matters. And yet repeatedly, appointees to the Treasury Department have fallen miserably short in doing just that. If the administration continues to box out Congress, it risks a blowback against its trade agenda.

If confirmed, will you make it a priority to bring Congress—and other stakeholders—into the conversation about a China strategy? We don’t need more empty promises, so please give me some specific examples of how you will effectuate better communication with Congress.

*Answer.* I highly value input from Congress and relevant stakeholders. If confirmed as Deputy Secretary, I will work to ensure that the Department communicates with members of Congress and their staffs on Treasury’s role in trade nego-

tiations. I am aware of the consultation requirements that Congress set forth in Pub. L. 114-26. To the degree they apply to Treasury, even in spirit, you have my commitment to work to ensure the Department adheres to them.

INTERNATIONAL AFFAIRS STAFFING

*Question.* There are recent reports that the Office of International Affairs has lost a significant number of both highly experienced career staff and rising junior staff. This raises significant concerns about Treasury's capacity to handle the multitude of important international topics it is currently engaged in, from its role in the relationship with China and tariff policy, to CFIUS reform, to monitoring currency manipulation and engaging in international negotiations supporting our trade agenda.

In your view, what has caused this wave of attrition, and how do you plan to address it?

*Answer.* We have a very high-caliber civil service working within the Treasury Department, as well as highly qualified administration appointees. The International Affairs office is exemplary, and we could not fulfill our mission without the deep expertise and passion for public service by all employees. With the recent lifting of Treasury's hiring freeze, we are beginning external recruitment consistent with the administration's commitment to very high standards for Federal employees.

ANONYMOUS SHELL COMPANIES

*Question.* During your confirmation hearing, I asked you about the national security risks posed by the abuse of anonymous shell companies. As you know, anonymous shell companies are abused by bad actors for money laundering and terrorist financing, and at your nomination hearing you agreed that "there are significant law enforcement benefits to solving beneficial ownership." You further stated that beneficial ownership legislation is something you are "committed to working with you very closely on and do want to solve."

Will you commit to working with me and this committee on a bipartisan basis to ensure that we adopt meaningful beneficial ownership legislation before the end of 2018? And, will you personally commit to working with my office to realize this important goal, and consult with this committee and my staff on any potential actions Treasury takes on this issue before doing so?

*Answer.* Treasury recognizes the vulnerabilities that exist in corporate formation without the disclosure of beneficial ownership information. We look forward to working with you and other members to enhance transparency of the ownership of legal entities. I will commit to working on this issue with the committee on a bipartisan basis, including your staff. I believe the end of 2018 is a worthy goal, though timing will of course not be solely in Treasury's control.

QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

*Question.* The Treasury Department recently announced that 501(c)(4) social welfare organizations are no longer required to report their donors to the IRS. A former general counsel to the Federal Elections Commission thought that this change in policy will "make it easier for large contributors to hide money that is being used to influence elections, including money given by foreign interests."

Why shouldn't the IRS be able to determine whether groups are receiving contributions from foreign nationals to influence our elections, which are prohibited under the law?

*Answer.* The integrity of the U.S. electoral system is central to our democracy, and foreign nationals should not be permitted to improperly interfere in U.S. elections in any way. Congress entrusted the Federal Election Commission and the Department of Justice with the enforcement of our Nation's campaign finance laws, including the prohibition to which you refer.

The mission of the IRS is to administer and enforce the Federal tax laws. If in the course of its examination activities the IRS discovers evidence of a possible violation of Federal criminal law outside its jurisdiction, on a case by case basis, the IRS may refer the matter to "the appropriate Federal agency charged with the responsibility of enforcing such law" (26 U.S.C. § 6103).

*Question.* What public policy goal is this serving?

Answer. Tax-exempt entities should not be required to report on their annual returns to the IRS information that the IRS does not need in that form to administer or enforce the Federal tax laws. The new policy announced by the IRS will protect taxpayers by reducing the risk of inadvertent disclosure or misuse of confidential information and will save both taxpayer and government resources. It is worth noting that the Schedule B modifications resulted in no change to data that is disclosed publicly, and the IRS retains its ability to access all data it had before. It is worth further noting that the IRS under President Obama was pursuing this policy, I assume for similar public policy reasons. In 2014, 2015, and 2016, the Priority Guidance Plan published by Treasury and the IRS listed as an item, “Guidance under § 6033 relating to the reporting of contributions,” and Treasury and the IRS’s spring 2016 unified regulatory agenda submitted to OIRA describes anticipated regulations to address this issue. This is available at: <https://reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=1545-BN29>.

*Question.* In your view, does the need to protect secret donors outweigh the need to protect our democracy from foreign nationals?

Answer. We clearly must not have foreign nationals interfere in our elections. The Federal Election Commission and the Department of Justice are charged with enforcing Federal election laws.

The recent Treasury/IRS decision to end the collection of donor names and addresses for certain tax-exempt organizations will have no effect on public transparency of donor information. As stated in the previous question, the Schedule B modifications resulted in no change to data that is disclosed publicly, and the IRS retains its ability to access all data it had before. The modifications affected only personally identifiable information that Federal law prohibits the IRS from publicly disclosing. I understand the issue has become quite politicized, but the IRS under the Obama administration reached a similar public policy conclusion, as noted above.

*Question.* Last year, Secretary Mnuchin predicted that, “Not only will this tax plan pay for itself, but it will pay down debt.” Next year we’re going to have a trillion-dollar deficit—the largest as a share of our economy outside of a recession since World War II. Deficits are projected to remain historically high through the rest of the decade.

You answered at the hearing that you agree that the tax cuts will pay for themselves. Can you explain what you disagree with in the analysis by the Joint Committee on Taxation, the Tax Policy Center, and the committee for a Responsible Federal Budget—all nonpartisan, independent scorekeepers—who each found that the tax cuts would add more than \$1 trillion to deficits over the next decade (and more if fully extended)?

Answer. I do not know the assumptions underlying the analyses you point to. I do agree with the analysis of the Council of Economic Advisors, which suggests that the Tax Cuts and Jobs Act and other policies of this administration will lead to increased investment, growth and tax revenue. In addition, other outside analysts have found that the proposals that underpinned the tax bill will produce significant economic responses (*e.g.*, Laurence Kotlikoff of Boston University and others).

*Question.* Treasury serves as a powerful stabilizing force for our country. Part of that stability is preserved by insulating Treasury from politics, which is central to the role of the Deputy Secretary.

I appreciate that in your answers at the hearing, you agreed that Treasury’s work to combat illicit financial activity, impose sanctions, and conduct national security reviews through the CFIUS process should be free from political interference, even if a company or individual affiliated with President Trump, his close associates, or family members is involved. I also appreciate that you agreed the same is true for tax administration and enforcement at the IRS.

Can you confirm that if inappropriate political interference occurs in any of the above processes that you will notify the bipartisan membership of the Finance Committee (either the chairman and ranking member or the full membership, as appropriate)?

Answer. If confirmed, I am committed to full compliance with laws and regulations designed to prevent conflicts of interest and any other form of improper influence over Treasury’s execution of its statutory responsibilities. In addition, under Treasury Order 114–10, all Treasury employees are expected to report violations of

Federal law through appropriate channels. In addition, I will work hard to set an example by conducting myself in accordance with high ethical standards.

*Question.* What are you going to do if confirmed as Deputy Treasury Secretary to push back on some of the damaging escalation in trade policies that harm our domestic manufacturers, our workers, and our farmers and ranchers?

*Answer.* The administration believes in free trade, but it must also be fair trade to ensure a balanced relationship in which U.S. firms and workers are protected against unfair foreign trade practices. The administration stands ready to engage with our trading partners to resolve these differences. The administration, including Secretary Mnuchin and I, have sympathy for industries that are targeted by unfair trade practices, and we remain committed to defending America's workers and agricultural producers.

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SUBMITTED BY HON. TIM SCOTT,  
A U.S. SENATOR FROM SOUTH CAROLINA

**DEPARTMENT OF THE TREASURY**  
**WASHINGTON, DC 20220**

October 20, 2017

Department of the Treasury  
2017–2018 Priority Guidance Plan

Joint Statement by:

David J. Kautter  
Assistant Secretary for Tax Policy  
U.S. Department of the Treasury

John A. Koskinen  
Commissioner  
Internal Revenue Service

William M. Paul  
Acting Chief Counsel  
Internal Revenue Service

We are pleased to announce the release of the 2017–2018 Priority Guidance Plan. As described below, the 2017–2018 Priority Guidance Plan sets forth guidance priorities for the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) based on public input, and taking into account the burden-reducing policies and reforms described in Section 1 of Executive Order 13789 (April 21, 2017; 82 FR 19317) and Executive Order 13777 (February 24, 2017; 82 FR 9339).

The 2017–2018 Priority Guidance Plan contains guidance projects that we hope to complete during the twelve-month period from July 1, 2017, through June 30, 2018 (the plan year). Part 1 of the plan focuses on the eight regulations from 2016 that were identified pursuant to Executive Order 13789 and our intended actions with respect to those regulations. Part 2 of the plan describes certain projects that we have identified as burden reducing and that we believe can be completed in the 8½ months remaining in the plan year. As in the past, we intend to update the plan on a quarterly basis, and additional burden reduction projects may be added. Part 3 of the plan describes the various projects that comprise our implementation of the new statutory partnership audit regime, which has been a topic of significant concern and focus as the statutory rules go into effect on January 1, 2018. Part 4 of the plan, in line with past years' plans and our long-standing commitment to transparency in the process, describes specific projects by subject area that will be the focus of the balance of our efforts this plan year. Many of these projects are included on the plan in response to specific requests for guidance from interested stakeholders. In addition, many of these projects afford burden reduction by providing

taxpayers and their advisers with clarity as to the application of the tax law so that businesses and individuals can significantly reduce the time needed to plan their affairs with certainty as to their tax consequences. Finally, most of these projects do not involve the issuance of new regulations. Rather, they will provide helpful guidance to taxpayers on a variety of tax issues important to individuals and businesses in the form of: (1) revocations of final, temporary, or proposed regulations; (2) notices, revenue rulings, and revenue procedures; and (3) simplifying and burden reducing amendments to existing regulations.

As in past years, we solicited comments from taxpayers to develop our Priority Guidance Plan, and we received many thoughtful suggestions for areas where guidance could clarify existing rules, eliminate unnecessary complexity, and provide reliance authority in areas where non-precedential IRS rules already exist. With respect to all of the projects described in this plan (as well any added in our quarterly updates), regardless of how they are categorized here, we will be guided by the burden-reducing principles and policies described in aforementioned Executive Orders, and focusing on reducing burdens and complexity wherever possible.

As in past years, we intend to update and republish the 2017–2018 plan during the plan year to reflect additional items that have become priorities and guidance that we have published during the plan year. The periodic updates allow us flexibility to consider comments received from taxpayers and tax practitioners relating to additional guidance priorities and to respond to developments arising during the plan year.

The published guidance process can be fully successful only if we have the benefit of the insight and experience of taxpayers and practitioners who must apply the internal revenue laws. Therefore, we invite the public to continue to provide us with their comments and suggestions as we develop guidance throughout the plan year.

Additional copies of the 2017–2018 Priority Guidance Plan can be obtained from the IRS website at <http://www.irs.gov/uac/Priority-Guidance-Plan>. Copies can also be obtained by calling Treasury’s Office of Public Affairs at (202) 622–2960.

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OFFICE OF TAX POLICY  
AND  
INTERNAL REVENUE SERVICE  
2017–2018 PRIORITY GUIDANCE PLAN

Updated as of October 12, 2017

Released October 20, 2017

**PART 1. E.O. 13789—IDENTIFYING AND REDUCING REGULATORY BURDENS**

1. Withdrawal of proposed regulations under §2704 regarding restrictions on liquidation of an interest for estate, gift, and generation-skipping transfer taxes. Proposed regulations were published on August 4, 2016.
2. Withdrawal of proposed regulations under §103 regarding the definition of political subdivision. Proposed regulations were published on February 23, 2016.
3. Proposed amendment of regulations under §7602 regarding the participation of attorneys described in §6103(n) in a summons interview. Final regulations were published on July 14, 2016.
4. Proposed removal of temporary regulations under §707 concerning treatment of liabilities for disguised sale purposes and review of regulations under §752 concerning liabilities recognized as recourse partnership liabilities. Temporary and proposed regulations were published on October 5, 2016.
5. Delay and proposed removal of documentation regulations under §385 and review of other regulations under §385. Final, temporary, and proposed regulations were published on October 21, 2016.
  - PUBLISHED August 14, 2017 in IRB 2017–33 as NOT. 2017–36 (RELEASED July 28, 2017).

6. Proposed modification of regulations under § 367 regarding the treatment of certain transfers of property to foreign corporations. Final regulations were published on December 16, 2016.
7. Proposed modification of regulations under § 337(d) regarding certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs). Temporary and proposed regulations were published on June 8, 2016.
8. Proposed modification of regulations under § 987 on income and currency gain or loss with respect to a § 987 qualified business unit. Final regulations were published on December 8, 2016.

## **PART 2. NEAR-TERM BURDEN REDUCTION**

1. Guidance removing or updating regulations that are unnecessary, create undue complexity, impose excessive burdens, or fail to provide clarity and useful guidance.
2. Guidance under § 871(m), including with respect to non-delta-one transactions.
  - PUBLISHED August 21, 2017 in IRB 2017–34 as NOT. 2017–42 (RELEASED August 5, 2017).
3. Guidance under Chapter 3 (§§ 1441–1446) and Chapter 4 (§§ 1471–1474). Final and temporary regulations were published on January 6, 2017. Guidance may include the following: addressing withholding on gross proceeds and foreign passthru payments under Chapter 4; coordinating certain documentation requirements for participating foreign financial institutions with the requirements under IGAs; revising the withholding requirements on insurance premiums under Chapter 4; guidance concerning certain due diligence requirements of withholding agents under Chapter 3, including the requirement to collect and report foreign taxpayer identification numbers of certain account holders; and guidance on refunds and credits under Chapter 3, Chapter 4, and related provisions. Notice 2015–10 (regarding refunds and credits) was published on May 18, 2015.
  - PUBLISHED October 10, 2017 in IRB 2017–41 as NOT. 2017–46 (RELEASED September 25, 2017).
4. Regulations under §§ 1014(f) and 6035 regarding basis consistency between estate and person acquiring property from decedent. Proposed and temporary regulations were published on March 4, 2016.
5. Guidance under § 170(e)(3) regarding charitable contributions of inventory.
6. Final regulations under § 263A regarding the inclusion of negative amounts in additional § 263A costs. Proposed regulations were published on September 5, 2012.
7. Final regulations under §§ 4051 and 4071 on heavy trucks, tractors, trailers, and tires. Proposed regulations were published on March 31, 2016.
8. Final regulations under § 2642(g) describing the circumstances and procedures under which an extension of time will be granted to allocate GST exemption.
9. Regulations streamlining the § 754 election statement.
  - PUBLISHED October 12, 2017 in FR as REG–116256–17 (NPRM).
10. Guidance under § 1362(f) regarding the validity or continuation of an S corporation election in certain situations involving disproportionate distributions, inconsistent tax return filings, or omissions on Form 2553, Election by a Small Business Corporation.
11. Guidance under § 301.9100 regarding relief for late regulatory elections.
12. Relief for late elections due to erroneously late-filed partnership and REMIC returns.
  - PUBLISHED September 18, 2017 in IRB 2017–38 as NOT. 2017–47 (RELEASED September 1, 2017).
13. Final regulations under § 3402(q). Proposed regulations were published on December 30, 2016.
  - PUBLISHED September 27, 2017 in FR as TD 9824.
14. Guidance on refunds under Combat-Injured Veterans Tax Fairness Act.

15. Guidance under § 954(c) regarding foreign currency gains.
16. Guidance under § 954, including regarding the use of foreign statement reserves for purposes of measuring qualified insurance income under § 954(i).
17. Final regulations and related guidance on closed defined benefit plans and related matters. Proposed regulations were published on January 29, 2016.
  - PUBLISHED September 18, 2017 in IRB 2017–38 as NOT. 2017–45 (RELEASED August 31, 2017).
18. Guidance under § 3405 regarding distributions made to payees, including military and diplomatic payees, with an address outside the United States.
19. Update to Revenue Ruling 67–390.

### **PART 3. BIPARTISAN BUDGET ACT OF 2015—PARTNERSHIP AUDIT REGULATIONS**

1. General guidance under new partnership audit rules.
2. Regulations addressing administrative and judicial review rules.
3. Regulations addressing push out election by tiered structures.
4. Regulations addressing adjustments to bases and capital accounts and the tax and book basis of partnership property.
5. Regulations addressing the operation of certain international provisions in the context of the centralized partnership audit regime, including rules relating to the withholding of tax on foreign persons, withholding of tax to enforce reporting on certain foreign accounts, and the treatment of creditable foreign tax expenditures of a partnership.

### **PART 4. GENERAL GUIDANCE**

#### **CONSOLIDATED RETURNS**

1. Regulations under § 1.1502–36 and related provisions regarding losses on subsidiary stock.
2. Regulations under § 1.1502–75(d) regarding group continuation. Final regulations were published on September 8, 1966.
3. Final regulations under § 1.1502–76 regarding when a member joins or leaves a consolidated group. Proposed regulations were published on March 6, 2015.
4. Final regulations under § 1.1502–91 regarding the redetermination of consolidated net unrealized built-in gain and loss. Proposed regulations were published on October 24, 2011.

#### **CORPORATIONS AND THEIR SHAREHOLDERS**

1. Updating § 301 regulations to reflect statutory changes.
2. Guidance under § 305(b) regarding certain stock distributions by REITs and RICs.
  - PUBLISHED August 28, 2017 IN IRB 2017–35 as REV. PROC. 2017–45 (RELEASED August 11, 2017).
3. Final regulations under § 305(c) regarding the amount and timing of deemed distributions from conversion ratio adjustments on convertible debt and stock. Proposed regulations were published on April 13, 2016.
4. Regulations regarding transactions involving the transfer or receipt of no net equity value. Proposed regulations were published on March 10, 2005.
  - PUBLISHED in FR on July 13, 2017 as REG–139633–08 (WITHDRAWAL).
5. Regulations under § 336(e) to revise the treatment of certain stock dispositions as asset sales. Final regulations were published on May 15, 2015.
6. Revising regulations under § 1.337(d)–7 regarding the treatment of certain foreign corporations. Final regulations were published on August 2, 2013.
7. Guidance regarding the application of §§ 355 and 361 to a distributing corporation's use of its controlled corporation's stock, securities, or other obligations to retire putative debt of the distributing corporation.
8. Guidance regarding procedures of Pilot Program for issuing private letter rulings under § 355.



- PUBLISHED October 10, 2017 in IRB 2017–41 as REV. PROC. 2017–52 (RELEASED September 21, 2017).
9. Revising regulations under § 368(a)(1)(F). Final regulations were published on September 21, 2015.
  10. Guidance regarding continuity of interest under § 368. Proposed regulations were published on December 19, 2011.
  11. Final regulations regarding the scope and application of § 597. Proposed regulations were published on May 20, 2015.

## **EMPLOYEE BENEFITS**

### **A. Retirement Benefits**

1. Regulations updating the rules applicable to ESOPs.
2. Final regulations on the application of the normal retirement age regulations under § 401(a) to governmental plans. Proposed regulations were published on January 27, 2016.
3. Guidance under § 401(a)(9) on the use of lump sum payments to replace lifetime income being received by retirees under defined benefit pension plans.
4. Final regulations regarding Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs). Proposed regulations were published on January 18, 2017.
5. Announcements on hardship distributions and loans from retirement plans as a result of Hurricanes Harvey and Irma.
  - PUBLISHED September 25, 2017 in IRB 2017–39 as ANN. 2017–11 (RELEASED August 30, 2017).
  - PUBLISHED October 2, 2017 in IRB 2017–40 as ANN. 2017–13 (RELEASED September 12, 2017).
6. Regulations under §§ 219, 408, 408A, and 4973 regarding IRAs.
7. Guidance updating regulations for service credit and vesting under § 411.
8. Regulations under § 411(a)(11). Proposed regulations were published on October 9, 2008.
9. Guidance on the treatment of future interest credits and annuity conversion factor under a hybrid defined benefit plan and adjustments under a variable annuity plan for purposes of satisfying certain qualification requirements.
10. Guidance related to church plans.
11. Regulations on the definition of governmental plan under § 414(d). An ANPRM was published on November 8, 2011.
12. Guidance regarding the aggregation rules under § 414(m).
13. Final regulations under § 415 regarding § 7873 treaty fishing rights income. Proposed regulations were published on November 15, 2013.
14. Final regulations under § 417(e) that update the minimum present value requirements for defined benefit plans. Proposed regulations were published on November 25, 2016.
15. Notice providing model amendments for § 417(e).
  - PUBLISHED September 5, 2017 in IRB 2017–36 as NOT. 2017–44 (RELEASED August 18, 2017).
16. Revenue procedures relating to approval for funding method changes.
17. Final regulations and other guidance under § 430(h)(3) revising the mortality tables used for pension funding purposes. Proposed regulations were published on December 29, 2016.
  - PUBLISHED October 5, 2017 in FR as TD 9826.
18. Notice on funding relief as a result of Hurricanes Harvey and Irma.
  - PUBLISHED October 2, 2017 in IRB 2017–40 as NOT. 2017–49 (RELEASED September 12, 2017).

19. Revenue Procedure on multiemployer plan benefit suspensions under § 432(e)(9) as amended by the Multiemployer Pension Reform Act of 2014.
  - PUBLISHED July 31, 2017 in IRB 2017–31 as REV. PROC. 2017–43 (RELEASED July 12, 2017).
20. Regulations relating to the reporting requirements under § 6057. Proposed regulations were published on June 21, 2012.
21. Additional guidance on issues relating to lifetime income from retirement plans and IRAs.
22. Revenue procedure modifying EPCRS to provide guidance with regard to certain corrections.
23. Guidance on missing participants.

**B. Executive Compensation, Health Care and Other Benefits, and Employment Taxes**

1. Regulations under § 86 regarding rules for lump-sum elections.
2. Regulations under §§ 119 and 132 regarding employer-provided meals.
3. Updated guidance on the classification system for the line of business determination under § 1.132–4 for purposes of qualified employee discounts and no-additional-cost services.
4. Guidance under § 162(m) addressing certain situations involving a short taxable year.
5. Final regulations on income inclusion and various other issues under § 409A. Proposed regulations were published on December 8, 2008, and on June 22, 2016.
6. Revenue ruling under § 419A on the definition of post-retirement medical benefits.
7. Regulations amending § 1.419A–2T relating to collectively-bargained welfare benefit funds.
8. Final regulations under § 457(f) and related guidance on ineligible plans. Proposed regulations were published on June 22, 2016.
9. Guidance on the application of § 409A to compensation deferred prior to 2009 and includible in income under § 457A no later than 2017.
10. Final regulations under § 512 explaining how to compute unrelated business taxable income of voluntary employees' beneficiary associations described in § 501(c)(9). Proposed regulations were published on February 6, 2014.
11. Guidance on the application of § 1402(a)(13) to limited liability companies.
12. Guidance under § 3402 to remove alternative method of figuring withholding based on combined income, employee social security, and employee Medicare tax withholding tables.
13. Guidance on certain transactions involving welfare benefit funds.
14. Guidance on issues under § 4980H.
15. Regulations under § 4980I regarding the excise tax on high cost employer-provided coverage.
16. Guidance on procedures under § 7436.
17. Guidance under § 9831(d) on qualified small employer health reimbursement arrangements (QSEHRAs) as added by section 18001 of the 21st Century Cures Act.

**EXCISE TAX**

1. Guidance under § 48.4041–7 on dual use of taxable liquid fuel.
2. Guidance on the definition of compressed natural gas for purposes of §§ 4041 and 6426.
3. Guidance on claims for dyed fuel relief under Notice 2017–30.
4. Regulations under § 4261(e)(3)(C) regarding the application of the domestic air transportation excise tax under § 4261 to the purchase of mileage awards.

5. Guidance on whether gasoline blendstocks combined with taxable fuel qualify for the alternative fuel mixture credit under § 6426(e).
6. Final regulations under ACA § 9010 regarding retrospectively rated insurance contracts.
7. Guidance on the allocated fee amount under ACA § 9010 for the 2019 fee year.
8. Final regulations for ACA § 9010 on definition of a covered entity.

#### **EXEMPT ORGANIZATIONS**

1. Update revenue procedures on grantor and contributor reliance under §§ 170 and 509, including update to Revenue Procedure 2011–33 for EO Select Check.
2. Final regulations on § 509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.
3. Guidance under § 512 regarding methods of allocating expenses relating to dual use facilities.
4. Guidance on § 529(c)(3)(D) on the recontribution within 60 days of refunded qualified higher education expenses as added by section 302 of the Protecting Americans from Tax Hikes Act of 2015.
5. Final regulations under § 529A on Qualified ABLE Programs as added by section 102 of the ABLE Act of 2014. Proposed regulations were published on June 22, 2015.
6. Guidance under § 4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
7. Update to Revenue Procedure 92–94 on §§ 4942 and 4945.
  - PUBLISHED October 2, 2017 in IRB 2017–40 as REV. PROC. 2017–53 (RELEASED September 14, 2017).
8. Guidance regarding the excise taxes on donor advised funds and fund management.
9. Final regulations under § 6104(c). Proposed regulations were published on March 15, 2011.
10. Final regulations designating an appropriate high-level Treasury official under § 7611. Proposed regulations were published on August 5, 2009.

#### **FINANCIAL INSTITUTIONS AND PRODUCTS**

1. Regulations relating to the definition of registered form under §§ 149(a) and 163(f).
  - PUBLISHED September 19, 2017 in FR as REG–125374–16 (NPRM).
2. Guidance under § 166 on the conclusive presumption of worthlessness for bad debts. Notice 2013–35, which requested comments on the existing rules, was published on June 10, 2013.
3. Regulations under § 249 relating to the amount of a repurchase premium attributable to the cost of borrowing.
4. Guidance under §§ 446, 1275, and 6050H to address the treatment and reporting of capitalized interest on modified home mortgages.
5. Guidance addressing issues relating to mark-to-market accounting under § 475.
6. Final regulations under § 851 relating to investments in stock and securities. Proposed regulations were published on September 28, 2016.
7. Guidance regarding application of the cure provisions under § 851(i) for regulated investment companies (RICs) and § 856(c)(7) and (g)(5) for real estate investment trusts (REITs).
8. Guidance clarifying the definition of income in § 856(c)(3) for purposes of the REIT qualification tests.
9. Guidance under § 856(c)(5)(J) to determine whether Subpart F income and passive foreign investment company (PFIC) inclusions are treated as qualifying income for purposes of § 856(c).
10. Regulations under § 1001 on the modification of debt instruments, including issues relating to disregarded entities.

11. Guidance on the constant yield election under § 1276(b).
12. Regulations under § 7872. Proposed regulations were published on August 20, 1985.
13. Guidance on the exchange of mortgage-backed securities.
14. Guidance on the treatment of fees relating to debt instruments and other securities.

#### **GENERAL TAX ISSUES**

1. Guidance under §§ 24, 25A, and 32 pursuant to section 208 of the Protecting Americans from Tax Hikes Act of 2015.
2. Final regulations on the allocation of the research credit to corporations and trades or businesses under common control for purposes of § 41(f)(1). Final, temporary, and proposed regulations were published on April 3, 2015.
3. Final regulations under § 42 relating to compliance monitoring, including issues identified in Notice 2012-18. Proposed and temporary regulations were published on February 25, 2016.
4. Final regulations under § 45D that revise and clarify certain rules relating to recapture of the new markets tax credit as well as other issues. Proposed regulations were published August 11, 2008.
5. Marginal well production credit under § 45I for natural gas.
  - PUBLISHED October 2, 2017 in IRB 2017-40 as NOT. 2017-51 (RELEASED September 12, 2017).
6. Guidance under § 47 concerning the rehabilitation credit and 2017 disaster relief.
7. Guidance on the modification, extension, and phase out of the investment tax credit (ITC) for solar energy property under § 48.
8. Revenue Ruling under § 102 regarding whether contributions of money received through a crowdfunding site to pay for medical expenses under § 213 are excludable from income because the contributions are gifts.
9. Final regulations under § 152 regarding dependency deduction.
10. Guidance facilitating leave-donation programs in areas affected by Hurricane and Tropical Storm Harvey.
  - PUBLISHED October 25, 2017 in IRB 2017-39 as NOT. 2017-48 (RELEASED September 5, 2017).
11. Guidance facilitating leave-donation programs in areas affected by Hurricane and Tropical Storm Irma.
  - PUBLISHED on October 2, 2017 in IRB 2017-40 as NOTICE 2017-52 (RELEASED September 14, 2017).
12. Guidance extending relief originally provided in Notice 2011-14, 2011-11 I.R.B. 544, for the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (HFA Hardest Hit Fund).
  - PUBLISHED August 7, 2017 in IRB 2017-32 as NOT. 2017-40 (RELEASED July 31, 2017).
13. Guidance under § 167 regarding a safe harbor for normalization.
  - PUBLISHED October 18, 2017 in IRB 2017-38 as REV. PROC. 2017-47 (RELEASED September 7, 2017).
14. Final regulations under § 170 regarding charitable contributions. Proposed regulations were published on August 7, 2008.
15. Final regulations under § 199 regarding allocation of W-2 wages in a short taxable year and in an acquisition or disposition. Proposed and temporary regulations were published on August 27, 2015.
16. Regulations under § 199 relating to computer software.
17. Guidance on qualified films under § 199.

18. Guidance clarifying whether the business use of an aircraft by a lessee that is a five percent owner or related party of the lessor of the aircraft is qualified business use for purposes of § 280F.
19. Final regulations under § 468A involving the decommissioning costs of a nuclear power plant.
20. Final regulations under § 1411 regarding issues related to the net investment income tax. Proposed regulations were published on December 2, 2013.
21. Guidance under § 7701 providing criteria for treating an entity as an integral part of a state, local, or tribal government.

#### **GIFTS AND ESTATES AND TRUSTS**

1. Guidance on basis of grantor trust assets at death under § 1014.
2. Final regulations under § 2032(a) regarding imposition of restrictions on estate assets during the six month alternate valuation period. Proposed regulations were published on November 18, 2011.
3. Guidance under § 2053 regarding personal guarantees and the application of present value concepts in determining the deductible amount of expenses and claims against the estate.

#### **INSURANCE COMPANIES AND PRODUCTS**

1. Final regulations under § 72 on the exchange of property for an annuity contract. Proposed regulations were published on October 18, 2006.
2. Guidance under § 807 and 816 regarding the determination of life insurance reserves for life insurance and annuity contracts using principles-based methodologies, including stochastic reserves based on conditional tail expectation.

#### **INTERNATIONAL**

##### **A. Subpart F/Deferral**

1. Guidance on the treatment of upfront payments on swaps under § 956. Temporary and proposed regulations were published on May 8, 2015.
2. Guidance on the treatment under § 956(c) of certain property temporarily stored in the United States following Hurricane Irma or Hurricane Maria.
3. Guidance under § 1295, 1297, and 1298 on passive foreign investment companies. Proposed regulations regarding foreign insurance companies were published on April 24, 2015.

##### **B. Inbound Transactions**

1. Regulations under § 897 and 1445 relating to changes in the Protecting Americans from Tax Hikes Act of 2015.

##### **C. Outbound Transactions**

1. Regulations under § 367. Notice 2016–73 regarding the treatment of certain triangular reorganizations involving foreign corporations, and the amount of an income inclusion required in certain inbound nonrecognition transactions was released December 6, 2016. Notice 2014–32 regarding triangular reorganizations involving foreign corporations was released April 25, 2014.
2. Guidance on transfers of property to partnerships with related foreign partners and controlled transactions involving partnerships. Temporary and proposed regulations were published on January 19, 2017.

##### **D. Foreign Tax Credits**

1. Guidance under § 901, including on the allocation of foreign tax imposed on disregarded entities and partnerships.
2. Final regulations under § 901(m) on covered asset acquisitions. Temporary and proposed regulations were published on December 7, 2016.
3. Guidance under § 905, including final regulations under § 905(c) on foreign tax redeterminations. Temporary and proposed regulations were published on November 7, 2007. Notice 2016–10 was released on January 15, 2016.

##### **E. Transfer Pricing**

1. Guidance under § 482, including with respect to the treatment and allocation of risk. Temporary and proposed regulations were published on September 16, 2015.

2. Annual Report on the Advance Pricing Agreement Program. Announcement 2017-03 was released March 27, 2017.

**F. Sourcing and Expense Allocation**

1. Regulations and other guidance under § 861 regarding the allocation and apportionment of interest expense, including guidance related to interest expense attributable to certain loans to related partnerships.
2. Regulations under § 861 on the character of income, including income arising in transactions involving intellectual property and the provision of digital goods and services.

**G. Treaties**

1. Guidance under § 894 and treaties, including regarding the application of various treaty provisions to hybrid entities and instruments.

**H. Other**

1. Guidance on the physical presence of certain individuals in the Commonwealth of Puerto Rico or the United States Virgin Islands under § 937(a) following Hurricane Irma or Hurricane Maria.
2. Guidance under Chapter 3 (§§ 1441–1446) and Chapter 4 (§§ 1471–1474), including regulations on verification requirements for sponsoring entities for Chapter 4 purposes, and regulations regarding the withholding obligations on deemed distributions from conversion ratio adjustments on convertible debt and stock. Final, temporary, and proposed regulations under chapters 3 and 4 were published on January 6, 2017. Proposed regulations (regarding verification requirements for sponsoring entities) were published on January 6, 2017. Proposed regulations (regarding conversion ratio adjustments) were published on April 13, 2016.
3. Regulations under §§ 6039F, 6048, and 6677 on foreign trust reporting and reporting with respect to foreign gifts, and regulations under §§ 643(i) and 679 relating to certain transactions between U.S. persons and foreign trusts.
4. Regulations and other guidance under § 7701.
5. Regulations under § 1256(g)(2) regarding the definition of a foreign currency contract, in light of the decision in *Wright v. Commissioner*, 809 F.3d 877 (6th Cir. 2016).

**PARTNERSHIPS**

1. Final regulations under § 1.337(d)–3 relating to partnership transactions involving a corporate partner's stock or other equity interests. Final, temporary, and proposed regulations were published on June 12, 2015.
2. Final regulations under § 469(h)(2) concerning limited partners and material participation. Proposed regulations were published on November 28, 2011.
3. Final regulations on the fractions rule under § 514(c)(9)(E).
4. Regulations to update the securities partnership aggregation rules under § 704(c).
5. Final regulations under §§ 704, 734, 743, and 755 arising from the American Jobs Creation Act of 2004, regarding the disallowance of certain partnership loss transfers and no reduction of basis in stock held by a partnership in a corporate partner. Proposed regulations were published on January 16, 2014.
6. Guidance under § 707 on disguised sales of partnership interests.
7. Final regulations under § 732(f) regarding aggregation of basis for partnership distributions involving equity interests of a partner. Proposed regulations were published on June 12, 2015.
8. Final regulations under § 752 regarding related person rules. Proposed regulations were published on December 16, 2013.
9. Final regulations under §§ 761 and 1234 on the tax treatment of noncompensatory partnership options. Proposed regulations were published on February 5, 2013.
10. Guidance under § 7704(d)(1)(E) regarding qualifying income derived from fertilizer for publicly traded partnerships.

**TAX ACCOUNTING**

1. Guidance under §§ 167 and 168 for determining whether certain assets used by a wireline telecommunication service provider are primarily used for providing one-way or two-way communication services.
2. Revenue procedure under § 263(a) regarding the capitalization of natural gas transmission and distribution property.
3. Guidance regarding the treatment of deferred revenue in stock acquisitions.
4. Regulations under § 453A regarding contingent payment sales.
5. Regulations under § 472 regarding dollar-value last-in, first-out (LIFO) inventories, including rules for combining pools as a result of a change in method of accounting, certain corporate acquisitions, and certain nonrecognition transactions.
6. Final regulations amending § 1.472-8 regarding the inventory price index computation (IPIC) method.

**TAX ADMINISTRATION**

1. Guidance under § 6011.
2. Guidance under §§ 25A, 6050S, and 6724(f) relating to changes made by sections 804 and 805 of the Trade Preferences Extension Act of 2015 regarding education tax credits and related information reporting. Proposed regulations were published on August 2, 2016.
3. Update to §§ 6051 and 6052 regarding truncated taxpayer identification numbers.
  - PUBLISHED September 20, 2017 in FR as REG-105004-16 (NPRM).
4. Guidance under section 2006 of the Fixing America's Surface Transportation Act of 2015 regarding due dates and extensions for certain forms.
  - PUBLISHED July 20, 2017 in FR as REG-128483-15 (NPRM).
  - PUBLISHED July 20, 2017 in FR as TD 9821 (FINAL and TEMP).
5. Finalize removal of automatic extension of time to file certain information returns. Proposed and temporary regulations were published on August 13, 2015.
6. Regulations under §§ 6662, 6662A, and 6664 regarding accuracy-related penalties relating to understatements. Notice 2005-12, which provided interim guidance, was published on February 14, 2005.
7. Final regulations under § 6707A, as amended by section 2041(a) of the Small Business Jobs Act of 2010, regarding the penalty for failure to disclose reportable transactions. Proposed regulations were published on August 28, 2015.
8. Guidance on safe harbors for de minimis errors on information returns and payee statements under section 202 of the Protecting Americans from Tax Hikes Act of 2015.
9. Guidance under § 7123 concerning alternative dispute resolution.
10. Guidance under § 7345.
11. Update to Revenue Procedure 2007-56 (Combat Zone and Disaster Relief).
12. Update to the whistleblower regulations.
13. Guidance on user fees.
  - PUBLISHED July 19, 2017 in FR as TD 9820.

**TAX-EXEMPT BONDS**

1. Guidance on remedial actions for tax-advantaged bonds under §§ 54A, 54AA, and 141.
2. Guidance on private activity bonds under § 141.
3. Regulations on public approval requirements for private activity bonds under § 147(f). Proposed regulations were published on September 9, 2008.
  - PUBLISHED September 28, 2017 in FR as REG-128841-07 (NPRM).
4. Guidance on rebate overpayment under § 148.

- PUBLISHED September 11, 2017 in IRB 2017–37 as REV. PROC. 2017–50 (RELEASED August 25, 2017).

5. Regulations on bond reissuance under § 150.

**APPENDIX—Regularly Scheduled Publications**

**JULY 2017**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
  - PUBLISHED July 3, 2017 in IRB 2017–27 as REV. RUL. 2017–14 (RELEASED June 16, 2017).
2. Notice setting forth updates for the corporate bond yield curve for plan years beginning in July 2017, the 24-month average segment rates, the funding segment rates applicable for July 2017, the spot segment rates for June 2017 that are used for determining minimum present values, and the 30-year Treasury rates.
  - PUBLISHED July 31, 2017 in IRB 2017–31 as NOT. 2017–39 (RELEASED July 13, 2017).
3. Revenue ruling providing the average annual effective interest rates charged by each Farm Credit Bank District.
  - PUBLISHED August 28, 2017 in IRB 2017–35 as REV. RUL. 2017–16 (RELEASED August 25, 2017).

**AUGUST 2017**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
  - PUBLISHED August 7, 2017 in IRB 2017–32 as REV. RUL. 2017–15 (RELEASED July 18, 2017).
2. Notice setting forth updates for the corporate bond yield curve for plan years beginning in August 2017, the 24-month average segment rates, the funding segment rates applicable for August 2017, the spot segment rates for July 2017 that are used for determining minimum present values, and the 30-year Treasury rates.
  - PUBLISHED August 28, 2017 in IRB 2017–35 as NOT. 2017–43 (RELEASED August 11, 2017).
3. Revenue procedure providing the domestic asset/liability percentages and the domestic investment yield percentages for taxable years beginning after December 31, 2015, for foreign companies conducting insurance business in the United States.
  - PUBLISHED August 28, 2017 in IRB 2017–35 as REV. PROC. 2017–44 (RELEASED August 11, 2017).

**SEPTEMBER 2017**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
  - PUBLISHED September 5, 2017 in IRB 2017–36 as REV. RUL. 2017–17 (RELEASED August 16, 2017).
2. Revenue ruling under § 6621 regarding the applicable interest rates for overpayments and underpayments of tax for the period October through December 2017.
  - PUBLISHED September 25, 2017 in IRB 2017–18 as REV. RUL. 2017–18 (RELEASED September 8, 2017).
3. Notice setting forth updates for the corporate bond yield curve for plan years beginning in September 2017, the 24-month average segment rates, the funding segment rates applicable for September 2017, the spot segment rates for August 2017 that are used for determining minimum present values, and the 30-year Treasury rates.
  - PUBLISHED October 2, 2017 in IRB 2017–40 as NOT. 2017–50 (RELEASED September 13, 2017).



4. Notice under §274 regarding the deemed substantiation of travel expenses using per diem rates.
5. Update of Notice 2004–83 to add approved applicants for designated private delivery service status under §7502(f). Will be published only if any new applicants are approved.
6. Notice identifying the counties that experienced exceptional, extreme, or severe drought during the preceding 12-month period ending August 31, 2017, for purposes of determining whether the replacement period within which to replace livestock sold on account of drought is extended under §1033(e)(2)(B) and Notice 2006–82.
7. Revenue ruling setting forth the terminal charge and the standard industry fare level (SIFL) cents-per-mile rates for the second half of 2017 for use in valuing personal flights on employer-provided aircraft.
8. Notice on annual adjustment in the fee imposed to fund the Patient Centered Outcomes Research Trust Fund.

#### **OCTOBER 2017**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§42, 382, 1274, 1288 and 7520.
  - PUBLISHED October 10, 2017 in IRB 2017–41 as REV. RUL. 2017–20 (RELEASED September 19, 2017).
2. Notice setting forth updates for the corporate bond yield curve for plan years beginning in October 2017, the 24-month average segment rates, the funding segment rates applicable for October 2017, the spot segment rates for September 2017 that are used for determining minimum present values, and the 30-year Treasury rates.
3. Revenue procedure under §1 and other sections of the Code regarding inflation adjusted items for 2018.
4. Revenue procedure providing the loss payment patterns and discount factors for the 2017 accident year to be used for computing unpaid losses under §846.
5. Revenue procedure providing the salvage discount factors for the 2017 accident year to be used for computing discounted estimated salvage recoverable under §832.
6. Update of Revenue Procedure 2005–27 listing the tax deadlines that may be extended by the Commissioner under §7508A in the event of a presidentially declared disaster or terrorist attack. Will be published only if there are any updates.
7. Guidance providing the amounts of unused housing credit carryover allocated to qualified states under §42(h)(3)(D) for the calendar year.
8. Guidance providing the calendar year inflation adjustment factor to be used in determining the credit for carbon dioxide (CO<sub>2</sub>) sequestration under §45Q.

#### **NOVEMBER 2017**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §42, 382, 1274, 1288 and 7520.
2. Revenue ruling providing the “base period T-Bill rate” as required by §995(f)(4).
3. Revenue ruling setting forth covered compensation tables under §401(l)(5)(E) that are used for purposes of applying the permitted disparity rules under §401(l) to defined benefit plans for the 2018 plan year.
4. Notice setting forth updates for the corporate bond yield curve for plan years beginning in November 2017, the 24-month average segment rates, the funding segment rates applicable for November 2017, the spot segment rates for October 2017 that are used for determining minimum present values, and the 30-year Treasury rates.
5. Update of Revenue Procedure 2016 13 regarding adequate disclosure for purposes of the §6662 substantial understatement penalty and the §6694 preparer penalty. Will be published only if there are any updates.
6. Notice setting forth cost-of-living adjustments effective January 1, 2018, applicable to the dollar limits on benefits under qualified defined benefit pension plans and other provisions affecting certain plans of deferred compensation.

7. Federal Register Notice on Railroad Retirement Tier 2 tax rate.
8. Notice under § 274 regarding the 2018 optional standard mileage rates.
9. Notice setting forth required amendment deadlines for § 401(a) plans with respect to certain changes in qualification requirements.
10. Notice providing guidance for public power providers to submit applications relating to reallocations of New Clean Renewable Energy Bonds under § 54C.

**DECEMBER 2017**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
2. Revenue ruling under § 6621 regarding the applicable interest rates for overpayments and underpayments of tax for the period January through March 2018.
3. Notice setting forth updates for the corporate bond yield curve for plan years beginning in December 2017, the 24-month average segment rates, the funding segment rates applicable for December 2017, the spot segment rates for November 2017 that are used for determining minimum present values, and the 30-year Treasury rates.

**JANUARY 2018**

1. Revenue procedure updating the procedures for issuing private letter rulings, determination letters, and information letters on specific issues under the jurisdiction of the Chief Counsel.
2. Revenue procedure updating the procedures for furnishing technical advice, including technical expedited advice, to certain IRS offices, in the areas under the jurisdiction of the Chief Counsel.
3. Revenue procedure updating the previously published list of “no-rule” issues under the jurisdiction of certain Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Associate Chief Counsel (Tax Exempt and Government Entities) on which advance letter rulings or determination letters will not be issued.
4. Revenue procedure updating the procedures for issuing determination letters and letter rulings on issues under the jurisdiction of the Office of the Commissioner, Tax Exempt and Government Entities Division, Employee Plans Rulings and Agreements Office.
5. Revenue procedure updating the procedures for issuing determination letters under the jurisdiction of the Office of the Commissioner, Tax Exempt and Government Entities Division, Exempt Organizations Rulings and Agreements Office.
6. Revenue procedure updating the previously published list of “no-rule” issues under the jurisdiction of the Associate Chief Counsel (International) on which advance letter ruling or determination letters will not be issued.
7. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
8. Revenue ruling providing the dollar amounts, increased by the 2018 inflation adjustment, for § 1274A.
9. Revenue procedure under § 280F providing limitations on depreciation deductions for owners of passenger automobiles first placed in service during the calendar year and amounts to be included in income by lessees of passenger automobiles first leased during the calendar year.
10. Notice setting forth updates for the corporate bond yield curve for plan years beginning in January 2018, the 24-month average segment rates, the funding segment rates applicable for January 2018, the spot segment rates for December 2017 that are used for determining minimum present values, and the 30-year Treasury rates.
11. Revenue procedure under § 143 regarding average area purchase price.
12. Notice providing the maximum allowable value for use of the fleet-average value and vehicle-cents-per-mile rules to value employer-provided automobiles first made available to employees for personal use in the calendar year.

13. Revenue ruling setting forth the prevailing state assumed interest rates provided for the determination of reserves under § 807 for contracts issued in 2017 and 2018.

#### **FEBRUARY 2018**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
2. Notice setting forth updates for the corporate bond yield curve for plan years beginning in February 2018, the 24-month average segment rates, the funding segment rates applicable for February 2018, the spot segment rates for January 2018 that are used for determining minimum present values, and the 30-year Treasury rates.
3. Notice under § 911 on the Housing Cost Amount for 2018.
4. Notice providing the inflation adjustment factor for renewable electricity (revised).

#### **MARCH 2018**

1. Revenue procedure providing annual indexing required under 36B.
2. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
3. Guidance providing the 2018 calendar year resident population estimates used in determining the state housing credit ceiling under § 42(h) and the private activity bond volume cap under § 146.
4. Revenue ruling under § 6621 regarding the applicable interest rates for overpayments and underpayments of tax for the period April through June 2018.
5. Revenue ruling setting forth the terminal charge and the standard industry fare level (SIFL) cents-per-mile rates for the first half of 2018 for use in valuing personal flights on employer-provided aircraft.
6. Notice setting forth updates for the corporate bond yield curve for plan years beginning in March 2018, the 24-month average segment rates, the funding segment rates applicable for March 2018, the spot segment rates for February 2018 that are used for determining minimum present values, and the 30-year Treasury rates.
7. Revenue procedure providing the annual update to the List of Automatic Changes for taxpayer changes in method of accounting.

#### **APRIL 2018**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
2. Revenue procedure providing a current list of countries and the dates those countries are subject to the § 911(d)(4) waiver and guidance to individuals who fail to meet the eligibility requirements of § 911(d)(1) because of adverse conditions in a foreign country.
3. Notice setting forth updates for the corporate bond yield curve for plan years beginning in April 2018, the 24-month average segment rates, the funding segment rates applicable for April 2018, the spot segment rates for March 2018 that are used for determining minimum present values, and the 30-year Treasury rates.
4. Guidance providing the calendar year inflation adjustment factor and reference prices for the renewable electricity production credit under § 45.

#### **MAY 2018**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
2. Notice setting forth updates for the corporate bond yield curve for plan years beginning in May 2018, the 24-month average segment rates, the funding segment rates applicable for May 2018, the spot segment rates for April 2018 that are used for determining minimum present values, and the 30-year Treasury rates.
3. Revenue procedure providing guidance for use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio under § 143.

4. Revenue procedure under § 223 regarding the inflation adjusted items for 2019.
5. Revenue procedure under § 5000A concerning the 2018 national average premium for a bronze level of coverage.
6. Guidance providing the inflation adjustment factor to be used in determining the enhanced oil recovery credit under § 43 for tax years beginning in the calendar year.
7. Notice regarding marginal production rates under § 613A for oil and gas well depletion.

**JUNE 2018**

1. Revenue ruling setting forth tables of the adjusted applicable federal rates for the current month for purposes of §§ 42, 382, 1274, 1288, and 7520.
2. Revenue ruling under § 6621 regarding the applicable interest rates for overpayments and underpayments of tax for the period July through September 2018.
3. Notice setting forth updates for the corporate bond yield curve for plan years beginning in June 2018, the 24-month average segment rates, the funding segment rates applicable for June 2018, the spot segment rates for May 2018 that are used for determining minimum present values, and the 30-year Treasury rates.
4. Notice setting forth the 2015 § 45K(d)(2)(C) reference price for the nonconventional source production credit.
5. Notice setting the inflation adjustment factor for the credit for carbon dioxide (CO<sub>2</sub>) sequestration under § 45Q for calendar year 2017.

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THE HONORABLE CURTIS M. LOFTIS, JR.  
State Treasurer

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Columbia, SC 29201  
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July 12, 2018

Senator Tim Scott  
717 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Scott:

I am writing to ask you to join a letter directed to Secretary Mnuchin requesting answers to questions regarding matured and unredeemed United States Savings Bonds. In the May 22, 2018, Subcommittee on Financial Services and General Government Hearing, Secretary Mnuchin gave his personal assurance to Senator Moran that he would follow up with answers to Senator Moran's questions regarding U.S. Treasury's refusal to honor certain states' escheat judgments and redemption requests for the proceeds of matured and unredeemed U.S. Savings Bonds.

U.S. Treasury passed a regulation on Christmas Eve in 2015, which effectively prohibits my ability to fulfill my responsibilities under South Carolina law to make every effort to reunite our citizens with their lost or unclaimed property. This regulation obstructs states' efforts to redeem matured and unredeemed savings bonds that have been lost, stolen, abandoned, or destroyed and return the proceeds to their citizens.

In the past, little or no effort has been made by Treasury to locate the owners of matured and unredeemed debt (commonly called "MUD" by Treasury). Savings bonds that are fully mature yet remain unredeemed by the savings bond owner are classified as MUD. These savings bonds, by Treasury's own admission, are unpaid loans that are owed to the citizens by the federal government. Every effort has been made to convince Treasury to return these U.S. savings bonds to the states so that the states could carry out their statutory duties as unclaimed property administrators. The states have made numerous redemption attempts and Freedom of Information Act requests to Treasury in order to accomplish reuniting savings bond owners

with their proceeds. Unfortunately, Treasury has refused to redeem escheated savings bonds unless a state has physical possession of the bond and has also denied states' repeated Freedom of Information Act requests seeking to identify and locate the owners of the lost or unclaimed bonds. As a result, a number of state treasurers, including myself, have brought lawsuits against Treasury in the Court of Federal Claims to address this issue. If the escheated savings bonds are redeemed and the money sent to the states, the states will use their highly celebrated unclaimed property programs to reunite savings bond owners with the proceeds of their savings bonds. The states are uniquely prepared and have the resources to address this issue. This effort by the states will allow citizens to be reunited with their investments and will allow U.S. Treasury to fulfill its contractual responsibility to repay these savings bonds.

To give you an example, our state obtained a court order with an effective date of December 18, 2015, escheating the title to approximately \$249 million of these matured and unredeemed bonds. When I presented this order to the U.S. Treasury along with a request for Treasury to redeem the proceeds of these bonds that South Carolinians purchased many years ago, Treasury denied my request.

I hope this letter raises your awareness of Treasury's endeavors to impede the states' efforts. I ask that you urge Treasury to reconsider this regulation and their policies, and to develop a reasonable solution to this issue. Finally, I ask that you join the attached letter and request that Treasury provide the information that has been sought by you and your colleagues for many years.

Sincerely,  
 Curtis Loftis  
 Treasurer for the State of South Carolina

**U.S. SENATORS**  
 States Currently Involved in Federal Case

State	Name
<b>Kansas</b>	Pat Roberts
	Jerry Moran
<b>South Dakota</b>	John Thune
	Mike Rounds
<b>Louisiana</b>	Bill Cassidy
	John Kennedy
<b>Kentucky</b>	Mitch McConnell
	Rand Paul
<b>Mississippi</b>	Roger F. Wicker
	Cindy Hyde-Smith
<b>South Carolina</b>	Lindsey Graham
	Tim Scott
<b>Indiana</b>	Joe Donnelly
	Todd Young
<b>Ohio</b>	Sherrod Brown
	Rob Portman
<b>Florida</b>	Bill Nelson

**U.S. SENATORS—Continued**  
**States Currently Involved in Federal Case**

State	Name
	Marco Rubio
<b>Arkansas</b>	John Boozman
(represented by separate counsel)	Tom Cotton

**Additional States With Escheatment Laws**

State	Name
<b>Pennsylvania</b>	Robert P. Casey, Jr.
	Patrick J. Toomey
<b>Missouri</b>	Claire McCaskill
	Roy Blunt
<b>Iowa</b>	Chuck Grassley
	Joni Ernst
<b>North Carolina</b>	Richard Burr
	Thom Tillis
<b>Georgia</b>	Johnny Isakson
	David Perdue
<b>New Hampshire</b>	Jeanne Shaheen
	Margaret Wood Hassan
<b>Maine</b>	Susan M. Collins
	Angus S. King, Jr.
<b>Illinois</b>	Richard J. Durbin
	Tammy Duckworth
<b>Wisconsin</b>	Ron Johnson
	Tammy Baldwin
<b>Rhode Island</b>	Jack Reed
	Sheldon Whitehouse

PREPARED STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON

The Finance Committee meets this morning to consider the nominations of Justin Muzinich to be Deputy Secretary of the Treasury and Michael Desmond to be Chief Counsel at IRS. I'll begin my remarks with this.

This committee is facing levels of stonewalling from the administration on letters and policy issues that I never expected I'd see. We'd get similar answers from the Treasury if we posed our questions to the statue of Alexander Hamilton outside Department headquarters. And it goes back to Secretary Mnuchin's very first appear-

ance before this committee. I asked that he work with me to crack down on the abuse of shell companies, a magnet for all manner of shadowy, illicit conduct. He told me the Treasury would get right on it. But a year and a half have passed, and it's business as usual at the Treasury on shell companies. And let's be clear, this wasn't some wacky proposition out of left field. I wrote a bill on this issue with Senator Rubio, a Republican.

Today we'll ask Mr. Muzinich what he will do to end this Treasury stonewalling if he's confirmed. He told me in our meeting earlier this week that he'd simply be a "building manager" as Deputy Secretary. But based on the glowing quotes in the newspapers from Treasury officials praising his financial expertise and previewing his expansive role on tax policy, debt management, and more, it's clear people in the building have a different perspective. Their accounts suggest that calling Mr. Muzinich the "building manager" is a little like saying an NBA all-star will be a nice role-player off the bench. It's clear he's the Secretary's right-hand man, and that's why we expect answers on how he's going to fix these long-running problems.

Bottom line on the stonewalling issue: committee members and I aren't firing off nasty-grams demanding the resignation of everybody who's ever come within 25 feet of Paul Manafort. We're not asking for anybody's high school diaries. This committee is attempting to pursue information that's key to uncovering corruption and protecting our democracy from foreign interference.

That includes working to determine the extent of the relationship between Alexander Torshin, a Russian national with close ties to Putin, and the NRA. It includes a request for information that would help determine the extent of Michael Cohen's influence-peddling. And because the President refuses to release his tax returns, it includes a request for information that would help shed light on questionable Trump real estate deals with Russian individuals. The list goes on from there.

At some point, this ceases to be a case of Treasury being slow to respond, and it looks more like actively abetting the coverup of corruption and illegal activity.

This committee also needs to know whether Mr. Muzinich agrees with the recent decision to open the floodgates to more dark money in our politics. This was a tax-policy change, and Mr. Muzinich says he's a tax-policy guy. You can try to downplay the significance of this decision, and you can try to spin it as a harmless policy update. But here's my view: if your dark money policy gives oligarchs in Moscow reason to throw back celebratory vodkas, and if their friends at the NRA have a green light to flood the airwaves with even more election secrecy, you made the wrong call. Last Monday night, the Trump administration wrested even more control of our democracy from the hands of American citizens.

Furthermore, if the Trump White House is ordering hasty changes to tax administration policies without public debate in ways that threaten the legitimacy of our elections, are those changes going to stand? After all, Mr. Desmond, as IRS Chief Counsel, will be responsible for carrying out this decision, and any proposed changes to IRS rules will have to go through him. Mr. Desmond must demonstrate to this committee that he will remain independent and unswayed by political pressure from the Trump White House on this and other issues.

In closing, there's one final tax policy issue to discuss. A year ago, the Treasury Department and Republicans in Congress made it clear they didn't want to work on tax reform in a bipartisan way. Now Americans are learning there's a *new* effort to update the partisan tax playbook with another plan that will benefit the wealthy. The House is already working on it, apparently uninterested in learning from the mistakes they made the first time around.

The Trump tax law has been in place for months, and the quarterly numbers from the Bureau of Labor Statistics show real wages fell over the first half of this year. Now it's looking like Trump tax cut 2.0 is going to be yet another massive windfall for high flyers. Even more goodies for the most fortunate while typical families are having a harder time making ends meet.

It's another plan that does nothing to resolve the fact that our tax code is split in two. There's one strict, punishing set of rules for factory workers and cops on the beat, and another loose set of rules that allows high flyers to pay what they want, when they want.

Going down the partisan road yet again makes it harder for this committee and the Congress to return to a point where bipartisanship on taxes is possible. So I'll have questions for Mr. Muzinich on that issue today as well.

## NEWS RELEASE

BUREAU OF LABOR STATISTICS

U.S. DEPARTMENT OF LABOR

**Transmission of material in this release is embargoed until 8:30 a.m. (EDT), Friday, August 10, 2018** USDL-18-1279

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Media Contact: (202) 691-5902 • PressOffice@bls.gov

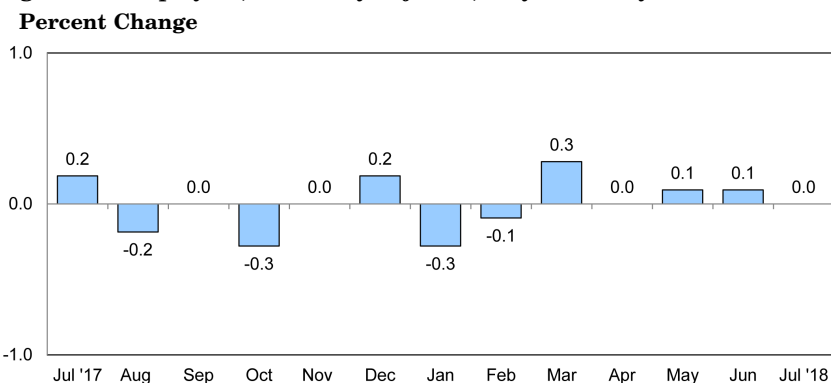
## REAL EARNINGS—JULY 2018

**All employees**

Real average hourly earnings for all employees were unchanged from June to July, seasonally adjusted, the U.S. Bureau of Labor Statistics reported today. This result stems from a 0.3-percent increase in average hourly earnings combined with a 0.2-percent increase in the Consumer Price Index for All Urban Consumers (CPI-U).

Real average weekly earnings decreased 0.2 percent over the month due to no change in real average hourly earnings combined with a 0.3-percent decrease in the average workweek.

**Chart 1: Over-the-month percentage change in real average hourly earnings for all employees, seasonally adjusted, July 2017–July 2018**



Real average hourly earnings decreased 0.2 percent, seasonally adjusted, from July 2017 to July 2018. Combining the change in real average hourly earnings with the 0.3-percent increase in the average workweek resulted in a 0.1-percent increase in real average weekly earnings over this period.

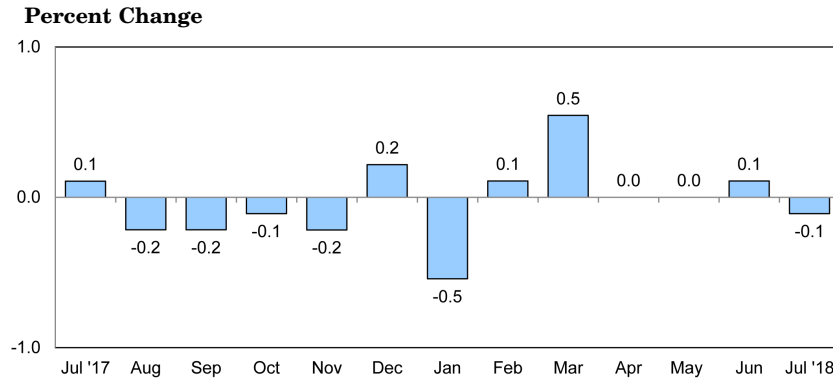
**Production and nonsupervisory employees**

Real average hourly earnings for production and nonsupervisory employees decreased 0.1 percent from June to July, seasonally adjusted. This result stems from a 0.1-percent increase in average hourly earnings combined with a 0.1-percent increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

After combining the change in real average hourly earnings with no change in average weekly hours, real average weekly earnings were unchanged over the month.



**Chart 2: Over-the-month percentage change in real average hourly earnings for production and nonsupervisory employees, seasonally adjusted, July 2017–July 2018**



From July 2017 to July 2018, real average hourly earnings decreased 0.4 percent, seasonally adjusted. Combining the change in real average hourly earnings with a 0.3-percent increase in the average workweek resulted in a 0.1-percent decrease in real average weekly earnings over this period.

“Real Earnings for August 2018” is scheduled to be released on Thursday, September 13, 2018 at 8:30 a.m. (EDT).

**Table A–1. Current and real (constant 1982–1984 dollars) earnings for all employees on private nonfarm payrolls, seasonally adjusted**

	July 2017	May 2018	June 2018 <sup>P</sup>	July 2018 <sup>P</sup>
Real average hourly earnings <sup>1</sup> .....	\$10.78	\$10.75	\$10.76	\$10.76
Real average weekly earnings <sup>1</sup> .....	\$370.99	\$370.98	\$372.13	\$371.38
Consumer Price Index for All Urban Consumers .....	244.236	250.535	250.857	251.286
Average hourly earnings .....	\$26.34	\$26.94	\$26.98	\$27.05
Average weekly hours .....	34.4	34.5	34.6	34.5
Average weekly earnings .....	\$906.10	\$929.43	\$933.51	\$933.23
<b>OVER-THE-MONTH PERCENT CHANGE</b>				
Real average hourly earnings <sup>1</sup> .....	0.2	0.1	0.1	0.0
Real average weekly earnings <sup>1</sup> .....	0.2	0.1	0.3	-0.2
Consumer Price Index for All Urban Consumers .....	0.1	0.2	0.1	0.2
Average hourly earnings .....	0.3	0.3	0.1	0.3
Average weekly hours .....	0.0	0.0	0.3	-0.3
Average weekly earnings .....	0.3	0.3	0.4	0.0
<b>OVER-THE-YEAR PERCENT CHANGE</b>				
Real average hourly earnings <sup>1</sup> .....	0.7	0.0	0.0	-0.2
Real average weekly earnings <sup>1</sup> .....	0.7	0.4	0.5	0.1
Consumer Price Index for All Urban Consumers .....	1.7	2.7	2.8	2.9
Average hourly earnings .....	2.5	2.8	2.7	2.7
Average weekly hours .....	0.0	0.3	0.6	0.3
Average weekly earnings .....	2.5	3.1	3.3	3.0

<sup>1</sup>The Consumer Price Index for All Urban Consumers (CPI-U) is used to deflate the earnings series for all employees.

<sup>P</sup>Preliminary.

**Table A-2. Current and real (constant 1982–1984 dollars) earnings for production and nonsupervisory employees on private nonfarm payrolls, seasonally adjusted<sup>1</sup>**

	July 2017	May 2018	June 2018 <sup>P</sup>	July 2018 <sup>P</sup>
Real average hourly earnings <sup>2</sup> .....	\$9.27	\$9.23	\$9.24	\$9.23
Real average weekly earnings <sup>2</sup> .....	\$312.44	\$312.04	\$312.15	\$312.11
Consumer Price Index for Urban Wage Earners and Clerical Workers .....	237.939	244.587	244.931	245.287
Average hourly earnings .....	\$22.06	\$22.58	\$22.62	\$22.65
Average weekly hours .....	33.7	33.8	33.8	33.8
Average weekly earnings .....	\$743.42	\$763.20	\$764.56	\$765.57
<b>OVER-THE-MONTH PERCENT CHANGE</b>				
Real average hourly earnings <sup>2</sup> .....	0.1	0.0	0.1	-0.1
Real average weekly earnings <sup>2</sup> .....	0.1	0.0	0.0	0.0
Consumer Price Index for Urban Wage Earners and Clerical Workers .....	0.1	0.2	0.1	0.1
Average hourly earnings .....	0.2	0.3	0.2	0.1
Average weekly hours .....	0.0	0.0	0.0	0.0
Average weekly earnings .....	0.2	0.3	0.2	0.1
<b>OVER-THE-YEAR PERCENT CHANGE</b>				
Real average hourly earnings <sup>2</sup> .....	0.5	-0.2	-0.2	-0.4
Real average weekly earnings <sup>2</sup> .....	0.9	0.4	0.0	-0.1
Consumer Price Index for Urban Wage Earners and Clerical Workers .....	1.7	2.9	3.0	3.1
Average hourly earnings .....	2.2	2.7	2.7	2.7
Average weekly hours .....	0.3	0.6	0.3	0.3
Average weekly earnings .....	2.5	3.3	3.0	3.0

<sup>1</sup>Data relate to production employees in mining and logging and manufacturing, construction employees in construction, and nonsupervisory employees in the service-providing industries. These groups account for approximately four-fifths of the total employment on private nonfarm payrolls.

<sup>2</sup>The Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) is used to deflate the earnings series for production and nonsupervisory employees.

<sup>P</sup>Preliminary.

#### Technical Note

The earnings series presented in this release are derived from the Bureau of Labor Statistics' Current Employment Statistics (CES) survey, a monthly establishment survey of employment, payroll, and hours. The deflators used for constant dollar earnings series presented in this release come from the Consumer Price Indexes Program. The Consumer Price Index for All Urban Consumers (CPI-U) is used to deflate earnings for the all employees series, while the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) is used to deflate earnings for the production and nonsupervisory employees series. Seasonally adjusted data are used for estimates of percent change from the same month a year ago for current and constant average hourly and weekly earnings. Special techniques are applied to the CES hours and earnings data in the seasonal adjustment process to mitigate the effect of certain calendar-related fluctuations. Thus, over-the-year changes of these hours and earnings are best measured using seasonally adjusted series. A discussion of the calendar-related fluctuations in the hours and earnings data and the special techniques to remove them is available in the February 2004 issue of *Employment and Earnings* or at [www.bls.gov/ces/cesfltxt.htm](http://www.bls.gov/ces/cesfltxt.htm).

Earnings series from the monthly establishment survey are estimated arithmetic averages (means) of the hourly and weekly earnings of all jobs in the private nonfarm sector of the economy, as well as of all production and nonsupervisory jobs in the private nonfarm sector of the economy. Average hourly earnings estimates are derived by dividing the estimated industry payroll by the corresponding paid hours. Average weekly hours estimates are similarly derived by dividing estimated aggregate hours by the corresponding number of jobs. Average weekly earnings estimates are derived by multiplying the average hourly earnings and the average weekly hours estimates. This is equivalent to dividing the estimated payroll by the corresponding number of jobs. The weekly and hourly earnings estimates for aggregate industries, such as the total private sector averages printed in this release, are derived by summing the corresponding payroll, hours, and employment estimates of the component industries. As a result, each industry receives a "weight" in the published averages that corresponds to its current level of activity (employment or total hours). This further implies that fluctuations and varying trends in employment in

high-wage versus low-wage industries as well as wage rate changes influence the earnings averages.

There are several characteristics of the series presented in this release that limit their suitability for some types of economic analyses. (1) The denominator for the all employee weekly earnings series is the number of private nonfarm jobs. Similarly, the denominator of the production and nonsupervisory employee weekly earnings series is the number of private nonfarm production and nonsupervisory employee jobs. This number includes full-time and part-time jobs as well as the jobs held by multiple jobholders in the private nonfarm sector. These factors tend to result in weekly earnings averages significantly lower than the corresponding numbers for full-time jobs. (2) Annual earnings averages can differ significantly from the result obtained by multiplying average weekly earnings times 52 weeks. The difference may be due to factors such as turnovers and layoffs. (3) The series are the average earnings of all employees or all production and nonsupervisory jobs, not the earnings average of "typical" jobs or jobs held by "typical" workers. Specifically, there are no adjustments for occupational, age, or schooling variations or for household type or location. Many studies have established the significance of these factors and that their impact varies over time.

Seasonally adjusted data are preferred by some users for analyzing general earnings trends in the economy since they eliminate the effect of changes that normally occur at the same time and in about the same magnitude each year and, therefore, reveal the underlying trends and cyclical movements. Changes in average earnings may be due to seasonal changes in the proportion of workers in high-wage and low-wage industries or occupations or to seasonal changes in the amount of overtime work, and so on.

For more information, see Thomas Gavett, "Measures of Change in Real Wages and Earnings," *Monthly Labor Review*, February 1972. Information in this release will be made available to sensory impaired individuals upon request. Voice phone: 202-691-5200; TDD Message Referral Phone Number: 1-800-877-8339.

