

**NOMINATIONS OF MIRIAM SAPIRO,
GEORGE MADISON, AND KIM WALLACE**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

MIRIAM SAPIRO, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH
THE RANK OF AMBASSADOR; GEORGE MADISON, TO BE GENERAL
COUNSEL, DEPARTMENT OF THE TREASURY; AND KIM WALLACE, TO
BE ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS, DEPARTMENT
OF THE TREASURY

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JUNE 5, 2009
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**NOMINATIONS OF MIRIAM SAPIRO, TO BE
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DEPARTMENT OF THE TREASURY**

FRIDAY, JUNE 5, 2009

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

The hearing was convened, pursuant to notice, at 10:09 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senator Bunning.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Amber Cottle, International Trade Counsel; and Ayesha Khanna, International Trade Counsel. Republican Staff: Kolan Davis, Staff Director and Chief Counsel; David Ross, International Trade Counsel; and Nick Wyatt, Tax Research Assistant.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The committee will come to order.

The essayist Lewis Lapham wrote, "Leadership consists not in degrees of technique, but in traits of character."

We have before us three nominees whom the President has called upon to lead. You have been called to lead during challenging times, and it is essential in these challenging times that you lead not just with skill, but also with character.

Ms. Sapiro, the President nominated you to be Deputy U.S. Trade Representative. It is essential that you lead by the strength of your character as well as the strength of your mind. As Deputy USTR, you will help Ambassador Kirk and the President to develop a comprehensive trade policy. In doing so, you must find a path that leads our country out of this global economic downturn and into renewed American competitiveness. You must show our trading partners that we will live up to our international obligations and that they must live up to theirs, and you must ensure that international trade works for all Americans.

This will be no easy task, but, Ms. Sapiro, you have the background necessary to accomplish it. You have spent years viewing the world through an international prism. During the Clinton administration, you served on the National Security Council and at the State Department. You have a strong background in international policy, and I am confident that your character and experience make you ready for this challenge.

Mr. Madison, the President has nominated you to be General Counsel of the Treasury Department. It is essential that you lead by the strength of your character, as well as the strength of your mind. As General Counsel of the Treasury, you will provide the Secretary with legal and policy guidance. You must advise on matters as disparate as banking, tax, and international policy. You will help the Treasury Department to navigate through uncharted waters as it takes novel actions to stem the global economic crisis.

This will be no easy task, but, Mr. Madison, you have the tools to accomplish this. You have spent almost 30 years practicing law; during that time you have served as a general counsel for two corporations. You have helped financial services companies to establish stringent risk management and corporate compliance practices.

You have been compensated handsomely for your work. A recent *Washington Times* article noted that you will continue to receive bonus payments from your previous employer, TIAA-CREF, during your tenure as Treasury's General Counsel. I understand that you have been advised that these payments comply with Treasury's ethical guidelines.

I also understand that you will recuse yourself from matters that may affect TIAA-CREF. I urge you to be vigilant in this matter and avoid any hint of conflict of interest. I am confident that your character will guide you well in this regard, and I am confident that your experience makes you ready for this challenge.

Mr. Wallace, the President nominated you to be Assistant Secretary of the Treasury for Legislative Affairs. It is essential that you lead by the strength of your character, as well as the strength of your mind. In this role you must be the bridge between the legislative and the executive branches of government.

You must keep the Congress well apprised of the Treasury's thinking so that we may be prepared to act and react in these challenging economic times. You must ensure that the Treasury maintains high levels of transparency to Congress and to the American people. This will be no easy task, but, Mr. Wallace, I believe you will succeed. You spent several years on Capitol Hill. You have worked at understanding and analyzing the inner workings of policymaking, as well as its effect on the financial services industry. I am confident that your character and experience make you ready for this challenge.

Although our country is in challenging times, I believe each of you has the character and leadership to guide the country. I congratulate you on your nominations. I urge you to lead with skill, I urge you to lead with character, and I have faith that, with your help, this government will lead America back to recovery.

Senator Grassley, the ranking member, is unable to be here this morning, but I would ask Senator Bunning from Kentucky if he wishes to make a statement.

**OPENING STATEMENT OF HON. JIM BUNNING,
A U.S. SENATOR FROM KENTUCKY**

Senator BUNNING. First of all, thank you, Mr. Chairman. You speak well for all of our members.

I just would like to make sure that the witnesses know they are welcome. They can, in their statements, tell us how they feel about their nomination and their philosophy, their backgrounds, and all the things that go into making up a nominee and the choice of a nominee. I just want you to know that I will consider all your skills and all your experience in weighing my vote one way or the other on your confirmation. But I am glad you are here. I welcome your statements. Thank you.

The CHAIRMAN. Thank you, Senator.

Now we will introduce our witnesses. We have three today. First, we will begin with Miriam Sapiro, who has been nominated to be Deputy USTR. Next, we will hear from George Madison, nominated to be General Counsel with the Treasury Department. Finally, Mr. Kim Wallace, who has been nominated to be Assistant Secretary of Treasury for Legislative Affairs.

Thank you all for coming, all three of you. As is our practice, I would encourage you to summarize your statements in roughly 5 minutes. Your full statements will automatically be included in the record.

Ms. SAPIRO. Thank you, Mr. Chairman.

The CHAIRMAN. Before each begins, because this is quite an honor for each of you to be nominated, and probably confirmed, it is customary to introduce your families. We love to see your families here, if you could introduce them.

Ms. SAPIRO. Thank you very much, Mr. Chairman. I am here with my husband, Stephen Labaton, and our son Max, and our daughter Ellie.

The CHAIRMAN. What is your son's name?

Ms. SAPIRO. Max. [Laughter.]

And it is his real name. [Laughter.]

The CHAIRMAN. It is mine, too. [Laughter.]

That is great. Why don't you all stand? We would like to give you all a round of applause. All of you stand up. [Applause.]

Thank you.

**STATEMENT OF MIRIAM SAPIRO, NOMINATED TO BE DEPUTY
U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBAS-
SADOR, WASHINGTON, DC**

Ms. SAPIRO. Chairman Baucus, Ranking Member Grassley, and members of this distinguished committee, it is a pleasure to appear before you today.

I am honored that President Obama has nominated me for this important position. We are facing unprecedented economic and political challenges, but with your continuing support we can develop a robust trade agenda that opens up additional markets and that translates into better jobs and better lives for America's working families. I want to publicly thank my husband Stephen, and our children, Max and Ellie, for their extraordinary support, without which I would not be here today.

I am also grateful to my mother, Gloria, and my late father, Burton, for their guidance and inspiration. Throughout my career in government and the private sector, I have seen firsthand how economic growth, fueled by trade, can raise the standard of living for Americans and people around the world.

My interest in trade issues stems from my earliest days at the State Department during the Reagan administration, when I worked on export controls. My years in the Legal Advisor's Office and on the Secretary of State's policy planning staff have given me a deep understanding of the international arena and the dynamics of complex negotiations.

These experiences have sharpened my ability to resolve difficult issues between countries, a skill that I relied upon when I helped to negotiate the Dayton Peace Accords that ended the war in Bosnia. These skills will now be useful as we strive to open new markets that can grow our economy and benefit our workers, consistent with strong labor and environmental standards.

Under President Clinton, I moved from the State Department to the National Security Council, where I worked on security and economic policies. Later, as Special Assistant to the President for Southeast European Stabilization and Reconstruction, I supervised U.S. efforts to transform that area into a peaceful democratic region.

As Chairman of the Interagency Committee that formulated and advanced U.S. goals, I worked with USTR and other agencies, other governments, and the international financial institutions to lay a sound foundation for economic development by increasing investment and trade.

My work on internet policy and telecommunications issues in the private sector has given me direct experience with American companies and workers, fostering innovation and competition around the globe. I know the challenges they face, including nontariff barriers in the technology sector and the continuing theft of billions of dollars of intellectual property each year.

As a small business owner, I have a special affinity for the many small and medium enterprises that form the backbone of our export industry. These businesses and their workers drive our economy and deserve a seat at the trade table. Trade has been fundamental to U.S. economic success. Last year, trade in goods and services was 30 percent of GDP, and exports were 13 percent of the U.S. economy. Nearly half of the growth in our GDP over the last 3 years was from exports. We know trade can play a key role in America's economic recovery.

To achieve this, we need to look for new opportunities to boost our exports, while ensuring that the benefits of trade are enjoyed more broadly across America. We must also enforce our agreements with other countries more strictly. Our trading partners, too, must play by the rules and treat our products and our workers fairly.

We are fortunate that USTR has an outstanding leader in Ambassador Kirk, and an exceptional career staff to help our manufacturers, farmers, ranchers, and service providers, large and small, succeed. By working with all stakeholders, we can establish a clear domestic consensus on the importance of trade that can lead to progress on a range of issues and, with strong bipartisan support

for trade that can benefit all Americans, we can identify new mechanisms with the greatest promise to broaden market access and strengthen enforcement.

If confirmed, I look forward to working closely with the members of this committee to meet these challenges. Thank you for your consideration.

The CHAIRMAN. Thank you, Ms. Sapiro, very much.

[The prepared statement of Ms. Sapiro appears in the appendix.]

The CHAIRMAN. Mr. Madison?

Mr. MADISON. Thank you, Mr. Chairman.

The CHAIRMAN. And we would like you, too, to introduce family.

Mr. MADISON. I would like to do that. I have with me my eldest daughter, Kristin, who is here. Stand up.

The CHAIRMAN. Kristin? Why don't you stand, Kristin?

Mr. MADISON. And my youngest daughter, Jillian.

The CHAIRMAN. Jillian.

Mr. MADISON. Kristin's boyfriend, Frank.

The CHAIRMAN. Frank. [Laughter.]

Mr. MADISON. And at the other end of the table is my uncle and aunt, John and Avril Madison.

The CHAIRMAN. Great.

Mr. MADISON. Thank you.

The CHAIRMAN. Nice to meet you all. [Applause.]

STATEMENT OF GEORGE MADISON, NOMINATED TO BE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. MADISON. Thank you, Chairman Baucus and Senator Bunning, for the opportunity to appear before you in connection with my nomination to be the General Counsel of the Department of the Treasury.

I am deeply honored to be President Obama's nominee for this position, and I am sincerely grateful to Secretary Geithner for recommending me to the President.

Chairman Baucus, I wanted to just mention that my oldest daughter is in school at Broward College-Nova University in Florida, and my youngest daughter, who just graduated from the Lawrenceville School outside of Princeton, NJ, is on her way to Stanford, which is a school that I think you are familiar with.

The CHAIRMAN. Wise choice. [Laughter.]

Mr. MADISON. My girls have survived a series of personal challenges during the last 8 years following the death of their mom. They have my deep admiration and respect for how they faced their loss over these years. They represent their mom well. So, I just wanted to say that publicly.

Mr. Chairman, I welcome this opportunity, if confirmed, to serve our country and contribute whatever I can to the President's and Secretary Geithner's efforts to stabilize the financial system and reinvigorate the economy.

Public service is in the blood of my family, and I beg your indulgence for a minute to explain why. While I was raised in Jersey City, NJ and now reside in Greenwich, I am from an old Washington, DC family who imbued in all of us the importance of, and responsibility to give back to our communities and to our country.

As a reminder to my children and for your information, I will relate two quick stories. First, my grandmother's grandfather, Gabriel Coakley, along with a couple of other freed slaves, initiated a fundraising campaign in the 1860s to build the first house of worship and school for black Catholics in the District.

Mr. Coakley obtained permission from then-President Abraham Lincoln to hold what was called a Strawberry Festival on the front lawn of the White House on July 4, 1864. With the funds they raised and other funds, Mr. Coakley founded St. Augustine's Catholic Church and School, which recently celebrated its 150th anniversary.

The second story is about my grandmother herself, Dr. Lena F. Edwards, who became a medical doctor in the 1920s. After nearly 40 years of providing health services to minority communities in DC and in New Jersey, in 1961 she built and staffed a 25-bed hospital in Hereford, TX for Mexican migrant workers. In 1965, President Lyndon Baines Johnson awarded her with the Medal of Freedom in recognition of her work in Texas.

The presentation was held in the Blue Room at the White House, and other honorees included Leontyne Price, Father Hesburgh, Carl Sandberg, John Steinbeck, and Aaron Copland, to name a few. The important lessons of these stories and others help explain why, for me, public service is both a privilege and an obligation.

As you know, as General Counsel at Treasury we supervise a staff of nearly 2,000 attorneys and 1,600 support staff. By statute, the General Counsel is a chief legal officer of the department who provides legal advice and counsel to the Secretary, the Deputy Secretary, the Under Secretaries, and other senior officials on legal issues that range from department management, to government financial operations, to the public debt, to revenue and customs laws, to the international and domestic economic monetary and financial affairs, to law enforcement and the financial war on terror, to the ethics programs, to legal claims and legislative reports to Congress and OMB.

In addition to all of that, and at this time in history, if confirmed, I would welcome the opportunity to offer my legal perspectives to the successful implementation of the programs initiated by Congress, the President, and the Secretary to stabilize the financial system and reinvigorate our economy.

It is an important and immensely rewarding role at a critical time in our history, and I pledge to you my thoughtful, diligent, and dedicated service, should the Senate choose to confirm me. Thank you.

The CHAIRMAN. Thank you, Mr. Madison, very, very much.

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

The CHAIRMAN. Mr. Wallace?

Mr. WALLACE. Mr. Chairman, thank you.

The CHAIRMAN. And your family?

Mr. WALLACE. I would like to introduce my wife, Robin Vink, and our children, Harrison, 17, and Ava, 15, are finishing the year end—happily finishing—school activities, otherwise they would be here.

I would also like to acknowledge my mother.

The CHAIRMAN. Why doesn't your wife stand? Her name, again?

Mr. WALLACE. Robin Vink, of New York.

The CHAIRMAN. Robin. [Applause.]

Mr. WALLACE. I would also like to acknowledge my parents, Frank Wallace, who passed 8 years ago, and my mother, Etta Wallace, who still lives in San Antonio and is, thankfully, very healthy. And my mother-in-law, Barbara Vink. All of them have been sources of great pride and inspiration to me, and continue to be.

STATEMENT OF KIM WALLACE, NOMINATED TO BE ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. WALLACE. Thank you, Mr. Chairman, for being here, and Senator Bunning, and other members of the committee who were not able to make it. I appreciate the opportunity to appear before you.

I am honored to have been nominated by President Obama to serve as Treasury Assistant Secretary for Legislative Affairs. I am also grateful to Secretary Geithner for recommending me to the President.

If approved by this committee and confirmed by the Senate, I know that their constant support and the support of my broader family will guide and continue to enlighten my thoughts and actions as I do all I can to help President Obama and Secretary Geithner revitalize the economy and stabilize our financial markets.

Senators, as you know, the Treasury Department and this committee work closely together on a range of important topics. The success of the priorities of this Congress and of the administration on crucial issues facing our Nation require a seamless communication between committee members, staff, and Treasury officials. If confirmed, I pledge to you my unwavering attention to ensuring that this committee and the Treasury Department have regular and open contact. If confirmed by the Senate, I would be honored to begin my third phase of public service.

As a graduate of the then Government Program at the University of Texas at Austin, then-Senator, now U.S. Congressman Lloyd Doggett hired me as a junior analyst. I also had the pleasure of working in the Texas Office of State-Federal Relations, responsible for communicating Federal policy developments in the areas of banking, employment, and education to relevant State agencies and legislators.

My Federal Government service began in 1986 as the Function 500 analyst for the Senate Budget Committee, then chaired by Lawton Chiles. I departed public service in 1994, after working almost 5 years for then-Senator Majority Leader George J. Mitchell as a member of his fiscal policy staff.

My State and Federal public service taught me the importance of translating policy actions to various constituencies who in one way or another would be affected by the decisions of elected officials. If confirmed, I look forward to applying these lessons and those learned as a private sector manager of research teams to the role for which you are considering me.

The challenges and opportunities facing our country will test policymakers to design and implement ideas that address near-term conditions, but to do so in a manner that has enduring, constructive implications for generations to come. I look forward to contributing to this work should the Senate choose to confirm me.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Wallace, very much.

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

The CHAIRMAN. I have several questions I must ask all three of you. These are general questions. I would like you to indicate your agreement or disagreement with each.

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

Ms. Sapiro?

Ms. SAPIRO. No, Mr. Chairman.

The CHAIRMAN. Mr. Madison?

Mr. MADISON. No, Senator.

The CHAIRMAN. Mr. Wallace?

Mr. WALLACE. No, Mr. Chairman.

The CHAIRMAN. Thank you.

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

Ms. SAPIRO. No, Mr. Chairman.

Mr. MADISON. No, Mr. Chairman.

Mr. WALLACE. No, Mr. Chairman.

The CHAIRMAN. Thank you.

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

Ms. SAPIRO. Absolutely, Mr. Chairman.

Mr. MADISON. Yes, Mr. Chairman.

Mr. WALLACE. I do.

The CHAIRMAN. Thank you.

I will begin with you, Ms. Sapiro. At a recent panel FTA hearing, the administration announced it is developing a new trade policy framework. To my knowledge, the administration has not yet consulted with the Congress, let alone this committee, on that trade policy framework. It was quite a surprise frankly. It was a shot out of the blue. We have been working on trying to pass the Colombia FTA, as well as the Panama FTA, and creating FTAs a little further down the road.

But while we are working on those free trade agreements, suddenly out of the blue, we have testimony here that the administration is working on a trade policy framework. Whatever that means, I have no idea, but we did not hear about it until then.

Now recently we see in news reports that the administration will not move the Panama FTA forward until health care reform passes the House and the Senate. Nobody in the administration consulted us about that. The first time we had heard about that, we read about it in newspaper articles. Then we hear the same is basically true with respect to, as I said, the trade policy framework.

So I guess I have several questions to ask you. You are not confirmed yet, but you have been talking to the administration a lot. What is going on here? Are those reports true or not true?

Ms. SAPIRO. Thank you, Mr. Chairman, for that important question. I share your interest in seeing the Panama FTA and the Colombia FTA secure congressional approval. I understand that the President would like to outline a new framework for trade that imbeds it in his overall economic policy. I believe that this step can be helpful in securing the necessary bipartisan support that is required to complete these agreements.

I know, with respect to both agreements, there are outstanding issues, particularly with respect to labor rights. USTR is working with their counterparts in both countries to address those questions. I do believe strongly about the importance of close consultation and partnership with the Congress on these issues, and with this committee. I believe that our trade policy is most successful when we have a good working relationship. If I am confirmed, I pledge to consult with you as much as you would like in order to move these issues forward.

The CHAIRMAN. Well, apart from your participation, do you think that this Congress, reading about these developments in the press and not being told by the administration in advance, is that close consultation? Would you regard that as close consultation?

Ms. SAPIRO. I believe that this consultation is important. I know USTR has been consulting with your staff on various elements related to both agreements, and if I am confirmed I will work on that consultation process and make sure that it is working smoothly and satisfies you.

The CHAIRMAN. Can you assure us that we will hear from you before we read about it in the press, the developments with respect to any of the FTAs, or any trade matter?

Ms. SAPIRO. We have an active and free press, Mr. Chairman.

The CHAIRMAN. We also have a very concerned Congress.

Ms. SAPIRO. Yes.

The CHAIRMAN. As you know, under the Constitution, it is Congress that sets trade policy.

Ms. SAPIRO. Yes. Yes.

The CHAIRMAN. Not the administration. It is Congress that sets trade policy.

Ms. SAPIRO. Yes, Mr. Chairman. I am aware that it is Congress that has the authority to regulate commerce with foreign nations and that the USTR derives its authority from the Congress. As I said, I fully intend to consult closely with you and with your staff to make sure that we have a good working relationship.

The CHAIRMAN. As a matter of policy, do you think it is a good idea that we are told first before we read about it in the press? Do you think that is a good method of operation? Do you think that is good?

Ms. SAPIRO. Yes. I would prefer—

The CHAIRMAN. Do you think that is preferable?

Ms. SAPIRO. Yes, Mr. Chairman. I do want to consult closely with you. I would rather, certainly, you raise any questions you have with me directly.

The CHAIRMAN. How am I supposed to raise them if I read about them in the press? I would like you to talk to me, first. Can you do that?

Ms. SAPIRO. I will talk to you first about these issues, Mr. Chairman, before I speak to the press.

The CHAIRMAN. I think you got the message. [Laughter.]

It is very clear to me that things work a lot better when we talk with each other in advance. For example, Senator Grassley and I, oh, gosh, 8 years ago, instituted a policy where we meet every week for about an hour, hour and a half. We lock it in, 5 o'clock every Tuesday, just to go over matters that pertain to this committee, to minimize misunderstandings, enhance communication, et cetera. It is amazing.

Pretty soon, our trade staffs started talking to each other. Then our health staffs started talking to each other. Then our tax staffs started talking to each other. If you were a fly on the wall, you would think it was one meeting, it has worked so well. But it is because we have locked-in a regular process where we talk with each other. There are no surprises, him surprising me or me surprising him. I am trying to think of some way we could do the same with USTR, as well as with Treasury, have a periodic, locked-in, set time where we could just sit down and go over things. It makes a huge difference.

I have done the same with Chairman Rangel over in the House, the same with Congressman Waxman, the same with Secretary Summers, with whom I talked weekly, Secretary Geithner, Peter Orszag, Larry Summers. We lock in a quarterly meeting. Excuse me—a monthly meeting. I am just trying to figure out some way to encourage you to tell us a little more in advance, and we tell you, too. I am talking about USTR now, and not necessarily you personally, but I would like you to be thinking about it and send back to Ambassador Kirk my hope that we could work out some way to regularize meetings like this so that we could minimize misunderstandings and avoid surprises.

Ms. SAPIRO. I will carry that message back, Mr. Chairman. I think it is a terrific idea. I am a firm advocate of putting things like that on the calendar on a regular basis so that day-to-day issues do not detract from the overall focus on the importance of consultation with you.

The CHAIRMAN. Thank you. My time is up, way up.

Senator BUNNING. Thank you, Mr. Chairman.

Mr. Madison, I have so many questions for you that I may take all my time for the first time around with you.

It seems obvious that the reason the Fed and the FDIC are being used for the Public-Private Investment Program is to use their existing authorities to leverage TARP money so Treasury does not have to ask Congress for the legal authority for more money.

If a situation like that were to come up in the future, would you advise against an end-run around Congress, or would you find a way to get around restrictions on Treasury's legal authority?

Mr. MADISON. Thank you for the question, Senator. It is obviously very important that I make sure that the Treasury is in full compliance with the laws of this country that have been promulgated by Congress. In the Public-Private Partnership, I have the

sense—and I have only been at Treasury for 5 weeks, myself—that it was put together with the Federal Reserve as a way of providing liquidity in markets with the market participants, which include the banks, to regulate it by the Federal Reserve using various kinds of vehicles that the Federal Reserve established.

Senator BUNNING. But they had not used them since 1931, some of those vehicles.

Mr. MADISON. I think that these times required extraordinary acts to provide financial stability to the economy and, in fact, all of the Emergency Economic Stabilization Act is an extraordinary act. But I think the main point was that both Treasury, the Federal Reserve, the FDIC, and the other agencies had to work together to come up with an effective program that would stem the concerns at the time and stabilize the economy.

As the regulator of the banking institutions that were involved and the principal supervisor, I believe it was appropriate for the Federal Reserve to do that, and funds were provided to that vehicle from Treasury under the PPIP program. So I do not see it as an end-run around Congress. It sounds to me—

Senator BUNNING. Let me ask you a direct question.

Mr. MADISON. Sure.

Senator BUNNING. Do you think, if you came back for TARP 3, you would get any money from Congress?

Mr. MADISON. I have heard from Secretary Geithner, in his appearances before Congress and in other places, that we are not looking for more money.

Senator BUNNING. I know that. No. But right now.

Mr. MADISON. We think that we have enough.

Senator BUNNING. As long as the Fed has a printing press, you have enough.

Mr. MADISON. Senator, as I said, I think it is important that the Federal Reserve supervise its institutions in the way that is prudent through their own governance. Obviously Treasury has to work with the Federal Reserve.

Senator BUNNING. Yes. Just so they do not become a partner.

Mr. MADISON. Yes. I understand.

Senator BUNNING. In other words, part of the Treasury. We want to make sure that the Fed stays separate.

Mr. MADISON. They are separate. They are separate institutions.

Senator BUNNING. The second question. During your 30 years of corporate practice, have you ever experienced a situation where a person or entity has an 80-percent ownership stake in a company without the ability to control the business operation of that company?

Mr. MADISON. Senator, my experience is that the equity owner uses the corporate governance mechanisms that the laws of the country allow.

Senator BUNNING. What if they are not being followed?

Mr. MADISON. Well, what I mean by that is establishing a board of directors that has fiduciary duties to the shareholders—all the shareholders—that is responsible for supervising the management of that entity, and then shareholders will often back off and allow the management—

Senator BUNNING. Before my time runs out I want to add to that.

Mr. MADISON. Good.

Senator BUNNING. Can you think of any reason the government could not require of those people you spoke of, the board and the president of AIG, given the taxpayers' 80-percent stake in that business, a little closer scrutiny and more ability to run that company a little more efficiently?

Mr. MADISON. Certainly through the exercise of their voting power, the government can put in place the right board that will govern AIG, and any other entity, appropriately. If that board is not doing what it needs to do, then the mechanism is to have a shareholder vote and to replace the board.

Senator BUNNING. Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. If you have more questions, go ahead.

Senator BUNNING. Well, I have lots more.

The CHAIRMAN. All right. Go ahead.

Senator BUNNING. All right.

The same, for Mr. Madison.

Mr. MADISON. Thank you.

Senator BUNNING. When banks repay TARP funds, would you advise Treasury that the best course of action would be, recycle the payments into TARP funding for another institution, or would you advise Treasury that the repayment should be used to repay taxpayers and reduce our massive Federal deficits?

Mr. MADISON. Senator, I think—and I know, in fact—what happens is that repayments on investments of TARP funds actually go to the public fund to reduce—they go into the Treasury's public fund. They are not recycled.

Senator BUNNING. In other words, they cannot lend them back out to someone else.

Mr. MADISON. They do not recycle the funds, is my understanding. Under EESA, there is a cap on the amount of funds that are available, and that is \$700 billion at any one time outstanding. So, when there are repayments on TARP investments, that creates more headroom under that \$700-billion cap that allows for additional investments to be made. So it is not a recycling of funds that come in from one entity that is repaying and going out to another. Those funds, as repaid, go into the general fund. That creates—

Senator BUNNING. You are talking about the excess?

Mr. MADISON. I am saying—

Senator BUNNING. Are you talking about the return of the TARP funds?

Mr. MADISON. I am saying that, as TARP funds are returned, they go to the general fund of the Treasury.

Senator BUNNING. But you just then said that they could be used for other entities.

Mr. MADISON. No. What I said, Senator, was that that creates room within the cap—

Senator BUNNING. Yes. Under the \$700 billion.

Mr. MADISON [continuing.] Under the \$700 billion for additional investments to be made at any one time.

Senator BUNNING. Well, that is evading my question, but that is actually exactly the question I ask, whether the funds should be held to reduce the deficit or whether they should be expended for other investments under TARP.

Mr. MADISON. And in fact, what happens is the repayments come in and they go to the general fund of the Treasury.

Senator BUNNING. We are going to have a lot of repayments very shortly from our banks.

Mr. MADISON. Exactly.

Senator BUNNING. And we were interested in what happens to that money.

Mr. MADISON. It goes into the general fund of the Treasury, and that creates more headroom under the \$700 billion.

Senator BUNNING. Thank you.

What concerns do you personally have about how TARP was implemented, especially in light of the way it was sold to Congress? In other words, it was sold as a way to remove toxic securities, and 1 week later the author and the Secretary of Treasury and the head of the Federal Reserve did what we call a bait-and-switch and moved it to the Wall Street bankers and other people on Wall Street. They were not necessarily banks, but they were investment companies. They used that money, not to remove the toxic securities, which still are not removed, but to shore up the situation with the bankers and with the Wall Street firms. So how would you have sold TARP if you came to me?

Mr. MADISON. Senator, as you know, I have only been at Treasury for 5 weeks, so it is hard for me to tell you what happened before.

Senator BUNNING. You know exactly what happened before.

Mr. MADISON. What I do know is this, that the purpose of it was to help stabilize the economy, and it was done in a number of different ways, under a number of different programs. So, providing capital to financial institutions that needed capital so that they would start lending again, other programs in which the point was to buy some of the toxic assets, as you say, programs for small business, and other programs for home ownership and refinancing and modifications. So, there were multiple purposes that had to do with credit and capital and liquidity in the system to get the economy going again. So I think it was not just limited to toxic assets.

Senator BUNNING. Well, that is the way it was sold. That is the way it was sold to the Congress. I was here when they sold it.

Just to follow up on that last answer, TARP funding was recently approved for insurance companies, but a Treasury spokesman said that these companies "posed no systemic risk." Would you advise Treasury to use TARP funding to prop up businesses, including autos, insurance, and others that pose no systemic risk?

Mr. MADISON. Senator, I think, to your direct question about TARP funds being provided to insurance companies, these are insurance companies that had bank holding companies in their structure.

Senator BUNNING. That is what we heard about AIG, too.

Mr. MADISON. And so the funding was provided to participants in the market system to make sure that they had capital and liquidity to be able to continue in their operations so that the market system would not be affected, either in the insurance world, the banking world, or any of the other components of the financial system. So, these are just different aspects and sectors in the market in which liquidity and capital had to be provided.

The CHAIRMAN. All right. Thank you, Senator.

Mr. Madison, the *Washington Times* ran an article noting that you will receive about \$3 million in bonus payments from TIAA-CREF, and these bonus payments will be paid out during the years 2010 through 2012. I understand Treasury's Ethics Office has stated you may receive the bonus payments, so long as you recuse yourself from any activities that might benefit TIAA-CREF. Is that correct?

Mr. MADISON. Yes, sir.

The CHAIRMAN. And do you commit to me that you will take all steps necessary to avoid any conflict of interest?

Mr. MADISON. Absolutely, sir.

The CHAIRMAN. And all steps to avoid taking any apparent conflict of interest?

Mr. MADISON. Absolutely.

The CHAIRMAN. Thank you. Because if you do not, the negative consequences are going to be profound.

Mr. MADISON. Ethics is the currency for which my practice and career has been run over the last 30 years, so it is hugely important to me, too.

The CHAIRMAN. That is good to hear.

This committee had a hearing in September of 2007 about how banks improperly froze and garnished Social Security and other benefits; that is, Social Security checks and other payments made by the Federal Government to beneficiaries and recipients who had those funds in bank accounts, and that debt collectors would garnish those payments.

Many people, senior citizens, with \$250, \$300, \$400 in their bank account, had no idea that those payments were garnished with the assistance of the banks. We have not yet received regulations from Treasury to solve that problem, because they should not be garnishing in that way. That hearing was back in September of 2007. We are coming on close to 2 years now. By what date can you assure me that Treasury will have those regulations promulgated?

Mr. MADISON. Mr. Chairman, it is an important question. It is also a thorny issue because, as I understand it—and I have not had a chance to dig into this, and I promise you that I will—the regulations really that need to be issued are by the Social Security Administration. Treasury has to work with the Social Security Administration and other agencies that would provide those regulations. My sense of the delay is in that process that is going on.

So what we can do is sit with the Social Security Administration and make sure that they are focused, and we are focused, on the issue so that we can deal with the problem. It is an important problem, garnishment of Federal benefit payments, obviously because people need those payments.

The CHAIRMAN. So you will commit to get that interagency process up and operating?

Mr. MADISON. Yes.

The CHAIRMAN. And by what date can I expect to hear a concrete, positive result?

Mr. MADISON. Mr. Chairman, not knowing much about the process myself, it is awfully hard for me to give a particular date.

The CHAIRMAN. What sounds like a reasonable period of time, just off the top of your head? You have been around a while. What do you think?

Mr. MADISON. Six months.

The CHAIRMAN. All right. It is a deal. We will ask you to report back within 6 months.

Mr. MADISON. And I will report back in 6 months.

The CHAIRMAN. Thank you very much. I appreciate that.

Ms. Sapiro, I am a little concerned about Doha negotiations. I am a little bit concerned that the administration may want to reach an agreement just for the sake of reaching an agreement. Mr. Pascal Lamy, the general director of Doha, would very much like an agreement. He is going around the world, talking to countries, developing countries, developed countries, et cetera. He is trying to put a deal together.

It is my concern that the deal that is on the table so far is one that does not give sufficient access to American producers, agriculture producers overseas, let alone American manufacturers' access overseas to foreign markets. It is one that asks a significant sacrifice in terms of support payments from the U.S. farmers and ranchers, especially our farmers.

Have you had a chance to kind of look at that proposal that is on the table?

Ms. SAPIRO. Thank you, Mr. Chairman. I have done some thinking about Doha. Obviously, if I am confirmed, it is an issue that I will spend a lot more time thinking about and talking to you about.

I do share your concern. I know there is pressure now on the United States to accept what has already been discussed in Geneva. My concern is that what is currently on the table would not yield significant benefits to American workers, farmers, and ranchers. It is clear what we would have to give, but it is not clear what we would get. As you have said, Mr. Chairman, no deal is better than a bad deal. I would like to work hard to try to identify what a good deal would be and whether we can get there with our trading partners.

The CHAIRMAN. Thank you. I appreciate hearing that. That is refreshing. It is encouraging. I thank you and would encourage you to work diligently, clearly, to try to get a deal, but one that is in the United States' best interests. I do think that the more we expand trade the better, so long as we are getting a fair deal. I appreciate your efforts in that regard.

With respect to Colombia, there are some who believe that Colombia must go farther to address labor violence in order to get an agreement, let alone this problem we now have of a framework that seems to be getting in the way, that is, development of a policy framework which seems to be getting in the way of both Panama and Colombia.

But can I count on you for developing benchmarks in cooperation with Colombian key stakeholders, that is, addressing not only labor violence, but also the environmental provisions in the framework that was put together with respect to, I think it was—what country

was that? Not Panama. I have forgotten which other country it was. We developed a framework, but it applied to Colombia as well as to Panama.

Ms. SAPIRO. If I am confirmed, Mr. Chairman, I will work hard to try to bring that agreement forward and create the bipartisan support that is necessary by addressing labor issues, particularly the violence and the impunity from prosecution question.

The CHAIRMAN. Because that is a problem. I think that has to be addressed even more. I think President Uribe has done a terrific job. I think he is a great President for Colombia. But in order to get it passed, I think it is also necessary to, regrettably from certain points of view, but positively from other points of view, for Colombia to address labor violence even more than it already has.

Ms. SAPIRO. I know that Ambassador Kirk is engaging in an outreach process right now with stakeholders and with this committee to determine steps that the Colombian government should take in order to help create the bipartisan support that we need.

The CHAIRMAN. I also want to put on your radar screen the Canadian Softwood Lumber Agreement, right there in the middle of your computer screen, right there so you see it every day.

Ms. SAPIRO. An "S," an "L," and an "A."

The CHAIRMAN. Yes. Exactly. So it is enforced and you work vigorously to ensure that it is enforced, because those Canadians, they are pretty clever. [Laughter.]

They figure out ways to get around it, which we do not want them to do.

Ms. SAPIRO. Thank you, Mr. Chairman, for raising that very important issue.

I was very pleased that the United States won in the arbitration recently. When it came time for enforcement, Ambassador Kirk took a clear step in insisting that the arbitral award be honored. When the Canadian government made an insufficient offer of a remedy, it was rejected and instead Ambassador Kirk imposed a 10-percent ad valorem duty on exports of softwood lumber from those provinces. I think that was the right thing to do, and it also sends an important signal to our trading partners around the world that we are serious about enforcement. So, yes, Mr. Chairman, I will keep an eye on that agreement, if I am confirmed.

The CHAIRMAN. Thank you. Thank you.

Mr. Wallace, the main point with you—my time has expired—is just very brief. That is consultation with Congress. You are the man. You make sure that you tell us what is going on with Treasury. I mean, that is going to be your job. I think I will set up some mechanism where, on a periodic basis, you are talking to us, maybe my Staff Director, someone like that. I do not know if it will be once a week or every other week, but something so we are prepared to ask each other questions and tell each other, really, what is going on.

More than anything else, it is just to develop trust. After you get to know somebody after a period of time, you start to trust that person a little bit more. That is the goal here, it's true. We just need a little more trust, and that might be a way to do it. But in the meantime, I encourage you just to bend over backwards and tell us. The fault should be, tell them. Tell them what is going on

down there, especially a couple of key people who really have jurisdiction over these matters, because we are good people. We do not go out and blab. We want to work with you. Two heads are generally better than one, so I urge you to work with us.

Mr. WALLACE. Mr. Chairman, as I said in my remarks, I am committed to working with you and all members of the staff and the committee. I am getting to know Russ, having been around him for a few years now. I have the great fortune of knowing a few members of your staff, some going back as far as the mid-1980s. The issue of trust is really not an issue, that has been established. As I said, a process convenient to your staff and the staff of both sides of the committee that keeps you well abreast of what is going on inside the Treasury Department is in your interests, and obviously in our interests.

The CHAIRMAN. I appreciate that. But there have been some developments where we, again, do not know about matters until we read about them in the press. That is, Treasury matters that directly affect this committee. That has happened already in the past.

Mr. WALLACE. It is regrettable, Mr. Chairman, that that is true for me as well. I have discussed within the building a process that seeks to mitigate those mistakes, as some of the people on the panel have mentioned. In Washington, DC it is impossible to give an ironclad commitment that there will not be leaks that some of us do not know about beforehand, but in terms of what goes on inside of Treasury, I will do everything possible to make sure you are not surprised by what you read in the newspaper.

The CHAIRMAN. Although I will say this. I think this administration has done a better job than any other I can think of for keeping things in-house and not a lot of leaks. That is good. That is good. But in so stating, then it is an opportunity to tell us, at least on matters that are relevant to us—and we will keep it to ourselves. We will just work with you.

But if we have a heads-up, it gets back to trust again. You have a better likelihood of giving us something where we get a heads-up in this administration compared with others, because at least this administration has a better reputation so far of keeping things in-house and not allowing its top people to blab as much as some have in other administrations.

Mr. WALLACE. Mr. Chairman, in my view that custom at Treasury, although it is only 5 months old, is owed entirely to the loyalty most of us feel—almost all of us feel—to Secretary Geithner, for various reasons. As we continue to work hard to protect a no-leak policy, I also pledge to you that we will establish a system where neither you, nor your staff, nor members of the committee will be surprised by policy pronouncements that come out in the media. We will talk to you beforehand.

The CHAIRMAN. I appreciate that. And I have the highest regard for Secretary Geithner. In fact, when his name was being considered, I called up the President and said, hey, Tim Geithner is your man. He is the one whom you should name to be Treasury Secretary. My confidence in him goes up every time I see him or talk to him. You have a great boss there, you have a great team there,

and you are part of that great team, or will be. I look forward to working with you.

Mr. WALLACE. Thank you, Senator.

The CHAIRMAN. Both of you.

Mr. MADISON. Thank you.

The CHAIRMAN. And you, Ms. Sapiro, too.

Ms. SAPIRO. Thank you.

The CHAIRMAN. And also, give my best to Demetrios.

Ms. SAPIRO. I certainly will.

The CHAIRMAN. That is an inside joke. Demetrios used to work for us, and now he is at the USTR.

Senator BUNNING. I have one more question for Ms. Sapiro.

I wanted to ask you, as the chairman has about lumber, about bananas and the trade enforcement cases. We need to turn the countless wins that we have had in the WTO into actual relief that will stop the European community's illegal actions. Even with five wins in the WTO and one past settlement, the European community has spent the last decade coming up with new ways to accomplish the same illegal trade policies.

Will you work to achieve a new banana settlement that opens up the European markets, prevents new illegal policies, and preserves the rights of U.S. companies in the case that the illegal measures return?

Ms. SAPIRO. Senator, I pledge to do that. I have to tell you that, when I began my briefings with the USTR staff, one of the first questions I asked them was, what about bananas? The reason is, I recall this dispute from when I worked at the State Department and the National Security Council in the 1990s.

Senator BUNNING. I recall it from when I sat on the Ways and Means Committee, which was 12, 13 years ago. So it was occurring then. After we win, the enforcement does not take place. That is what I want to make sure that you are aware of.

Ms. SAPIRO. Yes. I raised this issue for the very reason you mentioned: it has been on the books for too long. I would very much like to see progress. I understand that the Europeans have been speaking with the Latin American countries involved, and hopefully there will be developments there soon. But I do support us getting engaged, at any rate, now because too much time has passed. I would like to work with you and with the stakeholders in trying to reach a solution.

Senator BUNNING. Well, if we keep hearing from the stakeholders that we are not getting results, I am going to keep coming back to you, believe me, because I have some stakeholders that are located around my State and they are highly upset about, if you go to the WTO and you win, you do not get any enforcement. So I am hoping that you will be doing a better job in enforcing our wins in the WTO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I have no further questions. I thank all of you very, very much. I wish you good luck. It is a great sacrifice you are undertaking, a great sacrifice for your families, too, because you are not going to be seeing very much of them. Thank you, all of you, you and

your families, for your dedication and your service to our country.
I look forward to working with you.
The hearing is adjourned.
[Whereupon, at 11:07 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hearing Statement of Senator Max Baucus (D-Mont.) Regarding Trade and Treasury Nominations

The essayist Lewis Lapham wrote:

"Leadership consists not in degrees of technique, but in traits of character."

We have before us three nominees whom the President has called upon to lead. You have been called to lead during challenging times. And it is essential, in these challenging times, that you lead not just with skill, but also with character.

Ms. Sapiro, the President nominated you to be Deputy U.S. Trade Representative. It is essential that you lead by the strength of your character, as well as the strength of your mind.

As Deputy U.S. Trade Representative, you will help Ambassador Kirk and the President to develop a comprehensive trade policy. In doing so, you must find a path that leads our country out of this global economic downturn, and into renewed American competitiveness. You must show our trading partners that we will live up to our international obligations, and that they must live up to theirs. And you must ensure that international trade works for all Americans.

This will be no easy task. But Ms. Sapiro, you have the background necessary to accomplish it. You have spent years viewing the world through an international prism. During the Clinton Administration, you served in the National Security Council and the State Department. You have a strong background in international policy. I am confident that your character and experience make you ready for this challenge.

Mr. Madison, the President has nominated you to be General Counsel of the Treasury Department. It is essential that you lead by the strength of your character, as well as the strength of your mind.

As General Counsel of the Treasury Department, you will provide the Secretary with legal and policy guidance. You must advise on matters as disparate as banking, tax, and international policy. You will help the Treasury Department to navigate through uncharted waters, as it takes novel actions to stem the global economic crisis.

This will be no easy task. But Mr. Madison, you have the tools necessary to accomplish it. You have spent almost 30 years practicing law. During this time, you have served as the General Counsel for two corporations.

And you have helped financial services companies to establish stringent risk management and corporate compliance practices.

You have been compensated handsomely for your work. A recent Washington Times article noted that you will continue to receive bonus payments from your previous employer, TIAA-CREF, during your tenure as Treasury's General Counsel.

I understand that you have been advised that these payments comply with Treasury's ethical guidelines. I also understand that you will recuse yourself from matters that may affect TIAA-CREF.

I urge you to be vigilant in this matter and avoid any hint of a conflict of interest. I am confident that your character will guide you well in this regard, and I am confident that your experience makes you ready for this challenge.

Mr. Wallace, the President nominated you to be Assistant Secretary of Treasury for Legislative Affairs. It is essential that you lead by the strength of your character, as well as the strength of your mind.

In this role, you must be the bridge between the Legislative and Executive branches of government. You must keep the Congress well apprised of the Treasury's thinking, so that we may be prepared to act and react in these challenging economic times. And you must ensure that Treasury maintains high levels of transparency to Congress, and to the American people.

This will be no easy task. But Mr. Wallace, I believe that you will succeed. You spent several years on Capitol Hill. You have worked at understanding and analyzing the inner workings of policy making, and its effect on the financial services industry. I am confident that your character and experience make you ready for this challenge.

Although our country is in challenging times, I believe each of you has the character and leadership to help guide our country. I congratulate you on your nominations.

I urge you to lead with skill. I urge you to lead with character. And I have faith that, with your help, this government will lead America back to recovery.

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Opening Statement of George W. Madison
Nominee for General Counsel of the Treasury Department
Senate Committee on Finance
June 5, 2009

Remarks as Prepared for Delivery

Thank you Chairman Baucus, Senator Grassley and members of this committee, for the opportunity to appear before you today in connection with my nomination to be the General Counsel of the Department of the Treasury.

I am deeply honored to be President Obama's nominee for this position and I am sincerely grateful to Secretary Geithner for recommending me to the President.

I know the time is brief. If you permit me, Mr. Chairman, I would like to introduce the members of my family who are here today and who have supported me in all I've accomplished. I am joined by my two daughters, Kristin and Jillian. Kristin was the first born and attends Broward College/Nova University in Davie, Florida. She hasn't finally decided yet upon her career but she is leaning in the direction of psychology. My daughter Jillian graduated, just last weekend, from The Lawrenceville School near Princeton, New Jersey and will be attending Stanford University in the Fall. Kristin and Jillian are accompanied by Kristin's boyfriend Frank Stadelman, also a student in Florida. My girls have survived a series of personal challenges during the last 8 years with the tragic death of their mom. They have my deepest admiration and respect for how they have faced this grievous loss at such early ages. They represent well their mom.

Mr. Chairman, I welcome this opportunity, if confirmed, to serve our country and contribute whatever I can to the President's and Secretary Geithner's efforts to stabilize the financial system and reinvigorate the economy.

Public service is in the blood of my family and I beg your indulgence to spend a minute to explain. While I was raised in Jersey City, New Jersey and now reside in Greenwich Connecticut, I am from an old Washington DC family who embedded in all of us the abiding importance and the responsibility to give back to our communities and to our country. For your information and as a reminder to my children, I will relate two quick family stories. First, my grandmother's grandfather, Gabriel Coakley, along with two other freed slaves, initiated a fund-raising campaign in the 1860s to build the first house of worship and school for black Catholics in the District. Mr. Coakley obtained permission from President Abraham Lincoln to hold a "Strawberry Festival" on the front lawn of the White House on July 4, 1864. With these funds and others previously committed, Coakley founded Saint Augustine Catholic Church and School which recently celebrated its 150th Anniversary.

The second story relates to my grandmother herself, Dr. Lena F. Edwards, who became a medical doctor in the 1920s. After nearly 40 years of providing health services to the minority community in DC and NJ, in 1961 she built and staffed a 25 bed hospital in Hereford, Texas for Mexican migrant workers. In 1964, President Lyndon B. Johnson awarded her the Medal of

Freedom in recognition of her work in Texas. The presentation was made in the Blue Room of the White House and other honorees included Leontyne Price, Father Ted Hesburgh, Carl Sandburg, John Steinbeck and Aaron Copland.

The important lessons of these stories and others help explain why, for me, public service is both a privilege and an obligation. As you know, the General Counsel of the Treasury Department supervises a staff of approximately 2000 attorneys and 1600 support staff. By statute, the General Counsel is the chief legal officer of the Department who provides legal advice and counsel to the Secretary, Deputy Secretary, Under Secretaries and other senior officials on legal issues ranging from Department management, to government financial operations, to the public debt, to revenue and customs laws, to international and domestic economic, monetary and financial affairs, to law enforcement and the financial war on terror, the ethics program, legal claims and legislative reports to Congress and OMB. In addition to all of that, at this time in our history, if confirmed I would welcome the opportunity to offer my legal perspective to the successful implementation of the programs initiated by Congress, the President and the Secretary to stabilize the financial system and reinvigorate our economy.

This is an important and immensely rewarding role at a critical time in our history and I pledge to you thoughtful, diligent and dedicated service, should the Senate choose to confirm me.

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

A. BIOGRAPHICAL INFORMATION

- 1. Name: (Include any former names used.)**
George Wheeler Madison
- 2. Position to which nominated:**
General Counsel, Department of the Treasury
- 3. Date of nomination:**
April 20, 2009
- 4. Address: (List current residence, office, and mailing addresses.)**
Current residence:
Office address:
Mailing Address:
- 5. Date and place of birth:**
October 17, 1953; Jersey City, New Jersey
- 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.)

St Aloysius High School, Jersey City, New Jersey
September 1967 to June 1971 - High School Diploma June, 1971

New York University, New York, NY
September 1971 to June 1975 - B.S. June 1975

Columbia University, Graduate School of Business Administration, New York, NY
September 1975 to May 1977 - MBA May 1977

Columbia University, School of Law, New York, NY
August 1977 to May 1980 - JD May 1980

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.)

Controller/Accountant/Adviser to the Chief Executive, Allerton Press Inc., New York, NY – June 1975 to August 1977 (est.)

Intern, Mergers and Acquisitions Group/Corporate Finance, Bankers Trust Company, New York, NY - Summer of 1978

Summer Associate, Brown, Wood, Ivey Mitchell & Petty, NY, NY, Summer of 1979

Associate, Shearman & Sterling, New York, NY - September 1980 to December 1980; and November 1981 to April 1987 (est.)

Law Clerk, Hon. Nathaniel R. Jones, US Court of Appeals for the Sixth Circuit, Cincinnati, OH – December 1980 to November 1981 (est.)

Associate and Partner, Mayer, Brown & Platt, NY – April 1987 to December 1996

Executive Vice President, General Counsel and Corporate Secretary, Comerica Incorporated, Detroit, Michigan – January 1997 to June 2003

Executive Vice President and General Counsel, TIAA-CREF, New York, NY, June 2003 to October 2008

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

None

11. **Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**

Executive Vice President and General Counsel, TIAA-CREF, New York, NY; and its affiliates

Executive Vice President, General Counsel and Corporate Secretary, Comerica Incorporated, Detroit MI; and its affiliates

Partner, Mayer, Brown & Platt, New York, NY

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

Currently held positions:

Member, Board of Visitors, Columbia Law School

Member, Board of Directors, The Legal Aid Society of New York

VP and Member Board of Directors, American Judicature Society

Member, American Bar Association

Member, Association of Corporate Counsel

Member, American Law Institute

Member, Sigma Pi Phi Fraternity, Zeta Boule of NY chapter

Member, State Bar of Michigan;

Past Positions:

The Association of Bar of City of NY (ABCNY):

Member, Executive Committee;

Executive Committee Liaison to Estate & Gift Taxation Committee;

Liaison to Non-Profit Organizations Committee;

Liaison to Taxation of Business Entities;

Liaison to State & Local Taxation Committee;

Liaison to Personal Income Taxation Committee;

Chair, Civil Rights Committee

Member, Judiciary Committee
Member, Senate Confirmation Process Committee
Member, Banking Law Committee
Member, Steering Committee on Legal Assistance
Member, Recruitment & Retention of Lawyers Committee
Member, Task Force on Minorities
Member, Pro Bono and Legal Services Committee,

Board of Trustees, Miss Hall's School, Pittsfield, MA
Member, Board of Directors, Legal Services for NYC
Vice Chairman and Member, Board of Directors, Detroit Economic Growth Corporation,
Detroit, MI
Member, Board of Trustees, Henry Ford Health System, Detroit, MI
Chairman and Member, Board of Directors, Health Alliance Plan of Michigan, Inc.,
Detroit, MI
Member, Board of Trustees, Oakland University Foundation
Member, Board of Directors, Trailblazers, Inc., NY, NY
Chair, Committee of Corporate General Counsel, American Bar Association
Member, ABA Federal Securities Committee, ABA Banking Law Committee
Member, Board of Directors, Association of Corporate Counsel
Member, Board of Directors, Columbia Law School Alumni Association
Member, Board of Directors, Detroit Metropolitan Bar Association
VP, Finance and Member, Board of Directors, Metropolitan Black Bar Association, New
York, NY

13. Political affiliations and activities:

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

None

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

None

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

Contributed \$100 to Michigan Gov John Engler, 1997

Contributed \$375 to Wayne County Commissioner Bernard Parker, 1998

Contributed \$100 to 36th District court judge Deborah Ross Adams, 1998
 Contributed \$500 to Maura Corrigan for Supreme Court - MI, 1998
 Contributed \$1000 to Bill Bradley for President, 1999
 Contributed \$500 to Wayne County Prosecutor Mike Duggan, 2000
 Contributed \$500 to Dennis Archer Mayoral Election Comm, 2000
 Contributed \$500 to Kwame Kilpatrick for Detroit Mayor, 2001
 Contributed \$500 to Jennifer Granholm for Michigan Governor, 2002
 Contributed \$2,500 to the TIAA-CREF PAC, 2007

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.)

National Honor Society (high school)
 Phi Delta Phi (legal fraternity)
 Learned Hand Award, American Jewish Committee
 2006 Paul Robeson Distinguished Alumni Award, Columbia Law School
 NAACP's 1997 Invaluable Pro Bono Legal Services Award
 1998 Diversity 2000 Award, Minority Corporate Counsel Association
 2003 Distinguished Service Award, Detroit Metropolitan Bar Association
 2003 President's Choice Award, State Bar of Michigan
 2008 Corporate Social Responsibility Award, Neighborhood Defenders Assn of Harlem

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

"Marital and Nonmarital Relationships: The Right to Alternative Lifestyles", Columbia Human Rights Law Review, Vol. 11 (1979-80), pages 189 to 226

"TIAA-CREF Response to 'A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework' ", Harvard International Law Journal, Vol. 48 (2007), Pages 99 et al.; (with Stewart P. Greene, Vice President and Associate General Counsel, TIAA-CREF)

"New Bank Secrecy Act Regulation: Good News and Bad News For Financial Institutions," New York Law Journal, Volume 214, Number 30, August 14, 1995 (with Nelson K. Ahn)

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

None

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

I believe that I have the experience and judgment to help guide the Treasury through these difficult times. I have practiced corporate law for nearly 30 years and have had the privilege of serving for the last twelve years as the general counsel of two Fortune 500 financial services companies. My background and professional experience during that time has been in banking law and regulation, insurance law and regulation, investment company and investment adviser rules and regulation, as an expert in corporate governance with the leading corporate governance institutional investor in the world, in executive management of highly complex organizations, and in strategic planning and sophisticated human resource management of legal and compliance professionals.

For the past six years, I have been a member of a small executive team that transformed a venerable non-profit financial firm, TIAA-CREF, into a stronger, more agile competitor through upgrading talent, building out new products and services, rebuilding its technology platform, expanding its customer facing footprint and improving its investment management operation. I was directly responsible for creating, centralizing, structuring, and developing professional leadership for the compliance oversight function of TIAA_CREF. During this time, I advised executive management and three independent boards of directors as to regulatory compliance matters, significant potential litigation, restructuring of the firm's governance and legal structure, legal and compliance implications of operational difficulties, senior personnel matters, board and chief executive succession matters, and an array of problem solving. I was responsible for managing approximately 70 legal and compliance professionals at the first financial firm, and 250 at the second.

At TIAA-CREF, the development of policy positions affecting the broader market was central to my role as general counsel. The boards of trustees of TIAA and of CREF have committees that focus on corporate governance and social responsibility issues that affect TIAA-CREF's portfolio of 6000 companies. Periodically, the companies publish policy statements on best practices relating to corporate governance and policy issues affecting companies. The process of identifying and developing positions with respect to those best practices begins with the corporate governance unit of management that directly reports to the general counsel. As a leader in this area, the boards and management take seriously each of their positions as a signal to the market worldwide as to appropriate corporate conduct in the interests of shareholders.

As a non-profit, non-partisan financial firm, TIAA-CREF is frequently called upon to comment on proposals by the SEC and other regulators of the financial markets on matters affecting the markets broadly. As general counsel, I was responsible for taking

positions on matters the company commented on before they were vetted by executive management and the boards of trustees of TIAA and CREF.

I also practiced law as a partner with Mayer Brown, a major international law firm, and as an associate with another Wall Street firm, Shearman & Sterling, for approximately 16 years. I represented money center banks and financial firms in mergers and acquisitions, public offerings of securities, bank financing and restructuring transactions, bankruptcies, asset sales, and many others.

I have a broad and varied background in financial legal matters, corporate governance, settlement of litigation, regulatory and compliance matters, executive management, management of legal and compliance professionals, talent management, policy development and transactional lawyering. Over the past 30 years, my professional judgment, integrity and work ethic have been the cornerstones of my career. If confirmed, I look forward to applying my knowledge and skills in service to the American people.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

I am presently not employed and have no current employment relationships. Two former employers manage my money as they would for any other customer. I would expect to continue to be a member of the bar associations and fraternities that I am a member of today.

- 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.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Treasury Department's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

- 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.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Treasury Department's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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

None

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Treasury Department's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved

in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. **Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.**

6. **The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative: N/A**

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

D. LEGAL AND OTHER MATTERS

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

No

2. **Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.**

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

Questions for the Record to George W. Madison

Nominee for General Counsel, US Department of the Treasury

Questions from Chairman Baucus

Question 1:

Executive compensation is an issue of great importance to me, this Congress, and the American public. I fought hard to include executive compensation limits in the TARP, and I expect Treasury to quickly and fully implement these limits. Will you commit to implementing these executive compensation limits? What are your thoughts generally on the current limitations, and how do you think Treasury should handle this issue going forward?

Answer: I agree that executive compensation is a very important issue in the TARP. TARP recipients must be good stewards of the money they have received from the American public and the compensation limitations established in the American Recovery and Reinvestment of 2009 (ARRA) must be followed. You have my commitment that, if confirmed, under my leadership, the Treasury Legal Division will provide the necessary legal oversight to implement this important law.

I understand that the Department has been working diligently to draft the regulations called for in the ARRA to implement these executive compensation provisions as quickly as possible. These regulations will require the appropriate limitations on compensation, and also establish standards for compensation structures to eliminate the incentives for excessive risk that may have contributed to the economic turmoil we are facing. If confirmed, I look forward to engaging directly on this important issue.

Question 2:

In your role as General Counsel you will oversee the Office of IRS Chief Counsel. In the past, the IRS and Treasury have been criticized for failing to issue timely guidance that would give taxpayers certainty in how to treat complex tax matters. Concerns also exist that the choice of guidance projects may be unduly influenced by lobbyists and other self-interested stakeholders. Timely and well-chosen public guidance promotes effective tax administration, fairness among similarly situated taxpayers and helps reduce the tax gap.

- 1) *What principles and factors will you follow when considering and deciding which guidance projects are undertaken?*
- 2) *How can the guidance process be improved so that necessary guidance is issued in a more timely way?*

The IRS Office of Chief Counsel (“Counsel”) is responsible for interpreting the tax laws through its published guidance program, which is closely coordinated with the Department of the Treasury Office of Tax Policy (“OTP”). A strong published guidance program will help taxpayers understand and meet their tax responsibilities and help the IRS apply the tax laws fairly and consistently.

Each year, the Assistant Secretary (Tax Policy), the IRS Commissioner, and the IRS Chief Counsel publish a Guidance Priority List to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. Additional projects arise throughout the guidance plan year depending on various factors, including legislation passed by Congress, changes in economic conditions, and other events, such as the creation of new transactions or instruments by the private sector.

OTP and IRS seek input from the public, the IRS Operating Divisions, and their own staffs to formulate an annual Guidance Priority List that focuses resources on guidance items that are most important to taxpayers and tax administration.

A significant factor in determining guidance priorities is tax legislation. Whenever significant legislation is enacted the Treasury Department and the IRS dedicate substantial resources to publish guidance necessary to implement the provisions of the legislation. In recent years, the list has included projects addressing a multitude of tax acts including, but not limited to, the American Jobs Creation Act of 2004; the Pension Protection Act of 2006; the Economic Stimulus Act of 2008; the Housing Assistance Tax Act of 2008; the Emergency Economic Stabilization Act of 2008; the Energy Improvement and Extension Act of 2008; the Tax Extenders and Alternative Minimum Tax Relief Act of 2008; and the American Recovery and Reinvestment Tax Act of 2009.

A recent notice requesting recommendations for the annual priority guidance plan states that in reviewing recommendations and selecting projects for inclusion in the Guidance Priority List, the Treasury Department and the IRS will consider a number of factors in determining whether a proposed project should be prioritized. These include whether the guidance will resolve significant issues relevant to many taxpayers; whether it will promote sound tax administration; whether it can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance; whether it can be administered by the IRS on a uniform basis; and whether it will reduce controversy and lessen the burden on taxpayers or the Service. I agree that these are generally the appropriate criteria on which to formulate a plan that identifies and prioritizes tax guidance that should be issued.

Recommendations for guidance from taxpayers, tax professionals, Members of Congress and their staffs, and the public in general are accepted and considered at any time during the year, but the annual Priority Guidance List helps to organize a starting point for priorities and to provide an estimate of the capacity of the various organizations involved to provide guidance.

The process for issuing guidance is a complex one that involves many parties within the IRS and Treasury. On March 4, 2008, the Treasury Inspector General for Tax Administration issued a report, "The Published Guidance Program Needs Additional Controls to Minimize Risks and Increase Public Awareness" making recommendations for improving the process. I understand that many of those recommendations have been adopted but that improvements are still possible, including enhanced coordination among the many offices that are required to approve guidance before it is published.

I too am concerned about the timeliness of IRS guidance documents and share the concerns of constituency groups that such guidance needs to be timely in order to be both an effective tool for taxpayers and a valuable tax administration tool for the IRS. If confirmed, I am committed to studying this process to identify procedures to streamline the issuance and legal review functions. One of my top initiatives will be to coordinate my activities in this area with the IRS Commissioner.

You have my commitment that, if confirmed, I will carefully review the ways in which the General Counsel's Office can contribute to an improved process that produces prompt and useful tax guidance. I will also review and evaluate the degree to which lobbyists and other outside groups may influence the legal review of IRS guidance and ensure that any input by such groups is in compliance with Administration policy.

Question 3:

At your hearing, we discussed the problem of banks improperly freezing and garnishing protected federal benefits, such as Social Security and Veterans benefits. This committee held a hearing on this issue in September of 2007. It became apparent at that hearing that Treasury, working with the involved federal agencies and the banking institutions, needed to issue regulations with clear guidance on how these benefits are to be protected. We have been working with Treasury since that time to assist them in issuing this guidance. But to date, they have not been issued.

On May 13 of this year, Michael S. Barr, Assistant Secretary of the Treasury for Financial Institutions, said in his confirmation hearing that he is fully committed to ensuring that Federal anti-garnishment statutes are given full force and effect, and that it will be one of his first priorities to complete the issuance of a joint regulation to solve this problem.

Will you also commit to make this one of your top priorities and to issue this regulation before the end of June?

Answer: I too am fully committed to ensuring that Federal anti-garnishment statutes are given full force and effect as soon as possible, and will make it one of my top priorities. I am eager to be confirmed so that I can begin work on the solution to this problem.

I understand that Treasury has been working with the Federal benefit agencies on a regulation that the benefit agencies and Treasury would jointly issue to implement the protections afforded to beneficiaries under the Federal benefit statutes. I am committed to having Treasury lead the inter-agency process.

Let me explain my state of mind when I indicated at my confirmation hearing that the Social Security Administration was responsible for garnishment regulations and that a regulatory solution could be accomplished in 6 months. All of the Federal anti-garnishment provisions are in program statutes that the Federal benefit agencies, including SSA and VA, administer, and not in Treasury statutes. As such, it was my understanding, which I have since confirmed with counsel at the Treasury, that the benefit agencies have the statutory-based authority in the area.

I will work to publish a joint regulation as soon as possible, and believe that a notice of proposed rulemaking could be issued as early as this summer, given the work already done by Treasury staff. I know that they have worked with the Federal benefit agencies, Federal banking agencies, consumer advocates, and banking industry associations, to develop a consensus solution to this problem that protects the lifeline funds of beneficiaries without shifting financial liability to banks.

If confirmed, you have my commitment to use my position and authority as General Counsel of the Treasury to ensure the fastest possible execution of the regulatory process in accordance with Federal administrative procedure, from drafting of regulatory language, obtaining inter-agency clearance of the proposed rule, providing the public with an opportunity to comment, and ending with inter-agency clearance of a final rule. I understand the importance of this issue to some of the most vulnerable members of our society, to whom we have a special responsibility as senior policy officials and decision makers. I am eager to, if confirmed, contribute to the solution of this serious problem and keeping Committee staff fully informed of our progress.

Questions from Senator Grassley*Question 1*

Do you commit to respond quickly and completely to any requests made by myself or my staff for information?

Answer: If confirmed, I will seek to work closely with Congress and Committee staff to address the important financial issues within Treasury's purview and to perform its oversight role. I agree with Executive Branch policy that seeks to accommodate whatever legitimate interests Congress may have in obtaining information while at the same time preserving Executive Branch interests in maintaining essential confidentiality. Within these parameters, if confirmed, I intend to respond promptly to reasonable requests for information.

Question 2

The Internal Revenue Service is the largest agency under Treasury's jurisdiction – at close to 100,000 FTEs, it is one of the largest government agencies period. As a result, you can expect a significant amount of work related to tax law. Please describe your experience with and knowledge of tax law.

Answer: Although I am not a tax law specialist, as general counsel to two large financial services companies I have both supervised in-house tax lawyers and managed lawyers retained to handle various tax matters. In order to provide supervision to the staff and direction for the company, I had to understand both the context and importance of tax issues. To explain complicated tax matters to management and boards of directors not necessarily well-versed in tax-related issues, I learned to communicate complex concepts in straightforward terms and without resorting to jargon. It is my understanding that many previous Treasury General Counsels have not been tax law experts. Indeed, specialized tax expertise would be duplicative of the expertise possessed by the IRS Chief Counsel and his staff. If confirmed as General Counsel, my role will be to translate agency policy initiatives into concrete action. My experience has prepared me to work both with Treasury's tax experts and agency management on tax law issues.

Question 3

Prior to 1998 IRS restructuring, the Assistant General Counsel for Tax/IRS Chief Counsel reported to the IRS Commissioner. This position now reports directly to the Treasury General Counsel, even though the Chief Counsels of the other Treasury offices and departments report to the Deputy General Counsel. One of the reasons for this change was to ensure that there was high level Treasury oversight of this office and to ensure a unified position on tax issues within Treasury. However, I am concerned that, in recent years, the Treasury Secretary and Treasury General Counsel have not taken

such oversight seriously. For example, the most recent Chief Counsel, when speaking in his official capacity, would publicly state positions that were not Treasury's positions.

What will be your strategy to ensure that the IRS Chief Counsel is working to further both Treasury policy and legislative goals while supporting IRS service and enforcement actions?

Answer: The Chief Counsel of the IRS is also an Assistant General Counsel of the Treasury Department under 31 USC Section 301(f)(2). That section provides that the President may appoint, by and with the advice and consent of the Senate, an Assistant General Counsel who shall be the Chief Counsel of the Internal Revenue Service. The Chief Counsel is the chief law officer for the Internal Revenue Service and shall carry out duties and powers prescribed by the Secretary.

The IRS Restructuring and Reform Act of 1998 altered the relationships of the Chief Counsel within Treasury by enacting IRC Section 7803(b), which states that the Chief Counsel reports to the IRS Commissioner, with two exceptions. Specifically, the Chief Counsel is to report to both the Commissioner and Treasury General Counsel regarding legal advice or interpretation of the tax law not relating solely to tax policy, and regarding tax litigation; and to the Treasury General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy, such as legislation and treaties.

Although Treasury General Counsel Directives contain a number of formal requirements for coordination between the General Counsel and the Chief Counsel, appropriate and effective oversight and coordination is often a matter of judgment and good practice. In addition to formal coordination rules and requirements, it is at least as important to build strong relationships and lines of communications between the General Counsel's office and the IRS so that meeting oversight and reporting responsibilities is a natural outgrowth of practices that enhance the offices' performance.

I am strongly committed to ensuring that the IRS Chief Counsel works to further both Treasury policy and legislative goals while supporting IRS service and enforcement actions. If confirmed, I will work to build a strong relationship and ensure open and frequent communication with the Chief Counsel so the office can fully meet these responsibilities.

Question 4

Treasury annually releases a Guidance Plan listing the tax guidance that Treasury and IRS expect to issue for the coming fiscal year. In recent years, such self-imposed deadlines have proved meaningless as whatever items are not completed are carried forward to the following year's guidance plan. In addition, Treasury seems to consider Congressional mandates for studies and guidance as suggestions rather than mandates. For example, there are currently three studies mandated by the Pension Protection Act in addition to several guidance items that are past due. Issuing guidance in a timely

manner is critical to ensuring tax compliance. What will you do to hold the IRS Chief Counsel accountable for issuing guidance in a timely manner?

Answer: As you stated, each year, the Assistant Secretary (Tax Policy), the IRS Commissioner, and the IRS Chief Counsel jointly publish a Guidance Priority List to identify and prioritize the tax issues that should be addressed through published administrative guidance. The Guidance Priority List serves several functions, including reaching internal consensus about priorities, notifying the public about the existence of projects on which to comment, ensuring transparency, and establishing goals to which the agency can be held accountable. But accomplishing the initial plan, to the exclusion of other work, would not be prudent. Additional projects arise throughout the guidance plan year depending on various factors, including legislation passed by Congress, changes in economic conditions, and other events. In some cases the personnel or resources necessary to complete a project are unavailable, or a project becomes larger and more difficult than it first appears.

I share your concern about the timeliness of IRS guidance and share the concerns of constituency groups that such guidance needs to be timely in order to be both an effective tool for taxpayers and a valuable tax administration tool for the IRS. If confirmed, I am committed to studying this process to identify procedures to streamline the issuance and legal review functions. One of my top initiatives will be to coordinate my activities in this area with the IRS Commissioner.

You have my commitment that, if confirmed, I will carefully review the ways in which the General Counsel's Office can contribute to an improved process that produces prompt and useful tax guidance.

Question 5

As the champion of changes to the whistleblower provisions for tax whistleblowers, I remain concerned that advice provided by the IRS Chief Counsel regarding the handling of whistleblower cases is placing unnecessary and cumbersome restrictions on the operation of the whistleblower office. What is your opinion of the IRS Whistleblower program? Do you have any experience working with whistleblowers at TIAA-CREFF or other places of employment? If yes, please describe in detail. Also, I would like your commitment that you will work to ensure the effectiveness and efficiency of the IRS whistleblower program.

Answer: During my tenure TIAA-CREF maintained a robust whistleblower protection program that ensured that complaints were promptly reviewed by a special office within the company and whistleblower anonymity was protected. TIAA-CREF retained an

outside company that provided a toll-free number for whistleblowers to call day or night. Complaints were forwarded to internal auditors within the Legal Services and Human Resources offices who conducted independent investigations. Additional contact with the whistleblower was handled by the outside contractor, thereby preserving the whistleblower's anonymity if desired. TIAA-CREF also had a strong policy prohibiting any form of whistleblower retaliation with punishment up to and including termination from employment. After a full investigation, written reports and dispositions were provided to the appropriate Audit Committees.

The purpose of the December 2006 amendment to the whistleblower provisions of the Internal Revenue Code was to provide strong incentives for persons with knowledge of significant tax noncompliance to provide that information to the IRS. While the program is still, relatively speaking, new, initial results suggest that whistleblowers are coming forward with productive information which the IRS is utilizing in its efforts to recover unpaid taxes. It is my understanding that, from the time of the 2006 changes, the IRS Office of Chief Counsel has worked closely with the operating units of the IRS to build a strong and credible whistleblower program that also assures the protection of taxpayer privacy and taxpayer rights. If confirmed, I am fully committed to this vital program and to providing my support to the IRS in continuing to build and improve its effectiveness and efficiency.

Question 6

The Treasury General Counsel, through the Deputy General Counsel, has responsibility for policy and oversight of the chief counsels for Treasury offices varying from the U.S. Mint to FMS. Please describe your familiarity with the issues worked by these various agencies and how you intend to manage such a diverse set of issues.

Answer: As the question rightly acknowledges, the authority and functions of the Bureaus of the Department of the Treasury encompass a wide range of financial issues involving the Federal Government. As you know, the Internal Revenue Service is the largest of Treasury's bureaus and is responsible for determining, assessing, and collecting internal revenue in the United States. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for enforcing and administering laws covering the production, use, and distribution of alcohol and tobacco products. TTB also collects excise taxes for firearms and ammunition. The Bureau of Engraving & Printing designs and manufactures U.S. currency, securities, and other official certificates and awards. The Bureau of the Public Debt borrows the money needed to operate the Federal Government. It administers the public debt by issuing and servicing U.S. Treasury marketable, savings, and special securities. The U.S. Mint designs and manufactures domestic, bullion, and foreign coins as well as commemorative medals and other numismatic items. The Mint also distributes U.S. coins to the Federal Reserve banks as well as maintains physical custody and protection of our nation's silver and gold assets. The Financial Management

Service receives and disburses all public monies, maintains government accounts, and prepares daily and monthly reports on the status of government finances. The Financial Crimes Enforcement Network supports law enforcement investigative efforts and fosters interagency and global cooperation against domestic and international financial crimes. It also provides U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns. The Community Development Financial Institutions Fund was created to expand the availability of credit, investment capital, and financial services in distressed urban and rural communities. The Office of the Comptroller of the Currency charters, regulates, and supervises national banks to ensure a safe, sound, and competitive banking system that supports the citizens, communities, and economy of the United States. The Office of Thrift Supervision is the primary regulator of all federal and many state-chartered thrift institutions, which include savings banks and savings and loan associations. However, the General Counsel does not directly manage the Chief Counsels of OCC and OTS.

If I am confirmed, I will use my lengthy experience managing large legal offices to adjust the reporting structure as necessary to ensure that I am immediately aware of all important legal issues confronting the Bureaus. I also intend to meet with the Chief Counsel and staff of each Bureau to establish close working relationships and ask that they keep me fully informed regarding their work. I am heartened by the fact that although the legal issues facing Treasury's bureaus are numerous and complex, I will have at my direction considerable legal expertise both at the Bureaus themselves and within the Office of General Counsel.

Question 7

Section 382 of the Internal Revenue Code limits the ability of acquiring companies that acquire target companies to offset the taxable income of the acquiring company with the Net Operating Losses of the target. Section 382 was enacted after extensive scholarly reflection by the staffs of the Senate Finance Committee and the Joint Committee on Taxation, as well as after reflection by the House Ways & Means Committee. It has been an established part of the law ever since 1986.

On September 29, 2008 the House said no to the first bail-out bill; on September 30, 2008 the Treasury virtually waived section 382 for banks in Notice 2008-83; and on October 2, 2008, Wells Fargo acquired Wachovia, which took advantage of millions of dollars in Net Operating Losses.

In the opinion of many tax scholars, Treasury simply lacked the authority to issue Notice 2008-83. This is not a minor issue – this unauthorized waiver of an act of Congress likely had a revenue cost to the government of, at a minimum, several billion dollars. Congress found Treasury's action so egregious that Notice 2008-83 was rapidly overturned.

In your role as General Counsel you will be asked to review Treasury's authority to issue guidance. In your opinion, did Treasury have authority to issue Notice 2008-83? Please fully explain your answer. If you disagree with the Treasury Secretary or any of the Deputy, Under, or Assistant Secretaries about Treasury's authority to issue guidance, how will you resolve such conflicts? Will you notify the appropriate Congressional Committees if you believe that an action by Treasury may be illegal?

Answer: It is my understanding that Notice 2008-83 was issued under the authority of Internal Revenue Code (Code) Section 382(m), which authorizes the Secretary of the Treasury to issue such regulations as may be necessary or appropriate to carry out the purposes of the section. The issues raised by that notice are complex and concern issues such as the underlying purposes of Code Section 382, as well as Treasury's authority to issue such guidance and the transparency of the guidance process itself. I have not reviewed the prior Administration's determination that the notice was necessary or appropriate to carry out the underlying purposes of Code Section 382. I understand that you have asked for an Inspector General's report on the issue, and I look forward to reviewing that report when it is completed. If confirmed as General Counsel, I will respect the limits on the Treasury Department's authority to interpret statutory provisions, including tax provisions, and will ensure that authority issues such as those raised by Notice 2008-83 are fully vetted and debated before such guidance is approved for publication.

Question 8

In the stimulus bill, the section 25C credit for windows, doors, and skylights was modified as of the date of enactment so that such items do not qualify "unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30." However, the IRS issued guidance saying that windows, doors, and skylights qualify under section 25C if they meet the old Energy Star standards through May 31, 2009. In your view, did the IRS have the authority to issue such guidance, which appears to contradict the language of the statute? If yes, please explain what you think is the source of the IRS' authority.

Answer: Prior to amendment by the American Recovery & Reinvestment Act of 2009 (ARRA), Section 25C of the Internal Revenue Code provided a credit for windows, skylights, and doors that met the requirements of the 2000 International Energy Conservation Code (IECC). In the case of windows and skylights, the IECC requirements and Energy Star requirements were the same, so IRS Notice 2006-26 provided that purchasers of windows and skylights could rely on an Energy Star label. Thus, under this arrangement homeowners are generally relieved of the obligation to determine independently whether a particular item qualified for the credit.

The ARRA amended Section 25C to provide that, in addition to meeting the IECC requirements, windows, skylights, and doors must have a U factor and an SHGC equal to or below 0.30 to qualify for the credit. As a consequence of that amendment, taxpayers could no longer rely on Energy Star labels on windows and skylights to verify eligibility for the credit.

The amendment took effect for items placed in service after the date of enactment on February 17, 2009. I understand that the IRS was concerned that immediate implementation of the amendments to Section 25C would have had the perverse effect of discouraging homeowners from purchasing energy efficient products. Until the IRS issued guidance to provide an alternative way to confirm that items would qualify for the credit, homeowners likely would find it difficult to determine whether a particular energy efficient property qualified, even though many of those products would have met the new standards.

I understand that in this case the IRS determined that providing transition relief to homeowners purchasing windows, skylights, and doors until a new certification mechanism could be implemented was a reasonable exercise of its responsibility and authority to administer the tax laws and was consistent with congressional intent in the ARRA to stimulate spending on energy efficient property. I have not reviewed this determination, but you have my commitment that, if confirmed, I will work closely with the Office of Tax Policy and the Commissioner of the IRS to ensure that the law is always administered appropriately.

Question 9

In your experience at TIAA-CREFF or elsewhere, have you disagreed with senior executives or board members on legal issues? If yes, please describe and explain how such conflicts were resolved.

Answer: I served as the chief legal officer of TIAA-CREF. In that capacity, I was ultimately responsible for the legal positions of the firm on all matters. I supervised a team of expert lawyers and compliance professionals who worked directly with the client groups. The legal services provided by my staff were augmented by the retention of various outside legal advisors. This structure enabled me to work directly with the board of directors and senior management on the most significant legal issues and gave me first-hand experience dealing with senior executives and board members on a myriad of complex issues.

During my tenure, I had no fundamental disagreement with management or the board of directors on the resolution of legal issues. As in every corporation, the board of directors oversaw management through its collective meetings and also through its committee structures. Specialized legal issues were addressed with the board committees both in

terms of the status of projects and the provision of advice. Board and committee meetings are interactive and members frequently expressed their views and challenged various viewpoints in an open and candid manner. The end result was a constructive exchange of ideas and a respect for adherence to legal requirements in making the final decision.

Question 10

As part of the Troubled Asset Relief Program (TARP) Treasury is partnering with the Federal Reserve under the Term Asset Backed Loan facility (TALF) to unfreeze the securitization markets for student loans, small business loans, credit cards, and other financial products. In working with the Federal Reserve on TALF, what steps should Treasury be taking to ensure that collateral requirements and other risk management practices followed by the Federal Reserve are sufficient to protect Treasury's and the taxpayer interests?

Answer: TALF is a lending facility established by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York (FRBNY) in which the FRBNY loans funds for the purchase of asset-backed securities by private borrowers. In connection with this lending facility, the FRBNY has developed a robust compliance regime, and Treasury has been consulted in that process. That compliance regime includes such measures as (i) primary dealer gatekeeper function and “know-your-customer” diligence practices, (ii) representations, warranties, and indemnification from the sponsors and issuers of the underlying securitizations, (iii) accounting firm review of the securities to be used as collateral, and (iv) review of data received from borrowers. For specific classes of collateral, such as legacy commercial mortgage-backed securities, the FRBNY has engaged a collateral monitor to independently evaluate the risk of each security proposed as collateral.

In the event that a borrower under TALF fails to repay the TALF loan, Treasury has agreed to purchase the first \$20 billion of those loans, and the ABS collateral backing such loans, from the FRBNY. This is accomplished by Treasury lending to a special purpose vehicle (TALF LLC) owned and managed by FRBNY. Treasury has developed a list of financial metrics to track and is currently discussing those metrics with the FRBNY. It is anticipated that Treasury will receive periodic information about securities used as collateral in an attempt to properly gauge the possible expenditure of Treasury funds. Treasury also has complete inspection rights with respect to this second part of TALF (over both the FRBNY and TALF LLC), and the FRBNY and Treasury have been working collaboratively to ensure that the appropriate information is received by Treasury. Finally, Treasury has regularly consulted with SIGTARP and GAO regarding proposed expansions of TALF and has worked to incorporate recommendations from those oversight bodies into the compliance regime for TALF.

Question 11

Another major program under TARP is the Public-Private Investment Program which is being designed to remove troubled assets from the balance sheets of banks. It is intended that Treasury and the private sector would purchase these “legacy assets” and that Treasury would rely on asset managers to manage and dispose of these assets, as appropriate. In your view, what potential conflicts could arise in the utilization of asset managers for this purpose and how should Treasury ensure that such conflicts of interest are effectively dealt with?

Answer: The Public Private Investment Program (“PPIP”) has two parts, legacy securities and legacy loans. Treasury is involved in selection of Fund Managers (“FMs”) for the legacy securities part (the FDIC is administering the legacy loans part). The potential conflicts of interest include situations where an FM is trading for its own account, or for the account of other clients in similar securities as the Public Private Investment Fund (“PPIF”) that the FM forms as well as conflicts that could arise if FMs transact with certain of their affiliates. The procedures to deal with potential conflicts of interest involving such FMs will be substantial and are being developed now in consultation with the SIGTARP, the Fed and others. These policies and procedures requirements are expected to include the following:

- FMs must have a fair policy on allocation of investment and disposition opportunities that complies with analogous relevant requirements of federal securities laws;
- FM’s must invest a significant amount of their own firm capital in the PPIFs that they will manage, which will further align incentives between FMs and the investors in the PPIFs (including Treasury);
- FMs will acknowledge that they owe a fiduciary duty of loyalty and care when performing services for the PPIF;
- FMs must provide reports on all positions in Eligible Assets (in PPIF and non-PPIF funds) to Treasury on an on-going basis;
- FMs must have conflicts of interest and ethics policies satisfactory to Treasury;
- FMs must abide by restrictions on their other activities;
- FMs must observe restrictions on transactions with their affiliates ;
- FMs must permit Treasury, SIGTARP and GAO access to all records of the PPIF;
- FM’s must make their key persons available to discuss the PPIF and its activities with Treasury;
- FMs must permit Treasury to conduct annual and ad hoc audits of compliance with all policies;
- FMs must maintain a document retention policy acceptable to Treasury;

- FMs must maintain an independent Compliance Department that keeps an Eligible Assets Watch List to ensure compliance with allocation and valuation policies;
- FMs must disclose to Treasury all information in its possession regarding the beneficial owners of PPIF equity in their capacities as such;
- FMs must report the 10 largest positions of the PPIF on a quarterly basis;
- FMs must comply with all “Know Your Customer” regulations, Office of Foreign Asset Control statutes and regulations, and all relevant federal securities screening laws and anti-money laundering obligations; and
- FMs must obtain a Type II SAS 70 report and ensure independent third-party verification of its valuations, returns calculations, and internal controls.

Question 12

Treasury was appropriated \$700 billion last October for the Troubled Asset Relief Program to address the financial crisis. Since then, Treasury has made considerable investments in hundreds of financial institutions. Though it appears that the worst of the crisis may be behind us, there are still concerns that the credit markets have not fully recovered.

a) What would trigger the need for additional funds beyond the initial \$700 billion?

Answer: While we see some initial signs of economic improvement and the financial system is beginning to heal, our country continues to face substantial economic and financial challenges. Treasury programs are designed to meet these challenges and set a path to economic recovery. Under EESA, Treasury is allowed to purchase up to \$700 billion in assets outstanding at any one time. Treasury does not currently foresee that additional funds will be needed.

b) In the President's budget proposal, there is an estimate that suggests the President could ask for as much as \$750 billion in additional funds. How likely do you think it is that Treasury will have to ask for additional funds?

Answer: As I understand it, the President's FY 2010 Budget includes a \$250 billion contingent reserve for further efforts to stabilize the financial system. (The reserve, which reflects a net cost to the Government, would support \$750 billion in asset purchases.) The existence of this reserve in the Budget does not represent a specific request. Rather as events warrant, the Administration will work with Congress to determine the appropriate size and shape of any such efforts, and as more information becomes available the Administration will define an estimate of potential costs.

Question 13

Treasury has invested these funds with the intention that taxpayers will get a return on this investment. To date, Treasury has reportedly received almost \$6 billion in dividend

payments. Furthermore, some institutions who received funds through the Capital Purchase Program have redeemed their preferred stock and repurchased warrants. However, it is still unclear whether the taxpayers are really getting the best price.

a) How will Treasury's approach to allowing financial institutions to repurchase warrants be designed to maximize the benefit to the taxpayer? What analysis, if any, should Treasury consider for the alternative mechanisms (e.g., auctions) for the liquidation of warrants?

Answer: It is my understanding that Treasury has developed a robust process for arriving at a determination of fair market value, using internal modeling approaches, external advisers, and market quotes.

b) What steps should Treasury take to ensure that it is transparent with regard to the prices agreed upon for the warrant repurchases? Should Treasury disclose exactly how it determined that the offer from the financial institution was reasonable?

Answer: While I have not been directly involved in discussions surrounding warrant repurchases, I understand that Treasury is in the process of releasing additional information about the warrant repurchase process, including a summary of the various inputs used in arriving at a fair market value determination.

c) How should Treasury determine whether to hold certain warrants, particularly those that an institution does not seek to repurchase? Should it plan to liquidate any warrants in the market before institutions offer to repurchase them?

Answer: Treasury holds several different types of warrants depending on the institution. Our key objective is to balance the need to avoid market timing, minimize liquidity discounts, and maximize value for the taxpayer. Treasury does not have an ability to liquidate its warrants before institutions have an opportunity to offer to repurchase them.

d) When and how should Treasury make public the dividends and interest received through TARP?

Answer: Beginning in June 2009, Treasury will publish a monthly report that will reflect dividends received by institution for each TARP program. The report will include the dividend or interest payment date, the type of dividend (cumulative or noncumulative), the dividend or interest frequency, a life-to-date dividend or interest amount received by TARP, and the date of the next scheduled payment. The first report will cover payments received in May 2009. All reports will be posted to www.financialstability.gov.

Question 14

One of the Administration's key selling points for the American Recovery and Reinvestment Act was its potential to save or create between 3 million and 4 million

jobs. On January 10, 2009, Christina Romer and Jared Bernstein, from the President's own economic team asserted, "In light of the substantial quarter-to-quarter variation in the estimates of job creation, we believe a reasonable range for 2010Q4 is 3.3 to 4.1 million jobs created." On February 9, 2009, President Obama emphasized that "the single most important part of this Economic Recovery and Reinvestment Plan is the fact that it will save or create up to 4 million jobs, because that's what America needs most right now." However, on March 10, 2009, in a closed door meeting with House Speaker Nancy Pelosi and Democratic House leaders, Mark Zandi of Moody's.com and Allan Sinai of Decision Economics, Inc. estimated that the stimulus bill would save or create only 2.5 million jobs in the first two years.

The Administration's job creation forecast was based on the faulty assumption (articulated in the President's Budget) that the unemployment rate would peak at 8.2% in the second and third quarters of 2009. With reports last week that the unemployment rate has already jumped to 9.4%, what, if any, revisions would you make to the Administration's estimated number of jobs created or saved by 2010 as a result of the American Recovery and Reinvestment Act?

Answer: The work by Christina Romer and Jared Bernstein forms the basis of the projected effects on jobs. Their work indicated that 3-4 million jobs would be created or saved. A later version of the analysis, based on the package of spending and taxes that were included in the American Recovery and Reinvestment Act (ARRA), produced results similar to those published in early January. Like their earlier analysis, I understand that it was not based on a formal, specific macroeconomic model but was informed by the results from several of these models. I am advised that this approach is prudent, given that empirical macroeconomic models cannot deal with all the complex features of the current crisis.

When Romer and Bernstein talk about creating or saving jobs, they are comparing what we think will happen with the ARRA to the economy without the ARRA. They agree with private forecasters and the CBO, which have indicated that the downturn would be significantly larger without the ARRA, although opinions are evolving about the size. For example, in January, the CBO projected real GDP would decline 2.2 percent in 2009 without the ARRA. In March they predicted roughly a 4.5 percent decline without the ARRA. Nearly all analysts agree that the economy would be much worse off without the ARRA, and, given the state of financial markets, many are concerned that a much longer and severe downturn would occur without significant stimulus. The economy tumbled further than many economists predicted early in the year. However, the decline is more an indication of the state of the economy before the ARRA, and does not fundamentally change the view of how the economy would be affected by the stimulus from the ARRA. Private analysts have made a number of estimates of the effects of the ARRA. They agree that it will raise employment and GDP in the short run, although it is clear that there is a range of estimates.

Question 15

According to the Department of Labor, over 2 million American jobs have been lost since February. However, on April 29, 2009, at his "100 Days in Office" press conference, President Obama stated that the American Recovery and Reinvestment Act has "already saved or created over 150,000 jobs." On May 27, 2009, President Obama said, "In these last few months, the American Recovery and Reinvestment Act has saved or created nearly 150,000 jobs." On June 8, 2009, President Obama reiterated, "We've created or saved...at least 150,000 jobs." Please explain the specific criteria used by the Administration to designate a job as being "saved." In addition, please provide the source data upon which the White House estimate of 150,000 jobs "created or saved by the stimulus bill" was based. Finally, please explain why the Administration's estimate of jobs created or saved by the stimulus bill has not changed since April 29?

Answer: The estimates of the number of jobs created or saved by the American Recovery and Reinvestment Act (ARRA) was informed by the results of several macroeconomic models. To use these results, a baseline path was established that showed how the economy would evolve without the stimulus package. Then the ARRA stimulus was factored in, which resulted in a simulated path for the economy. Finally, the results of the two paths for the economy are compared. The difference in the number of jobs between these two paths is the number of jobs created or saved. The estimate of the number of jobs created or saved so far simply indicates the number consistent with amount of stimulus that has already been applied (to that date) from the ARRA. The estimates of jobs created or saved are the result of using a conventional economic modeling approach, and they are not the result of actual job counts.

Question 16

In a radio address on January 10, 2009, then President-Elect Obama asserted that, according to analysis done by Christina Romer and Jared Bernstein, the stimulus bill would likely create or save three to four million jobs, and that "90 percent of these jobs will be created in the private sector." Today, President Obama and Vice-President Biden announced an initiative to accelerate federal spending into hundreds of public works projects in order to create or save 600,000 jobs over the next 100 days. Of the 150,000 jobs created or saved by the stimulus package so far, and of the 600,000 jobs promised over the next 100 days, please provide an estimate of the percentage of these jobs that are/will be from the private sector. Does the Administration continue to anticipate that 90 percent of the stimulus jobs will be created in the private sector?

Answer: The Treasury Department's best estimate is that 90 percent of the jobs created or saved by the recovery package will be in the private sector. The components of the package – tax cuts, grants to states, and infrastructure spending – are geared toward raising private employment. There are no new large federal agencies created in the American Recovery and Reinvestment Act of 2009, which would raise the share of

government jobs. Federal jobs are only about 2 percent of the total number of jobs in the U.S. State governments account for about 4 percent of the total number of jobs in the U.S. and localities account for about 11 percent of jobs.

Question 17

During your hearing, in response to questions from Senator Bunning on “recycling” of TARP funds, you stated that if funds were repaid, more “head room” would be available under the \$700 billion cap. Do you mean that the total amount of money available for Treasury to lend for the TARP program is capped at \$700 billion, or that Treasury could potentially lend out additional amounts of money as long as the amount outstanding at any one time was no more than \$700 billion? Are dividends paid back to the Federal government about to be recycled and re-lent to other institutions? If a company buys back stock from the Federal government, how are those payments treated? Can those payments be recycled by the government and be lent to other institutions?

Answer: As I stated in my testimony, when Treasury has purchased a troubled asset under the Troubled Asset Relief Program (TARP) and that TARP investment is repaid, I understand that the proceeds are deposited into the Treasury general fund for reduction of the public debt. This is consistent with the mandate in section 106(d) of the Emergency Economic Stabilization Act of 2008 (EESA), which requires that revenues and the proceeds from the sale of troubled assets purchased under that law be paid into the general fund of the Treasury for reduction of the public debt. However, I understand that other applicable provisions of EESA also govern the use of TARP funds.

Section 115(a) of EESA authorizes Treasury to purchase troubled assets having aggregate purchase prices up to \$700 billion “outstanding at any one time.” When a recipient of a TARP investment buys back its stock from Treasury, the total amount of troubled assets that are held by Treasury and count against the \$700 billion cap is reduced. This reduction in the total amount of assets “outstanding” frees up headroom under the cap. Section 106(e) of EESA authorizes Treasury to continue to purchase troubled assets under commitments that Treasury has entered into before the purchase-authority sunset date in EESA. To be clear, the funds used to pay for any new purchases under the freed-up headroom under the cap are not the same as the funds received from the sale or repayment of the troubled assets. Instead, new funding is made available under section 118 of EESA from the Treasury general fund for any new purchases, and any new purchase is recorded as a new, current-year outlay.

In contrast, dividends and interest payments paid by recipients of TARP investments do not reduce the total amount of outstanding troubled assets held by Treasury and therefore do not free up any headroom under the cap. Those dividends and interest payments are deposited into the Treasury general fund.

I also understand that section 123(a) of EESA requires that any cash flows associated with certain activities, including sales of troubled assets, have to be determined as provided under the Federal Credit Reform Act of 1990. I am informed that, for accounting purposes, when a TARP investment is repaid, and when any dividends or interest is paid, those proceeds and revenues have to, first, be recorded in the Federal Credit Reform Act "financing account" for the respective TARP program, and then get deposited into the Treasury general fund.

Questions from Senator Olympia Snowe

Question 1

Although Treasury's Office of General Counsel has traditionally been charged with supplying policy advice and interpreting the law for other Treasury divisions, it is now also responsible for closing TARP transactions. As of June 2, Treasury has disbursed \$402.8 billion of TARP funds, and with respect to banks alone, to date, \$199.4 billion has been obligated to over 600 institutions. I find it noteworthy that the March 2 edition of the Legal Times quotes Former General Counsel Robert Hoyt, who stepped down in February, as saying that his former office is "cranking out a higher deal volume than, I would guess, any institution in the entire world." Additionally, although the article notes that Treasury is looking to recruit lawyers with transactional experience and contracting with a number of private law firms to complete the work, the bulk of TARP work has been done by the eight-lawyer banking and finance section.

Given that TARP continues to make investments in financial institutions, is handling a complicated auto bailout, and will shortly launch the Public Private Investment Partnership to help institutions to cleanse their balance sheets of toxic, illiquid assets, do you believe that the Office of General Counsel has sufficient resources to complete all the TARP-related work accurately and effectively? Put another way, while I am aware that the Office of General Counsel manages the activities of approximately 2,000 attorneys Department wide, are there enough resources being devoted to TARP?

Answer: The Office of the General Counsel has significantly increased the number of lawyers on its staff to handle the various transactions. Under the oversight of Treasury's Banking and Finance Legal Team which was critical to launching the TARP programs and managing many of the most complicated transactions, Treasury has hired a Chief Counsel for TARP as well as ten additional lawyers. The lawyers that have been hired have expertise in equity and debt transactions, securitization, bankruptcy, executive compensation, and litigation. Together, the Banking and Finance team and the robust new TARP legal team ensure that all the requirements of EESA and other applicable laws as well as Treasury policies are complied with as transactions occur. Treasury also continues to use law firms to advise on and prepare documentation for the transactions. At present, Treasury is in the process of conducting a full and open competition for firms to provide legal services for TARP on a longer-term basis under an omnibus contract. Treasury re-evaluates its legal staffing for TARP on a regular basis and will continue to hire qualified experienced lawyers and retain law firms as needed. Ensuring that TARP programs are conceived and executed with the highest quality legal advice is a top priority for the Office of General Counsel. If confirmed, I will make sure that sufficient resources are available and committed to this effort.

Question 2

The Treasury Department's Office of General Counsel has a critical role to play when it comes to helping to draft agreements necessary to administer TARP. Indeed, Duane Morse, TARP's former interim chief counsel and now Treasury's Chief Compliance and Risk Officer, told the Legal Times on March 2 that, "Our role is to make sure that there are appropriate protections for the TARP money that are built into the loan agreements." That said, I am concerned that some of the agreements, such as the one between Treasury and the Federal Reserve to establish the Term Asset Backed Securities Loan Facility (TALF) to spur consumer and small business lending, may be deficient. Referring to TALF, Special Inspector General for TARP (SIGTRP) Neil Barofsky wrote in his April 21 Quarterly Report to Congress that "In SIGTARP's view, Treasury did not receive sufficient oversight-enabling provisions in the agreements, nor has it established a sufficient compliance protocol with the Federal Reserve."

With \$700 billion in taxpayer dollars at stake for TARP alone, I am deeply troubled by Mr. Barofsky's conclusion. The fact is that Mr. Barofsky has been a tireless champion in identifying the significant potential for the abuse of TARP funds across the gamut of TARP-funded programs. Notably, I worked with Senators Boxer, Pryor, and Ensign to add language to the Helping Families Save Their Homes Act of 2009 (S. 896) to require the Treasury Secretary and Mr. Barofsky's office to work together to draft regulations to avoid conflicts of interest in the Public-Private Investment Program (PPIP) that will use up to \$100 billion to purchase toxic, illiquid assets. We added that language after Mr. Barofsky concluded in his quarterly report that "Many aspects of PPIP could make it inherently vulnerable to fraud, waste, and abuse."

Mr. Madison, given the complexity of each of the individual TARP programs and that one of your missions will be to ensure taxpayer funds are protected, will you pledge to this Committee that you will work with and take Mr. Barofsky's recommendations very seriously as you draft regulations and additional resources are obligated? Although I will not hesitate to act legislatively in cases where Mr. Barofsky's recommendations are warranted but ignored, I would rather this be done on a voluntary basis. What assurances can you offer in that regard?

Answer: Treasury maintains an active and open working relationship with Mr. Barofsky and his staff and gives serious and careful consideration to SIGTARP's recommendations. It is the practice of Treasury staff to provide briefings to SIGTARP as new programs such as the Public-Private Investment Program are developed, announced, and structured, as well as in response to specific requests from SIGTARP. Treasury staff interacts with SIGTARP staff on a regular basis, answering questions, providing information, and making themselves available for meetings to discuss topics of interest or address audit inquiries. Herbert M. Allison, Jr., the nominee to be Assistant Secretary of Financial Stability, intends to continue his predecessor's practice of meeting weekly with the Special Inspector General to discuss any issue or concern that either party wishes to

raise. To facilitate the SIGTARP's work, Treasury has added provisions to TARP contracts explicitly granting SIGTARP inspection rights.

If confirmed, I will work to ensure that Mr. Barofsky's comments and recommendations are given serious consideration in drafting TARP contracts and regulations and obligating TARP funds.

Questions from Senator Debbie Stabenow*Question 1**Currency*

Member countries of the IMF took an obligation to not manipulate exchange rates, and the IMF charter states that the IMF shall exercise, "... firm surveillance over the exchange rate policies of member countries..." But it seems to me the IMF hasn't acted as the global umpire of exchange rate policies. Do you believe IMF members are obligated not to manipulate their exchange rates and that the IMF should exercise "firm surveillance"?

Answer: IMF members have a clear obligation not to manipulate their currency. Article IV, Section 1(iii), of the IMF Articles of Agreement states that each member shall "... avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members." The Treasury Department consistently urges the IMF to exercise "firm surveillance" over its members' exchange rate policies. In particular, the Treasury Department seeks to ensure that the IMF's analysis of its members' exchange rate policies under Article IV is consistent with accepted methodologies and IMF guidelines, and that IMF staff assessments are credible and candidly presented.

In the past Treasury Department has refused to say that the Chinese are manipulating their currency. As general counsel at the Treasury, what role would you have if any in determining whether China manipulates their currency?

Answer: As General Counsel, I would be responsible for ensuring that Treasury is in compliance with its statutory requirements under sections 3004 and 3005 of the Omnibus Trade and Competitiveness Act of 1988. One of these requirements is that the Secretary of the Treasury analyze the exchange rate policies of foreign countries and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade. The issue of currency manipulation is an important one, and, if I am confirmed as General Counsel, I will give very considered advice to the Secretary of the Treasury and other Treasury officials concerning its application.

*Question 2**Customs*

The problem of illicit and counterfeit trade has reached epidemic levels. The FDA has linked contaminated Chinese heparin, the blood-thinning drug, to nearly 150 deaths in the United States. That's the latest in a long line of illegal and unsafe Chinese exports that includes poisonous toothpaste, lead-painted toys, toxic pet food, and tainted fish. These deadly products somehow got through CBP's examination process at the borders.

Counterfeit products not only endanger Americans' safety, but also our economic security. Counterfeiting has led to a loss of more than 200,000 good-paying jobs in the automotive industry alone. American auto parts manufacturers lose about \$3 billion a year because of counterfeit imports. Your agency, working with other federal agencies, is supposed to catch these imports long before they reach our stores and homes.

CBP appears to have assessed penalties on a significant number of violators of our intellectual property laws but according to a GAO report, you collected less than one percent of intellectual property rights penalties assessed from 2001 through 2006.

What should Treasury and CBP do to improve the collection record of intellectual property rights penalties?

Answer: CBP enforces intellectual property rules (IPR) under authority delegated to DHS from the Secretary of the Treasury. Under the terms of that delegation CBP has responsibility for day-to-day enforcement operations. Treasury has been working closely with CBP and IPR rights holders through the IPR Subcommittee of the COAC (the Advisory Committee that provides advice to Treasury and DHS on the commercial operations of CBP) to examine possible regulatory changes that might simplify IPR enforcement procedures or that would otherwise make IPR enforcement more effective. The Treasury Department stands ready to work with Congress to make IPR enforcement more effective.

Questions from Senator Mike Crapo

Question 1

Can I have your assurances that you will look into making sure that the Federal Home Loan Banks are sufficiently strong to continue to achieve their core mission of providing liquidity and supporting community banks and thrifts?

Answer: The Federal Home Loan Banks have played an important role of providing a stable source of funds to their member institutions throughout the recent disruptions in credit markets. The Federal Home Loan Banks have access to a credit facility that the Treasury Department established under the Housing and Economic Recovery Act of 2008. The Treasury Department works closely with the Federal Housing Finance Agency in evaluating the financial condition of the Federal Home Loan Banks. If confirmed, I will look forward to continuing this work with my colleagues at the Treasury Department.

Follow-up Questions for the Record
George Madison
Senator Chuck Grassley

Question 1

Do you commit to respond quickly and completely to any requests made by myself or my staff for information?

Answer: If confirmed, I will seek to work closely with Congress and Committee staff to address the important financial issues within Treasury's purview and to perform its oversight role. I agree with Executive Branch policy that seeks to accommodate whatever legitimate interests Congress may have in obtaining information while at the same time preserving Executive Branch interests in maintaining essential confidentiality. Within these parameters, if confirmed, I intend to respond promptly to reasonable requests for information.

Follow-up: Please explain what you mean by "legitimate interests Congress may have" and what exactly in your mind constitutes a "reasonable request for information." As they relate to your duties, if you are confirmed, please describe in detail what "Executive branch interests in maintaining essential confidentiality" you had in mind in your earlier response, and what kind of information you expect to withhold from Congressional oversight.

How can Congress know that the Treasury Department will not cherry-pick information provided to Congress if certain requests are deemed to be unreasonable? What assurances does Congress have that information that might reflect poorly on the Treasury Department will not be withheld in the name of "essential confidentiality."

Answer: Thank you for the opportunity to clarify my response. I would presume that all Congressional requests for information are reasonable and reflect legitimate interests. Moreover, I never would support withholding information from Congress simply because it might reflect poorly on the Treasury Department. With respect to maintaining essential confidentiality, I was merely noting the longstanding executive branch practice by which the President may, in appropriate circumstances, assert a claim of executive privilege in response to a request from Congress. However, I have no such scenario in mind. Of course, decisions about executive privilege are made by the President, not the Treasury Department.

Question 7

Section 382 of the Internal Revenue Code limits the ability of acquiring companies that acquire target companies to offset the taxable income of the acquiring company with the Net Operating Losses of the target. Section 382 was enacted after extensive scholarly reflection by the staffs of the Senate Finance Committee and the Joint Committee on Taxation, as well as after reflection by the House Ways & Means Committee. It has been an established part of the law ever since 1986.

On September 29, 2008 the House said no to the first bail-out bill; on September 30, 2008 the Treasury virtually waived section 382 for banks in Notice 2008-83; and on October 2, 2008, Wells Fargo acquired Wachovia, which took advantage of millions of dollars in Net Operating Losses.

In the opinion of many tax scholars, Treasury simply lacked the authority to issue Notice 2008-83. This is not a minor issue – this unauthorized waiver of an act of Congress likely had a revenue cost to the government of, at a minimum, several billion dollars. Congress found Treasury's action so egregious that Notice 2008-83 was rapidly overturned.

In your role as General Counsel you will be asked to review Treasury's authority to issue guidance. In your opinion, did Treasury have authority to issue Notice 2008-83? Please fully explain your answer. If you disagree with the Treasury Secretary or any of the Deputy, Under, or Assistant Secretaries about Treasury's authority to issue guidance, how will you resolve such conflicts? Will you notify the appropriate Congressional Committees if you believe that an action by Treasury may be illegal?

Answer: It is my understanding that Notice 2008-83 was issued under the authority of Internal Revenue Code (Code) Section 382(m), which authorizes the Secretary of the Treasury to issue such regulations as may be necessary or appropriate to carry out the purposes of the section. The issues raised by that notice are complex and concern issues such as the underlying purposes of Code Section 382, as well as Treasury's authority to issue such guidance and the transparency of the guidance process itself. I have not reviewed the prior Administration's determination that the notice was necessary or appropriate to carry out the underlying purposes of Code Section 382. I understand that you have asked for an Inspector General's report on the issue, and I look forward to reviewing that report when it is completed. If confirmed as General Counsel, I will respect the limits on the Treasury Department's authority to interpret statutory provisions, including tax provisions, and will ensure that authority issues such as those raised by Notice 2008-83 are fully vetted and debated before such guidance is approved for publication.

Follow-up:

- *In your response, you said "It is my understanding that Notice 2008-83 was issued under the authority of ... Section 382(m), which authorizes the Secretary of the Treasury to issue such regulations as may be necessary or appropriate to carry out the purposes of the section." Are you saying that Notice 2008-83 was necessary or appropriate to carry out the purposes of section 382? Are you saying that Section 382(m) did actually provide authority for Notice 2008-83?*
- *Did Treasury have authority to issue Notice 2008-83?*
- *Had you been General Counsel of the Treasury at the time Notice 2008-83 was issued, how would you have handled the situation differently?*
- *How will you ensure full compliance with the Congressional Review Act of 1996?*

Answer: The Secretary's authority to issue guidance under Internal Revenue Code Section 382 is derived in part from Section 382(m) itself which authorizes the Secretary of the Treasury to issue such regulations as may be necessary or appropriate to carry out the purposes of Section 382. I was not at Treasury at the time but from what I understand, in September 2008, the Treasury Department determined in issuing Notice 2008-83 (Notice) that the guidance contained within was necessary and appropriate to carry out the purposes of Section 382, which is meant to prevent abusive transfers of tax benefits through corporate ownership changes. I also understand, however, that the finding of Congress as expressed in section 1261(a)(3) of the American Recovery and Reinvestment Act of 2009 (ARRA) was that the legal authority to prescribe Notice 2008-83 was "doubtful." In addition, in ARRA section 1261(b), Congress determined that the Notice would have no force or effect with respect to any ownership changes

after January 16, 2009. I do not know the details of the discussions and deliberations that lead to the issuance of Notice 2008-83, so it is difficult for me to say how I would have handled the matter differently. However, the guidance process should be studied and changes recommended, if appropriate. If confirmed, I would review the Inspector General's report on this matter to determine whether it indicates that changes in the guidance process are necessary, especially with respect to determinations of authority to issue guidance. Then, I would review the process for the issuance of tax guidance to ensure compliance with all applicable requirements, including the determination of authority to issue the guidance as well as compliance with the Congressional Review Act of 1996 (CRA). I understand that the CRA requires the delivery to Congress and GAO of agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy (e.g., regulations, tax rulings). The Internal Revenue Service (IRS) Office of the Associate Chief Counsel's Legal Processing Division and the IRS Office of Legislative Affairs are charged with the IRS's CRA compliance. Therefore, if confirmed the next step would be the review of the IRS procedures for complying and make any necessary changes.

Question 8

In the stimulus bill, the section 25C credit for windows, doors, and skylights was modified as of the date of enactment so that such items do not qualify "unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30." However, the IRS issued guidance saying that windows, doors, and skylights qualify under section 25C if they meet the old Energy Star standards through May 31, 2009. In your view, did the IRS have the authority to issue such guidance, which appears to contradict the language of the statute? If yes, please explain what you think is the source of the IRS' authority.

Answer: Prior to amendment by the American Recovery & Reinvestment Act of 2009 (ARRA), Section 25C of the Internal Revenue Code provided a credit for windows, skylights, and doors that met the requirements of the 2000 International Energy Conservation Code (IECC). In the case of windows and skylights, the IECC requirements and Energy Star requirements were the same, so IRS Notice 2006-26 provided that purchasers of windows and skylights could rely on an Energy Star label. Thus, under this arrangement homeowners are generally relieved of the obligation to determine independently whether a particular item qualified for the credit.

The ARRA amended Section 25C to provide that, in addition to meeting the IECC requirements, windows, skylights, and doors must have a U factor and an SHGC equal to or below 0.30 to qualify for the credit. As a consequence of that amendment, taxpayers could no longer rely on Energy Star labels on windows and skylights to verify eligibility for the credit.

The amendment took effect for items placed in service after the date of enactment on February 17, 2009. I understand that the IRS was concerned that immediate implementation of the amendments to Section 25C would have had the perverse effect of discouraging homeowners from purchasing energy efficient products. Until the IRS issued guidance to provide an alternative way to confirm that items would qualify for the credit, homeowners likely would find it difficult to determine whether a particular energy efficient property qualified, even though many of those products would have met the new standards.

I understand that in this case the IRS determined that providing transition relief to homeowners purchasing windows, skylights, and doors until a new certification mechanism could be implemented was a reasonable exercise of its responsibility and authority to administer the tax laws and was consistent with congressional intent in the ARRA to stimulate spending on energy efficient property. I have not reviewed this determination, but you have my commitment that, if confirmed, I will work closely with the Office of Tax Policy and the Commissioner of the IRS to ensure that the law is always administered appropriately.

Follow-up: You stated in your response to my original question 8 that you had not reviewed the IRS's determination that it had authority to issue guidance relating to section 25C. That guidance appears to contradict the plain language of the statute, which provides for a 30/30 standard as of the date of enactment. I will ask question 8 again in a different manner since I didn't get an answer the first time to my question, which was, in your view, did the IRS have authority to issue this guidance regarding section 25C? Instead of referring to a broad purpose of the legislation that is not found in the legislative text, please review the legislative text of the amendment to section 25C referenced in my earlier question 8 and answer the question. Please fully explain your answer.

Answer: I have been provided with the explanation for the guidance that follows. Upon an initial review of the explanation, I believe that there are reasonable arguments for the position taken by IRS while I also recognize that others might disagree. If confirmed, I commit to

review, in coordination with the IRS Commissioner, the IRS Chief Counsel, and the Assistant Secretary for Tax Policy the procedures utilized by Treasury and the IRS in issuing tax guidance.

Section 25C of the Internal Revenue Code (Code) allows a tax credit to individuals who invest in certain non-business property such as energy efficient windows and doors. The American Recovery and Reinvestment Act of 2009 (ARRA) amended Code section 25C by requiring that to qualify for the credit, windows and doors must have a so-called U factor or a SHGC of 0.30. Before this amendment by the ARRA, the requirements for claiming the credit under section 25C were not more restrictive than the "Energy Star" requirements, so IRS Notice 2006-26 provided that taxpayers could rely on an Energy Star label in determining whether property could qualify for the credit. ARRA provides that the change in standards is effective for property placed in service after February 17, 2009.

I understand that following passage of ARRA there were immediate concerns expressed regarding how taxpayers could determine whether property met the new standards. There was concern that the uncertainty could discourage taxpayers from purchasing energy efficient windows and other products, contrary to the purpose of the provision to encourage immediate investment in energy-efficient property. Thus, until Treasury and the IRS issued guidance to provide a new way to confirm that property would qualify for the credit, taxpayers would find it difficult to determine whether a particular energy efficient property qualified for the credit, even though many of those products in fact would have met the new standards.

I understand that the IRS in consultation with Treasury, to ease compliance and administration of an immediately effective provision, therefore announced that it would issue guidance providing a transition rule allowing taxpayers to continue to rely on the Energy Star label to document eligibility for the credit. Under Code section 7805(a) the Secretary of the Treasury has authority to provide all "needful" rules and regulations for the enforcement of the Code.

In addition, it has been explained to me that prior to ARRA, Treasury and the IRS had published rules allowing individuals to rely on certifications that property qualified for the section 25C credit as opposed to having to make the determination on their own. See Notice 2006-26. Those rules have been subsequently revised and updated. See Notice 2009-53. Similar procedures are followed for other credits, such as the credit for the purchase of hybrid automobiles (see Notice 2006-9), where individuals generally lack the expertise to determine whether a property meets the technical requirements for the credit. In these cases Treasury and the IRS have provided that the law is to be administered by allowing taxpayers to rely on certifications. This approach is particularly important when Congress intends to provide individuals an inducement to purchase property with certain technical specifications. If taxpayers are uncertain about whether the credit is available the intended effect of the credit can be significantly undermined.

If confirmed, I would expect to meet with the IRS Chief Counsel, upon his confirmation, to review the guidance process generally and in particular understand his thoughts on transition guidance of this type.

Additional Questions:

Question: It was reported to my office that there is some disagreement about the nature and authority of the Special Inspector General for the Troubled Assets Relief Program (SIGTARP) to operate and access documents within Treasury. Specifically, my office received information that there was a dispute over certain Treasury documents that were being withheld from SIGTARP auditors on a specious claim of attorney-client privilege, and that this disagreement then escalated into a broader question about whether SIGTARP is subject to Secretary Geithner's direct supervision and direction, which may have been referred outside Treasury for an independent legal opinion.

Do you believe that the SIGTARP is part of the Treasury Department?

Answer: *Yes.*

Do you believe that the Treasury Department may use attorney-client confidentiality to withhold information from the SIGTARP?

Answer: *No.*

Has the question of whether the SIGTARP is subject to the Secretary's direct supervision and direction been referred outside Treasury for an independent legal opinion? If yes, where has the question been referred, why, and what was the response?

Answer: *Yes, the question was referred to the Justice Department. However, this was handled by career lawyers in the Office of General Counsel who made the referral in order to seek clarification of the status of the SIGTARP within Treasury. This occurred before I started at Treasury and I have not been involved in this matter. The Justice Department is still considering the question.*

If confirmed as General Counsel for the Treasury Department, will you cooperate with any requests for information made by the SIGTARP, the Treasury Inspector General, or any other Inspector General?

Answer: *Yes.*

Questions for the Record
George Madison

1. After receiving your first two responses to my questions regarding whether, in your view, the IRS had the authority to issue the guidance it did regarding section 25C, I still do not know whether you think the IRS did or did not have authority to issue that guidance. I am not asking about your view as to the reasonableness of explanations that have been provided to you, but instead, as I've for twice already, I want YOUR view as to whether the IRS had authority to issue that guidance. Therefore, I will ask this same question a third time, in the hope that you will directly answer it in this third round of questions. Please tell me, in YOUR view, did the IRS have the authority to issue the guidance it did regarding section 25C-YES or NO. Also, please explain. All of the information that you need to form a view (the legislative text, the IRS guidance, Treasury regulations, etc.), if you haven't formed a view already, is public information. So if you need to look at that information and form a view, please do so. Keep in mind that Congress specifically stated in the statute that as of the date of enactment (and not May 31, 2009 as the IRS guidance states) the more restrictive 30/30 standard applies (and not the less restrictive old Energy Star standard as the IRS guidance states). Therefore, in answering my question above, keep in mind that the IRS guidance appears to flatly contradict the actual text of the statute that Congress enacted, so the question apparently becomes, can the IRS not only interpret the statute as passed by Congress, but can the IRS instead essentially change the words of the statute to reach a result that the IRS deems more appropriate than the one clearly intended by Congress.

Answer: You have asked for my view as to the authority of the IRS to issue guidance Notice 2009-53 in connection with the changes to Internal Revenue Code Section 25C pursuant to ARRA

I would begin by noting that, regarding whether Notice 2009-53 gives effect to the effective date of the efficiency standards as set forth in ARRA Section 1121(f), during the period between the enactment of ARRA and June 1, 2009, the answer is it does not. On the date the IRS issued Notice 2009-53 (June 1, 2009), the IRS provided transition rules for compliance with changes to Section 25C pursuant to ARRA Section 1121, which permitted taxpayers to rely on the 2006 IRS guidance in this area during this period.

In response to your question as to whether the IRS had authority to issue this transition rule covering the period between February 17 and June 1, my opinion is yes, that the IRS has broad authority in this area. The Treasury Secretary has express authority under Internal Revenue Code Section 7805(a) to prescribe "all needful rules and regulations as may be necessary by reason of alteration of law in relation to internal revenue." Accordingly, the IRS may issue a transition rule, upon which taxpayers may rely, binding the Commissioner to positions taken when laws are changed that permits the IRS to give taxpayers and IRS agents guidance as to compliance with the amended law. The IRS appears to have tried to balance the need for immediate enforcement of the Section 1121 of ARRA with the need to ensure that taxpayers who relied upon the IRS's 2006 guidance during the period between February 17, 2009, and June 1,

2009 could continue to do so until it issued Notice 2009-53 giving effect to ARRA Section 1121 going forward.

It is my view that the IRS should use its authority under Section 7805(a) to issue rules consistent with the intent of Congress when it amends the laws.

If confirmed, and if similar issues arise in the future, I would consult with the IRS Chief Counsel in order to ensure that IRS guidance is consistent with Congressional intent expressed in new or amended laws, including with respect to the effective date of legislation. If confirmed, I will hold the IRS and Treasury attorneys who work for me to the highest standards in this regard, and ensure to the best of my ability that the guidance issued that interprets the tax laws passed by Congress is within the authority granted by those laws to the IRS and Treasury Department.

2. Mr. Madison, the EESA created the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). The SIGTARP was created to be an independent watchdog for taxpayer dollars that have been expended by Treasury under TARP. SIGTARP was created and designed to be wholly independent from both the Treasury and the Treasury Inspector General.

Question: Do you agree that SIGTARP is a statutorily created entity that is separate, distinct, and independent from the influence of the Secretary of Treasury and the Treasury Inspector General? If not, why not? (please provide all relevant analysis and background-including legal citations).

Answer: Yes. I note that the Secretary is prohibited from “prevent[ing] or prohibit[ing] the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.” Inspector General Act of 1978 § 3 (a); See also EESA § 121. Section 121(g) of EESA, as amended, requires the SIGTARP to “work with” each of certain entities, including the Treasury Inspector General, “with a view toward avoiding duplication of effort and ensuring comprehensive oversight of the Troubled Asset Relief Program through effective cooperation and coordination.” Apart from this coordination requirement, I do not believe that the Treasury Inspector General has any authority over SIGTARP investigations.

Question: Does the Secretary of the Treasury have the authority to withhold information from SIGTARP? If so, what information and why? (please provide all relevant analysis and background-including legal citations).

Answer: No.

Question: Does the Secretary have the authority to halt an audit, investigation, or other inquiry conducted by SIGTARP? If so, why? (please provide all relevant analysis and background-including legal citations).

Answer: No. Section 3(a) of the Inspector General Act of 1978 provides that the Secretary is prohibited from “prevent[ing] or prohibit[ing] the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.”

Question: Does the Treasury Inspector General have the authority to overrule or otherwise impede an audit, investigation, or other inquiry conducted by the SIGTARP? If so, why? (please provide all relevant analysis and background-including legal citations).

Answer: No.

Question: Will you pledge to work cooperatively and provide all documents, information, and access to witnesses in a timely fashion to the Comptroller General? Why or why not?

Answer: Yes.

It has been reported that AIG was seeking the government's consent to pay out \$2.4 million in executive bonuses on July 15. This is in addition to \$235 million that is evidently scheduled to be paid out next year. Please answer the following questions.

After consulting with others at Treasury, I am pleased to offer the following responses:

Were \$2.4 paid out this past week in bonuses to AIG executives?

I have been advised that AIG did not make any bonus payments to its senior executives on or around July 15, 2009.

Did the Treasury Department approve these bonuses in any way, and if so, who specifically made the decision that the bonuses were appropriate and how was that determined?

I have been advised that the Treasury Department did not approve bonus payments for AIG, and as stated above, no payments were made.

Please break down the amounts individual executives received as a bonus, and explain how those amounts were calculated.

To the best of my knowledge, AIG did not make any bonus payments to its senior executives on or around July 15, 2009.

How involved has Kenneth Feinberg, "pay tsar" to the Obama Administration, been in any determinations concerning the \$2.4 million in bonuses scheduled for this past week, and what exactly is his involvement in examining the \$235 million AIG reportedly will still owe employees?

Pursuant to the TARP Compensation and Corporate Governance Interim Final Rule published by Treasury on June 15, 2009, Kenneth Feinberg, as the Special Master for TARP Executive Compensation, is required to review certain payments and payment structures for the executive officers and the top 100 most highly compensated employees of all recipients of exceptional TARP assistance, including AIG. The Special Master will be reviewing their compensation for consistency with the Rule. In addition, as the Special Master has previously stated, he has met with all seven exceptional assistance firms including AIG to discuss a variety of compensation issues including what AIG asserts to be pre-existing bonus and retention programs.

The Rule does not require the Special Master to approve all compensation matters at these firms, but it does grant him the authority to issue advisory opinions on broad compensation matters at his discretion. To date, the Special Master has not issued any advisory opinions.

With regards to the \$235 million payments, it is my understanding that this is part of a retention program designed by AIG Financial Products in early 2008 prior to government intervention at the company. In March 2009, Secretary Geithner reported that he requested that AIG CEO Edward Liddy renegotiate these payments that AIG claimed were contractually obligated to its employees. I understand that AIG has informed the Special Master of its efforts in this renegotiation process, but that this process is still underway and no resolution between AIG and its employees has been reached.

Please explain how these bonus payments are an appropriate use of taxpayers' money.

Like all TARP recipients, taxpayer funds are used by AIG to support its continued operations, including payments of appropriate salaries and bonuses. With regards to compensation payments that fall under the jurisdiction of the Special Master, the Interim Final Rule requires that the Special Master consider a variety of standards when determining whether payments are appropriate. These standards include incentives created related to risk, the effect on facilitating return of taxpayer funds, an appropriate allocation among various types of pay, performance based metrics to support compensation, comparable compensation paid to similar firms in similar circumstances, and the specific contributions of each employee. These standards require specific inquiry into payments to specific employees to determine whether they are appropriate.

**Statement of Miriam E. Sapiro
Nominee for Deputy United States Trade Representative
Before the Senate Finance Committee
June 5, 2009**

Chairman Baucus, Ranking Member Grassley and Members of this distinguished Committee, it is a pleasure to appear before you today.

I am honored that President Obama has nominated me for this important position. We are facing unprecedented economic and political challenges, but with your continuing support we can develop a robust trade agenda that opens up additional markets and that translates into better jobs and better lives for America's working families.

I want to publicly thank my husband, Stephen, and our children, Max and Ellie, for their extraordinary support, without which I would not be here today. I am also grateful to my mother, Gloria, and my late father, Burton, for their guidance and inspiration.

Throughout my career in government and the private sector I have seen first-hand how economic growth, fueled by trade, can raise the standard of living for Americans and people around the world. My interest in trade issues stems from my earliest days at the State Department during the Reagan Administration, when I worked on export controls. My years in the Legal Adviser's Office and as a member of the Secretary of State's Policy Planning Staff have given me a deep understanding of the international arena and the dynamics of complex negotiations. These experiences have sharpened my ability to resolve difficult issues between countries – a skill I relied upon when I helped to negotiate the Dayton Peace Accords that ended the war in Bosnia. These skills will now be useful as we strive to open new markets that can grow our economy and benefit our workers.

Under President Clinton, I moved from the State Department to the National Security Council, where I worked on security and economic policies. Later, as Special Assistant to the President for Southeast European Stabilization and Reconstruction, I supervised U.S. efforts to transform that area into a peaceful, democratic region. As chairman of the interagency committee that formulated and advanced U.S. goals, I worked with USTR and other agencies, other governments and international financial institutions to lay a sound foundation for economic development by increasing investment and trade.

My work on Internet policy and telecommunications issues in the private sector has given me direct experience with American companies fostering innovation and competition around the globe. I know the challenges they face, including non-tariff barriers in the technology sector and the continuing theft of billions of dollars of intellectual property each year.

As a small business owner, I have a special affinity for the many small and medium enterprises that form the backbone of our export industry. These businesses and their workers drive our economy and deserve a seat at the trade table.

Trade has been fundamental to U.S. economic success. Last year trade in goods and services was 30% of GDP and exports were 13% of the U.S. economy. Nearly half of the growth in our GDP over the last three years was from exports. We know trade can play a key role in America's economic recovery.

To achieve this we need to look for new opportunities to boost our exports while ensuring that the benefits of trade are enjoyed more broadly across America. We must also enforce our agreements with other countries more strictly. It cannot be that the United States is the only party that implements the agreements it signs. Our trading partners too must play by the rules and treat our products and our workers fairly.

We are fortunate that USTR has an outstanding leader in Ambassador Kirk and an exceptional career staff to help our manufacturers, farmers, ranchers, and service providers – large and small – succeed. By working with all stakeholders, we can establish a clearer domestic consensus on the importance of trade that can lead to progress on a range of issues. And, with strong bipartisan support for trade that can benefit all Americans, we can identify new mechanisms with the greatest promise to broaden market access and strengthen enforcement.

If confirmed, I look forward to working closely with the Members of this Committee to meet these challenges.

Thank you for your consideration.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. **Name: (Include any former names used.)**
Miriam Elizabeth Sapiro
2. **Position to which nominated:**
Deputy United States Trade Representative
3. **Date of nomination:**
TBD
4. **Address: (List current residence, office, and mailing addresses.)**
Residence:

Office:

Mailing:
5. **Date and place of birth:**
August 23, 1960 in New York, NY.
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.)**
 - 1989 to 1990: St. Antony's College, Oxford University (Rotary Scholar).

- 1983 to 1986: New York University School of Law, J.D. awarded May 1986.
- 1978 to 1982: Williams College, B.A. awarded May 1982.
- 1975 to 1978: Friends Select School, High School Diploma awarded June 1978.
- 1974 to 1975: Scarsdale High School (freshman year).

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.)

- 2002 to present: *President*, Summit Strategies International, LLC, Washington, DC.
- 2003 to present: *Adjunct Professor*, NYU School of Law, New York, NY.
- 2007 to 2007: *Adjunct Professor*, Georgetown University Law Center, Washington, DC.
- 2005 to 2006: *Adjunct Professor*, Columbia University School of International & Public Affairs, New York, NY.
- 2000 to 2002: *Director of International Policy*, VeriSign, Inc., Washington, DC.
- 1999 to 2000: *Special Assistant to the President*, National Security Council, The White House, Washington, DC.
- 1997 to 1999: *Director for European Affairs*, National Security Council, The White House, Washington, DC.
- 1995 to 1997: *Member, Policy Planning Staff*, Department of State, Washington, DC.
- 1988 to 1995: *Attorney-Adviser*, Department of State, Washington, DC.
- 1987 Winter: *Temporary Associate*, White & Case, Washington, DC.
- 1986 to 1987: *Law Clerk*, Judge Thomas Clark, U.S. Court of Appeals for the 11th Circuit, Atlanta, GA.
- 1986 Summer: *Summer Associate*, Wilmer, Cutler & Pickering, Washington, DC.

- 1985 to 1986: *Junior Fellow*, Center for International Studies, NYU School of Law, New York, NY.
- 1985 to 1985: *Legal Intern*, Department of State, Washington, DC.
- 1985 to 1985: *Summer Associate*, Cravath, Swaine & Moore, New York, NY.
- 1984 to 1984: *Summer Associate*, Goldman & Hafetz, New York, NY.
- 1983 to 1983: *Information Coordinator*, Hebrew University of Jerusalem, Mt. Scopus, Jerusalem, Israel.
- 1982 to 1983: *Assistant Information Officer & Clerk/Typist*, The British Embassy, Tel Aviv, Israel.

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

- 2004 to present: Department of State Advisory Committee on International Communications and Information Policy.
- 2001 to present: Joint Government/Private Sector Free Trade Area of the Americas (FTAA) Experts Committee on Electronic Commerce.

11. Business Relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or education or other institution.)

- 2002 to present: *President & Owner*, Summit Strategies International, LLC.
- 2005 to present: *Consultant*, Verizon Communications.
- 2003 to present: *Consultant*, Internet Corporation for Assigned Names & Numbers (ICANN).
- 2003 to present: *Arbitrator*, Arbitration and Mediation Center, World Intellectual Property Organization (WIPO).
- 2002 to present: *Consultant & Member, Steering Committee (North America)*, Global Forum Annual Conference.
- 2004 to 2005: *Consultant*, Afiliias (.INFO Registry).
- 2003 to 2004: *Consultant*, CENTRA Technology.

- 2002 to 2002: *Consultant*, Global Name Registry (.NAME Registry).
 - 2002 to 2002: *Consultant*, Center for Democracy & Technology
12. **Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations)**
- American Bar Association.
 - American Society of International Law.
 - Vice President (2006 to 2008).
 - Executive Council (2003 to 2006; 1995 to 1997).
 - Nominations Committee (2008 to 2009).
 - Chairman, Women in International Law Interest Group (1994 to 1995).
 - China E-Commerce Committee, Coalition of Service Industries (Chairman – 2001 to 2002).
 - Congressional Internet Caucus Advisory Committee.
 - Council on Foreign Relations.
 - District of Columbia Bar.
 - International Law Section (Co-Chair – 1993 to 1995).
 - Task Force on Pro Bono Opportunities in International Law, International Law Section (Chairman – 1992 to 1993).
 - DC Vote.
 - Forest Hills Neighborhood Alliance.
 - Global Internet Project Initiative, Center for Democracy & Technology (Advisory Board – 2001 to present).
 - Information Technology Association of America (now TechAmerica).
 - International Chamber of Commerce.
 - Internet Society (Nominations Committee for Board of Trustees – 2007 to 2008).
 - John F. Kennedy Center for the Performing Arts.

- New York State Bar Association.
- TechCast Panel of E-Commerce Experts, George Washington University.
- United States Council for International Business.
- Washington International Trade Association.

13. Political affiliations and activities:

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

- District of Columbia Democratic Party - National Committeewoman.

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

- Trustee, Obama Presidential Inaugural Committee.
- Member, Obama Campaign Technology, Media & Telecom Policy Group
- Member, Obama Campaign Foreign Policy Committee
- Member, Obama Campaign National Finance Committee & Mid-Atlantic Finance Committee
- Member, Democratic National Committee Credentials Committee (Denver)
- Member, National Federation of Democratic Women

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.

Amount	Date	Recipient
\$2,300	2008	Obama for America
\$200	2008	Obama4Unity
\$250	2008	DC Constituent Services Fund
\$2,300	2007	Obama for America
\$2,000	2004	John Kerry Campaign
\$100	2004	Howard Dean Campaign

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.)

- Individual Superior Honor Award, Department of State.

- Group Superior Honor Award, Department of State.
 - Outstanding Law Section, D.C. Bar.
 - Rotary Scholar, Oxford University.
 - Junior Fellow, Center for International Studies, New York University School of Law.
 - Rubin Law Review Prize, New York University School of Law.
 - Law Review, New York University School of Law.
 - Graves Prize, Williams College.
 - Phi Beta Kappa, Williams College.
 - Mead Internship in Government, Williams College.
15. **Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)**
- "Preempting Prevention: Lessons Learned," 37 NYU Journal of International Law and Politics 357 (2005).
 - "The Politics of International Law and the Law of International Politics," 23 Wisconsin International Law Journal 49 (2005).
 - "Evaluation of the New Top-Level Domains," prepared for the Internet Corporation for Assigned Names and Numbers (ICANN), available at <http://icann.org/tlds/new-qtld-eval-31aug04.pdf> (2004).
 - "Iraq: The Shifting Sands of Preemptive Self-Defense," 97 American Journal of International Law 599 (2003).
 - "War to Prevent War," Legal Times 42 (Apr. 7, 2003).
 - "Book Review: Peace with Justice? War Crimes and Accountability in the Former Yugoslavia" (P. Williams and M. Scharf) 97 American Journal of International Law 1009 (2003).
 - "Redelegation of Country Code Top Level Domains," prepared for the Global Internet Policy Initiative (GIPI) and the Center for Democracy & Technology (CDT), available at <http://www.internetpolicy.net/practices/030200cctld.pdf> (2003).
 - "Governing the Net," The National Law Journal A9 (Nov. 25, 2002).

- "The OSCE: An Essential Component of European Security," American Society of International Law Insight No. 15 (March 1997).
 - "Book Review: Mass Expulsion in Modern International Law and Practice" (J-M Henckaerts) 90 American Journal of International Law 539 (1996).
 - "Current Development: Changing the CSCE into the OSCE: Legal Aspects of a Political Transformation," 89 American Journal of International Law 631 (1995).
 - "Mechanisms of Diplomacy: What They Are and How They Can Be Made More Effective" in Managing Ethnic Tension in the Post-Soviet Space (American Association for the Advancement of Science 1995).
 - "Protecting Human Rights and Minorities in Fragmented or Divided Societies" in Managing Ethnic Tension in the Post-Soviet Space (American Association for the Advancement of Science 1995).
 - "Advising the U.S. Government on International Law," 27 NYU Journal of International Law and Politics 619 (1995).
 - "U.S. Commercial Arms Exports," 3 International Quarterly 54 (1991), reprinted in Export Controls (W. Hancock, ed. 1993).
 - "Book Review: Military Technology, Armaments Dynamics and Disarmament" (H.G. Brauch, ed.) 85 American Journal of International Law 224 (1991).
 - Note, "Extradition in an Era of Terrorism: The Need to Abolish the Political Offense Exception," 61 NYU Law Review 654 (1986).
 - "Investigating Allegations of Chemical or Biological Warfare: The Canadian Contribution," 78 American Journal of International Law 678 (1986).
 - "Russian Roulette," Spectrum 11-13 (Sept. 1983).
 - "Can Soviet Participation Bring Moderation?" Newsview 8-9 (Apr. 19, 1983).
 - "The Soviet Imperative," The Jerusalem Post 6 (Apr. 1, 1983).
16. **Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)**

The following is a list of panels on which I have spoken (as panelist or moderator) during the past five years relating to national security or international economic policy. I do not normally use formal texts and so am able to provide the Committee with copies of my remarks only where noted below.

- "Mainstreaming Human Rights in the Work of the Internet Governance Forum," United Nations Internet Governance Forum, Hyderabad, India (Dec. 5, 2008).

- “The Transboundary Internet: Jurisdiction, Control and Sovereignty,” United Nations Internet Governance Forum, Hyderabad, India (Dec. 4, 2008).
 - “High and Low: Linkages Between International Economic Law and Foreign Policy,” Biennial International Economic Law Interest Group Conference, Washington, DC (Nov. 14, 2008).
 - “Regulation and Governance Initiatives,” Global Forum, Athens, Greece (Oct. 21, 2008).
 - “A New U.S. Policy Towards the United Nations?” Remarks at American Bar Association International Law Weekend, New York, NY (Oct. 16, 2008).
 - “The Politics of the Internet,” American Society of International Law 102nd Annual Meeting, Washington, DC (Apr. 10, 2008) (*copy attached*).
 - “Public Policy on the Internet,” United Nations Internet Governance Forum, Rio de Janeiro, Brazil (Nov. 14, 2007).
 - “Introductory Remarks on Global Convergence 2.0: Integration & Innovation,” Global Forum, Venice, Italy (Nov. 5, 2007).
 - “Evolving Issues in IP Telecom Regulation & Net Governance,” Global Forum, Paris, France (Nov. 9, 2006).
 - “Internet Governance as a Tool for Participation: Democratization and Empowerment,” United Nations Internet Governance Forum, Athens, Greece (Oct. 31, 2006).
 - “Introductory Remarks on Convergence,” Global Forum, Brussels, Belgium (Nov. 7, 2005).
 - “International Law in Times of Empire,” American Society of International Law 99th Annual Meeting, Washington, DC (Apr. 1, 2005).
 - “Local & Regional Authorities: Convergence Scenarios, Tools & Perspectives,” Global Forum, Malmö, Sweden (Nov. 5, 2004).
 - “Overview: Evaluation of the New gTLDs: Policy and Legal Issues,” ICANN Meeting, Kuala Lumpur, Malaysia (July 22, 2004).
 - “Preliminary Overview: Evaluation of the New gTLDs: Policy and Legal Issues,” ICANN Meeting, Rome, Italy (Mar. 4, 2004).
17. **Qualifications: (State what, in your opinion, qualifies you to serve in the position for which you have been nominated.)**

I am honored to have been nominated by President Obama to serve as Deputy United States Trade Representative. From 1988 until 2000 I had the privilege of

servicing in several positions in government during the administrations of Presidents Reagan, Bush and Clinton. I believe that my professional experience, particularly in the White House, the State Department and the private sector, makes me well qualified to serve as Deputy United States Trade Representative.

I have been involved in international political and economic issues, including trade, since I joined the State Department more than 20 years ago as an Attorney-Adviser working on export controls. My years at the State Department, both in the Office of the Legal Adviser and on the Secretary of State's Policy Planning Staff, have given me a deep understanding of the international arena and the dynamics of international negotiations. These experiences have sharpened my ability to resolve difficult issues between countries – a skill I relied upon when I helped to negotiate the 1995 Dayton Peace Accords that ended the war in Bosnia. I have represented the U.S. Government in numerous other complex multilateral and bilateral negotiations over the years.

In 1997 I became Director for European Affairs at the National Security Council. At the NSC, I developed and supervised implementation of security and economic policies for the President and National Security Advisor. I played a leading role in efforts to defuse regional tensions and integrate Turkey and the Balkans with the rest of Europe. I also supervised interagency preparations for NATO action in Kosovo.

In 1999 I was appointed Special Assistant to the President and Counselor for Southeast European Stabilization and Reconstruction. My job was to supervise U.S. efforts to transform Southeast Europe from a war-torn region into a peaceful, prosperous and democratic part of Europe. As chairman of the interagency Coordinating Committee that formulated and advanced U.S. goals, I worked with USTR and other agencies, other governments and the international financial institutions to lay a foundation for economic development. These efforts were critical to both U.S. interests and revitalization of the region. They focused on improving the investment climate, promoting trade, strengthening regional infrastructure and bolstering anti-corruption initiatives. In addition, I played a key role in persuading the European Commission to pledge more than \$12 billion for development.

I have spent the past eight years in the private sector working with non-profit organizations, companies, business associations and international organizations on international Internet and telecommunications policy issues. After stepping down from the White House, I joined a technology company as its first Director of International Policy, responsible for relations with international organizations and foreign governments. In 2002, I founded Summit Strategies International, a consulting company that focuses on the Internet economy. I serve on the Department of State's Advisory Committee on International Communications and Information Policy and as an arbitrator for WIPO's Arbitration and Mediation Center. I participate in the Advisory Committee of the Congressional Internet Caucus, to which I have brought the perspective of a small business owner. I am past chairman of the Coalition of Service Industries' China E-Commerce Committee, among other professional organizations in which I have played a leadership role. These experiences have given me a unique perspective on the impact of new and emerging technologies on international trade issues.

I have written and spoken about national security, international law, e-commerce, Internet policy and dispute settlement issues. I have taught international law and foreign policy as an Adjunct Professor at New York University School of Law, Georgetown University Law Center and Columbia University's School of International & Public Affairs. I was an officer of the American Society of International Law and served as a member of its Nominations Committee.

My extensive work in government, the private sector and academia has provided me with broad experience for promoting U.S. trade interests. If I am confirmed as Deputy United States Trade Representative, I will look forward to working closely with Members of the Committee and Staff on the full range of trade issues as we work together to advance American interests.

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.**

If I am confirmed by the Senate, I will sever all connections with my present employer and any other organization that would present a potential or actual conflict of interest in accordance with guidance from my Designated Agency Ethics Official.

- 2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the Government.

- 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 person or entity has made a commitment or agreement with me to employ my services in any capacity after I leave government service.

- 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.**

If I am confirmed by the Senate, I expect to serve out my full term and serve at the pleasure of the President.

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.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the USTR's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

- 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 to which you have been nominated.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the USTR's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

- 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.**

To the best of my knowledge, I have not engaged in such activity during the past 10 years for the purpose of directly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

My company, Summit Strategies International, is a member of two business associations, the United States Council for International Business (USCIB) and the Information Technology Association of America (now TechAmerica), which on occasion seek to directly or indirectly influence the passage, defeat, or modification of legislation or affect the administration and execution of law or public policy. Summit is also a member of the Congressional Internet Caucus Advisory Committee, which brings together public interest, non profit and industry groups to provide information to the Congressional Internet Caucus, congressional Staff and the public about Internet-related policy issues.

One of Summit's clients is the Internet Corporation for Assigned Names & Numbers (ICANN), a non-profit organization based in California that is responsible for technical coordination of the Internet's domain name system (DNS) and operates certain functions with the approval of the Department of Commerce. I have not acted as a lobbyist for ICANN on any issue.

I became aware in 2008 that a former employer, VeriSign, had registered me as a lobbyist in 2001, apparently out of an abundance of caution. To the best of my

knowledge, I did not act as a lobbyist for VeriSign on any issue. My responsibilities were focused on the international community. Others in the company were responsible for relations with the Congress and with the Administration. I left the company in 2002. In 2007, the company filed a lobbying report removing me from its list of lobbyists.

From 2001-2002 I served as Chairman of the China E-Commerce Committee of the Coalition of Service Industries, an U.S. trade association that focuses on policies to enhance American competitiveness through trade and investment.

The Global Internet Project Initiative (GIPI), in which I have played an advisory role, is an international network supporting the adoption of legal and policy frameworks in developing countries to promote an open and democratic Internet. I am also a member of the Internet Society (ISOC), a nonprofit international organization focused on the development of Internet-related standards, education and policy on a global basis.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the USTR's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provided to this Committee.

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

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

To the best of my knowledge I have not represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter.

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.**

I have never been 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. Moreover, to the best of my knowledge, I have never been the subject of such a complaint.

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.**

I have never been arrested, charged, held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance. Moreover, to the best of my knowledge, I have never been investigated for such a violation.

3. **Have you ever been involved as a party in interested in any administrative agency proceeding or civil litigation? If so, provide details.**

<u>Type of Proceeding</u>	<u>Parties</u>	<u>Date</u>	<u>Issue/Disposition</u>	<u>Court</u>
Civil Litigation	<u>Plaintiff:</u> Miriam Sapiro <u>Defendant:</u> VeriSign, Inc.	2003	Parties resolved claim of discrimination and retaliation for protected activity.	U.S. District Court for the District of Columbia
Civil Litigation	<u>Plaintiff:</u> Miriam Sapiro <u>Defendant:</u> Doggett's Parking	1997	Received default judgment against defendant for damage to my car in a parking garage.	District of Columbia Small Claims Court

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.**

I have never been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation.

5. **Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**

I am unaware of any additional information, favorable or unfavorable, which should be considered in connection with my nomination.

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, if confirmed by the Senate, I am willing to appear and testify before any duly constituted committee of the Congress on such occasions as I may be reasonably requested to do so.

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

Yes, if confirmed by the Senate, I am willing to provide such information as is requested by such committees.

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

United States Senate
Committee on Finance

Nominations Hearing
Miriam Sapiro
June 5, 2009

Questions from Chairman BaucusQuestion 1:

During the Finance Committee's recent Panama Free Trade Agreement (FTA) hearing, the Administration announced its intention to develop a new "trade policy framework." To my knowledge, the Administration has not yet consulted with Congress on the trade policy framework. And recent press reports indicate the Administration does not plan on releasing the framework until after health care reform passes the House and Senate. What will the trade policy framework include? Are these press reports correct? What is the timeline for the framework? And do you commit to working with us as you develop the trade policy framework?

A: The President believes that the United States needs a new framework for trade that addresses important issues, such as potential new trade agreements, in the context of the broader economic policy agenda. Trade is essential to America's prosperity and has the potential to lift up workers in America and around the world. To accomplish this, trade agreements need to include strong labor and environmental standards, we need to do a better job of enforcing obligations, and we need domestic policies to help Americans succeed in an increasingly dynamic economy. A new framework for trade will help build the necessary bipartisan support for approval of the pending trade agreements, as well as broader support for other opportunities to increase market access and expand the benefits of trade. If confirmed, I will look forward to working with you and the Committee as the Administration develops and implements the framework.

Question 2:

I have long said that we should move the pending FTAs in the order in which they are ready to move. I expect the Panama FTA will garner widespread support, and I see no reason to delay its consideration. But recent press reports state that the Administration does not plan on moving the Panama FTA until health care reform passes the House and Senate. Are these reports correct? What is the Administration's plan for moving forward the Panama FTA?

A: The pending U.S.- Panama trade agreement remains a top priority in the Administration's trade policy agenda. USTR has been working with Panama to address outstanding concerns before the agreement is submitted to Congress. These concerns involve labor and tax transparency rules. While Panama has made progress in addressing these issues, the Administration believes more work remains to be done. Successfully addressing the concerns will be an important step in determining when, in close consultation

with the Congress and as part of the President's broader trade policy framework, the agreement is ready to be considered for approval. If confirmed, I look forward to working with you towards this goal.

Question 3:

Many Members of Congress remain concerned by the level of violence against Colombian labor leaders and the rate of impunity for the perpetrators of such crimes. I support the Colombia FTA, but have been clear that more must be done to address labor violence before the FTA can move forward. The President's Trade Agenda called for the development of benchmarks to address these labor issues, which I support. Can I count on you to develop these benchmarks in close cooperation with Colombia, key stakeholders, and the Finance Committee?

A: Yes. I will work in close consultation with Colombia, key stakeholders, the Finance Committee and the Ways and Means Committee to identify the further steps that Colombia needs to take to ensure that Colombian workers' fundamental labor rights are protected in law and practice.

Question 4:

The global downturn in the housing market has led to a steep decrease in softwood lumber prices. U.S. lumber producers, including those in Montana, have seen production fall off, mills shut down, and workers laid off. In these troubled times, it appears Canada has been subsidizing its lumber producers, including by improperly classifying lumber as "Grade 4" lumber, and thus charging its producers lower stumpage fees. How does USTR plan on addressing this issue? And what steps does USTR plan on taking to consistently enforce the U.S. - Canada Softwood Lumber Agreement?

A: As the decision Ambassador Kirk made to impose the 10 percent duties on lumber from four Canadian provinces shows, USTR is committed to carefully monitoring and enforcing the U.S.-Canada Softwood Lumber Agreement (SLA). I discussed the importance of the SLA and grading concerns during consultations with your staff in preparation for my hearing. USTR has already held a series of meetings with key stakeholders regarding implementation of the SLA, and British Columbia's lumber grading practices were identified as a major issue. There will be several opportunities to discuss these concerns with Canada over the next few weeks, including meetings of the technical working groups of the Softwood Lumber Committee and of the Committee itself. In addition, on July 20-24, there will be an arbitration hearing before the LCIA on circumvention. If confirmed, I will review all of the SLA compliance issues you have identified to ensure full enforcement of the SLA.

Question 5:

I am concerned about enforcement of U.S. intellectual property rights abroad. I introduced a bill with Senator Hatch last year to strengthen the Special 301 provisions of U.S. law to address this concern.

Do you think the Special 301 provisions of U.S. law provide a sufficient enforcement tool? Do those provisions work as well today as they did 20 years ago? What do you see as the pros and cons of my proposal to strengthen the Special 301 provisions? What other tools

does the administration need to better fight the intellectual property violations that have plagued U.S. industry?

A: These are important questions. The United States needs commitments from its trading partners for strong and effective protections of intellectual property rights. If confirmed, I will work with USTR staff to review the Special 301 provisions of U.S. law and work with you and your staff to consider options for strengthening it.

Question 6:

As indicated in my previous question, I have long supported enhanced protection and enforcement of U.S. intellectual property rights abroad. In addition to tough enforcement tools, I also think that negotiations can play an important role. And I think that the Anti-Counterfeiting Trade Agreement (ACTA) negotiations hold real promise. I understand USTR has decided to proceed with ACTA negotiations. What is the timeline for moving ACTA forward? Can you assure me that you will consult with all interested stakeholders as you move forward?

A: The Administration has announced that it plans to move forward with negotiation of the ACTA to step up the fight against global counterfeiting and piracy. I strongly support the goal of working with our trading partners to toughen international standards for the enforcement of intellectual property rights, making the world safer for the innovation and creativity that are so critical to the U.S. economy. The participants in the ACTA negotiations will next meet in Morocco in July to continue discussions, with a goal of reaching an agreement in 2010. If confirmed, I will work to ensure that the Administration continues to consult with all interested stakeholders as this effort moves forward.

Question 7:

I have long supported increased trade and investment ties with Asia and other key trading partners. And I have grown increasingly concerned that our trading partners are locking down agreements with the region while we sit on the sidelines. Bilateral Investment Treaty (BIT) negotiations with China, India, and Vietnam are a step in the right direction. Strong BITs based on the model BIT will help ensure that U.S. companies can compete in these vital growth markets. What do you plan to do with respect to these negotiations?

A: I strongly support increased trade and investment ties with Asia and other key trading partners. With respect to investment, it is critical that U.S. firms and investors be able to compete on a level playing field in foreign markets and be treated according to the rule of law. Strong BITs can help achieve this by promoting economic reform, improving the investment climate, enhancing transparency and strengthening the rule of law. USTR – in cooperation with the State Department (with which it shares responsibility on BITS) - has launched a review of the U.S. BIT program to ensure that the agreements being negotiated are consistent with key U.S. interests. In the meantime, the BIT discussions begun with China, India and Vietnam are moving ahead. If confirmed, I will work to secure a level playing field for U.S. firms and investors in these and other countries.

I also urge you to tread carefully as you consider whether and how to revise the model BIT. Improvements can always be made, particularly in the area of increased transparency. But the current model BIT represents a carefully calibrated compromise between many competing viewpoints. Does USTR intend to proceed with a review of the model BIT? Can

you assure me that you will consult closely with me and my staff as you consider any such changes? And can you assure me that you will consult with all interested stakeholders as you consider any changes to the model BIT?

A: The 2004 U.S. model BIT text represents a carefully calibrated compromise among domestic stakeholders. As noted in my previous answer, USTR – in cooperation with the State Department - has launched a review of the U.S. BIT program to ensure that the agreements being negotiated are consistent with key U.S. interests. If confirmed, I will consult closely with you and your staff regarding the review, as well as with interested stakeholders.

Question 8:

Although U.S. agricultural producers, manufacturers, and service suppliers believe that the WTO Doha Round holds great potential to open foreign markets, they are concerned that the current Doha Round negotiations are unbalanced. These groups feel that too little new market access is being offered by emerging economies, while too much is being asked of U.S. agricultural producers and manufacturers, both in terms of tariff reductions and domestic support. As Deputy USTR, what would you do to re-balance these negotiations and lead them to a successful conclusion?

A: I agree that it is important to remedy the imbalance in clarity that currently exists in the Doha Round negotiations between what is being asked of the United States and what U.S. exporters stand to gain. Ambassador Kirk has told key trading partners that we must consider new ideas to get the negotiations moving, along with creative, quiet and informal work by ministers and senior officials. If confirmed, I look forward to working with him to advance these efforts.

Question 9:

Services account for 80 percent of the U.S. economy and employ 80 percent of the U.S. workforce. What are your plans for opening foreign markets to U.S. service suppliers, particularly if the Doha Round remains stalled? What can Congress do to help?

A: The United States remains committed to achieving a successful conclusion to the Doha Round that provides new market access for our service suppliers. In addition to the Doha Round negotiations, bilateral and regional trade agreements have been effective at providing comprehensive coverage of services, enhancing regulatory transparency and addressing specific impediments to trade.

There also are ways to expand global trade in services outside of formal trade agreements, such as through regulatory dialogues and nonbinding cooperative initiatives. If confirmed, I am committed to exploring all of these options and consulting with you on additional ideas.

Question 10:

The Finance Committee reviewed your 2005, 2006, and 2007 Federal income tax returns in connection with your nomination. During this review vetting process, one additional item was identified and you have filed a second 2006 amended tax return to address the matter. Please provide an account of the changes that were made in your 2006 amended return.

A: Our 2006 federal income tax return was amended at the request of the Committee because the contribution to my 401(K) plan had been inadvertently reported by our former accountant on Schedule C instead of on the front of the Form 1040. The amended return moved the deduction from Schedule C to Form 1040.

Questions from Ranking Member Grassley

Question 1:

The Obama Administration has signaled that the Panama trade agreement will not be submitted to Congress until we at least address a reform of our health care system, which could take much of the remainder of this year.

Six weeks ago, I asked Ambassador Marantis during his confirmation hearing when the Administration would reach out to Congress to develop benchmarks for the Colombia trade agreement.

He replied that USTR would seek to engage with us as soon as possible, but that hasn't happened yet. USTR has made no effort to approach me on this issue.

It's readily apparent that creating new export opportunities for U.S. farmers, manufacturers, workers, and service suppliers in Panama and Colombia is not a priority for this Administration.

And, I'm disappointed that the Administration doesn't appear to be concerned by the potential adverse impact to our relations with these important allies.

(1) What is your view? Do you think it makes sense to continue denying our exporters and workers such meaningful market opportunities?

A: I believe it is vital to create new export opportunities for our workers, manufacturers, farmers, ranchers, and service providers and to deepen relations with important trading partners. The Administration recognizes the significant potential benefits that the Panama and Colombia trade promotion agreements offer, and these agreements are top priorities in its trade agenda. USTR has been working with both Panama and Colombia to address outstanding concerns before these agreements are submitted to Congress. With respect to Panama, these concerns focus on labor and tax transparency rules. While Panama has made some progress in addressing these concerns, the Administration believes more work remains to be done. In the case of Colombia, USTR is working with the Government, this Committee and key stakeholders to identify the further steps that Colombia needs to take to ensure that workers' fundamental labor rights are protected in law and practice.

In addition to the work under way with Panama and Colombia, the President believes that the United States needs a new framework for trade that addresses important issues, such as trade agreements, in the context of the broader economic policy agenda. Trade is essential to America's prosperity and has the potential to lift up workers in America and around the world. To accomplish this, trade agreements need to include strong labor and environmental standards, we need to do a better job of enforcing obligations, and we need domestic policies to help Americans succeed in an increasingly dynamic economy. A new framework for trade will help build the bipartisan support necessary for approval of the FTAs, as well as for other opportunities to broaden market access and expand the benefits of trade.

(2) What are the potential foreign policy implications if we fail to promptly implement these trade agreements?

A: Panama and Colombia are valued economic and political partners of the United States. The Administration engages closely with both governments at all levels on a broad array of issues. As noted above, the Administration is working with Panama and Colombia to address outstanding concerns before submitting these agreements to Congress for approval. Successfully addressing the concerns noted will be an important step in determining when, in close consultation with the Congress and as part of the President's broader trade policy framework, the Panama and Colombia agreements can gain bipartisan support. If confirmed, I look forward to working with you on these efforts.

Two months ago, the Obama Administration proposed to expand our trade relations with Cuba.

At the same time, our pending trade agreements with Colombia and Panama are on indefinite hold. I don't understand the Administration's approach.

(3) Why should trade relations with Cuba be a higher priority than leveling the playing field for U.S. exporters and strengthening our relationships with important allies like Colombia and Panama?

A: The Administration is moving forward with the pending agreements with Panama and Colombia. Both countries are important partners of the United States and represent significant export markets in Latin America for U.S. workers, manufacturers, farmers, ranchers and service providers. If confirmed, I look forward to working with other members of the Administration and this Committee to gain congressional approval of both pending agreements, as well as to address Cuba trade issues.

Question 2:

By June 30, 2009, President Obama is required to determine and report to the Senate Finance Committee whether Bolivia satisfies the criteria set forth in section 203 of the Andean Trade Preference Act (19 U.S.C. 3202) to remain a beneficiary country under that Act, including whether Bolivia meets the narcotics cooperation certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 for eligibility for United States assistance (19 U.S.C 3202(d)(11)).

President Obama is also required to determine and report to the Senate Finance Committee by June 30, 2009, whether Ecuador does not satisfy the criteria set forth in section 203 of the Andean Trade Preference Act (19 U.S.C. 3202) to remain a beneficiary country under that Act, including whether Ecuador does not meet the narcotics cooperation certification criteria set forth in section 490 of the Foreign Assistance Act of 1961.

(1) In December 2008, the Bush Administration suspended Bolivia's benefits under ATPA for failure to meet the criteria set forth in section 490 of the Foreign Assistance Act of 1961. I am unaware of any action taken by the government of Bolivia to date that suggests Bolivia is now meeting the criteria set forth in section 490. If that is the case, do you agree that as a matter of law, President Obama must necessarily conclude that Bolivia does not satisfy the criteria set forth in section 203 of the Andean Trade Preference Act?

(2) In July 2008, Ecuador's Foreign Ministry formally notified the United States that the U.S. lease on the Eloy Alfaro Air Base would not be renewed when it expires later this year. Interdiction activities originating from this air base have been an important part of our cooperative counternarcotics efforts over the past 10 years. What steps should we pursue with the government of Ecuador to ensure that there is no diminution in our cooperative counternarcotics efforts after the U.S. lease to the air base expires?

A: Upon confirmation I will work to ensure that your concerns on these issues are taken into account by the President and addressed in the report he is required to send to the Senate Finance Committee by June 30.

Question 3:

Canada Intellectual Property Rights

In this year's Special 301 report, USTR added Canada to the priority watch list.

The report explains that USTR took this action because Canada is failing to live up to its commitments to improve the protection and enforcement of intellectual property rights.

- (1) Are you aware of Canada's reaction to USTR's decision?**
- (2) Has the government of Canada taken any steps since then to address USTR's concerns?**
- (3) If you are confirmed, will this issue be an important priority for you to engage the Canadians on for a resolution?**

A: It is important that all countries – including close allies like Canada – protect and enforce intellectual property rights in the context of a rules-based trading system. If I am confirmed, it will be one of my priorities to engage with the Canadian Government to address the intellectual property concerns identified in the Special 301 Report as soon as possible, and to ensure that the seriousness of its elevation to the Priority Watch List is understood.

Question 4:

Under the previous Administration, USTR supported the establishment of a Middle East Free Trade Area.

- (1) What is your view—is this a worthwhile objective?**
- (2) If you are confirmed, will you work to advance this effort?**
- (3) Do you foresee the negotiation of additional trade agreements with countries in the Middle East region? If so, with which countries?**

A: Our economic engagement with countries in the Middle East and North Africa is a key aspect of our broader relationship with this important region. Enhanced U.S. trade and investment links with the region promote economic development and respect for the rule of law, including important workers' rights, as well as contribute to overall regional stability. These ties also advance the interests of U.S. exporters in a region that offers the potential for significant export growth.

If confirmed, I will work with Ambassador Kirk, others in the Administration and the Congress to determine the best strategy for expanding these links.

Question 5:

Russia is increasingly imposing scientifically unjustified barriers to imports of U.S. pork. Over the past year, Russia has delisted numerous U.S. pork plants, including plants located in Iowa, from eligibility to export to Russia.

Besides delisting some plants claiming sanitary concerns, Russia has also delisted plants over minor clerical errors on paperwork, and in some cases Russia has not provided reasons for removing plants from the eligibility to export.

Russia is also restricting imports of U.S. pork over alleged concerns over the H1N1 virus. Yet it is clear that the H1N1 virus cannot be spread through the consumption of pork.

(1) If you are confirmed, will you make it a high priority to engage the government of Russia on the removal of non-tariff barriers to U.S. pork exports?

As you know, Russia is engaged in negotiations to accede to the World Trade Organization. A number of important issues remain outstanding in these negotiations.

(2) Under what terms do you believe Russia should accede to the World Trade Organization with respect to: (i) the conditions of competition for Russian state-owned enterprises; (ii) the recognition, protection, and enforcement of intellectual property rights; and (iii) the imposition of export duties?

(3) If you are confirmed, what will your priorities be with respect to negotiating Russia's accession to the World Trade Organization?

A: Sanitary and phytosanitary measures that are not science-based are a key problem for U.S. pork and other exporters and a high priority for USTR. USTR is currently working with industry, USDA and other agencies to address the unjustified measures you raise, and if confirmed I will discuss the removal of these barriers with Russia. USTR is also committed to working closely with Russia to address outstanding issues with respect to its accession to the WTO, including those pertaining to state-owned enterprises, the enforcement of intellectual property rights and the imposition of export duties. If confirmed I will work to ensure that Russia understands the work necessary to conclude the accession process.

Question 6:

In an effort to move the stalled Doha Development Round Negotiations, Director-General Lamy recently endorsed the idea of beginning bilateral or plurilateral discussions to clarify the use of flexibilities under a modalities framework.

That's progress. Until we have a clear understanding of the market access opportunities that U.S. exporters stand to gain, Congress is not going to be receptive to concluding a deal.

If you are confirmed, how will you encourage key trading partners such as the European Union, China, India, and Japan, to play a constructive role in bringing members together to achieve such clarity in the negotiations?

A: I agree it is important to remedy the imbalance in clarity that currently exists in the Doha Development Round negotiations between what is being asked of the United States and what U.S. exporters stand to gain. Ambassador Kirk has told key trading partners that we must consider new ideas to get the negotiations moving, along with creative, quiet and informal work by ministers and senior officials. He has begun this effort and, if confirmed, I look forward to working with him to advance it.

Question 7:

The European Union's *de facto* moratorium on approvals of new agricultural biotech varieties in effect blocks U.S exports of corn to the European market.

Yet the European Union's own scientists state that the biotech varieties that they have reviewed pose no health or safety risks.

The World Trade Organization determined in 2006 that the European Union's measures were inconsistent with the European Union's obligations as a member of the World Trade Organization, but these measures remain in place.

This policy of the European Union adversely impacts corn producers in my home state of Iowa.

If you are confirmed, what steps will you take to see that the European Union removes its scientifically unfounded barriers to imports of U.S. biotech commodities?

A: I share your concern that despite the WTO case in our favor, the United States has not obtained access to the EU market for biotech corn and corn products. If confirmed, I will explore every tool available to USTR, from diplomacy to the dispute resolution process, to achieve the goal of normalizing trade in biotech corn with the EU. I understand that USTR is actively working with an interagency team and key stakeholders to review all of the information relating to current EU measures that are blocking U.S. market access in order to determine next steps. If confirmed, I will look forward to advancing this work and taking steps to resolve the problem.

Question 8:

The European Union imposes non-science-based restrictions on imports of U.S. meat.

For example, while the United States and the European Union recently reached a provisional accommodation for expanded exports of U.S. beef to Europe, this accord applies only to so-called hormone-free beef. The European Union still prohibits imports of beef from cattle treated with growth-promoting hormones.

U.S. poultry producers commonly rinse processed poultry in chlorine washes in order to reduce microbial contamination, and the European Union's own scientists report that these washes pose no risks to human health. Regardless, the European Union bans poultry processed with these treatments.

U.S. exports of pork to the European Union are limited by various EU sanitary policies that do not reflect sound science. Iowa farmers are being harmed by these restrictive policies that are not scientifically based.

If you are confirmed, what steps will you take to see that the European Union removes these scientifically unfounded barriers to U.S. meat exports?

A: If confirmed, I will seek solutions to the unjustified SPS barriers that restrict U.S. exports of poultry and meat to the European Union. In addressing these issues I will give consideration to the full range of options—from diplomacy and negotiations to, where appropriate, WTO dispute settlement—in order to promote adherence to science-based rules and achieve meaningful market access for U.S. products.

Question 9:

The European Union is currently considering whether to impose antidumping and countervailing duties on imports of U.S.-produced biodiesel.

The imposition of such duties could negatively impact Iowa soybean and biodiesel producers.

If you are confirmed, I expect that you will not hesitate to act if the European Union takes any actions that are inconsistent with its World Trade Organization obligations in conducting this investigation.

Do you agree?

A: If confirmed, I will work with Ambassador Kirk and officials at the Department of Commerce to take appropriate action should the EU take actions that are inconsistent with its WTO obligations.

Question 10:

I'm concerned about the use of differential exports taxes by some of our trading partners, such as Argentina.

By placing lower export taxes on processed soy products like soy meal, soy oil, and biodiesel, compared to those assessed on exports of raw soybeans, Argentina creates an artificial incentive for the production and export of processed soy products.

This increased production expands supplies in the world market and thus suppresses world prices for these processed products—thereby harming U.S. soybean farmers and U.S. soybean processors.

If you are confirmed, what steps will you take in the Doha Development Round negotiations to achieve a consensus on eliminating the use of such differential export taxes?

A: I am aware of your concerns and, if confirmed, look forward to working with you on this issue.

Questions from Senator Wyden

Question 1:

I commend the Administration's recent step to enforce an arbitration panel decision that had found Canada to be in breach of the Softwood Lumber Agreement. It was unfortunate that Canada has been slow to meet its obligations under the agreement. Most troubling for my home state has been British Columbia's subsidies to its lumber producers by reducing stumpage fees, making it much harder for Oregon forestry companies and their workers to compete in this down economy. It is now essential that the United States builds upon its recent enforcement action by quickly formulating and implementing a comprehensive plan of action to address all these trade practices – including timber fee reductions by British Columbia. What steps will you and Ambassador Kirk take to fully enforce this trade agreement? Do you agree that arbitration is an effective enforcement approach which should be used aggressively to remedy potential breaches?

A: As the decision Ambassador Kirk made to impose the 10 percent duties on lumber from four Canadian provinces shows, USTR is committed to carefully monitoring and enforcing the SLA. USTR held a series of meetings this spring with key stakeholders regarding implementation of the SLA, and British Columbia's lumber grading practices were identified as a major concern. If confirmed, I will review all of the SLA compliance issues identified to ensure that the SLA functions as intended. I will work with the Canadians where possible and pursue dispute resolution when necessary.

Question 2:

Will you provide the members of this Committee with a detailed plan of action to monitor and further improve Canada's compliance with the Softwood Lumber Agreement?

A: There will be several opportunities to monitor and further improve Canada's compliance with the SLA over the next few weeks, including meetings of the technical working groups of the Softwood Lumber Committee and a meeting of the Committee. In addition, on July 20-24, there will be an arbitration hearing before the LCIA on circumvention. If confirmed, I will work to promote Canadian compliance with all aspects of the SLA.

Question 3:

In 2006, the Government of Thailand tried to issue a compulsory license for the AIDS drug Efavirenz as a way to increase generic competition, reduce costs, and improve public health.

The Bush Administration opposed this policy, arguing that it violated patent protections. How will you approach these situations, where the interests of developing countries to act in the best interest of public health, conflict with the desire of United States drug makers' to keep patent protections?

A: I recognize the importance of protecting public health and ensuring access to life-saving medicines in developing countries and, at the same time, that there are cases where the issuance of compulsory

licenses raises legitimate concerns. If confirmed, I will work with Congress to promote respect for the Doha Declaration on the TRIPS Agreement and Public Health, which recognizes the right of WTO members to grant compulsory licenses in accordance with WTO rules. At the same time, I will ensure that USTR carefully monitors the use of compulsory licensing by our trading partners and takes action where appropriate to address any concerns that may arise.

With respect to Thailand, I agree with the Special 301 report, which urged Thailand to consider ways of addressing its public health challenges while maintaining a stable patent system that promotes investment, research and innovation.

Questions from Senator StabenowQuestion 1:*Enforcement*

During the last administration our government's trade priorities moved our nation in the wrong direction. While USTR focused on negotiating new trade agreements, Michigan and American workers suffered the consequences of bad trade deals with little monitoring and little enforcement. U.S. businesses continue to close, or move overseas, and lay off American workers.

Would you welcome the idea of a Trade Enforcement Officer within USTR who can take the lessons learned across the various desks of USTR to establish a larger mission and strategy for enforcement?

A: Ambassador Kirk has made clear that enforcement is a top priority for USTR, and I fully share that commitment. The Ambassador has indicated that he would welcome additional resources and is open to the idea of creating a new position for trade enforcement. If confirmed, I would be pleased to discuss that possibility with you.

Question 2:*Special 301*

Countries like China repeatedly violate international IP laws, yet the Bush administration refused to list it as a "Priority Foreign Country." Under the Special 301 process, that designation would require the USTR to investigate and address specific problems. Do you believe countries on the "Priority Watch List" should also be investigated further, and what role should Customs and Border Patrol have in this process?

A: The Special 301 process is an interagency effort that includes participation by U.S. Customs and Border Protection (CBP). If confirmed, I will work to develop a close relationship with CBP and other agencies so that we can address collectively the challenges of IPR infringement in China as well as IPR infringing and counterfeit imports into the United States. I agree that each country on USTR's Priority Watch List merits close scrutiny and, if confirmed, I will work to ensure that happens as we explore all appropriate steps to make progress in IPR protection and enforcement.

Question 3:*Colombia*

As you are aware, the escalating murder of trade unionists, and the slow progress on the prosecution of those ultimately responsible, is one, but by no means the only, problem with the US-Colombia FTA. As a result of the violence, as well as poor labor laws and the failure of the government to enforce its laws, workers in Colombia are unable to exercise their basic labor rights.

How would you work with the Colombian government to address the problem of violence against trade unionists and to enact meaningful labor law reform?

A: If confirmed, I will engage closely with the Colombian government and lead efforts to identify the steps necessary to address these issues adequately. An important part of that process will also be consultations with key stakeholders and the Congress.

What benchmarks do you see as useful in judging whether the Colombian government has made adequate progress toward ending the climate of terror and violence for workers seeking to exercise their rights?

A: If confirmed, I will consult closely with Colombia, key stakeholders, the Finance Committee, the Ways and Means Committee and other members of Congress to identify the further steps that Colombia needs to take to ensure that Colombian workers' fundamental labor rights are protected in law and practice.

Question 4:

Peru

The Bush Administration implemented the Peru FTA despite objections from the Committee on Ways and Means and several labor and environmental organizations, which argued that Peru had not yet passed the labor and environmental laws and regulations necessary to comply with the terms of the FTA.

What outstanding issues would you raise with the Peruvian government?

A: I understand USTR continues to work closely with the government of Peru, key stakeholders, and Congress to ensure the successful implementation and enforcement of the agreement's provisions. There is an open dialogue with stakeholders on the historic provisions included in the Environment Chapter and the Annex on Forest Sector Governance. USTR is also working closely with the Government of Peru to secure effective implementation of the directives, decrees, and administrative resolutions issued to meet Peru's labor obligations under the agreement. If confirmed, I will assess these efforts and determine if there are specific areas where more attention is needed.

What process(es) would you put in place to ensure that such concerns, from congress or civil society, are duly considered and acted upon long before the USTR determines whether an FTA should enter into force?

A: The President believes that the United States needs a new framework for trade that addresses important issues, such as trade agreements, in the context of the broader economic policy agenda. Trade is essential to America's prosperity and has the potential to lift up workers in America and around the world. To accomplish this, trade agreements need to include strong labor and environmental standards, we need to do a better job of enforcing obligations, and we need domestic polices to help Americans succeed in an increasingly dynamic economy. If confirmed, I would welcome the opportunity to consult with you on this question in the context of a new framework for trade.

Question 5:

Intellectual Property

Counterfeiting is a crime that also hurts all manufacturers. The auto parts counterfeiting market is a \$12 billion annual business that has cost our nation a quarter-million manufacturing jobs. But it's not just jobs that are at stake. Counterfeit auto parts are dangerous—just like counterfeit medicine. Investigators have found brake pads made of kitty litter, sawdust, and dried grass.

What actions should USTR take to stop the trade of counterfeit auto-parts?

A: Enforcement of intellectual property rights is a key trade priority for the Administration. If confirmed, I will work closely with Congress and industry stakeholders to address the many intellectual property rights enforcement challenges facing U.S. industries, including the issue of counterfeiting. The specific issue of the counterfeiting of automobile parts was noted in the Special 301 Report issued recently. If confirmed, I will carefully consider the best approach, whether through robust engagement or trade enforcement actions, to respond to intellectual property challenges. I will also ensure that USTR continues to devote considerable staff resources to this important issue.

Question 6:

WTO

Although there are non-binding commitments, there is currently no enforceable labor rights clause in the WTO agreements, and there continues to be resistance by some countries to the introduction of a labor clause.

Do you think enforceable labor rights should be included at the WTO and, if so, how would you go about putting labor rights on the agenda – given the strong objections of some WTO members?

A: If confirmed, I would welcome an opportunity to discuss this with you. Respect for fundamental labor rights is an essential component of the Administration's trade agenda and I would welcome your ideas for how best to broaden international discussion of this important subject.

Questions from Senator Bill Nelson

Question 1:

For Ms. Miriam Sapiro, Deputy U.S. Trade Representative:

I am concerned about the continued piracy of United States pay television channels in the Caribbean and Latin America. For some time now, a number of cable television providers in these regions have downloaded and rebroadcast programming without the consent of the provider. Some countries, such as the Bahamas, even provide legal authority (through compulsory licensing laws) for cable providers to down link, decode and rebroadcast United States television programming and associated intellectual property without consent or compensation.

If confirmed as Deputy U.S. Trade Representative, please tell me how you will work to stop the piracy of American intellectual property as it relates to broadcast signals of U.S. companies in the Caribbean and Latin America?

A: Ensuring strong intellectual property protection is one of the Administration's trade priorities. If confirmed, I will work with our trading partners to secure their commitment to strong and effective protection and enforcement of U.S. intellectual property rights and use all available tools to combat piracy, including signal piracy. USTR already reviews intellectual property rights (IPR) practices in connection with the administration of U.S. trade preference programs. This year as part of its biennial review of the operation of the Caribbean Basin Economic Recovery Act (CBERA), USTR will review the IPR practices of beneficiary countries to assess compliance with the eligibility criteria, which include the extent to which a country prohibits the broadcasting of U.S. copyrighted materials without permission.

Question 2:

The U.S. has played an important role in partnering with Haiti, the poorest country in the Hemisphere, on trade initiatives such as the 2006 Hemispheric Opportunity through Partnership Encouragement Act (HOPE) and the 2008 HOPE II Act, to help revitalize Haiti's domestic industry and spur economic growth.

Can you provide me with an update on how you think these programs are working and whether Haiti is fully taking advantage of these preferences?

A: The HOPE Act contributed to positive trends in Haitian economic development. Two-way trade reached \$1.4 billion in 2008, including \$450 million in exports from Haiti to the United States. The program appears to have been a factor in the 28% increase in U.S. foreign direct investment in Haiti between 2006 and 2007 (latest available data). U.S. imports under the HOPE Act reached \$60 million in 2008. According to the HOPE Commission Executive Director, the program has led to the creation of 11,000 new jobs in the apparel sector. I understand that the Administration is currently working with the Haitian government to implement fully the HOPE II Act and that it will report to the Congress on progress soon.

Question 3:

As Deputy USTR with responsibility for the Western Hemisphere, how will you approach the U.S. trade and investment relations with Haiti specifically, as well as U.S. trade and investment more broadly with the Caribbean, Central America and South America?

A: My actions as Deputy USTR will reflect the President's commitment to strengthen and renew trade relationships in the region and construct close partnerships and joint approaches to address common challenges. If confirmed, I will pursue this goal while working to see that the benefits of trade are shared more broadly. Trade is essential to America's prosperity and that of the Caribbean, Central America and South America. A robust trade agenda can grow all of our economies, consistent with strong labor and environmental standards, and have the potential to lift up workers in America, the region and around the world.

Question 4:

Senator Cornyn and I have introduced a bill that would add Paraguay as a beneficiary of the Andean Trade Preference Drug Eradication Act (ATPDEA) program.

If confirmed, would you be supportive of efforts to add Paraguay to ATPDEA?

A: The Administration greatly values its trade relationship with Paraguay and is considering ways to strengthen ties. As regards the ATPA, USTR will be reviewing all trade preference programs, in consultation with Congress, to see whether changes are warranted. If confirmed, I would look forward to playing an active role in this review and consulting with you as it proceeds.

Question 5:

If confirmed, what improvements to the ATPDEA program would you recommend?

A: If confirmed, I will participate actively in the review of trade preference programs, including the ATPDEA. I would be pleased to consult with you and other Members of Congress to determine whether changes to the program could be useful.

Questions from Senator Hatch**Question 1:**

America's economic future and competitive advantage is dependant on our ability to continue to lead the world in innovation and creativity. Yet the intellectual property system that protects creativity and incentivizes innovation is under attack in multilateral institutions – from the World Health Organization and the World Intellectual Property Organization to the United Nations Framework Convention on Climate Change. What steps will USTR take to insure that American intellectual property rights continue to be protected?

A: I agree that ensuring strong intellectual property protection is a top priority. Because of American innovation and creativity, IP-intensive industries give the United States a strong comparative advantage. In times of economic challenge, U.S. industries must be able to continue to create jobs and opportunities for economic growth. Securing and enforcing commitments from our trading partners for strong and effective protection for intellectual property is more important than ever. The Administration places a high priority on enforcement in general, and IP issues are no exception. USTR will continue to monitor IPR protection and enforcement through its annual Special 301 Report, which was recently released. USTR will also pursue other opportunities to make concerns to our trading partners clear. If confirmed, I look forward to working with you to ensure that the Administration has a full range of tools with which to protect American intellectual property rights.

Questions from Senator SnoweQuestion 1:

Ms. Sapiro, throughout the quarter-century-long softwood lumber dispute, I have consistently defended the trade rights of Maine lumber producers and their workers against artificially underpriced Canadian imports, most recently against Canada's numerous violations of the 2006 Softwood Lumber Agreement. Ensuring Canadian compliance with the pact is essential to Maine's mills, all of which—about 25 in total-- have either shut down indefinitely or greatly scaled back production in the past year. These mills—which are already struggling with the lowest demand for softwood lumber in decades— must simultaneously deal with a deliberate effort by certain Canadian provinces to circumvent the agreement with new subsidies and reduced stumpage fees.

Thankfully, a certain degree of credibility was restored to the agreement in April, when Ambassador Kirk commendably raised tariffs—as I had urged him to do-- on Canadian lumber following Ottawa's failure to comply with an arbitration ruling ordering it to collect \$55 million in export taxes from producers in certain provinces.

Despite that positive development, however, western Canadian provinces continue to subvert the agreement to a much larger degree by flooding the market with standard quality lumber cut from supposedly low-quality "Grade-4" logs provided to Canadian mills by the provincial government for next to nothing. In the interior of British Columbia alone, the number of such logs has increased eight-fold! There is considerable evidence to suggest that provincial governments are even allowing Canadian lumber producers to artificially damage higher-grade logs by needlessly heating and cracking them in order to qualify as low-cost Grade 4 lumber, but still cutting those logs into marketable amounts of standard-quality lumber at rock-bottom prices, pricing out U.S. producers entirely.

May I have your assurance that, if confirmed as the Deputy USTR responsible for our trade relationship with Canada, you will formulate and communicate to me and other interested legislators a plan for enforcement action against this log misgrading practice and other Softwood Lumber Agreement compliance issues without delay?

A: If confirmed, I will continue the strong efforts Ambassador Kirk has taken to ensure compliance, working with the Canadians where possible and pursuing dispute resolution when necessary. I discussed the importance of the SLA and grading concerns during consultations with your staff in preparation for my hearing. USTR has already held a series of meetings with key stakeholders regarding implementation of the SLA, and British Columbia's lumber grading practices were identified as a major issue. There will be several opportunities to discuss these concerns with Canada over the next few weeks, including meetings of the technical working groups of the Softwood Lumber Committee and a meeting of the Committee. In addition, on July 20-24, there will be an arbitration hearing before the LCIA on circumvention. I look forward to the chance to work with you to ensure that the SLA is vigilantly enforced and would be pleased to update you on USTR's enforcement efforts at your convenience.

Questions from Senator Mike Crapo

Question 1:

One of the biggest disputes you will face in your position at USTR is the cross-border dispute with Canada regarding its low-priced exports of subsidized softwood lumber to the United States. In the United States, all lumber producers must pay market value for their input in the form of logs and timber. By contrast, Canada subsidizes its lumber industry by providing noncompetitive, long-term arrangements, allowing the industry access to timber at an artificially low price. I am concerned that these programs give Canadian lumber producers an unfair competitive advantage, which enables them to sell their subsidized and dumped products in the U.S. market, which harms American lumber manufacturers, workers, and communities, as well as forest landowners.

As you know, the Softwood Lumber Agreement negotiated between the United States and Canada in 2006 was intended to level the playing field. Unfortunately, Canada continues to violate several key components of the agreement. One of Canada's breaches was recently confirmed by the London Court of International Arbitration, the mechanism provided for under the agreement to resolve disputes. I commend the Administration's hard work to achieve this victory and the subsequent enforcement steps it took when Canada failed to implement the remedy prescribed by the Court.

The United States should build on the credibility that these actions have reinstated to this trade agreement and swiftly address remaining areas where Canada is failing to honor its commitments. Given the violations that are currently ongoing, will you ensure that the United States fully enforces the terms of the U.S.-Canada Softwood Lumber Agreement by initiating arbitrations under the agreement to resolve Canada's ongoing and harmful breaches? Please provide me within 30 days USTR's plan of action to enforce the terms of this trade agreement.

A: If confirmed, I will continue the strong efforts Ambassador Kirk has taken to ensure compliance with the SLA, working with the Canadians where possible and pursuing dispute resolution when necessary. I note that there will be several opportunities to discuss concerns with Canada over the next few weeks, including meetings of the technical working groups of the Softwood Lumber Committee and a meeting of the Committee. In addition, on July 20-24 there will be an arbitration hearing before the LCIA on circumvention. I look forward to the chance to work with you to ensure that the SLA is vigorously enforced and would be pleased to update you on USTR's enforcement efforts at your convenience.

Questions from Senator Enzi

Question #1:

Ms. Sapiro, you have extensive experience in negotiation which will serve you well in the responsibilities of your nominated role at USTR. Congress enacted a Country of Origin Labeling law in the 2008 Farm Bill that took particular care to ensure that it would not conflict with our existing trade obligations. If confirmed, what efforts will you make to ensure that the implementation of COOL, as Congress intended, is not hindered by challenges from the Canadian and Mexican governments?

A: If confirmed, I will work with Ambassador Kirk in an effort to resolve the COOL disputes brought by Canada and Mexico and avoid WTO litigation, while implementing the requirements of the COOL statute. Should Canada and Mexico choose to move the disputes to the panel phase, I will work with USTR staff to ensure that the U.S. Government defends COOL before the WTO.

Opening Statement of Kim N. Wallace
Nominee for Assistant Secretary for Legislative Affairs at the Treasury Department
United States Senate Committee on Finance
June 5, 2009

Remarks as Prepared for Delivery

Thank you Chairman Baucus, Senator Grassley, and members of the Senate Finance Committee, for the opportunity to appear before you today. I am honored to have been nominated by President Obama to serve as Treasury assistant secretary for legislative affairs. I am grateful to Secretary Geithner for recommending me to the President.

Before I begin, I would like to briefly introduce my family. My wife, Robin Vink, is my life partner of more than two decades; this year we celebrate our twenty-year anniversary on the same date that the 1990 Budget Agreement was passed by the Senate. Our son, Harrison, is a rising senior at Maret School in the District and enjoys his time on the varsity basketball and lacrosse teams as a three-year starter almost as much as he relishes the post-secondary school selection process. Our daughter, Ava, attends the Communications Arts Program at Blair High School in Montgomery County. All three are a constant source of support to me and contribute in unique ways to our family.

If approved by this Committee and confirmed by the Senate, I know that their constant support and guidance will continue to enlighten my thoughts and actions as I do all I can to help President Obama and Secretary Geithner revitalize the economy and stabilize our financial markets.

Senators, as you know, the Treasury Department and this Committee work closely together on a range of important topics. The success of the priorities of this Congress and of the Administration on crucial issues facing our nation require a seamless communication between Committee members, staff, and Treasury officials. If confirmed, I pledge to you my unwavering attention to ensuring that this Committee and the Treasury Department have regular and open contact.

If confirmed by the Senate, I would be honored to begin my third phase of public service. As a graduate of the then Government program at the University of Texas at Austin, then state Senator, now U.S. Congressman Lloyd Doggett hired me as a junior analyst. I also had the pleasure of working in the Texas Office of State-Federal Relations, responsible for communicating federal policy developments in the areas of banking, employment, and education to relevant state agencies and legislators. My federal government service began in 1986, as the Function 500 analyst for Senate Budget Committee Chairman Lawton Chiles. I departed public service in 1994 after working almost five years for then Senate Majority Leader George J. Mitchell as a member of his fiscal policy staff.

My state and federal public service taught me the importance of translating policy actions to various constituencies who in one way or another would be affected by the decisions of elected officials. If confirmed, I look forward to applying these lessons, and those learned as a private sector manager of research teams, to the role for which you are considering me.

The challenges and opportunities facing our country will test policymakers to design and implement ideas that address near-term conditions but to do so in a manner that have enduring, constructive implications for generations to come. I look forward to contributing to this work should the Senate choose to confirm me.

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

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Kim Nolan Wallace
2. Position to which nominated:
Treasury Department Assistant Secretary for Legislative Affairs
3. Date of nomination:
March 17, 2009
4. Address: (List current residence, office, and mailing addresses.)
Home:
Office:
5. Date and place of birth:
January 15, 1958; Newburgh, NY
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.)

Oliver Wendell Holmes high school, 1973-1976; 1976
 St. Mary's University (San Antonio), 1976-1977
 The University of Texas at Austin, 1977-1982, BA Government, 1982
 Johns Hopkins University, 1992-1996; MS Business, 1996

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.)

Texas State Senate; legislative analyst, Senator Lloyd Doggett, 1982-1984
 Texas Office of State-Federal Relations, Washington, DC; analyst, 1984-1986
 US Senate, Committee on the Budget, analyst, 1986-1989
 US Senate, Democratic Policy Committee, analyst, 1989-1990
 US Senate, Office of the Majority Leader, legislative aide (fiscal), 1990-1994
 Lehman Brothers, Washington Research Group, analyst, 1994-1999
 Lehman Brothers, Washington Research Group, group head, 1999-2008
 Barclays Capital, Washington Research Group, group head, 2008-2009
 US Department of the Treasury, counselor to the Secretary

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.)

NA

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

NONE

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

Member, advisory committee, POSSE foundation, DC (2005-2008)

13. Political affiliations and activities:

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

NA

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

NA

- 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.

2008 cycle: \$2300, Sen. Barack Obama; \$2300, Sen. Hillary Clinton; \$1000 Mark Warner; \$250, Jim Martin. 2006 cycle: \$1000, Ben Cardin; \$500, Lloyd Doggett; \$250 Aaron Klein. 2004 cycle: \$1500, John Kerry; \$1000, Bob Graham; \$1500, Sen. Tom Daschle; \$500, Lloyd Doggett. 2002 cycle: \$1500 Sen. Paul Sarbanes. 2000 cycle: \$1500 VP Al Gore; \$500 Lloyd Doggett.

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.)

1976, full academic scholarship, St. Mary's University, San Antonio
1996-2008, institutional Investor All-American Research team (all but 1999, 2003)

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

I wrote, contributed to, and/or edited almost every issue of Lehman's or Barclay's "Washington Weekly" from May 1994 through January 9, 2009.

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

NA

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

My interest in governance began in 6th grade. I consider that my work and study since then help prepare to execute the demands of the position for which I've been nominated. During my five years as an undergraduate at the University of Texas, I was enrolled a full year in the Business School and transferred back to the Government School. In between, I took off a year from school and helped manage a small business. I pursued a graduate degree in business because the subject matter has always appealed to me and because I thought it would round out my view of how large organizations influence outcomes for a range of stakeholders. A combined 12 years in public policy have afforded me personal experiences in policy making and its consequences. The nearly 15 years I spent working for capital markets participants allowed me to understand more acutely the nexus between public policies, markets, and economies.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

Yes

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No

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

Yes

C. POTENTIAL CONFLICTS OF INTEREST

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

I have agreed to place a partnership interest in a trust for adult siblings living in Texas. Neither I nor my children or spouse will have any interest in this partnership, my brothers and/or their heirs will be sole owners.

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.

NA

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.

NA

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

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I will divest my holdings in the Lehman Brothers Partnership Account 2000/2001 and the Lehman Brothers Loan Opportunity Limited Partnership within 90 days of my confirmation by placing these holdings in an irrevocable trust for two of my siblings. I will not be the trustee for this irrevocable trust. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of these entities until I have divested

them, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I worked for Lehman Brothers Holdings, Inc. until September 2008. For a period of one year from the date of my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which Lehman Brothers Holdings, Inc., is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

In addition, I will continue to participate in Lehman's defined benefit pension plan, which is currently under consideration by the Pension Benefit Guaranty Corporation. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of either Lehman Brothers Holdings, Inc., the Pension Benefit Guaranty Corporation, or any other entity that may assume this responsibility to provide this contractual benefit, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I am no longer employed with Barclays, P.L.C. (the entity that purchased my former employer Lehman Brothers Holdings, Inc.). For a period of one year from the date of my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which Barclay's is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

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

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

D. LEGAL AND OTHER MATTERS

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

No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

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.

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

Questions for the Record – Kim N. WallaceQuestions from Senator Grassley:

1. What will you do to ensure that, as Ranking Member of the Finance Committee, my staff and I are kept up to date on activities at the Treasury department?

I believe that the success of this Congress and of the Administration in addressing crucial issues facing our nation requires a seamless communication between Committee members, staff and Treasury. If confirmed, I am committed to ensuring that the Treasury Department has regular and open contact with you and your staff, as well as with all members of the Finance Committee and their staff. I am open to suggestions from you as to the most efficient method to fulfill his request, and I am committed to ensuring that Treasury's legislative affairs staff have a regular dialogue with the Ranking Member's staff on Treasury department activities pertinent to the broad jurisdiction of the Finance Committee. A process convenient to your staff and the staff of all members of the Finance Committee that keeps you well abreast of the Treasury Department's activities would serve both of our interests.

2. In the past few months there have been several instances, particular involving high profile presidential nominees, where the Finance Committee has reached a deal concerning the release of information, only to find that the information was leaked ahead of time in violation of the deal. Do you promise that you and your staff will uphold any agreements made with me or my staff?

Should I be confirmed, I promise that I and the Treasury legislative affairs staff will work arduously to protect agreements made with the Ranking Members or his staff.

3. Do you commit to respond quickly and completely to any requests made by myself or my staff for information?

Yes, I believe that the success of the priorities of this Congress and of the Administration require a seamless communication between Committee members, staff and the Treasury Department. Congressional requests play an important role in our communication, and therefore, should I be confirmed, I commit to timely and complete responses to requests from the Ranking Member or his staff.

Question from Senator Crapo:

1. Can I have your assurances that you will look into making sure that the Federal Home Loan Banks are sufficiently strong to continue to achieve their core mission of providing liquidity and supporting community banks and thrifts?

The Federal Home Loan Banks have played an important role of providing a stable source of funds to their member institutions throughout the recent disruptions in credit markets. The Federal Home Loan Banks have access to a credit facility that the Treasury Department established under the Housing and Economic Recovery Act of 2008. The Treasury Department works closely with the Federal Housing Finance Administration in evaluating the financial condition of the Federal Home Loan Banks. If confirmed, I will look forward to working with you and Treasury Department staff on this matter.

COMMUNICATION

Prepared Statement of

Paul Strauss

United States Senator

District of Columbia (Shadow)

before the

United States Senate Committee on Finance

Regarding

**The Hearing to Examine the Nomination of Miriam E. Sapiro,
of the District of Columbia, to be a Deputy United States Trade
Representative, with the Rank of Ambassador**

10:00 a.m.- June 5, 2009

Dirksen Senate Office Building

Rm. 215

Prepared statement of Paul Strauss, United States Senator District of Columbia (Shadow) before the United States Senate Committee on Finance regarding the hearing to examine the nomination of Miriam E. Sapiro, of the District of Columbia, to be a Deputy United States Trade Representative, with the rank of Ambassador

Chairman Baucus, and members of the Senate Committee on Finance, I am Paul Strauss, a United States Senator elected by the voters of the District of Columbia. I am pleased to submit this statement for the record today in strong support for President Obama's nomination of Miriam Sapiro to be Deputy United States Trade Representative (DUSTR). As I have the privilege of being personally acquainted with the nominee, I would like to take this opportunity to address her specific qualifications.

Ms. Sapiro's breadth of experience in both the public and private sector leaves her well prepared for the role as DUSTR. In this role she will be responsible for U.S. trade negotiations and enforcement around the world. She is fully capable of leading U.S. global initiatives on trade and development, labor and the environment. The DUSTR plays a vital role, with the same diplomatic status as a full U.S. ambassador. We are fortunate to have such a qualified nominee.

She served her country under three U.S. Presidents. In her capacity as Special Assistant to President William Jefferson Clinton and Counselor for Southeast European Stabilization, she was responsible for strengthening economic development, democracy and security throughout Southeast Europe. Prior to this, Ms. Sapiro was Director for European Affairs at the National Security Council. She

also worked at the U.S. State Department on the Secretary of State's Policy Planning Staff and in the Office of the Legal Adviser.

Ms. Sapiro's exceptional educational record includes an undergraduate degree from Williams College, graduate work on a Rotary Fellowship at St Anthony's College, Oxford, and a JD from New York University Law School.

After more than 10 years of public service, Ms. Sapiro left to join VeriSign, Inc. as Director of International Policy. She directed relations with the international non-profit, Internet Cooperation for Assigned Names Numbers (ICANN), as well as the World Trade Organization and International Telecommunications Union. She has worked on a range of technology policy issues involving European and Asian governments, including trade, privacy, security and law enforcement. She currently serves as the founder and Principal of Summit Strategies International, LLC.

Ms. Sapiro is a recognized authority on e-commerce and Internet policy issues. Her published articles on international dispute settlement; European security and arms export controls are widely read and cited. She has been an active member of the Council on Foreign Relations, the Atlantic Council, the American Society of International Law, the DC Bar and the American Bar Association. She is on the Advisory Board of the Global Internet Policy Initiative, which promotes development of the Internet in emerging markets.

She served as a key adviser to President Obama during the campaign on domestic and foreign policy, as well as on legal voting issues. A proud moment in her life was her opportunity to represent the District of Columbia at the Democratic National

Convention as a member of the DNC Credentials Committee. I was also proud to work with her on behalf of D.C. issues at that historic convention.

My association with her stems not only from our political work, but also through our relationship as neighbors in D.C.'s Ward 3 community. She is a founding member of Forest Hills Neighborhood Alliance and is a current member of D.C. vote, an organization that supports D.C. voting rights. She was also co-chair of the D.C. Bar (International Law Section). Ms Sapiro and I have worked cooperatively to fight against the disenfranchisement of D.C. residents and to advance the interests of our community. D.C. is proud to have one of our own leading residents be nominated to such a prestigious position.

Her qualifications plus my personal experience with her allow me to express my wholehearted support for her nomination. I have found her to be a smart, dedicated woman of high integrity. I am confident in her ability to effectively represent us in important trade negotiations in regions across the world.

In short, Miriam Sapiro has all of the positive attributes of a successful Presidential nominee, save one - a voting *home-state* Senator, who could champion her nomination before this body. In that spirit I ask you to extend to me a degree of Senatorial courtesy and cast your vote in support of Ms. Sapiro on her behalf and on the behalf of the residents of the District of Columbia who do not have anyone in this body that can cast the vote for them.

In closing let me also thank Mr. Kevin Loane of my staff for his assistance in the preparation of this statement for the record. I would, of course, be happy to answer any questions that you or your staff may have.

