United States Senate Committee on Finance

Hearing to Consider the Pending Nominations of Lily Lawrence Batchelder to be an Assistant Secretary of the Treasury, Benjamin Harris to be an Assistant Secretary of the Treasury, J. Nellie Liang to be an Under Secretary of the Treasury, and Jonathan Davidson to be Deputy Under Secretary of the Treasury

Tuesday, May 25, 2021

Questions for the Record

Majority

Senator Cardin (D-MD)

Question for Lily Batchelder, nominee to be Assistant Secretary of the Treasury for Tax Policy

On May 8, 2021, the Internal Revenue Service (IRS) issued Notice 2021-31, providing guidance on temporary premium assistance for COBRA continuation coverage enacted as part of the American Rescue Plan Act of 2021.

Notice 2021-31 included guidance in the form of 86 Questions and Answers. My question for the record relates to Question 62, reprinted below. The issue raised in Question 62 is of significant concern to me. While I appreciate the Treasury Department and IRS indicate they need additional time to address the issue, the COBRA subsidy is available for a time-limited period and guidance for this instance is required to ensure the benefit of subsidized COBRA is realized consistent with Congressional intent.

There is some urgency to resolving this issue, so I would like to know more than that the Department and IRS are continuing to consider the issue. I want to make sure people in the situation captured by Question 62 receive the benefit of the COBRA subsidy. Therefore, please tell me the date by which we can expect resolution of the issue in Question 62 and the publication of additional guidance to allow for full implementation of the COBRA subsidy.

Q-62. In the case of an insured plan subject solely to State law requiring the insurer to provide continuation coverage, is the employer eligible to take the premium assistance credit directly if the employer pays the full premium to the insurer?

A-62. No. Under § 6432(b)(3), in the case of an insured plan subject solely to State law with respect to the requirement to provide continuation coverage, the premium payee is the insurer providing the coverage under the group health plan. The Treasury Department and the IRS are aware that this requirement may create administrative issues for certain Small Business Health Options Program (SHOP) exchanges that aggregate premiums paid by participating employers or where State rules require full payment of premiums by the employer; the Treasury Department and the IRS are continuing to consider this issue.

Answer: Currently, I am not privy to any discussions about guidance or potential timelines. If confirmed, I am committed to raising the issue promptly with the Office of Tax Policy (OTP) and IRS staff and responding as soon as practicable.

Senator Warren (D-MA)

Questions for the Record for Lily Batchelder

Question 1
Strengthening U.S. tax policies and setting high international standards on taxation are important pieces of getting giant corporations to pay their fair share. President Biden has put forward a number of important tax proposals, including raising the corporate tax rate to 28% and the global intangible low-tax income (GILTI) minimum tax to 21%. The Treasury Department has also committed to negotiating a global minimum tax at the OECD; however, recently it put forward a proposal for a rate of "at least 15%," which is much lower than proposed corporate tax and GILTI rates. Treasury described 15% as "a floor" and stated that "discussion should continue to be ambitious and push that rate higher."[1]

a. *Will you, if confirmed, push for a global minimum tax rate that is higher than 15%? Please explain why or why not.*

Answer: Yes, if confirmed, I would push for a higher rate. I believe it is important to stop the race to the bottom on corporate tax rates.

b. *If you will push for a global minimum tax rate that is higher than 15%, how will you accomplish that, given Treasury's expressed openness to a 15% rate and other obstacles?*

Answer: It is my understanding that the Administration's proposal was an opening bid to secure momentum toward a global minimum tax, and that the Administration's SHIELD proposal would work as an incentive to push the rate higher.

Question 2
In 2018, the Trump administration expanded a requirement for a nonsensical cost-benefit analysis of tax regulations by the Office of Information and Regulatory Affairs (OIRA). OIRA's regulatory cost-benefit analysis framework does not take into account revenue impacts as a cost or benefit, and discounts changes in the distribution of the tax burden, which should be two primary considerations in evaluation of tax regulations.[2]

a. *Do you agree that OIRA's framework runs contrary to the Biden administration's goals of raising revenue to pay for crucial infrastructure investments and doing so in an equitable way? Please explain why or why not.*
b. *If you do agree that OIRA's framework conflicts with Biden administration goals, how will you, if confirmed, prevent OIRA review from undermining implementation of the administration's tax reforms?*

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[1] Department of the Treasury, "READOUT: U.S. Department of the Treasury's Office of Tax Policy Meetings", May 20, 2021, https://home.treasury.gov/news/press-releases/jy0189.
[2] Greg Leiserson, "Cost-Benefit Analysis of U.S. Tax Regulations Has Failed. What Should Come Next?" Washington Center for Equitable Growth, September 20, 2020, https://equitablegrowth.org/research-paper/cost-benefit-analysis-of-u-s-tax-regulations-has-failed-what-should-come-next/.

Answer: President Biden has repeatedly emphasized his strong commitment to infrastructure investment and to funding that investment in fair and equitable ways as described in the American Jobs Plan. The post-enactment interpretation of legislation via tax regulations can be a critical factor in achieving the intended goals of legislation and whether or not projected revenues are raised. I do not believe anyone in the Administration, including at Treasury or OMB, would be interested in imposing requirements or processes that did not advance the President's agenda or add value to the rule-making process. If confirmed I would be supportive of revisiting the 2018 MOA between Treasury and OIRA and considering whether there is a more appropriate framework for evaluating tax regulations, while still preserving OIRA's important role and input in the overall rule-making process. I would be committed to gathering input from a wide variety of stakeholders as part of any such process.

Question 3

The tax system raises many concerns with respect to racial equity and yet does not provide data based on race and ethnicity, making it more difficult for us to understand and address the ways in which our tax code and enforcement are exacerbating inequities. We have yet to see any results from Treasury based on the ongoing racial equity assessment or new Equitable Data Working Group, on which you will serve, if confirmed.

Will you commit to a vigorous racial equity review of all tax policies and practices, including a review of disproportionate IRS auditing of low-income, Black taxpayers and use of predatory private debt collectors, again with a disproportionate impact on low-income, Black Americans? Please explain why or why not.

Answer: My understanding is that the Treasury Department, under the leadership and guidance of Deputy Secretary Wally Adeyemo, is undertaking an examination at Treasury and Treasury agencies akin to what you have outlined. If confirmed, I look forward to working with Deputy Secretary Adeyemo on ensuring a thorough review of policies and Treasury practices is conducting through a racial equity lens.

Question 4

The Earned Income Tax Credit (EITC) is one of the government's most effective tools to fight poverty, increase financial stability, and promote work among low-income workers and their families.[3] Despite the EITC's importance for supporting working families and their economic mobility, tax refunds received by EITC recipients who have defaulted on their federal student loans are subject to offset. Borrower advocates have documented the harm that EITC offsets cause financially distressed student loan borrowers, including impairing their ability to get and keep jobs and pay for basic necessities, and exacerbating housing instability.[4] The Treasury Department, however, does not provide public data on the amount and value of EITC refunds that are seized from borrowers each year.

a. *Do you believe the EITC should be exempt from seizure through the Treasury Offset Program? Please explain why or why not.*

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[3] Center on Budget and Policy Priorities, "Policy Basics: The Earned Income Tax Credit," December 10, 2019, https://www.cbpp.org/research/federal-tax/the-earned-income-tax-credit.

[4] Persis Yu, "Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic," National Consumer Law Center, July 2020, https://www.nclc.org/images/pdf/student_loans/voices-of-despair-seizing-eitc-in-pandemic.pdf.

b. *Will you commit to analyzing and releasing data on the composition of tax refund offsets to identify how many borrowers have had their EITC seized through the Treasury Offset Program in recent years?*

Answer: My understanding is that this analysis would largely need to be handled by the IRS. If confirmed, I am committed to requesting a briefing by the relevant offices to better understand the issue and working with them to respond.

Question 5

The American Rescue Plan that President Biden signed into law in March 2021 includes a provision that excludes from income any student loan debt that is modified or discharged beginning December 31, 2020 until January 1, 2026, including private and institutional loans.[5] The average student borrower who earns $50,000 in income would save approximately $2,200 in taxes for every $10,000 of forgiven student loans.[6]

While Congress has provided this crucial relief for student loan borrowers through 2026, Treasury can extend it indefinitely by issuing a Revenue Procedure to ensure that borrowers will not be taxed for cancelled debt. This Rev. Proc. could rely on the general welfare exclusion, which grants the IRS the clear authority to conclude "that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in a recipient's gross income."[7] There is recent precedent for the IRS to issue Rev. Procs. to shield federal student loan borrowers from tax liabilities. In 2015, the Obama-Biden IRS issued Rev. Proc. 2015-57, which was the first in a series of Rev. Procs. that ensured that student loans canceled by the Department of Education under borrower defense to repayment would not result in a tax liability for borrowers.[8] A similar rationale could be incorporated into a proposed Rev. Proc. regarding IDR forgiveness or administrative debt cancellation.

a. *What steps will you take to ensure that the implementation of the American Rescue Plan provision protects all student borrowers, including those with private loans, whose debt is fully or partially forgiven from being saddled with thousands of dollars in surprise taxes?*

b. *Will you commit to issuing a Rev. Proc. to indefinitely extend this relief for student borrowers beyond 2026?*

Answer: I share your concern regarding the heavy student loan debt burdens that many Americans face. While a long-term, comprehensive legislative solution to the problems associated with both borrowing and discharge in the student loan context would be optimal, if confirmed I would be open to using all of the tools at the disposal of Treasury and the IRS to ensure that borrowers do not face unexpected tax bills.

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[5] Office of Senator Elizabeth Warren, "Warren, Menendez Bill to Make Student Loan Relief Tax-Free Passes as Part of COVID Relief Package, Clearing a Hurdle for Broad Loan Forgiveness," March 6, 2021, https://www.warren.senate.gov/newsroom/press-releases/warren-menendez-bill-to-make-student-loan-relief-tax-free-passes-as-part-of-covid-relief-package-clearing-a-hurdle-for-broad-loan-forgiveness.

[6] *Id.*

[7] For example, Rev. Rul. 2003-12, https://www.irs.gov/pub/irs-drop/rr-03-12.pdf.

[8] Rev. Proc. 2015-57, https://www.irs.gov/pub/irs-drop/rp-15-57.pdf.

Questions for the Record for Nellie Liang
Senator Warren

Question 1
The Treasury Offset Program (TOP) collects past-due federal nontax debt and state tax and nontax debt by offsetting federal payments to individuals. Under current law, $750 in monthly Social Security benefits is exempted from administrative offset, above which 15% of benefits may be garnished.[9] The intent of the exemption is to ensure that offsets do not leave beneficiaries without a sufficient level of benefits to ensure a basic standard of living. Social Security benefits represent about 33% of the income of elderly Americans, and 45% of single elderly beneficiaries rely on Social Security for more than 90% of their income.[10]

In 1998, the year Treasury regulations implemented the $750 threshold, the threshold constituted 112% of the federal poverty line for a single adult.[11] However, because this threshold was not adjusted for cost of living, an increasing number of seniors experiencing garnishment are left with monthly benefits well below the poverty line. According to a 2016 GAO report, the $750 threshold represented just 76% percent of the 2016 poverty guideline.[12] Among older Americans whose Social Security benefits were offset after defaulting on their federal student loans, 64% had benefits below the poverty line in fiscal year 2015.[13] Moreover, as GAO notes, "a growing number of these older borrowers already received Social Security benefits below the poverty guideline before offsets further reduced their incomes."[14]

a. *Do you believe that $750 a month is a sufficient amount for Social Security beneficiaries who are already struggling to pay their debts to live on? Please explain why or why not.*
b. *As Under Secretary for Domestic Finance, will you commit to revising Treasury regulations to raise the offset threshold for Social Security and other federal benefit payments to at least 150% of the federal poverty line and adjust the threshold for cost of living, before the end of the year?*
c. *Will you commit to preserving the 15% withholding percentage for Social Security benefits and other federal payments above the offset threshold amount?*
d. *Do you believe Social Security benefits should be entirely exempted from administrative offset? Please explain why or why not.*

Answer: I understand that Treasury has recently begun a review of its offset program to determine whether additional regulatory or statutory changes could make the system more equitable and to determine what additional protections might assist low-income debtors. If I am confirmed, I look forward to working with others at Treasury and Congress on this issue.

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[9] 31 CFR§285.4
[10] Social Security Administration, "Fact Sheet: Social Security," 2021, https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf.
[11] GAO, "Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief," GAO-17-45, December 2016, https://www.gao.gov/assets/gao-17-45.pdf.
[12] *Id.*
[13] *Id.*
[14] *Id.*

Question 2
Student loan debt is crippling millions of families across the country – especially those borrowers who have defaulted on their loans. Borrowers who have not made a loan payment for more than 270 days are considered to be in default and can be subject to offset through the Treasury Offset Program and Administrative Wage Garnishment program.[15] As research has shown, these programs may seize hundreds or thousands of dollars more from student loan borrowers than they would have been required to pay under an income driven repayment (IDR) plan, which requires borrowers pay a percent of their adjusted gross income above 150% of the federal poverty line.[16]

Will you commit to revising the offset formulas under these programs to ensure that student loan borrowers pay no more than would have been required under an IDR plan?

> **Answer:** If confirmed, I look forward to engaging with you and your office on issues related to the offset program. Treasury collects student loan debts through the Treasury Offset Program (TOP) as directed by the Department of Education and as required by statute but does not collect these debts through administrative wage garnishment or use other tools to collect student loan debt. TOP is a collection tool and referring creditor agencies (not Treasury) determine when and to what extent they are required to use TOP. If the Department of Education determines that a debtor is not eligible for offset due to financial hardship (or for some other reason) or if Education determines that the debtor qualifies for a reduced offset, Treasury will implement Education's direction.

Question 3
The Earned Income Tax Credit (EITC) is one of the government's most effective tools to fight poverty, increase financial stability, and promote work among low-income workers and their families.[17] Despite the EITC's importance for supporting working families and their economic mobility, tax refunds received by EITC recipients who have defaulted on their federal student loans are subject to offset. Borrower advocates have documented the harm that EITC offsets cause financially distressed student loan borrowers, including impairing their ability to get and keep jobs and pay for basic necessities, and exacerbating housing instability.[18] The Treasury Department, however, does not provide public data on the amount and value of EITC refunds that are seized from borrowers each year.

a. *Do you believe the EITC should be exempt from seizure through the Treasury Offset Program? Please explain why or why not.*
b. *Will you commit to analyzing and releasing data on the composition of tax refund offsets to identify how many borrowers have had their EITC seized through the Treasury Offset Program in recent years?*

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[15] Federal Student Aid, "Student Loan Delinquency and Default," https://studentaid.gov/manage-loans/default.
[16] Persis Yu, "Pushed into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans," National Consumer Law Center, May 2017, https://www.nclc.org/images/pdf/student_loans/student-loan-collections-threaten-fin-sec.pdf.
[17] Center on Budget and Policy Priorities, "Policy Basics: The Earned Income Tax Credit," December 10, 2019, https://www.cbpp.org/research/federal-tax/the-earned-income-tax-credit.
[18] Persis Yu, "Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic," National Consumer Law Center, July 2020, https://www.nclc.org/images/pdf/student_loans/voices-of-despair-seizing-eitc-in-pandemic.pdf.

Answer: My understanding is that this analysis would largely need to be handled by the IRS. If confirmed, I am committed to requesting a briefing by the relevant offices to better understand the issue.

Question 4

I have long been concerned about the practice of sending defrauded borrowers who are eligible for a student loan discharge under Borrower Defense to Treasury for debt collections and administrative offset. 31 U.S.C. 6402(d) authorizes the offset of any payments due to an individual against a "past due, legally enforceable debt."[19] In regulations and in a memorandum of understanding between Treasury and Education, the Secretary of Education may only certify debts that it has affirmatively determined are "legally enforceable." The Department of Education has previously argued that even when it is aware that a delinquent student loan may be eligible for discharge, and even when a borrower has filed a borrower defense application, it may still refer the debt to Treasury for collection by offset.[20]

Treasury may define the term "legally enforceable" to clarify that Education cannot affirmatively determine a debt is legally enforceable where it is aware of actual or potential grounds for cancellation, whether they have been asserted by the borrower or not. Will you commit to do so?

Answer: Treasury services many types of debts for many federal and state agencies. The referring creditor agency is responsible for making decisions regarding the validity or enforceability of the debt. Different rules apply to the many programs on whose behalf Treasury collects debt, and Treasury does not have the programmatic expertise or the factual information needed to make appropriate decisions on behalf of the referring agencies. Federal agencies generally can determine whether a debt is legally enforceable or can determine whether it can suspend debt collection efforts, such as when a debtor has requested a waiver or review of the debt.

Question 5

Last Congress, I introduced S. 2155, the Stop Wall Street Looting Act, to reform the private equity industry and end abusive leveraged buyouts, and I have continued my oversight of this industry, particularly throughout the pandemic.[21] The private equity industry, which "is behind many of the understaffed and underprepared nursing homes through which COVID-19 tore, the surprise medical bills that will greet those lucky enough to make it home, and the evictions sending people out onto the streets amidst a global pandemic," operates through aggressive

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[19] 31 CFR§6402

[20] Order on Motions for Judgment, Darnelle E. Williams and Yessenia M. Taveras v. Elisabeth Devos, October 24, 2018, https://predatorystudentlending.org/wp-content/uploads/2018/10/Ruling_Williams-v.-DeVos_10.24.18.pdf.

[21] Office of Senator Warren, "Warren, Baldwin, Brown, Pocan, Jayapal, Colleagues Unveil Bold Legislation to Fundamentally Reform the Private Equity Industry," July 18, 2019, https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-brown-pocan-jayapal-colleagues-unveil-bold-legislation-to-fundamentally-reform-the-private-equity-industry; Office of Senator Warren, "Warren to Private Equity Industry Lobbyists: Don't Exploit the COVID-19 Pandemic to Line the Pockets of the Wealthy at the Expense of Struggling Workers and Communities," press release, June 25, 2020, https://www.warren.senate.gov/oversight/letters/warren-to-private-equity-industry-lobbyists-dont-exploit-the-covid-19-pandemic-to-line-the-pockets-of-the-wealthy-at-the-expense-of-struggling-workers-and-communities..

financial engineering and extracting wealth from target companies, "exploiting tax loopholes and pushing tax planning to the breaking point."[22]

a. *Will you direct the Office of Capital Markets to review and report on the broader economic impact of private equity investments and their impacts on target companies, workers, and communities, as well as the tax and fee structures used by private equity funds?*
b. *Sec. 120 of the Dodd Frank Act allows the Financial Stability Oversight Council (FSOC) to issue recommendations to primary financial regulators "to apply new or heightened standards and safeguards" of financial activities that could create or increase the risk of significant liquidity, credit, or other problems speaking among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities." Do you believe that the private equity industry has created "significant liquidity, credit, or other problems" among low-income, minority, or underserved communities?*

Answer: The economic and tax issues associated with the private equity industry are important ones that warrant study. I share your concern that private equity buyouts can create high leverage for businesses and harm communities. If confirmed, I will look forward to working with you to evaluate these issues.

Question 6

In May 2020, the Federal Reserve, FDIC, and OCC issued a joint interim final rule (IFR) that allowed depository institutions to exclude U.S. Treasury securities and central bank reserves from the denominator of the Supplementary Leverage Ratio (SLR).[23] A month earlier, the Fed granted similar relief at the holding company level through a separate IFR.[24]

a. *Do you believe that either of the IFRs were appropriate?*

Answer: The Federal Reserve, FDIC and OCC adopted the IFRs in response to the rush for liquidity and safety in the early stages of the Covid-19 pandemic. The carveout was temporary and intended to increase the ability of banking organizations to provide liquidity, by offsetting the pressures on the SLR from Fed asset purchases and resulting increases in bank reserves.

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[22] American Prospect, "A Day One Agenda for Private Equity," Eleanor Eagan and Eileen Appelbaum, August 7, 2020, https://prospect.org/day-one-agenda/a-day-one-agenda-for-private-equity/; Private Equity Stakeholder Project, "Dividend Recapitalizations in Health Care: How Private Equity Raids Critical Health Care Infrastructure for Short Term Profit," October 20, 2020, https://pestakeholder.org/report/dividend-recapitalizations-in-health-care-how-private-equity-raids-critical-health-care-infrastructure-for-short-term-profit/.

[23] Board of Governors of the Federal Reserve System, "Regulators temporarily change the supplementary leverage ratio to increase banking organizations' ability to support credit to households and businesses in light of the coronavirus response," May 15, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200515a.htm.

[24] Board of Governors of the Federal Reserve System, "Federal Reserve Board announces temporary change to its supplementary leverage ratio rule to ease strains in the Treasury market resulting from the coronavirus and increase banking organizations' ability to provide credit to households and businesses" April 01, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200401a.htm

b. Do you support the inclusion of central bank reserves in the SLR denominator?

Answer: I understand that the Federal Reserve is studying and inviting public comment on possible modifications to the SLR. As the Fed has acknowledged, it is important that any changes to the SLR do not erode bank capital levels.

c. Do you support the inclusion of U.S. Treasuries in the SLR denominator?

Answer: I believe bank capital levels should not be eroded and that the SLR's function as a backstop to risk-weighted capital requirements should be maintained.

d. Do you believe that modifying the SLR is an appropriate response to address strains in the Treasury market?

Answer: As noted above, the Federal Reserve, FDIC and OCC adopted the IFRs in response to the rush for liquidity and safety in the early stages of the Covid-19 pandemic. The carveout was temporary and intended to increase the ability of banking organizations to provide liquidity, by offsetting the pressures on the SLR from Fed asset purchases and resulting increases in bank reserves.

e. Will you commit to not making any recommendations to the regulatory agencies that could result in a reduction in capital requirements?

Answer: Increases since the financial crisis in the quantity and quality of capital have significantly improved the safety and soundness of banking institutions and the stability of the U.S. financial system. I believe it is important not to erode bank capital levels.

Question 7

The Dodd-Frank Wall Street Reform and Consumer Protection Act established FSOC to identify risks to the financial system and eliminate expectations that the government will shield creditors or counterparties from potential losses.[25] FSOC has the ability to designate nonbank financial firms as Systemically Important Financial Institutions (SIFIs) that would be subject to enhanced prudential supervision by the Federal Reserve.[26]

a. Do you believe there are companies that exist today whose failure would pose a threat to the financial stability of the United States?
b. Do you believe that firms above a certain size threshold should be subject to automatic designation as SIFIs?
c. Please describe the advantages and disadvantages of using activities-based regulation to address financial stability risks in lieu of company-wide designations. Are there risks that can only be addressed by the former? Are there risks that can only be addressed by the latter?

[25] 12 U.S. Code § 5322
[26] 12 U.S. Code § 5323

Answer: Congress established FSOC to bring together the financial regulatory community to identify and respond to emerging threats to financial stability and to promote market discipline. FSOC should have the tools to protect our financial system from instability, whether arising from a single firm or the risky products or activities of an array of firms. The designation of individual nonbank financial companies for Federal Reserve supervision and enhanced prudential standards is one of the tools Congress provided to FSOC. The Dodd-Frank Wall Street Reform and Consumer Protection Act lists the criteria FSOC must consider in making any designation. If FSOC were to use this tool, it should do so in a manner that is transparent and accountable. Other tools may be more appropriate to address risks that stem not from one firm but from the products or activities of an array of firms. If confirmed, I will work closely with FSOC to identify, assess, and to respond to potential risks using whichever tools would be most efficient and effective given the nature of the risks.

Question 8

Last year, Ceres issued a report with recommendations for agencies to "protect[] the stability and competitiveness of the U.S. economy" due to the "need to recognize and act on climate change as a systemic risk."[27] The report argued that the "wide-ranging physical impacts" of climate change, "combined with expected transitions to a net-zero carbon economy and other socio-economic ripples, are likely to manifest in both cumulative and unexpected ways and present clear systemic risks to U.S. financial markets – and the broader economy."[28] The Commodity Futures Trading Commission (CFTC) also issued a report that stated that agencies and regulators "must recognize that climate change poses serious emerging risks to the U.S. financial system, and they should move urgently and decisively to measure, understand, and address these risks."[29]

Treasury has acknowledged that climate change poses financial risks to banks and the financial system alike.[30] Failing to account for this in bank capital requirements would fail to price in the cost of climate risk.

a. *Do you support integrating climate risks into bank capital requirements? Please explain why or why not.*
b. *Will you commit to working with the Federal Reserve and FSOC to integrate climate risk into bank capital requirements?*

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[27] Ceres, "Addressing Climate as a Systemic Risk: A call to action for U.S. financial regulators," June 1, 2020, https://www.ceres.org/resources/reports/addressing-climate-systemic-risk.

[28] *Id.*

[29] Commodity Futures Trading Commission, "Managing Climate Risk in the U.S. Financial System: Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission," report, September 2020, https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf; Office of Senator Warren, "Senator Warren Releases Statement on CFTC Report Concluding that 'Climate Change Poses a Major Risk to the Stability of the Financial System,'" press release, September 10, 2020, https://www.warren.senate.gov/newsroom/press-releases/senator-warren-releases-statement-on-cftc-report-concluding-that-climate-change-poses-a-major-risk-to-the-stability-of-the-financial-system.

[30] "Treasury Announces Coordinated Climate Policy Strategy with New Treasury Climate Hub and Climate Counselor," April 19, 2021, https://home.treasury.gov/news/press-releases/jy0134.

Answer: Climate change has already impacted the economy and the financial sector, with more frequent and severe natural disasters damaging homes, businesses, and entire communities. These impacts are expected to increase. In addition, the economic and financial transitions needed to place the economy on a sustainable path may involve additional financial risks. As a result, it is important that financial institutions measure, disclose, and manage the risks that climate change poses to their businesses. Financial regulators must also adjust their regulatory and supervisory approaches in response to new identified risks, to support safety and soundness and financial stability, consistent with their existing mandates.

Financial regulators have begun work in this area, and Secretary Yellen has identified climate-related financial risks as a priority for the work of the Financial Stability Oversight Council. Treasury is also actively engaged in implementing the Executive Order on Climate-Related Financial Risk, issued May 20, 2021, which calls for a number of steps to address climate-related risks, including the issuance of a report by FSOC on this topic. I support the assessment of climate-related financial risks by financial regulators, including work coordinated by FSOC, and steps to address identified vulnerabilities based on these assessments. It is critical that these assessments proceed in an expeditious and analytically sound manner.

Questions for the Record

Minority

Senator Crapo (R-ID), Ranking Member

Questions for Lily Batchelder

1. There have been repeated references made by the administration to individual taxpayers and corporations paying "their fair share." For example, an April Treasury document describing the Made in America Tax Plan often refers to fair share. From Treasury's document, however, it appears that the Plan envisions enactment of proposals that would merely move the country "Toward a Fairer Tax System."

   As a prospective adviser to the administration on tax policy, please define what constitutes a "fair share" and the appropriate measure to use to determine whether or not an individual is paying their fair share.

   a. Given your definition and measure, for tax year 2021, what is the fair share for a single filer on taxable income: up to $9.950; $9,951 to $40,525, $40,526 to $86,375, $86,376 to $164,925, $164,926 to $523,600, over $523,600?
   b. Please define what constitutes a "fair share" and the appropriate measure to use to determine whether or not a corporation is paying its fair share.
   c. Why do you believe that the Made in America Tax Plan proposes only to move "toward" a "fairer" tax system, thereby foregoing movement to a fully fair system and leaving fairness gains unfulfilled to remain on the table for future tax policy modifications?

      Answer: The United States exhibits relatively high levels of income and wealth inequality and low levels of intergenerational economic mobility compared to other high-income countries. This makes a progressive tax system especially important.

      A progressive tax system is one where tax rates rise with income, so that higher-income people pay a higher share of their income in tax than lower-income households. I support a more progressive tax system and one that taxes income from wealth more like income from work, as President Biden has proposed. It is worth noting that President Biden has committed to not raising taxes on anyone with income under $400,000.

2. The Made in America Tax Plan, outlined by Treasury in an April 2021 document, identifies a proposal of "Replacing fossil fuel subsidies with incentives for clean energy production." The Plan proposes to "remove subsidies for fossil fuel companies."
   a. Please identify your understanding of what subsidies the Plan would remove, and how they differ from like "subsidies" in place for other companies performing similar activities but not involving "fossil fuels."

b. If enacted, do you believe that the Plan would lead to higher gas prices at the pump in the near term, defined as the period 2022-2024?
c. If so, would you have any concern that such an effect would have disproportionate adverse effects on low- to middle-income workers whose expenditures on "fossil fuel" related consumables such as gasoline and heating fuel tend to be higher shares of their incomes than for upper earners?

Answer: I have not been privy to discussions within Treasury. Thus, my understanding of Treasury's Green Book proposals is identical to what was published in the Green Book. It describes these proposals under the heading "eliminate fossil fuel subsidies." I am not aware of studies finding a substantial effect on gas prices as a result of such changes.

3. You have been employed by New York University, which holds billions of dollars in endowment funds. Some of those funds have come from donations from people's wealth and estates. Your employer does not use all of its endowment funds to help students or researchers. Rather, it carries some of those funds forward, presumably to help ensure that resources can be made available for future students and researchers. That is, your employer builds dynastic wealth.

   Families in the United States wish to do the same, yet you seem to believe that bequest motives mainly show up as undue benefit to the "rich" or "ultra-rich." People wish to accumulate wealth over time, and they choose not to consume all the accumulation in their lifetimes so that future members of their family can benefit. While that seems like altruism to me, it apparently seems like some sort of undeserved dynasty building to you.

   Since New York University is building and accumulating dynastic wealth, from which you derive benefits, should Congress increase taxation of university endowments and use the proceeds to spend on what you and others may view as more worthy social investments?

   Answer: The taxation of large university endowments is a complex issue. As you suggest, not all of the benefits of large endowments flow to students from disadvantaged backgrounds. At the same time, universities may produce positive externalities, whether through basic research or increasing the next generation's human capital. As I understand it, President Biden has not proposed any changes to the taxation of endowments. If confirmed, I would look forward to working with Congress to address the issues that endowments raise, including through any legislative proposals in this space.

4. Your writing on inheritances, estates, bequests, and the like is largely premised on your norms and beliefs that inequality has risen substantially, to the point of overall social concern, and that intergenerational mobility has shrunk. Are you aware of any research suggesting that your beliefs about inequality are overstated and, if so, please identify the relevant research and discuss why you do or do not find such research compelling?

   Answer: As best as I recall, my recent work on inheritance, estates, and bequests has generally focused on disparities within the U.S in income, wealth, inheritances, and

intergenerational mobility, and on how the U.S. compares along these dimensions to other high-income countries, not on time trends. That said, I am always interested in seeing new data.

5. Among other things, you wrote, in a New York Times opinion article titled "Tax the Rich and Their Heirs," about a hypothetical heir's inheritance, and corresponding effective tax rate. You identify that: "Some will argue that this example ignores any income and payroll tax the wealthy parents paid when they originally earned the $50 million. But if the couple paid their personal chef's wages out of after-tax income, we wouldn't think their personal chef should get credit for the taxes they paid." Given this rather confusing comparison, could you provide your understanding of the concept and measures of wealth, the concept and measures of income, and what are the distinguishing features that differentiate the two concepts?

   Answer: In this example, I was comparing an adult who inherits $50 million from his parents (let's call them Jack and Jane) to someone who works as a personal chef for Jack and Jane. Under current law, the heir does not owe income or payroll tax on the $50 million that he inherits, while the personal chef owes both income and payroll tax on his salary from Jack and Jane. Let's say that Jack and Jane earned all of their money from working and paid income and payroll taxes on all of their earnings. Some argue that their heir should not have to pay income or payroll tax on his inheritance because Jack and Jane effectively paid those taxes on his behalf. In other words, the heir should get credit for the income and payroll taxes his parents paid. I was noting that, under this theory, their personal chef should also get credit for the income and payroll taxes Jack and Jane paid and, therefore, all the chef's salary should be tax exempt. But current law does not provide such an exemption for the personal chef.

6. During development of the Tax Cuts and Jobs Act, you appeared highly critical of the effort, including procedural aspects of legislating an outcome, up to and including criteria to allow provisions to be passed in a reconciliation setting. You participated in producing highly speculative quantitative analyses of tax proposals from Republicans, sometimes before they were even produced in detailed enough form to perform quantitative analysis. What was your objective in providing premature, speculative quantitative analyses of proposals that did not yet even exist, but could be portrayed in partisan fashion?

   Answer: In my quantitative work I try to clearly state my assumptions and, where there is a partisan valence, adopt assumptions that are the least favorable to whatever point I am making, even if such assumptions may be less accurate. It seems like you may be referring to my work estimating the effects of President Trump's childcare proposals. In that work, we detailed our assumptions throughout, noting how the assumptions underlying our estimates probably understated the regressivity of his proposals.

   More generally, I think it can helpfully inform the complicated legislative process for outside groups to estimate the revenue or distributional effects of legislative proposals before every detail has been specified. For example, my recollection is that there typically is no legislative language for tax legislation until after it has been voted out of

the Finance Committee because the Committee engages in conceptual mark-ups. It would seem to be somewhat late for the public only to have access to preliminary estimates of tax legislation after it has been voted out of Committee. That said, I believe strongly that any estimates by outside groups should be done with care, integrity, and transparency.

7. Federal Reserve notes represent lawful money, and are liabilities of the U.S. federal government. Liabilities of the U.S. federal government are overseen and managed by Treasury. The Senate Finance Committee is the authorizing committee for Treasury and its operations, and has oversight responsibility over Treasury operations and activities.

   The Federal Reserve is experimenting with formulating a central bank digital currency, which has the potential of enabling, along a blockchain, fiscal policy actions and would involve issuance of liabilities backed by the U.S. federal government. Given that, if confirmed, you would be working at the Treasury, with responsibilities over federal liabilities that are authorized by Congress, and would likely be working on issues of financial "stability:"
   a. Do you believe that a central bank digital currency can pose a threat to financial stability, in that such federal liabilities, if held in accounts at the Federal Reserve or Treasury, would be viewed as safe havens in flights to safety, and away from riskier liabilities of firms provided in financial markets, during periods of market stress?
   b. Do you believe that a central bank digital currency, designed by the Federal Reserve, should be constructed in a way that could easily and rapidly allow for deployment of accounts that could have balances modulated in accord with business cycle developments, thereby providing automatic stabilizers or welfare transfers? Do you support such a design and construction, which will engineer a significant transfer of fiscal authority, upon one mere act of Congress, from Congress to the Federal Reserve?

      Answer: I am not familiar with these issues and their tax aspects. If I am fortunate enough to be confirmed, I would seek a briefing by the relevant Treasury staff.

8. As a tax expert, what definition can you provide that determines whether a country is a "tax haven." Have you ever publicly characterized Switzerland or Puerto Rico as tax havens, and do you believe that they are according to your working definition?

   Answer: Some researchers define tax havens as jurisdictions with effective tax rates less than 10 percent; other researchers use metrics based on secrecy. I do not recall using this term myself with respect to those jurisdictions.

9. Are there any proposals or issues on which you intend to engage with members of this Committee to achieve bipartisan results? If so, please describe what those issues are.

   Answer: If confirmed, I would be eager to engage with members of the Committee to seek bipartisan agreement wherever possible.

10. Please describe any bipartisan accomplishments you participated in substantively during your service on President Obama's National Economic Council.

    Answer: During my previous government service, I served as former Chairman Baucus' Chief Tax Counsel in his work on negotiating tax aspects of the American Taxpayer Relief Act of 2012, Moving Ahead for Progress in the 21st Century Act of 2012, Middle Class Tax Relief and Job Creation Act of 2012, FAA Modernization and Reform Act of 2012, Temporary Payroll Tax Cut Continuation Act of 2011, VOW to Hire Heroes Bill of 2011, U.S.-Korea Free Trade Agreement of 2011, Airport and Airway Trust Fund Reauthorization Act of 2011, Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, and Small Business Jobs Act of 2010. I believe all of these bills were passed on a bipartisan basis. I served in the Obama Administration for a much shorter period of time during which little or no tax legislation was passed. However, I did facilitate policy processes that arguably helped lay the groundwork for the Protecting Americans from Tax Hikes Act of 2015, which was passed on a bipartisan basis after I returned to teaching.

11. Some believe that, independent of revenue raised or lost because of implementation of a wealth or inheritance or estate tax, it is important to institute such taxes so "billionaires" and high-wealth individuals do not hoard such wealth, or because inequality harms democracy in speculative unmeasured and conjectural ways. You have devoted a substantial amount of your professional activities in advocacy of significant increases or implementations of wealth, inheritance, gift taxes and the like.
    a. Do you support implementation of such taxes with the primary or sole intention of ensuring that there are fewer people with high wealth levels?
    b. If so, what social problem do you intend to solve by implementing significantly high taxes on intergenerational transfers, what evidence suggests that your solutions would accomplish your objective, and is there overwhelming support for your normative objectives?
    c. If I, as a parent, wish to forgo consumption over my life cycle, accumulate wealth, and bequeath resources to children and grandchildren that I love, is there a social problem that I am generating by doing so? If so, please tell me what that is, or whether you believe that what I choose to do can be accepted by you, but only up to some limits that you deem appropriate?

        Answer: My work on wealth transfer taxes is focused on furthering the goal of everyone having a chance to succeed in the United States, and ensuring that we do not miss out on individuals' talents because of barriers to upward mobility. My understanding is that President Biden did not propose any changes to the estate or gift taxes in his budget.

12. You identified during the hearing on your nomination that you would like to participate in work, if confirmed, at Treasury aimed at increasing enforcement and tax collections at the IRS. Given your background in research, and what appear to be increased efforts at IRS to engage in normative research, you may also be interested in working with IRS researchers. In the May 2021 U.S. Department of the Treasury publication titled, "The American Families

Tax Compliance Agenda," research that includes income attribution methodology utilized by researchers Emmanuel Saez and Gabriel Zucman is referred to, as well as, research in what appears to be the Critical Tax theory branch of research performed principally by tax law professors.

a. Are you aware of any critiques of income and wealth valuation methods utilized by researchers Saez and Zucman and, if so, do you believe the critiques have merit?
b. Economist Larry Summers has characterized some of the work by Saez and Zucman as being "substantially inaccurate and substantially misleading." Many economists have criticized some of their methodology and data manipulation as problematic, and some of their wealth valuation methods are enormously sensitive to perturbations in discount and interest rates. Do you believe that caution should be exercised in using income and wealth inequality measures put forward by those researchers in guiding fiscal policies?
c. Could you describe your understanding of Critical Tax theory?
d. The May 2021 Treasury publication cites the article titled "Should the IRS Know Your Race? The Challenge of Colorblind Tax Data." Do you believe that the IRS should require that racial identification should be part of filed tax returns? Please explain why or why not.
e. Do you support consideration at the IRS of urging legislation to provide increased disclosure of taxpayers' private information for research purposes?
f. Do you believe that research at the IRS should allow for partisan policy positions to play a role?

Answer: I am aware of a spirited debate among economists about the best way to measure wealth and accrued gains on wealth. It is a complicated issue and unfortunately, we do not have good data on wealth in the U.S. This means that all estimates of the wealth distribution are necessarily imperfect, and thoughtful, nonpartisan research can produce different estimates. In my view, each of the various methodological approaches have pros and cons. I have not written about critical tax theory and would need to research the various definitions to determine which I thought was the most accurate.

I support understanding more about the effects of tax provisions and proposals along many dimensions. If confirmed, I am committed to working with Treasury, and with the Administration as a whole, to better understand these impacts, including on disadvantaged groups. The use of identifying information on tax returns is a complicated issue. If confirmed, I would look forward to being briefed on these issues, including on the use of IRS data for research. I believe it is vitally important to make sure that such research protects taxpayer privacy. The IRS is a nonpartisan organization and its research is not conducted by political appointees. I believe it is important for its research to remain nonpartisan.

13. Professor Batchelder, during your hearing it was suggested that the TCJA changes to international taxation amounted to "[giving] away the store," the implication being that the TCJA changes in this area were a tax cut that amounted to an unfair "giveaway" to the international operations of taxpaying businesses. It seemed in your response that you agreed

with the characterization. Can you clarify: were the TCJA changes to international taxation a "giveaway" tax cut and if so how? I ask because according to the revenue estimates prepared by the JCT the TCJA's international tax changes were not a tax cut at all, but a $324 billion tax increase.

Answer: I do not recall referring to the TCJA changes to international taxation as a giveaway. That said, my understanding is that JCT estimated that the TCJA international provisions resulted in a slight revenue loss if one excludes the repatriation provision. While the repatriation provision raised revenue within the budget window, it presumably lost revenue on net over a longer period of time. This is because it was a tax cut relative to prior law, which would have taxed foreign earnings at the full U.S. rate (then 35%) less foreign tax credits when repatriated, rather than at the TCJA repatriation rate of 8% or 15.5%.

14. Do you consider it to be an unfair "loophole" for a taxpayer to pay a lower rate on their capital gains than on their ordinary income? If so, would it not be more appropriate to require **all** capital gains to be paid at the taxpayer's ordinary rates, rather than the President's current proposal, which would continue to allow a taxpayer earning $900,000 to benefit from what you consider to be an unfair loophole?

    Answer: The current tax code contains many provisions that favor income from wealth over income from work. The Biden Administration's tax proposals aim to shift some of the current priorities and incentives in the tax code so that we recognize and reward the value of work as much as we do income from wealth. If confirmed, I look forward to working with Congress to implement a system that provides appropriate incentives for investment but does not do so at the cost of disfavoring workers and small businesses.

15. Professor Batchelder, in your testimony on the President's proposal to increase the minimum tax rate on active foreign-source income earned by U.S. companies operating abroad to an "all-in" 26 percent rate you allude to various non-minimum tax regimes of foreign countries that somehow make them "comparable" to both the current U.S. GILTI regime and the President's proposal. Can you provide specific detail as to how the current law of the U.S.'s major trading partners is comparable to the U.S.'s with respect to minimum taxes on active foreign-source income?

    Answer: Our major trading partners with territorial tax systems generally have robust anti-base erosion measures in their domestic law to mitigate the incentive to shift profits offshore that can be created by such systems. My understanding is that these anti-base erosion measures generally take the form of "controlled foreign corporation" (CFC) rules and limitations on interest deductions (earnings stripping rules). Certain jurisdictions also limit or deny application of their territorial system (i.e., their participation exemption) to certain business entities or business lines. Most European Union (EU) countries apply their CFC rules within the EU to address shifting of profits to low-tax EU countries by targeting certain arrangements deemed to be artificial (i.e., lacking real economic activities) based on specified criteria.

The criteria for determining whether CFC rules apply to a foreign subsidiary generally vary, with some countries applying objective standards (generally based on ownership), others applying more subjective standards (e.g., effective management, level of taxation, place of incorporation, etc.), and others applying a combination of such standards. There is also disparity in the types of income that is subject to various CFC rules. According to an April 2019 report by the Tax Foundation, among the OECD countries with CFC rules, approximately half tax solely passive income and the other half tax both passive and active income.[31]

Given how complex and multi-faceted anti-base-erosion regimes are, it is difficult to make judgements about which countries' regimes are more or less onerous, even without considering the impact of taxpayer planning. Additional background on the similarities between our provisions for taxing foreign earnings of our resident companies and the provisions of our major trading partner can be found at Altshuler et al. Lessons the United States Can Learn from Other Countries' Territorial Systems for Taxing Income of Multinational Corporations, Tax Policy Center (2014) and Joint Committee on Taxation, Background and Selected Issues Related to the U.S. International Tax System and Systems That Exempt Foreign Business Income*,* JCX-33-11 (2011).

16. Professor Batchelder, in your testimony you indicated that an appropriate "balance" must be struck between the tax code's "marriage bonus" and "marriage penalty." Can you elaborate specifically on how the President's proposal to increase taxes on a married couple with a combined income of $509,300 but not an unmarried couple with a combined income of $905,398 strikes this balance "in the best possible way?"

    Answer: Under what is sometimes called the marriage taxation "trilemma," an income tax cannot simultaneously have progressive marginal tax rates, tax all married couples with identical combined incomes the same, and tax couples the same regardless of whether they are married or unmarried. Current law creates a complicated pattern of marriage penalties and bonuses. My understanding is that President Biden's proposals tend to preserve this pattern. In my view, the best balance between marriage penalties and marriage bonuses is a complicated issue on which reasonable people can disagree. If I am fortunate enough to be confirmed, I would look forward to working with Congress to identify the best balance for the situation you described.

17. Professor Batchelder, as you know the child tax credit (CTC)—which was Republican-led proposal and which I voted for all those years ago—was intended to operate as a family support provision in order to somewhat ameliorate a working family's inability to pay taxes as their family size increased. Further, save for the changes enacted in the American Rescue Plan, all successful efforts to expand the CTC since then have continued to ground the provision in supporting working families. In your testimony, you applaud the recent expansions of the CTC as being a powerful new anti-poverty tool. This is confusing to me, particularly given your subsequent acknowledgment of the various recent expansions of the earned income tax credit (EITC) and their powerful anti-poverty role (which was, as you

[31] Bunn et al, Anti-Base Erosion Provisions and Territorial Tax Systems in OECD Countries, Tax Foundation (April, 2019).

know, the intent of the provision). Is the CTC, which was never intended to operate as an anti-poverty provision, and which clearly lacks the targeting of the EITC, the most appropriate mechanism to address child poverty—particularly when we still have (and have continued to expand) the EITC?

Answer: I believe that child poverty is a serious national challenge that we should continually strive to address. Both the EITC and CTC have long served to lessen child poverty, in part because both are fully or partially refundable. Prior to the American Rescue Plan, the two provisions lifted an estimated 5.5 million children above the poverty line.[32] Researchers have estimated that the American Rescue Plan would cut child poverty by more than 50 percent.[33] I fully support President Biden's commitment to ending child poverty.

18. The Tax Cuts and Jobs Act introduced Section 199A of the Internal Revenue Code, which provides a 20-percent deduction for pass-through businesses, such as sole proprietorships, partnerships and S corporations, with qualifying business income. Section 199A was intended to provide parity for pass-through businesses that did not benefit from the reduction in the corporate tax rate. Most small businesses operate in pass-through form, and many of these small businesses have been hardest hit by the COVID-19 pandemic. How do you view raising taxes on small businesses through the repeal of Section 199A?

Answer: As I understand it, President Biden's budget does not propose any changes to Section 199A.

Questions for Nellie Liang
<u>Senator Crapo</u>

1. The Financial Stability Oversight Council (or, FOSC), which you would participate in if confirmed, has vast authority and unclear objectives. It has the potential of being an unaccountable roving regulator with enormous authority and power.

   Among FSOC authorities are: abilities to break up firms that pose a "grave threat: to financial stability; ability to designate 'systemic activities' and utilities and subject those designated to heightened oversight and standards; ability to designate any company for consolidated supervision; among other things." Many things in the FSOCs objectives involve undefined, nebulous, concepts such as "financial stability," and "systemic risk." It has been nearly impossible to obtain workable definitions and measures of those concepts from regulators and authors of Dodd-Frank. Sometimes, requests for definitions of nebulous concepts such as financial stability are answered with similarly nebulous concepts, as with saying that: we have financial stability if we have financial resilience. That, unfortunately, simply moves from one rung of the ladder of opacity to another.

[32] Marr et al, Congress Should Adopt American Families Plan's Permanent Expansions of Child Tax Credit and EITC,
Make Additional Provisions Permanent, Center on Budget and Policy Priorities (May 24, 2021).
[33] Parolin et al, The Potential Poverty Reduction Effect of the American Rescue Plan, Center on Poverty and Social Policy at Columbia University (March 11, 2021).

Similarly, as we have seen with the Volcker Rule, which urged action against "proprietary trading," it took many years and hundreds of pages of regulation to attempt to define what that even means. As yet, Congress has not received a working definition, in the opinion of some. Dr. Liang, given that, if confirmed, you could be involved in use of enormous power and authority over large sectors of financial markets and the economy, please respond to the following questions:

a. How do you define financial stability, and how do you measure whether the financial system is stable and whether there is a threat to stability?
b. How do you define systemic risk and what measure do you use to monitor it?
c. How do you define "excessive risk" and what is the measure used to identify it?

Answer: A stable financial system can be defined as one that is resilient to adverse events and can continue to provide necessary financial services to households and businesses and not cause serious harm to economic growth. Systemic risks can arise from financial vulnerabilities, such as high leverage, that amplify adverse shocks to other parts of the financial system and economy. Financial vulnerabilities are measured in a number of ways. The annual reports of FSOC and the Office of Financial Research provide various measures and assessments of vulnerabilities and potential systemic risks.

2. Do you believe that a breach of the U.S. statutory debt limit represents a grave threat to financial stability? If so, is an approaching lapse in the suspension of the debt limit something that the FSOC should be identifying as an impending risk to financial stability and responding to?

   Answer: I believe Congress should suspend or raise the debt limit in a timely manner. It is important that the federal government honor all of its obligations, to protect the full faith and credit of the United States. Failure to do so would raise debt-servicing costs for the U.S. government and cause significant disruptions to the U.S. and global financial systems. FSOC has addressed these risks in the past, including in its 2012 and 2014 annual reports.

3. Large financial institutions are required to submit "living wills" to regulators, and "stress tests" are performed on those institutions. Part of the reason offered for those examinations of the institutions is that it is instructive to assess roadmaps of how institutions are arranged, and how they might respond to stressed conditions.

   President Biden, in December of 2020, criticized the federal government as having been caught off guard and unprepared for cyberattacks, in association with breaches of the SolarWinds/Orion platform.

   Members of the Senate Finance Committee and House Financial Services Committee during the Obama administration requested, numerous times and through many mechanisms, detailed information from the U.S. Treasury and Federal Reserve about contingency plans at Treasury and the Federal Reserve for any inability of the federal government to make timely

payments on federal debt obligations. Such an inability could arise because of cyber-attacks, a super storm such as Sandy, breach of the debt limit, or other factors that temporarily knocks out federal processing systems in financial networks or legal authorities to pay. Inquiries made of the Federal Reserve Board and Treasury did not receive adequate or substantive responses. It took subpoenas from Congress to identify that, in fact, Treasury and the Fed do have contingency plans, as we would hope is the case, for confronting emergencies.

If you are confirmed, and if requested, do you commit to providing Finance Committee members, who have oversight responsibility over federal debt, with details of Treasury's contingency plans for what to do in the event that, for whatever reason (e.g., superstorm, cyberattack, etc.), the federal government is temporarily unable to make timely payments on debt obligations?

Answer: If confirmed, I am committed to being responsive to all inquiries from the Senate Finance Committee.

4. Do you believe that money market funds remain runnable and do you think they represent threats to financial stability?

    Answer: Research indicates that some money market funds faced investor runs in March 2020. I support regulatory reforms to reduce the risk of investor runs that lead to severe stresses in short-term funding markets.

5. Do you believe that tri-party repo trades are, in effect, runnable, do you think they represent threats to financial stability, and do you think they are stable, independent of federal intervention into repo markets?

    Answer: Reform efforts in the tri-party repo market following the financial crisis in 2008 substantially reduced the market's reliance on intraday credit, thus eliminating a key risk to financial market stability stemming from the tri-party repo market. In addition, these reforms improved market participants' risk-management practices. However, the market may remain vulnerable to collateral fire sales if a large tri-party repo borrower were to default.

6. Do you believe that underfunded pensions and other post-employment benefit (OPEB) promises of state, local, and territorial governments are threats to financial stability or potential risks to stability of the financial system?

    Answer: Underfunded public pension funds are a significant source of fiscal pressure on several U.S. states, territories, and municipalities. The risks presented by these fiscal pressures upon the financial system warrant ongoing attention. If confirmed, I would look forward to working with you on this issue.

7. Do you believe that climate change is a threat to financial stability and, if so, what are measures of climate change and the associated connection to financial stability that Congress should use to monitor developments?

Answer: Climate change has already impacted the economy and financial sector, with more frequent and severe natural disasters damaging homes, businesses, and entire communities. These impacts are expected to increase. In addition, the economic and financial transitions needed to place the economy on a sustainable path may involve additional financial risks. As a result, it is important that financial institutions measure, disclose, and manage the risks that climate change poses to their businesses. Financial regulators also should adjust their regulatory and supervisory approaches in response to new identified risks, to support safety and soundness and financial stability, consistent with their existing mandates.

The data, methodologies, and metrics needed to quantify climate-related financial risks remain under development. U.S. and international financial regulators are engaged in the development of consistent data and metrics. Secretary Yellen has identified climate-related financial risks as a priority for the Financial Stability Oversight Council, which is engaging with regulators to help develop the information that financial institutions and investors need to make better investment decisions and mitigate risks to financial stability.

8. Do you believe that so-called "stakeholder capitalism" and mandated allowance for environmental, social, and governance (ESG) factors in investments by fiduciaries (including investments covered under ERISA) could pose threats to financial stability when populist sentiment shifts investor resources rapidly and violently across firms or entire sectors of the economy?

    Answer: Fiduciaries ordinarily have a duty to beneficiaries not to be influenced by the interest of any third person or by motives other than pursuing financial benefits for those beneficiaries. Some forms of ESG investment can be consistent with these requirements when the fiduciary's motive is to benefit the beneficiary by pursuing improved risk-adjusted investment returns. Improved disclosure of companies' ESG factors provides fiduciaries and other investors with better information to pursue such investment strategies. A financial system that provides investors with the tools to pursue a variety of investment strategies enables investors to manage their risks.

9. Secretary Yellen has identified that she plans to listen to and incorporate input from "many stakeholders in developing the Administration's climate policy." Since that policy may involve activities you would be involved in, if confirmed, will you commit to including Republicans in Congress as stakeholders from which you will be willing to receive input in developing policy, and will you identify how you intend to gather the input?

    Answer: It is important that policies be based on input from a variety of stakeholders, including members of Congress. If confirmed, I commit to working with members of Congress, including Republican members, on a wide range of issues.

10. Do you believe that climate change poses a systemic risk to the American economy, or a potential systemic risk? If you believe there is a risk or potential risk, please explicitly define

exactly what that is, including what sectors of the economy are at risk and shares of GDP represented by those sectors.

> **Answer:** The possible risks and impacts may reach across the economy through the direct impact of climate change on certain regions or economic sectors and through the spillovers of such impacts through the financial system and broader economy. Climate change has already impacted the economy and the financial sector, with more frequent and severe natural disasters damaging homes, businesses, and entire communities. These impacts are expected to increase and may have spillovers to the broader economy. In addition, the economic and financial transitions needed to place the economy on a sustainable path may involve additional financial and economic risks. In light of these complex channels, climate change may impact all sectors of the economy through both new risk channels and new investment opportunities. As a result, it is important that financial institutions measure, disclose, and manage the risks that climate change poses to their businesses. Financial regulators must also adjust their regulatory and supervisory approaches in response to new identified risks, to support safety and soundness and financial stability, consistent with their existing mandates.
>
> Financial regulators have begun work in this area, and Secretary Yellen has identified climate-related financial risks as a priority for the work of the Financial Stability Oversight Council. Treasury is also actively engaged in implementing the Executive Order on Climate-Related Financial Risk, issued May 20, 2021, which calls for a number of steps to address climate-related risks, including the issuance of a report by FSOC on this topic. I support the assessment of climate-related financial risks by financial regulators, including work coordinated by FSOC, and steps to address identified vulnerabilities based on these assessments. It is critical that these assessments proceed in an expeditious and analytically sound manner.

11. If the Federal Reserve in the future adopts yield curve control measures, how, if confirmed, would you advise the Treasury Secretary regarding coordination (or not) with the Federal Reserve with respect to implications for any target by Treasury of the weighted-average maturity of outstanding debt?

    Answer: The Federal Reserve is responsible for implementing monetary policy, while Treasury seeks to fund the government at the lowest cost over time. The two agencies exercise their respective authorities independently from each other. Treasury does not coordinate with the Federal Reserve with regard to the Federal Reserve's implementation of monetary policy.

12. The Charles Koch Foundation provide substantial funding to the Brookings Institution when you worked there, as did many "wealthy corporations" and billionaires. Given the sensitivity of some to institutional funding, especially when funding is provided to institutions that include conservative scholars, do you believe there should be concern that you, in your

position, if confirmed, at Treasury would, as alleged against a conservative scholar in the past "serve the wishes of wealthy corporations and their billionaire owners?" Do you believe that concerns about think-tank funders should be limited to organizations that allow scholars to pursue conservative thoughts?

Answer: I am proud of the work I performed during my long career in public service and at the Brookings Institution. If I have the honor to be confirmed at Treasury, I will serve the President and the American people.

13. Do you believe that underfunded pensions and other post-employment benefit promises of state, local, and territorial government should be subjected to stress tests?

    Answer: Underfunded public pension funds are a significant source of fiscal pressure on several U.S. states, territories, and municipalities. The risks presented by these fiscal pressures on the financial system warrant ongoing attention. If confirmed, I plan to study this issue closely.

14. If confirmed, you would likely provide advice to the Treasury Secretary on FSOC work, if confirmed. Would you advise that the Treasury Secretary take or urge any actions to, in effect, resurrect and expand on the "operation chokepoint" efforts of the Obama administration through regulatory actions to have financial firms channel or restrict credit according to partisan and normative views, perhaps under the guise of "reputation risk?"

    Answer: I have not previously worked on issues related to your question, but if confirmed, I would be happy to work with you on this issue.

15. If confirmed, your work will touch on payment system issues. Recently, the Federal Reserve has been engaged with "stakeholders" and other central banks to work on developing a Central Bank Digital Currency (CBDC). As part of that work, some political advocates would like the Fed to consider construction of a distributed ledger scheme to enable accounts for all Americans (or, perhaps all residents of America) which, once an initial signoff from Congress is somehow obtained, allow the Fed to engage in fiscal policy. Those policies could involve automatic stabilization, such as injections of funds into accounts in downturns or absorption of funds from accounts in expansions, universal basic income, perhaps with smart contracting allowing the Fed to be able to determine what fund-holders could or could not purchase in transactions. Do you commit to informing members of this Committee, if confirmed, about any work within the federal government, or joint work of Treasury and the Federal Reserve, on development of a government-provided digital currency or payment system ledger, and inform members of the Committee at the immediate onset of any such work?

    Answer: The Federal Reserve is currently exploring numerous issues associated with the design of a digital dollar, and Chairman Powell has committed that the Federal Reserve would not proceed with a digital dollar without support from Congress. Treasury plays a critical role in the operation and maintenance of key systems of the nation's financial infrastructure and has a strong interest in the nation's currency. The research and

exploration being undertaken by the Federal Reserve and others should help us better understand the need for and objectives of any potential CBDC as well as key design choices and their implications for consumer protection and financial stability. If confirmed, I will promote Treasury's engagement with Congress and the Federal Reserve on this important issue.

16. Climate change, we are told by some, involves risks that the Federal Reserve says we do not yet understand. The Fed also says they are examining implications of climate change for the economy, financial institutions, and financial stability. A Fed official identifies that "financial markets face challenges in analyzing and pricing climate risks." The President, on May 20, issued an executive order on climate-related financial risk, calling, among other things, for the Treasury Secretary, as Chair of the FSOC, to essentially go find those as-yet unknown and not understood risks.
    a. Do you agree with the Fed that financial markets are challenged in analyzing and pricing climate risks?
    b. If so, can you identify what those mispriced risks are, and why you know what they are while others who participate in markets do not?
    c. If you do not know what those risks are, and, if confirmed, wish to assist Treasury in finding them, please describe the process you will use to discover as-yet undiscovered risks. Please, also, describe steps you would take to ensure that Treasury relays the findings immediately upon discovery, and make the discoveries immediately available to the public, if confirmed?
    d. If confirmed, do you commit to identifying to members of this Committee actions that Treasury may recommend or rules Treasury may propose to alter relevant laws (e.g., P.L. 93-406, "ERISA"; P.L 99-335, "FERS," and the like) and rules (e.g. 85 Fed. Reg. 72846; 85 Fed. Reg. 81658) governing the life savings and pensions of U.S. workers and families as well as things like fiduciary duties prior to taking such actions or promulgating such rules?

Answer: Climate change has already impacted the economy and the financial sector, with more frequent and severe natural disasters damaging homes, businesses, and entire communities. These impacts are expected to increase. In addition, the economic and financial transitions needed to place the economy on a sustainable path may involve additional financial risks. As a result, it is important that financial institutions measure, disclose, and manage the risks that climate change poses to their businesses. Financial regulators must also adjust their regulatory and supervisory approaches in response to new identified risks, to support safety and soundness and financial stability, consistent with their existing mandates.

Financial regulators have begun work in this area, and Secretary Yellen has identified climate-related financial risks as a priority for the work of the Financial Stability Oversight Council. Treasury is also actively engaged in implementing the Executive Order on Climate-Related Financial Risk, issued May 20, 2021, which calls for a number of steps to address climate-related risks, including the issuance of a report by FSOC on this topic. I support the assessment of climate-

related financial risks by financial regulators, including work coordinated by FSOC, and steps to address identified vulnerabilities based on these assessments. It is critical that these assessments proceed in an expeditious and analytically sound manner.

I believe it is important that Treasury work with members of Congress on these issues.

17. While the position to which you have been nominated does not engage much with federal tax policy, there are interplays between activities you would be engaged in, if confirmed, and taxation, and it is presumed that you understand the Administration's general policies toward taxation. Given that, how would you define the concept of a taxpaying individual business or company paying its "fair share," and how would you advise Treasury?

    Answer: As you point out, the position for which I have been nominated is not responsible for decisions related to federal tax policy, so I would defer to my colleagues on this issue.

18. Do you believe that tax credit bonds are efficient means of subsidizing state and local borrowing, and can you explain whether there are disadvantages to such bonds and, if so, what are the disadvantages?

    Answer: I would want to study the issue further. If I am confirmed, I would be happy to work with your office on this issue or to direct you to the relevant officials within Treasury.

19. Tax analysts sometimes use, often in ad hoc ways, a concept of a "normal return" and sometimes things like "supernormal" returns. As an economist, what to you is meant by a "normal return" to an economic activity (e.g., to teaching, or a tech entrepreneur, or an industry sector)? How would you advise, if confirmed, Treasury to measure normal returns in a particular sector of the economy? As a researcher while you worked at the Brookings Institution, were you earning normal returns to your human capital, or supernormal returns?

    Answer: The measurement of normal and supernormal returns is an important analytical concept in the economics of the taxation of capital. Loosely speaking, normal (nominal) returns represent compensation for the time value of money (such as interest costs) and for the effect of generalized inflation on the value of an asset. Supernormal returns refer to returns beyond the normal return. My personal expertise in this area is very limited, as I have focused on financial economics and policy, and I would defer to tax experts within Treasury and elsewhere on the proper methodologies in this technical area, including how to apply the concepts to wage income.

20. The so-called Heroes Act (H.R. 6800), which passed in the House of Representatives in May, 2020, directs the Federal Reserve, in Sec. 110801, in unusual and exigent circumstances, to purchase obligations issued by any State, county, district, political subdivision, municipality, or entity that is a combination of any of the several States, the District of Columbia, or any of

the territories and possessions of the U.S. Such purchases would occur within proposed modifications to the Municipal Liquidity Facility that was established under section 13(3) of the Federal Reserve Act, and the modifications would have to be made to, among other things, "ensure that any purchases made are at an interest rate equal to the discount window primary credit interest rate…commonly referred to as…the 'Federal funds rate'"; and, to "ensure that an eligible issuer does not need to attest to an inability to secure credit elsewhere." Given that the Federal funds rate is near-zero, Sec. 110801 in effect requires that the Federal Reserve make near-zero-interest rate loans to states, municipalities, and the like, independent of whether those jurisdictions are able to secure credit elsewhere—something that turns the Federal Reserve into an agency providing assistance that is close to grant making.

a. Do you support the policies called for in Sec. 110801?
b. More generally, do you support requiring that the Federal Reserve make loans to potentially non-creditworthy borrowers at the Federal funds rate?
c. More generally, do you support allowing the Federal Reserve to make grants to private or governmental entities, whether under exigent and unusual circumstances or otherwise?

Answer: I believe that the Federal Reserve's emergency facilities implemented last year were successful in promoting the stability of U.S financial markets. I have not had an opportunity to study the Heroes Act but would be happy to work with you on this issue if I am confirmed.

21. If confirmed you will participate in oversight of multi-trillion dollar markets for Treasury issuances, with obvious implications for exchange rates of actions taken in managing and regulating activities surrounding Treasury markets. Do you support a "weak dollar" or "strong dollar" position for Treasury and, whichever, please explain what a weak or strong dollar policy means to you.

Answer: The role for which I have been nominated is not responsible for making determinations regarding the strength of the U.S. dollar, but if confirmed I would be happy to follow up with you on this issue.

22. The GSEs – Fannie Mae and Freddie Mac – have been in government conservatorship for close to 13 years. While some important administrative reforms have been undertaken in this period, such as the creation of the Uniform MBS and the credit risk transfer programs, can you discuss the additional reforms you believe are necessary for the GSEs to operate in a safe and sound manner? How should Treasury balance protecting the taxpayers' interest in the GSEs with the need to advance their housing mission – how do you see this balance playing out?

Answer: I appreciate the considerable effort that you and other members of Congress have devoted to evaluating the U.S. housing finance system and developing proposed reforms. The Biden Administration is committed to housing finance policy that expands fair and equitable access to homeownership and affordable rental opportunities, protects taxpayers, and promotes financial stability. If confirmed, I look forward to working

across the Administration and with Congress on housing finance policy, including regarding the GSEs' conservatorships.

23. The Federal Financing Bank is an agency under the purview of the Department of the Treasury. We have seen it be used in some relatively interesting ways during its tenure, especially during the financial crisis, as liquidity dried up in the marketplace, including purchasing certificates or securities evidencing undivided beneficial ownership interests in agency-insured loans. As we work to wind down some of the extraordinary measures put into place to see us through the pandemic, can we get your assurance that you will work with Congress prior to enacting any new, extraordinary measures, such as expansion of the FFB?

    Answer: The FFB is authorized to purchase obligations issued, sold, or guaranteed by a federal agency. As such, it does not have independent authority to extend federal credit or assume risk for the taxpayer, but can only provide financing where Congress has first authorized a program agency to borrow money, guarantee or insure a loan or bond, or sell assets off its balance sheet. If confirmed, I will work with Congress to ensure use of the FFB is consistent with law and the federal government's policies.

Questions for Benjamin Harris
Senator Crapo

1. Former Treasury Secretary Lawrence Summers, discussing the nearly $2 trillion American Rescue Plan Act (ARPA) of 2021, is quoted as saying that: "I think this is the least responsible macroeconomic policy we've had in the last 40 years." He also is reported to have said that: "Now there's the real risk that macroeconomic policy will be very much destabilizing things." Economist Olivier Blanchard, former economic counselor and director of the Research Department at the International Monetary Fund and Professor of Economics emeritus at MIT, also expressed concerns. He has written, for example, about having misgivings about the size of ARPA, warning that: "Much too much is both possible and harmful. I think this package is too much." Concerns remain over massive fiscal stimulus de-anchoring inflation expectations, increasing interest rates, and eventually stalling the recovery from the largest negative shock to the economy on record.

   Do you disagree with prominent progressive economists who have warned of the economic risks and irresponsibility of ARPA?

    Answer: I believe that the American Rescue Plan Act of 2021 (ARP) will return the U.S. economy to conditions of full employment in late 2021 or early 2022 and view the risk of overheating or any other destabilizing outcome as low. The ARP was designed to bring an end to the pandemic by distributing vaccines, provide relief to the millions of American families whose lives continued to be disrupted by the pandemic, and deliver much-needed aid to hard-hit industries and state and local governments. These measures will ensure a rapid recovery back to pre-pandemic conditions. Indeed, growth this year is expected to be the strongest in decades.

It is worth emphasizing that at the start of the Administration, the risk of doing too little outweighed the risk of doing too much. Nearly 10 million jobs had been lost since April 2020, the course of the pandemic remained highly uncertain, and global growth prospects seemed sub-par and unlikely to provide a tailwind for the U.S. recovery. In my view, these risks justified the magnitude of the fiscal response, especially given that in the last two decades before the pandemic, inflation has run below the Federal Reserve's 2% target.

A robust recovery – which I believe we are now seeing – will involve some degree of transitory inflation. In part, this reflects that fact that prices in some pandemic-impacted sectors like hotels, airlines, and restaurants actually fell in 2020 but are now moving back up to their pre-pandemic levels. In addition, elevated demand for goods like motor vehicles has interacted with global supply chain disruptions to cause some price increases. we expect the combined effects or reopening and higher demand to moderate in coming months, bringing inflation down closer to its underlying trend. The Federal Reserve has the tools to address inflation risks over the medium- and long-term. Inflation expectations have risen in recent months, but only after to falling to levels that were judged to be too low. We will continue to monitor inflation developments, but we see recent inflation readings as transitory and indicative of a robust recovery.

2. In a 2010 article on "Taxes and Housing Prices," you wrote that "…raising taxes on those in the top brackets could increase urban housing prices by as much as 10 percent, and even more in east and west coast cities where homes are most expensive. The drivers of this windfall: higher top rates on ordinary income and hikes in capital gains taxes. Obama's proposal to limit the benefit of itemized deductions to 28 percent could more than reverse this housing windfall…"

   Your argument was that capital gains tax increases lead to increased value of the capital gains exclusion in housing. Similarly, increases in ordinary income tax rates, as you wrote, "...would increase the value of owning a home, since as tax rates rise, so does the value of the mortgage interest deduction." So higher ordinary income tax rates, by your argument, will increase housing prices.

   There seem to be two conclusions from your analysis: One is that higher tax rates on upper earners and higher capital gains taxes, by enhancing the value of the mortgage interest deduction and the capital gains exclusion in housing, could lead to increases in housing prices. The second is that such "windfalls" could be offset through use, simultaneous with higher income and capital-gains taxes, of limits on benefits of itemized deduction, as President Obama had proposed, to "…reverse this housing windfall."

   The current administration is proposing higher capital gains taxes and higher income taxes for "anyone" earning $400,000 or more. Do you believe that, if implemented, the tax hikes would lead to higher housing prices, perhaps mostly at the high-end of housing valuations and, in turn, increase values of itemized deductions for upper earners that should then lead to consideration of limits on itemization in order to offset ensuing "windfalls?"

Answer: The study referred to in the question was written in 2010 and used the most recent data available at the time, which was generally from around 2007. Evolutions in the housing market and other relevant data since that time make the specific conclusions of that modeling exercise slightly dated, as do moderate changes in the tax code (including, for example, the partial and temporary rollback of the mortgage interest deduction). However, the fundamental direction of the analysis holds: because housing is a tax-preferred asset, all else equal, raising taxes can increase its relative value while cutting taxes can lower it.

3. The Department of the Treasury recently issued an Interim Final Rule (31 CFR Part 35; RIN 1505-AC77) to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act (ARPA). Part of the Rule involves Treasury's attempt to implement the invasive restriction ARPA places on States abilities to determine their own fiscal policies by not allowing federal funds to be used to "…either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase."

   Through administrative fiat and interpretation, the Rule allows for some leeway and carve-outs for funds to be used for certain tax relief that the Treasury Department evidently finds acceptable, but bans others.

   In order to pass muster with Treasury, the Rule says that a State or territory must "identify and value" tax revenue reductions in a given year "based on estimated values produced by a budget model, incorporating "reasonable assumptions." However, "estimation procedures should not use dynamic methodologies," according to the Rule, since Treasury believes its valuation scheme already adequately measures for macroeconomic growth. Moreover, according to the Rule: "Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories."

   a. While working at Treasury, were you involved in formulating the Interim Final Rule related to ARPA's state and local recovery funds? If so, please describe what parts of the Rule you worked on.
   b. Please describe in detail what you believe constitutes "dynamic scoring methodologies."
   c. Do you agree that Keynesian multiplier numbers are "dynamic scoring methodologies," in that they measure cumulative (over time and, hence, dynamic) projected changes in economic measures resulting from an alteration in a policy parameter?
   d. Do you agree with the Rule that "scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions?" If so, please explain in detail why and whether minimization of assumptions ought to be an objective for obtaining the best "scores" and econometric identification.
   e. The Rule in more than one place refers to "reasonable assumptions" to be used in valuation estimation. Please describe what you believe to be "reasonable

assumptions," and what you believe to be unreasonable, with respect to identification of either direct or indirect effects on a State's net tax revenue resulting from a change in law, regulation, or administrative interpretation that reduces or delays any tax or tax increase?

f. In the Rule, Treasury identifies that tax revenue reductions stemming from a change in law, regulation, or administrative interpretation "may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to" tax changes that reduce tax revenue. As an economist, what would you advise to be acceptable statistical methodologies that a State could use to satisfy Treasury's requirements and objective of identification (in an econometric sense) and achieve econometric identification and consistent estimation?

Answer: I was not deeply involved in formulating the interim final rule related to ARPA's state and local recovery funds. In addition, as to specific scoring methodologies referenced in the interim final rule, Treasury is in the midst of a notice and comment period for the rule, so I am not able to speak to those issues at this time. I look forward to being briefed on these issues should I have the honor of being confirmed.

4. The President and various administration officials have identified that, under the administration's tax proposals, "nobody making under $400,000 a year" will have their taxes increased. Nobody means that an individual is being discussed. Moreover, in the President's Social Security proposal with a cutoff for added taxes, that cutoff is at $400,000 for an individual.

   However, at various times, some administration officials have changed their description of the administration's stance to be that no "family," rather than individual, making less than $400,000 would face higher taxes. On Friday, March 26, the Washington Post's fact checker wrote about the confusion caused by varying statements of policy intent by the administration, and how a switch to "family" or "household" or the like would seem to renege on a promise made by the President during his campaign for election. The fact checker concluded by writing that "Despite the confusion spawned by various administration references to 'families,' the promise [that nobody, meaning individual, earning less than $400,000 would face a tax increase] appears to remain intact." I have questions to help clarify some unnecessary confusion.

   Given that you are currently employed and working at Treasury, is your understanding that the current stance of the administration with respect to taxation is that no individual making under $400,000 will face higher taxes if the administration's tax hike proposals are enacted? Or, is it household, rather than individual? Or, is it tax filing unit, rather than individual?

   Answer: The Administration's tax proposals are focused on creating equity in the tax system by ensuring that corporations and wealthy individuals pay their fair share, to support necessary investments in American workers and families. The President has consistently committed to making sure that no taxpayer with income under $400,000 experiences tax increases as a result of the Administration's proposals.

5. There have been repeated references made by the administration to individual taxpayers and corporations paying "their fair share." (For example, see page 1 of the April 2021 U.S. Department of the Treasury "The Made in America Tax Plan." It appears, though, that the Plan envisions enactment of proposals that would merely move the country "Toward a Fairer Tax System" (p.5)).
   a. As a prospective adviser to the administration on economics, please define what constitutes a "fair share" and the appropriate measure to use to determine whether or not an individual is paying their fair share.
   b. Given your definition and measure, for tax year 2021, what is the fair share for a single filer on taxable income: up to $9.950; $9,951 to $40,525, $40,526 to $86,375, $86,376 to $164,925, $164,926 to $523,600, over $523,600?
   c. Please define what constitutes a "fair share" and the appropriate measure to use to determine whether or not a corporation is paying its fair share.
   d. Why do you believe that the Made in America Tax Plan proposes only to move "toward" a "fairer" tax system, thereby foregoing movement to a fully fair system and leaving fairness gains unfulfilled to remain on the table for future tax policy modifications?

Answer: The concept of "fair share" depends on the context of the specific tax and an individual's or corporation's specific circumstances. One particular measure relates to the concept of horizontal equity, which compares tax burdens borne by taxpayers of like circumstances. The concept of "fair share" can also depend on macroeconomic circumstances, as the appropriate measure of a tax code's fairness can depend on key economic trends such as the labor and capital share, or wage trends at various points in the wage distribution. The concept of "fair share" can also relate to the gap between owed and paid tax liability, with individuals who evade taxes explicitly defined as individuals who do not pay their fair share. The unfairness of evaded taxes was one of the motivations behind the tax compliance proposal advanced in the Biden Administration tax agenda.

6. The Made in America Tax Plan, outlined by Treasury in an April 2021 document, identifies a proposal of "Replacing fossil fuel subsidies with incentives for clean energy production." The Plan proposes to "remove subsidies for fossil fuel companies."
   a. Please identify your understanding of what subsidies the Plan would remove, and how they differ from like "subsidies" in place for other companies performing similar activities but not involving "fossil fuels."

Answer: As detailed in the "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals" (the Green Book) released at the end of May, the Administration is proposing to remove 13 specific subsidies for fossil fuel production. The proposal would repeal: (1) the enhanced oil recovery credit for eligible costs attributable to a qualified enhanced oil recovery project; (2) the credit for oil and gas produced from marginal wells; (3) the expensing of intangible drilling costs; (4) the deduction for costs paid or incurred for any tertiary injectant used as part of a tertiary recovery method; (5) the exception to

passive loss limitations provided to working interests in oil and natural gas properties; (6) the use of percentage depletion with respect to oil and gas wells; (7) two-year amortization of independent producers' geological and geophysical expenditures, instead allowing amortization over the seven-year period used by integrated oil and gas producers; (8) expensing of exploration and development costs; (9) percentage depletion for hard mineral fossil fuels; (10) capital gains treatment for royalties; (11) the exemption from the corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels; (12) the Oil Spill Liability Trust Fund excise tax exemption for crude oil derived from bitumen and kerogen-rich rock; and (13) accelerated amortization for air pollution control facilities.

These provisions of the tax code are specific to the oil, gas, and coal industries. The objective of the Plan is to bring the tax treatment of oil, gas, and coal producers back in line with other firms. These tax advantages are referred to variously as subsidies, tax expenditures, loopholes, or tax advantages.

b. If enacted, do you believe that the Plan would lead to higher gas prices at the pump in the near term, defined as the period 2022-2024?

   Answer: No, not noticeably.

c. If so, would you have any concern that such an effect would have disproportionate adverse effects on low- to middle-income workers whose expenditures on "fossil fuel" related consumables such as gasoline and heating fuel tend to be higher shares of their incomes than for upper earners?

   Answer: Please see my response to question 6b.

7. The Tax Cuts and Jobs Act imposed a cap of $10,000 on the state and local (SALT) deduction, reducing tax benefits and what some call a "tax expenditure" which accrues disproportionately in favor of upper earners. Do you support proposals to lift or eliminate the $10,000 cap on the state and local tax (SALT) deduction?

   Answer: I believe in an equitable tax system where wealthy taxpayers and corporations pay their fair share. With respect to SALT, as Secretary Yellen has said, it will be important to develop a full understanding of the impact of the cap on state and local governments and those who rely on their services. As you know, repealing the SALT cap would come with potentially significant costs, and understanding these and their distribution is important. This is an issue I am eager to work on with you and your colleagues.

8. Given that an asset's tax basis is not updated for inflation, will the Administration's proposals to tax capital gains at the same rate as ordinary income, generally eliminate the step-up in tax basis at death, and require immediate income recognition with respect to inherited assets result in taxpayer's paying tax on phantom gain—that is, simple inflation?

Why does the Administration consider it “fair” for taxpayers to pay tax on inflation with respect to their assets?

> **Answer:** The Administration's proposed capital gains reforms, including those mentioned above, would retain substantial preferences for capital income—including, for example, the ability to time realization during life, zero or preferred capital gains tax rates for the vast majority of American families, no taxation on the first $2 million in gains at death for every married taxpayer in the country (increased to a maximum of $2.5 million when including the exclusion for gains to owner-occupied housing), and other preferences and considerations for family-owned businesses and illiquid assets. In sum, the bulk of Americans would continue to pay low or no taxes on their capital gains.

9. The American Economic Association, of which you have been a member and Secretary Yellen has served as President, has a policy of publishing papers only if data and code used in the analysis are clearly and precisely documented and access to the data and code is non-exclusive to the authors.

   If confirmed, you may be assigned to work on the annual trustees’ reports on the financial conditions and outlook for Social Security and Medicare trust funds; you may have already been working on the reports.

   The 2019 Technical Panel on Assumptions and Methods, formed by the Social Security Advisory Board, wrote that “The Panel recommends providing and supporting greater external access to the projection models used to produce the Trustees Report.”

   a. Do you agree that policy, such as the one adopted by the American Economic Association, of open sourcing and external accessibility of data and code used in published analyses is also good public policy that should be applied to analyses performed and models and data used by the federal government, including agencies, aside from any administrative data that are not allowed to be publicly shared?

      Answer: On page 32 of the 2019 Technical Panel on Assumptions and Methods, the panel made the following recommendation under Section 3.2, “Increase transparency of the projections,” Presentation Recommendation 8: “The Panel recommends providing and supporting greater external access to the projection models used to produce the Trustees Report.” The panel writes the following:

      “OCACT regularly fields questions about its modeling techniques and assumptions. Social scientists have recently increased their focus on transparency of methods, while the open source movement has gained momentum. Researchers would benefit from the ability to assess OCACT’s code directly. OCACT could post its models’ full code, along with adequate documentation, on SSA’s public website. SSA could allow researchers to apply for access to the underlying data, similar to the Internal Revenue Service call for proposals to use the IRS administrative data. Social Security could also fund research projects on OCACT’s model. In the long run, we believe public trust in these projection methods would increase if the methods were subject to scrutiny and rigorous

debate informed by public access. Greater scrutiny from researchers also could help improve the models in the long run."

The full text of the 2019 Technical Panel Presentation Recommendation Number 8 is directed at Social Security's Office of the Chief Actuary and the Social Security Administration rather than the Social Security and Medicare Trustees. H

However, I generally support efforts to explore possibilities for improvements in transparency and public access.

For your convenience, already existing documentation on some of the Social Security's Office of the Chief Actuary's projection models is provided on their website, available here for the long-range OASDI projection model: https://www.ssa.gov/oact/TR/2020/2020_LR_Model_Documentation.pdf

Here for the short-range OASDI projection model: https://www.ssa.gov/oact/NOTES/pdf_studies/study121.pdf

Here for the demographic assumptions: https://www.ssa.gov/oact/TR/2020/2020_Long-Range_Demographic_Assumptions.pdf

Here for the ultimate economic assumptions: https://www.ssa.gov/oact/TR/2020/2020_Long-Range_Economic_Assumptions.pdf

And here for the disability assumptions: https://www.ssa.gov/oact/TR/2020/2020_Long-Range_Disability_Assumptions.pdf

b. Have you worked on the trustees' reports for the Social Security and Medicare trust funds at any time this year?

Answer: I have had only very limited involvement with the Social Security and Medicare Trustees Reports this year.

10. The Social Security Act requires that trustees' reports for the Social Security and Medicare trust funds be issued annually, and no later than April 1st of each calendar year. According to a July 2019 report by the U.S. Government Accountability Office (GAO), 2008 was the last year in which the statutory deadline had been satisfied. The 2020 report was 21 days overdue, missing the deadline by fewer days than the past decade's average, yet still late.

The 2019 GAO report recommended that the Secretary of the Treasury, as Chairperson of the Boards of Trustees of the Social Security and Medicare trust funds: work to improve management of the report development schedule to provide Trustees reports to Congress by the statutory deadline; and, "establish a policy to inform Congressional committees of

jurisdiction when the trustees determine that the reports are expected to miss the issuance deadline." While committees have received an email from Treasury officials identifying that this year's reports will be delayed for some indefinite period, we are unaware that any policy has been developed or followed.

a. Will you commit to working to ensure that the Treasury Secretary follows GAO's recommendation to establish a policy to inform Congressional committees of jurisdiction when trustees determine that the reports are expected to miss the issuance deadline?

   Answer: A policy has already been established to inform Congressional committees of jurisdiction by electronic communication when it is determined that the reports are expected to miss the issuance deadline pursuant to the recommendation of the Government Accountability Office. For the 2021 reports, Treasury informed the committees of expected delays in the issuance of the reports on March 19, 2021.

b. Will you commit to working to ensure that as part of that policy, the Treasury Secretary, on a regularly scheduled basis (e.g., every 15 days following determination that the issuance deadline will not be met), provide updated projections of when the reports will be issued?

   Answer: A policy has been established to inform Congressional committees of jurisdiction by electronic communication when it is determined that the reports are expected to miss the issuance deadline pursuant to the recommendation of the Government Accountability Office. If confirmed, I would be happy to promote Treasury's communication with Congress regarding the status of the reports.

c. Will you commit to working to ensure that the Treasury Secretary and all trustees improve scheduling of trustee meetings in order to produce reports on or before the statutory issuance deadline?

   Answer: As Treasury indicated in its response (dated June 27, 2019) to the GAO report, Treasury takes seriously the April 1 reporting deadline. During the course of preparation of both the 2020 and 2021 Trustees' Reports, Treasury made every attempt possible to move work on the reports along without sacrificing the quality of the reports.

   However, Treasury does not have the authority to impose particular outcomes or to require that decisions be made within specified timeframes. In particular, the preparation of the 2021 Trustees Reports has inevitably been affected by the crisis response to the pandemic, by the presidential transition (including the turnover of trustees and staff), and by work to fully understand the effects of the pandemic on the trust funds, particularly in the near term.

d. Will you commit to providing the Committee with source code used to make projections of the future financial conditions of the Social Security and Medicare trust

funds, in order to improve transparency over methods and assumptions used to make projections of the financial conditions of trust funds into which American workers have paid into over their lifetimes and have entrusted to the federal government?

Answer: Please see my written response to question 9a above. Any source code would reside with the Office of the Chief Actuary, which is an office within the Social Security Administration, and with the Office of the Actuary, which is an office within the Centers for Medicare and Medicaid Services.

11. If confirmed, you would likely work on the annual trustees' reports on the Social Security trust funds. Please read the Statement of Actuarial Opinion in both the 2014 and 2015 Annual Reports of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds (available at the webpage of the Social Security Administration's Office of the Chief Actuary) and identify:
    a. Whether you believe that the Actuarial Opinion of the 2014 report points to assumptions made in the trustees' report of that year that in any sense played up the potential future insolvency of Social Security, and if so, what those identified assumptions were and how they accentuated insolvency in the Actuary's opinion; and,

Answer: The statement of actuarial opinion in the 2014 report under the Federal Budget Accounting heading includes the following:

> This report focuses on the actuarial status of the OASI and DI Trust Funds and includes important information on (1) the years in which trust fund asset reserves are projected to be depleted and (2) the degree to which benefits scheduled in the law would no longer be fully payable on a timely basis after reserve depletion. However, the footnote on page 60 of this report directs the reader to an appendix in the Medicare Trustees Report, which states, "The trust fund perspective does not encompass the relationship between the Medicare and Social Security trust funds and the overall federal budget." The reader of this report should consider this "overall" federal unified budget perspective with care because the assumptions underlying unified budget accounting are inconsistent with the assumptions of trust fund accounting.

The text on page 60 of the 2014 Report is as follows:

> The trust fund ratio serves an additional important purpose in assessing the actuarial status of the program. If the projected trust fund ratio is positive throughout the period and is either level or increasing at the end of the period, then projected adequacy for the long-range period is likely to continue for subsequent reports. Under these conditions, the program has achieved sustainable solvency.[Footnote 1]

Footnote 1 reads:

As noted in greater detail in the 2014 Medicare Trustees Report, "The trust fund perspective does not encompass the interrelationship between the Medicare and Social Security trust funds and the overall Federal budget." For an explanation of that relationship, see appendix F of the 2014 Medicare Trustees Report.

My view is that the statement of actuarial opinion in the 2014 OASDI Trustees Report to which this question is referring is the discussion of Footnote 1 on page 60 of the that report, as excerpted above. Footnote 1 is appended to a paragraph in the 2014 OASDI report discussing the trust fund ratio. I believe this statement of actuarial opinion refers to this part of the actuarial statement, "1) the techniques and methodology used herein to evaluate the financial and actuarial status of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds are based upon sound principles of actuarial practice and are generally accepted within the actuarial profession" rather than this piece of the actuarial statement, "(2) the assumptions used and the resulting actuarial estimates are, individually and in the aggregate, reasonable for the purpose of evaluating the financial and actuarial status of the trust funds, taking into consideration the past experience and future expectations for the population, the economy, and the program."

With regard to part (1) of the actuarial statement referenced above, I regard this statement of actuarial opinion to be a clarifying statement by the Chief Actuary of Social Security discussing his views regarding the trust fund accounting concept that the trust fund ratio embodies as calculated and presented in the 2014 OASDI Trustees Report and the unified budget perspective as discussed in appendix F of the 2014 Medicare Trustees Report.

b. Whether you believe that the Actuarial Opinion of the 2015 report identifies questionable elements within the trustees' 2015 report, and whether you believe that the Actuary's opinion represents a public rebuke of the report.

   Answer: Please see my answer to question 11a. Additionally, please note that the statement of actuarial opinion section of the OASDI Trustees Report is outside the purview of the OASDI program trustees.

12. President Biden has proposed to subject earnings on taxpayers with more than $400,000 (unindexed) in wages to Social Security and Medicare payroll taxes, with a "donut hole" between the current "tax max" on earnings subject to payroll taxes and $400,000 that would close over time as the wage-indexed tax max grows into and eventually above the unindexed $400,000 threshold. So, eventually, all wage earnings become subject to payroll taxes. However, presumably to avoid paying upper earners more in Social Security and other benefits, for every dollar of payroll taxes paid on earnings above the $400,000 threshold, there is no commensurate Social Security benefit. This, of course, breaks the longstanding, traditional tie between paying in to the Social Security System and obtaining a benefit in return—the "earned benefit" principle.

Indeed, an old Franklin Roosevelt quote from 1941 often invoked to reinforce the earned benefit principle that: “We put those payroll contributions there so as to give the contributors a legal, moral, and political right to collect their pensions and their unemployment benefits. With those taxes in there, no damn politician can ever scrap my social security program.” To many Social Security advocates, it is important that Social Security programs remain as ones that can be characterized as earned benefits, meaning, again, that there is a benefit commensurate with every unit of tax paid in. Otherwise, some fear, dependence of Social Security benefits on partial general-fund revenue, or revenue cloaked as Trust Fund revenue but accruing to the Trust Funds as tax payments that do not carry any associated benefit accrual, would lead to Social Security being characterized as some sort of “welfare,” and benefits being thought of as mere transfers to which recipients do not necessarily have legal, moral, or political “rights.”

a. Do you support upholding the earned benefit principle and not allowing a decoupling of payment into the Social Security system and commensurate benefit receipt?
b. Alternatively, do you support violating the earned benefit principle by breaking the link for ***any*** FICA taxpayer between paying into the system and receipt of a commensurate benefit?

> **Answer:** While I am aware of certain members of Congress proposing Social Security reforms that match the one described in the question, I am not aware of President Biden proposing either an effective closure of exempted wages or specifically designating whether higher payroll taxes would or would not be matched with a change in benefits (i.e., preservation of the “earned benefit principle”). In general, I am concerned about the long-term solvency of the Social Security program, and support reform which puts the program on a long-term path to fiscal solvency. Reforms should be judged on the extent to which they preserve the system, enhance efficiency, and protect American workers who have paid into the system for decades.

13. Do you believe that Social Security, while not being a main driver of future deficits, does contribute to deficits in the on-budget part of the federal budget and the consolidated federal budget?

> **Answer:** Future deficits are driven by a wide range of factors. In the case of Social Security, the extent to which the program impacts future deficits on-budget and unified deficits depends both on the funding status of the program and estimates of the economic implications of instituting changes to the program. For example, eliminating Social Security—a step that I do not support—would steeply raise poverty rates among Americans of all ages and could result in substantially higher expenditures for other social programs. However, I have not undertaken a robust modeling exercise regarding the impact of Social Security on federal deficits.

14. Researchers Valerie Ramey and Sarah Subairy wrote, in a 2015 VOX^{EU}, CEPR article on government spending “multipliers” and noted evidence from US historical data, that:

- Overall, we find no evidence that the multiplier on government purchases is higher during high unemployment states. Most estimates of the multiplier are between 0.6 and 1.
- In addition, we do not find convincing evidence of significantly higher multipliers during periods at the zero lower bound or constant interest rates.

They write: "Our findings suggest that there is no evidence that fiscal multipliers differ by the amount of slack in the economy or the degree of monetary accommodation. These results imply that, contrary to recent conjecture, government spending multipliers were not necessarily higher than average during the Great Recession. Do you agree with the analysis and conclusions; and, if not, please describe why you believe the analysis is incorrect.

Answer: On this question, I do not regard the Ramey and Zubairy analysis as definitive.

An extensive literature in empirical macroeconomics has sought to measure the government spending multiplier. This literature uses a variety of empirical methods, some of which come to different conclusions about the size of the government multiplier. For example, Nakamura and Steinsson (2014), using U.S. state-level data on military procurement, find a government spending multiplier of 1.5, well above the Ramey and Zubairy estimate. Miyamoto, Nguyen, and Sergeyev (2018) find a government spending multiplier of 1.5 when interest rates are at the zero lower bound in the case of Japan. Chodorow-Reich (2019) provides a comprehensive review of government spending multipliers, with cross-sectional evidence supportive of higher multipliers and larger responses in periods of greater slack.

It is also worth noting that the Ramey and Zubairy analysis looks at government spending multipliers during World War II. Extensive rationing of consumer goods during the war may lower their estimate of the government spending multiplier despite a high degree of monetary accommodation.

Lastly, this literature is largely silent on the macroeconomic effect of transfers. Much of the fiscal response to the pandemic has come in the form of transfers rather than changes in direct government consumption. Overall, there continues to be active discussion about the size of the government spending multiplier and, more generally, the effects of fiscal policy, and how these effects may differ in periods of slack versus full employment.

Questions for Jonathan Davidson
<u>Senator Crapo</u>

1. The Finance Committee is the authorizing committee for the Department of the Treasury. As established, Treasury, among other things, is "to make report, and give information to either branch of the legislation…respecting all matters referred…by the Senate or House of Representatives." Congressional oversight of Treasury activities has a long bipartisan tradition of the Finance Committee, and an important responsibility Committee members have to the public. The Department of the Treasury's description of the office to which you have been nominated identifies that the office, among other things, acts to "ensure accurate and prompt response" to Congressional inquiries. Thus far, Treasury's responsiveness to

inquiries has been wanting. Do you commit, if confirmed, to ensure accurate, detailed, complete, and timely responses to inquiries of Treasury from members of the Finance Committee?

Answer: I deeply respect the oversight function of this Committee. If I am privileged to be confirmed, I would like very much to work in a collaborative way with members of the Committee to provide timely, complete, detailed and accurate information in line with the traditional partnership that Treasury and the Committee have had in the past.

2. Finance Committee staff recently obtained a briefing on activities of the newly formed Office of Recovery Programs and Treasury's activities regarding funding provided in the American Rescue Plan Act of 2021 to governments of states, localities, territories, the District of Columbia, and tribes. When asked about how the Committee, as a "stakeholder" with oversight responsibilities can obtain documents submitted by those governments, it was suggested that the information can be obtained by perusing public websites and other information provided publicly. Do you believe that is a satisfactory resolution of a need by the authorizing Committee in its oversight role to have abilities to access documents involving utilization of taxpayer resources with implications for the federal fisc?

   Answer: I am committed to maintaining a strong working relationship with the Finance Committee on both sides. In my current role as Counselor to the Secretary, I am not aware of the request you cited. If confirmed, I would work with the Ranking Member and his staff to ensure that they receive documentation in a way that is accessible and user-friendly to enable the Committee to do its work in overseeing Treasury's role in implementing the recovery programs.

3. When, if ever, do you believe it is appropriate for the Department of the Treasury to withhold documents or data from the Finance Committee, and why in such instances, if any, do you believe that the Committee and the American public should not be allowed such documents?

   Answer: If confirmed, my goal would be to encourage Treasury to provide requested information to the Committee whenever possible, based on applicable laws, procedures, and protocols.

4. During the Obama Administration, Treasury officials refused to provide information to Congress or the American people, as a debt limit breach was impending, about how much operating cash was available at Treasury to continue timely payment on due obligations. Treasury officials also refused to provide information about what their near-term projections were for operating cash balances, or confidence intervals surrounding their projections. Do you commit to, if confirmed, strongly urge the Treasury Secretary to provide the American people and Congress with timely information, when asked, about operating cash balances and projections of cash balances, or any other information that our constituents deserve to know about the state of federal debt and operations at the Treasury Department?

   Answer: It is important that the debt ceiling be suspended or raised on a timely basis. If confirmed, I would urge Treasury to work in a transparent manner to ensure that

Congress can fulfill its responsibility to preserve the full faith and credit of the United States.

5. During the Obama Administration, Treasury officials at times refused to provide information about the Nation's fisc to Members of the Finance Committee on the grounds that some of the information was "market sensitive." The unsatisfactory implication of the view that Treasury need not reveal whatever it wishes to conceal on the grounds of the information being market sensitive (a term with no legal definition) is that unelected Treasury officials are entitled to know more about the Nation's finances than elected Members of Congress and their constituents. If confirmed, do you commit to immediately providing Members of this Committee with a clear delineation of what information Treasury has that it deems, for whatever reason, to be sensitive in some regard, and a method that Treasury will agree to that enables sharing of the information with Members of the Finance Committee who are all entitled to access to the information?

   Answer: Yes, I will commit to working with this Committee to enable and facilitate the sharing of information to assist the Committee in its oversight function. I would need to be fully briefed by Treasury staff to better understand the restrictions mentioned as part of this question. If confirmed, I would very much welcome this conversation so that we can provide satisfactory information to the Committee.

6. As we near a lapse in the suspension of the statutory debt limit, and need to either increase the dollar-value of the limit or once again suspend the limit until some future date, there becomes a rising probability that Treasury will engage in so-called "extraordinary measures" to ensure that Treasury can make timely payments on obligations to remain below whatever the statutory limit becomes upon the lapse in the suspension period. It is known that Treasury makes projections about how long extraordinary measures may last before Treasury is at risk of breaching the debt limit and exhausting operating cash balances. Treasury Secretary Yellen has identified that she "would certainly want to work closely with Congress to address in advance the issue of the debt limit to avoid its harmful effects. I agree, and look forward to any such bipartisan work. The administration and Congress should do all it can to responsibly and agreeably avoid such a risk, but risks cannot simply be ignored. As we await bipartisan work to stave off the risk of a limit breach and exhaustion of operating cash, it is imperative that Treasury regularly provide Congress with updates on its projections of how long extraordinary measures would last under adverse contingencies. Will you commit to advising Treasury to provide Congress with regular updates of its projections, and provide me with what you believe to be a prudent update schedule between now and the earliest of whenever a limit resolution is attained or August 1, 2021?

   Answer: I share your concern with protecting the full faith and credit of the United States. This is a bipartisan responsibility, and if confirmed, I would want to work collaboratively with you and other members of Congress to ensure that the debt limit is timely raised or suspended. I respect the Committee's need for information and data and look forward to working with the Committee on this issue.

7. Treasury officials have been engaged in international negotiations on global taxation, including so-called Pillar 1 and Pillar 2 components of negotiations within an OECD framework. Treasury has surely performed analyses of how proposals it is contemplating or has made will affect U.S. headquartered companies. Will you commit to advising Treasury to provide Congress with quantitative and qualitative analyses it has performed on its international tax proposals in the OECD framework, if confirmed and immediately upon confirmation?

   Answer: As I mentioned during the hearing, I would welcome a collaborative approach such that the Ranking Member and his staff have sufficient visibility to enable bipartisan work in support of a strong U.S. position with respect to these negotiations. If confirmed, I look forward to working with the Committee to provide data and analyses regarding this issue.

8. Will you commit to, if confirmed, working to provide the Finance Committee with regular (e.g., quarterly) updated listings of all fiscal agency agreements that the Treasury has with the Federal Reserve and all financial agency agreements that Treasury has with private firms?

   Answer: If confirmed, I commit to working with Treasury staff to understand this issue and to ensure that Treasury provides the Finance Committee with appropriate information regarding these arrangements.

9. Large financial institutions are required to submit "living wills" to regulators, and "stress tests" are performed on those institutions. Part of the reason offered for those examinations of the institutions is that it is instructive to assess roadmaps of how institutions are arranged, and how they might respond to stressed conditions.

   President Biden, in December of 2020, criticized the federal government as having been caught off guard and unprepared for cyberattacks, in association with breaches of the SolarWinds/Orion platform.

   Members of the Senate Finance Committee and House Financial Services Committee during the Obama administration requested, numerous times and through many mechanisms, detailed information from the U.S. Treasury and Federal Reserve about contingency plans at Treasury and the Federal Reserve for any inability of the federal government to make timely payments on federal debt obligations. Such an inability could arise because of cyber-attacks, a super storm such as Sandy, breach of the debt limit, or other factors that temporarily knocks out federal processing systems in financial networks or legal authorities to pay. Inquiries made of the Federal Reserve Board and Treasury did not receive adequate or substantive responses. It took subpoenas from Congress to identify that, in fact, Treasury and the Fed do have contingency plans, as we would hope is the case, for confronting emergencies.

   If you are confirmed, and if requested, do you commit to advising the Treasury Secretary to provide Finance Committee members, who have oversight responsibility over federal debt, with details of Treasury's contingency plans for what to do in the event that, for whatever

reason (e.g., superstorm, cyberattack, etc.), the federal government is temporarily unable to make timely payments on debt obligations?

Answer: I cannot speak to the Obama Administration's considerations regarding the flow of information to the Committee, but if confirmed, my goal would be to ensure that Treasury is transparent regarding its plans for continuity of operations under exigent circumstances.

Senator Thune (R-SD)

Questions for the Record for Lily Lawrence Batchelder

Question 1
As a follow-up to the question asked at the hearing, can you state with certainty that no taxpayer earning less than $400,000 will be hit by the Biden administration's step-up in basis tax proposal?

> **Answer:** As I understand the proposal, the only taxpayers who could be affected are those with more than $1 million in capital gains income because the proposal allows an exclusion of up to $1 million of gains per person (indexed for inflation). The exclusion is portable between spouses, effectively meaning that couples would not be affected unless they had more than $2 million of capital gains income. Moreover, the $1 million per-person exclusion applies in addition to the existing exclusion for gains on homes, which allows taxpayers to exclude up to $250,000 of gain on principal residences ($500,000 for couples), as well as the existing exclusion for qualified small business stock.

Question 2
Under the Biden administration's step-up in basis proposal, the untaxed gains on investments held at death would be taxed at a top rate of 39.6%, above an exemption of $1 million per individual. There is a good chance that some parents might die with an estate that has gained $1 million-plus in value over the course of their lives, but their heir might be earning $40,000 or $50,000 a year.

Under such a scenario, is it plausible that an heir earning less than $400,000 would be impacted by the administration's step-up in basis tax proposal?

> **Answer:** Please see my answer to question 1 above. Thank you.

Question 3
Under the Biden administration's step-up in basis tax proposal, and depending on the heir's liquidity, could taxpayers potentially have to sell off some of their inherited assets to cover the new tax liability?

> **Answer:** In the Treasury Green Book description of this proposal, there are several measures to address this concern. For example, it proposes that payment of tax on the appreciation of certain family-owned and operated businesses would not be due until the business is sold or ceases to be family-owned and operated. It also proposes a 15-year fixed-rate payment plan for illiquid appreciated assets.

Questions for the Record for Benjamin Harris
Senator Thune

Question 1
At the hearing, you stated that you believe the Treasury Department's plan to raise $700 billion over the next decade was too low of estimate. As you know, the administration proposed raising $700 billion over the next decade largely through new tax compliance measures and $80 billion of new IRS funding.

If the Treasury Department's projection was incorrect, as you assert, what is the correct number in your estimation and how do you arrive at that figure?

> **Answer:** Career economists in Treasury's Office of Tax Analysis estimated that the Administration's compliance proposals will generate $700 billion over the course of the next decade. However, as the recent Treasury report makes clear, these estimates are thought to be conservative for several reasons. For example, the revenue potential of additional resources is based on IRS return on investment (ROI) estimates that only exist for adjustments detected through current enforcement-related activities. Benefits of other foundational changes in tax administration, like IT and taxpayer service improvements, are not accounted for. Additionally, although revenue estimates for increased information reporting includes the effects of this regime on voluntary compliance, estimates for increased enforcement actions do not account for deterrent effects, which are known to be quite significant.

Question 2
The nonpartisan Congressional Budget Office estimated that increasing IRS funds by $40 billion over 10 years would increase revenues by $103 billion, resulting in a net $63 billion decrease in the deficit. It is not to say that better utilized or enhanced resources could not help find real money, but the projected return-on-investment is vastly different than the Treasury Department's projections – and deserves clarification as the administration portrays the figures as offsets for new spending proposals.

Do you disagree with CBO's estimate? Why or why not?

> **Answer:** It is difficult to compare the Administration's compliance initiatives to previous estimates because of differences in scale and scope of the comprehensive proposal the President put forth in the American Families Plan. Estimates from career economists at the Office of Tax Analysis suggest that providing the IRS the resources it needs to address sophisticated tax evasion and introducing a comprehensive financial reporting regime would raise $700 billion in additional revenue over the course of a decade: $240 billion in net tax revenue from $80 billion in additional IRS resources; and $460 billion from a new financial reporting regime.

Question 3
Congressional Budget Office rules prohibit scoring hoped-for but entirely certain revenue from enforcement proposals. Does the Treasury Department account for CBO's scorekeeping rules

with its $700 billion projection? Does your higher estimate account for CBO's scorekeeping rules? If not, how would the scorekeeping rules alter each projection and by what amount?

> **Answer:** Many in the academic and policymaking community have written about the budgetary scorekeeping rules and how they relate to tax compliance efforts. The nature of these rules is a matter on which those in the official scorekeeping community—the OMB, House and Budget Subcommittees, and CBO—will be best positioned to address. Should I have the privilege of being confirmed, in my role I look forward to working with these groups and you and your colleagues on this important question.

Questions for the Record for Nellie Liang
<u>Senator Thune</u>

Question 1
If confirmed, you would participate in the Financial Stability Oversight Council, which is in charge of identifying risks to the financial stability of the country. In terms of risk calculus, it's becoming popular among some to say that the debt-to-GDP is no longer meaningful. This year, the federal government's publicly held debt is projected to reach 102% of GDP – the highest debt-to-GDP ratio since 1946 according to the Congressional Budget Office. And the deficit is expected to reach 10.3% of GDP.

In your judgment, what are the top three risks to the stability of the U.S. financial system (ex. inflation, cryptocurrency bubble, excessively loose monetary policy) and how concerning do you find the trajectory of the U.S. deficit?

> **Answer:** Risks to financial stability can arise from clear threats, such as cyber attacks. The increased frequency of cyber attacks is a significant risk to financial stability. Risks can also arise because the financial system is not sufficiently resilient to events that cannot be reliably predicted. FSOC has announced that it will be evaluating the resilience of nonbank financial intermediation in light of significant stresses in financial markets at the onset of the pandemic in March 2020. In addition, FSOC has announced that it is working with financial regulators to assess risks to financial institutions and markets from climate change, arising from more frequent climate events and transition risks as the economy and financial system take steps to mitigate the impact of climate change.
>
> With respect to the trajectory of the deficit, I believe the American Rescue Plan Act of 2021 is helping to preserve the economy's potential by preventing the loss of human capital and business enterprise value, which helps the economy's long-term fiscal situation. Looking ahead, the President has proposed investments in infrastructure and workers to make the economy more productive, and has proposed ways to pay for those investments, mitigating concerns about growth in the federal debt.

Question 2
If you are confirmed, and if requested, do you commit to providing Finance Committee members, who have oversight responsibility over the federal debt, with timely responses about the statutory debt limit and timelines that Treasury will engage in so-called "extraordinary

measures" to ensure that Treasury can make all necessary payments and obligations? Would you commit to working with me to find bipartisan solutions to reduce undue risks associated with the debt limit?

Answer: It is important that the federal government honor all of its obligations, to protect the full faith and credit of the United States. Failure to do so would cause significant disruptions to the U.S. and global financial systems and raise debt-servicing costs for the U.S. government and all other credit instruments that are benchmarked to Treasury interest rates, including mortgages and corporate debt.

I commit to providing timely responses to inquiries from Finance Committee members related to the debt limit, and I would be happy to work with you and other members of Congress to find bipartisan solutions to reduce undue risks associated with the debt limit.

Senator Portman (R-OH)

Questions for the Record for Lily Batchelder

Question 1

At the hearing, we discussed the status of the Global Intangible Low-Taxed Income ("GILTI") as a unique American tax policy compared to our major trading partners. Under GILTI, U.S.-based businesses are taxed on their outbound active business income. You differed in that characterization of GILTI, stating:

1. "While I agree that no other country has a minimum tax exactly like ours, they do have many provisions in place designed to limit the ability to shift profits to low-tax jurisdictions by companies resident in their countries that I think are analogous to GILTI";
2. "Many deny participation exceptions for certain foreign countries or lines of business"; and
3. "Partially tax foreign earnings of their companies across the board."

Since GILTI only applies to U.S.-based businesses, policymakers should have a common understanding of what the rest of the playing field is among America's trading partners. That's why I asked the question and that's why I'm following up on it. I'd like you to provide more detail on your responses.

A. Please list those countries, who are major trading partners of the U.S., with provisions analogous to GILTI that apply to active business income, rather than passive income (which has long been subject to tax under the U.S. subpart F rules);

B. Please explain how those provisions are similar to GILTI in their application to active business income, such as foreign manufacturing income;

C. Where applicable, please explain whether any such rules do not apply among EU members because the EU fundamental freedoms prevent one EU country from applying its controlled foreign corporation ("CFC") rules (or analogous regimes) to foreign branches or subsidiaries located in another EU country -- whether active income or passive income -- unless the income is earned in an artificial arrangement;

D. Please explain the practical effect of these and other limitations (such as treaty exceptions) to any foreign country's CFC rules in evaluating whether they are truly analogous to the breadth and scope of GILTI; and

E. Please provide a specific list of countries with CFC regimes that you consider more onerous than GILTI, and a general description of how those regimes operate.

Answer: Our major trading partners with territorial tax systems generally have robust anti-base erosion measures in their domestic law to mitigate the incentive to shift profits offshore that can be created by such systems. My understanding is that these anti-base erosion measures generally take the form of "controlled foreign corporation" (CFC) rules and limitations on interest deductions (earnings stripping rules). Certain jurisdictions also limit or deny application of their territorial system (i.e., their participation exemption) to certain business entities or business lines. Most European Union (EU) countries apply their CFC rules within the EU to address shifting of profits to low-tax EU countries by targeting certain

arrangement deemed to be artificial (i.e., lacking real economic activities) based on specified criteria.

The criteria for determining whether CFC rules apply to a foreign subsidiary generally varies, with some countries applying objective standards (generally based on ownership), others applying more subjective standards (e.g., effective management, level of taxation, place of incorporation, etc.), and others apply a combination of such standards. There is also disparity in the types of income that is subject to various CFC rules. According to an April 2019 report by the Tax Foundation, among the OECD countries with CFC rules, approximately half tax solely passive income and the other half tax both passive and active income.[34]

Given how complex and multi-faceted anti-base-erosion regimes are, it is difficult to make judgements about which countries' regimes are more or less onerous, even without considering the impact of taxpayer planning. Additional background on the similarities between our provisions for taxing foreign earnings of our resident companies and the provisions of our major trading partners can be found at Altshuler et al. Lessons the United States Can Learn from Other Countries' Territorial Systems for Taxing Income of Multinational Corporations, Tax Policy Center (2014) and Joint Committee on Taxation, Background and Selected Issues Related to the U.S. International Tax System and Systems That Exempt Foreign Business Income, JCX-33-11 (2011).

My understanding is that the President's proposal to replace the section 59A Base Erosion and Anti-Abuse Tax (BEAT) with the Stop Harmful Inversions and Low-Tax Developments (SHIELD) would provide a strong incentive for our major trading partners to change their CFC rules to more closely align with our reformed GILTI regime.

Question 2

As we negotiate with the Organisation for Economic Co-operation and Development ("OECD"), the Administration has taken the position that we should encourage our OECD counterparts to increase their corporate tax rates. However, we've been less than successful at having our counterparts live up to their word. For instance, as part of an effort to resolve a trade dispute, the U.S. negotiated changes to the Domestic International Sales Corporation (DISC) provision of the Code, which provided a tax exemption for certain export related trade income. In return, the Europeans agreed to change their border adjustment regimes to eliminate the export subsidies they conferred. Despite their "agreement," and after Congress had legislated the agreed to changes in the form of the Foreign Sales Corporation (FSC), our EU partners reneged on their commitment and mounted a World Trade Organization challenge to the FSC.

In fact, the EU has complained bitterly about the "extraterritorial" reach of our states' use of formulary apportionment in the early 1980s. The U.S. went through tremendous effort to resolve the dispute – weighing heavily on the various states to give up the practice. Fast forward to the

[34] Bunn et al, Anti-Base Erosion Provisions and Territorial Tax Systems in OECD Countries, Tax Foundation (April, 2019).

past few years, we now have the French adopting an approach to digital taxation that mirrors unitary taxation.
Why should we trust that the EU and other OECD partners will increase corporate tax rates simply because we ask them to?

> **Answer:** It is my understanding that leading economies in the EU have already committed to supporting a global minimum tax, in part because of their own domestic needs and in part because of their commitment to a multilateral solution to a race to the bottom in effective corporate tax rates. It is also my understanding that Pillar 2 contains a mechanism such that, once a sufficient number of leading economies join, will incentivize other jurisdictions to adopt minimum taxes as well and penalize those that defect. My understanding is that the SHIELD proposal, which Congress could enact without a multilateral agreement or any action by other countries, works similarly.

How do you plan to protect U.S companies from unfair taxation – such as DSTs?

> **Answer:** If confirmed, I look forward to being briefed by my staff on this and other issues. But my understanding is that Pillar 1 would replace discriminatory measures, such as DSTs, with a nondiscriminatory approach to market-based taxation. It is also my understanding that, as part of the Pillar 1 negotiations, Treasury has asked for the standstill and rollback of DSTs.

Question 3
In a bipartisan way, Senators have been monitoring the progress of the OECD process and have repeatedly expressed an interest in protecting U.S. companies and the U.S. tax base during the discussions. I urge you to continue to press the Inclusive Framework members to treat U.S. businesses fairly in both Pillar One and Pillar Two; this will ensure that the U.S. tax base is protected and activities and income that should properly be taxed in the U.S. remain here.
Will you commit to keeping the members of the Senate Finance Committee updated on the progress of the negotiations and to bringing any final agreement back to the Senate to discuss with members of this Committee?
Further, will you commit to providing information to the members of the Senate Finance Committee about the economic effects of any proposals on different types of U.S. businesses (manufacturing, financial services, technology, consumer products, etc.)?

> **Answer:** If confirmed, I am committed to updating members of the Committee on the negotiations and sharing available and relevant economic analyses

Question 4
If confirmed as Assistant Secretary for Tax Policy, one of the most important roles of the office you will lead, in my estimation, will be working out the details of the President's tax proposals and turning them into legislative proposals with accompanying projected revenue estimates. There have been some recent Treasury Department statements, including to this Committee, regarding tax revenue that appear to be misleading. That's concerning because we rely on the Treasury Department as a source of unbiased information.

I'll give you an example of one. It relates to the revenue raised by the Base Erosion and Anti-abuse Tax ("BEAT"). The statement has been made that BEAT has been ineffective based on the BEAT revenue table, but, of course, BEAT taxes paid are only a small part of the revenue raised by the BEAT, which was intended to change behavior, so the revenue raised by BEAT would be reflected significantly in corporate tax revenues, not necessarily in BEAT revenues.
For this Committee to make sound policy, we must have thorough and complete analysis. Can you commit that, if confirmed, you will ensure that the analysis the Treasury Department presents is thorough and complete and not misleading?
Do you further commit to revise any prior statements of the Office of Tax Policy that may not have been based on complete data or were otherwise misleading?

> **Answer:** The Office of Tax Policy provides professional, high-quality analyses and estimates that are done by its highly qualified career staff. If confirmed, I am committed to ensuring that their work continues to be done in a complete, high-quality, and professional manner.

Question 5
The treatment of conservation easements transactions is an important issue to my state of Ohio, particularly in relation to easements for historic preservation. These easements protect iconic buildings in places like downtown Cleveland and Columbus from simply being bulldozed. This program has saved numerous historically significant buildings and facilitated the revitalization of entire neighborhoods in my state. And, it goes without saying, the issue is crucial to land conservation which I know is a priority of the President as articulated in his thirty by thirty goal. Due to the lack of guidance from the IRS in this area, taxpayer certainty on conservation easements is elusive. As the bipartisan Senate Finance Committee report indicated last year, it is important that Treasury and the IRS make clear what the rules of the road are to allow taxpayers to appropriately utilize this preservation tool and to protect the integrity of the conservation easement tax deduction, as Congress intended. I have asked similar questions on this topic to both Secretary Yellen and Deputy Secretary Adeyemo, but I know that this would fall more directly under your purview as Assistant Secretary of Tax Policy.
If confirmed, will you commit to work with my office and stakeholders, to facilitate a notice and comment period, and to expedite clear guidance from the Office of Tax Policy and the Internal Revenue Service to further Congressional intent?

> **Answer:** Should I be confirmed, I look forward to working with my Office of Tax Policy (OTP) colleagues to understand the status and priorities in the current guidance plan, and potentially resetting some of those priorities. I can commit to working with your office to understand how this issue should fit into the Treasury and OTP agenda.

Question 6
The Administration's proposed book minimum tax is dependent on the Financial Accounting Standard Board's ("FASB") accounting standards for income and loss recognition. Additionally, under the Alternative Minimum Tax regime (pre-Tax Cuts and Jobs Act), a credit was available for the book minimum tax in excess of regular tax to mitigate the issue of timing differences between book and tax that would result in paying tax twice.

A. *Is there concern in relinquishing taxing incentives and control to the FASB?*

B. *How would the proposal address taxpayers that use accounting methods other than GAAP?*
C. *In thinking about constructing a book minimum tax, how would you address timing differences between book and tax that would result in paying tax twice?*

> **Answer:** I have not been privy to discussions within Treasury, including about proposals in the Green Book. If confirmed, I would look forward to being briefed by the Office of Tax Policy staff on the details of this proposal and its likely effects. Regarding your third question, the Green Book states that under the proposal "taxpayers would be allowed to claim a book tax credit (generated by a positive book tax liability) against regular tax in future years but this credit could not reduce tax liability below book tentative minimum tax in that year."

Question 7

The proposed *Stopping Harmful Inversions and Ending Low-Tax Developments ("*SHIELD") rule would look to the effective tax rate of the foreign payee (determined on a jurisdiction by jurisdiction basis), and if the rate were below a specified level, then the deduction would be denied for a U.S. corporation or U.S. branch for federal income tax purposes. Payments made directly to a low-taxed jurisdiction would be subject to the SHIELD as follows: payments giving rise to deductions would be denied in their entirety, while payments for costs of goods sold ("COGS") and third party payments would be "disallowed up to the amount of the payment."

A. *Treasury recently released its General Explanations of the Administration's Revenue Proposals (referred to as "the Green Book"). With respect to the SHIELD, the score for repealing section 59A and implementing the SHIELD would raise $309 billion. What factors account for the large revenue raised by the provision? Does it reflect the likelihood that the Inclusive Framework will not reach agreement?*
B. *With respect to the SHIELD, please explain the interplay of the Sixteenth Amendment and the ability deny cost of goods sold in whole or in part.*
C. *The SHIELD appears to treat some countries and companies worse than others are treated. Does the SHIELD override any of our current treaty obligations? How would the structure of the SHIELD ensure that is does not constitute a violation of Article 24 of our model tax treaty? Alternatively, would the U.S. need to amend its tax treaties to take into account the SHIELD?*

> **Answer:** I have not been privy to discussions within Treasury, including about proposals in the Green Book. If confirmed, I would look forward to being briefed by the Office of Tax Policy (OTP) staff on the questions you raise**.**

Question 8

The Green Book proposes a GILTI rate of 21 percent. However, I understand Secretary Yellen offered a 15 percent rate for Pillar 2 of the ongoing OECD negotiations.

A. *What would you propose to ensure that U.S. companies are not unfairly disadvantaged with this higher rate? Or would you propose a 15 percent rate for GILTI should the OECD consensus result in a 15 percent rate?*

Answer: It is my understanding that the Administration's GILTI reform proposal in the President's Budget, paired with the Administration's multilateral Pillar 2 proposal, is meant to improve American competitiveness by reducing the differential between the GILTI minimum tax rate, which applies to the foreign earnings of U.S.-resident multinationals, and the rate applicable to the foreign earnings of multinationals resident in other countries with weak anti-base-erosion regimes. Right now, that differential is quite large. The GILTI rate is at least 10.5% to 13.125%, while the rate on multinationals resident in countries with very weak anti-base-erosion measures is effectively zero. The President's GILTI and multilateral proposals would narrow this differential substantially. Moreover, other proposals in the President's budget would further strengthen U.S. competitiveness, including his anti-inversion proposals and the SHIELD proposal, which would incentivize other jurisdictions to adopt strong minimum taxes and could be enacted by Congress without any multilateral agreement. Even so, many believe there are many non-tax reasons why a company would want to be resident in the U.S. and that there is thus room for some divergence between our tax system and that of other countries.

B. *Why should the U.S. move first on changes to GILTI when it will likely take several years for the Inclusive Framework countries to reach consensus and implement legislation and treaty changes?*

Answer: As alluded to in my answer to question 8.A above, strengthening GILTI would improve U.S. competitiveness by eliminating current law incentives to book profits in foreign jurisdictions (whether higher or lower-taxed) instead of in the U.S. Additionally, these changes can raise substantial revenue which can be used to make infrastructure and other investments to further improve U.S. competitiveness. The President's anti-inversion proposals would backstop these changes and the SHEILD proposals would create strong incentives for other countries to adopt robust minimum taxes, thus ensuring our tax system is competitive. All of these proposals can be enacted by Congress without a multilateral agreement being reached or implemented.

C. *Do the proposed changes in the Inclusive Framework require legislative changes? Do the proposed changes also require modifying U.S. treaties or the adoption of a multilateral instrument?*

Answer: It is my understanding that Pillar 1 would require a multilateral treaty, but I look forward to being briefed further on this if confirmed.

Question for the Record for J. Nellie Liang
<u>Senator Portman</u>

Question 1
Independent monetary policy is a cornerstone of our economic growth and the dollar's position as a reserve currency.
Can you pledge that you will not only respect the independence of our central bank, but that you will ensure you never give the appearance of interference in its decision making?

> **Answer:** I believe that an independent central bank leads to better macroeconomic performance. If I am honored to be confirmed, I pledge that I will respect the independence of the Federal Reserve in its monetary policy decisions and will not interfere in its decision making.

Question for the Record for Benjamin Harris
<u>Senator Portman</u>

Question 1
I am very concerned by the recent inflation indicators we are seeing. As you know, a Congressional Budget Office report earlier this year predicted that we would hit full recovery by the middle of 2021 without additional spending. Yet, we are seeing even more spending that would continue into next year.
Are you concerned about rising inflation, and how does that change your assessment of additional federal spending?

> **Answer:** I believe that the current inflation rates we are seeing are indicative of a robust recovery and likely transitory due to the combined effects of reopening the economy and supply chain disruptions that are impacting prices in some categories of durable goods, like motor vehicles. We expect monthly inflation rates to moderate in the coming months as the effects of stimulus payments wane, supply chain disruptions ease, and price normalization in pandemic-impacted sectors runs its course.
>
> I believe that the Administration's American Jobs Plan and American Families Plan will increase the productive capacity of the economy by improving physical infrastructure, reallocating workers to higher-paying/higher-productivity industries like manufacturing, and raising labor force participation by addressing the childcare and eldercare issues that make it harder for Americans to work. By increasing the economy's capacity, the risks of an undesirable future increase in inflation will be lower, as it means the economy can grow faster and for longer before resource utilization tightens. Additionally, both plans are paid for over time, limiting the near-term increase in deficits and lowering deficits in the medium-term.

Question 2
Dr. Harris, I was interested to learn in your writings of your interest in retirement security – particularly as it relates to lifetime income. You may know that Senator Cardin and I have a sweeping bipartisan retirement bill. Amongst other changes, our bill reforms Qualified

Longevity Annuity Contracts ("QLACs") and makes it easier for retirees to purchase annuity products. This seems to dovetail well with the work you did at Brookings.

A. *Can you discuss why lifetime income – particularly later in life is so crucial and the ways the private sector can play a role here?*
B. *Can you commit to working with me on this if confirmed to you role?*

> **Answer:** Throughout my career I have been an ardent supporter of more robust markets for lifetime income products as one strategy for strengthening retirement security. My focus on this topic was driven, in part, by the belief that one of the greatest risks in retirement is uncertain lifespans, and this uncertainty can be addressed through guaranteed lifetime income. Naturally, Social Security plays a critical role in the provision of this income, but many workers may seek additional opportunities to increase their level of guaranteed income beyond their Social Security benefits—and for these workers increased access to lifetime income products, especially those that are specifically tailored to address longevity risk, can be welfare enhancing. This view is in line with the perspective of many other economists who study aging and retirement policy. If confirmed, I look forward to working with you on this critical issue.

<u>Senator Toomey (R-PA)</u>

Question for the Record for J. Nellie Liang

Money Market Funds and Open-End Mutual Funds

Question 1
If confirmed, will you respect the SEC's jurisdiction to regulate money market funds?

Answer: Yes, I will respect the SEC's jurisdiction.

Question 2
At a recent Financial Stability Oversight Council (FSOC) meeting, Secretary Yellen expressed potential systemic concerns resulting from "liquidity risks" associated with open-end mutual funds and money market funds. I'm concerned this will be used to justify an overreaching regulatory regime for both products.

Question 2a
Do you believe that money market funds should be eliminated as an investment vehicle?

Answer: Money market funds are a useful investment vehicle and are a source of demand for short-term debt issuers. However, as events in 2008 and in 2020 have shown, certain types of money market funds are prone to investor runs during episodes of broader market stress. Reforms introduced over the past decade have been inadequate to eliminate investor runs, and I support additional reforms to make the funds more robust to future market stress.

Question 2b
Do you support retaining the viability of open-end mutual funds as an investment vehicle?

Answer: Yes, open-end mutual funds are a useful vehicle for investors and a source of demand for securities issuers. In 2020, about 47 percent of U.S. households owned U.S.-registered mutual funds. The Securities and Exchange Commission has taken steps in recent years to improve the liquidity risk management of open-end mutual funds and to improve investor awareness of risks. If confirmed, I would be happy to work with you and your office on the regulation of open-end mutual funds.

Question 2c
Do you believe that the in-kind redemption mechanism for exchange-traded funds (ETFs) presents different liquidity concerns than cash redemptions from traditional mutual funds? If you believe there is a difference, please explain how that affects your views on how to regulate ETFs.

Answer: I believe that any liquidity concerns for ETFs differ from those of traditional mutual funds, as illustrated in the financial market stress at the onset of the pandemic in March 2020. The Securities and Exchange Commission has been reviewing its ETF

regulations in recent years, and if confirmed, I would look forward to engaging with them on this issue.

Question 3
You have previously argued that the SEC's 2014 rules governing money market funds are "working well." However, the March 2020 market volatility demonstrated that the new gates established by these rules actually led to less stability and greater volatility by creating a "first mover advantage."
In light of this experience, have your views on the structure of money market fund regulation evolved? Please explain why or why not.

> **Answer:** Research on the events of March 2020 showed that the option for certain types of money market funds to impose redemption fees or gates during times of stress appear to have had the effect of exacerbating the problems faced by these funds. I support revising the regulations applicable to these funds to reduce the risk of investor runs and to make money market funds more robust to future stress events.

Question 4
On December 22, 2020, President Trump's Working Group on Financial Markets issued a report on the March 2020 pressures in the short-term funding markets and the resulting adverse effects on money market funds. The report identified 10 potential money market fund reforms without recommending any particular reform.
Which, if any, of these reforms do you support?

> **Answer:** The SEC issued a public request for comment on the President's Working Group report and currently is evaluating the comments in considering potential reforms. I have not studied the report sufficiently to identify which of its reform options would most efficiently and effectively reduce money market funds' risk of investor runs, but if confirmed I would look forward to addressing this issue.

Question 5
In October 2017, the Treasury Department released a report and recommendations on asset management and insurance.
Which recommendations in the report, if any, do you agree with?

> **Answer:** The U.S. asset management and insurance industries facilitate the deepest and most liquid capital markets in the world and provide diverse investment opportunities for investors while offering critical services to consumers. I have not studied all the recommendations in the 2017 report, but I support the general principles that we should protect U.S. interests in international standard-setting and we should avoid duplicative and conflicting standards. If confirmed, I look forward to working with you to see how Treasury can strengthen our asset management and insurance industries while ensuring strong investor protections and promoting sustainable economic growth.

Question 6
On July 12, 2016, former Federal Reserve Governor Daniel Tarullo described the term "shadow banking" as evoking a "sense of something hidden, furtive even" in a speech.
Do you believe this term should apply to open-end mutual funds registered with the SEC?

> **Answer:** Financial services in this country are provided by a variety of types of financial institutions and arrangements. That diversity is a strength of our financial system. I believe that a useful categorization of the financial sector is between bank and nonbank financial intermediation. I would place open-end mutual funds registered with the SEC in the nonbank financial intermediation category.

Question 7
In 2018, the House of Representatives voted 406-4 in favor of the JOBS and Investor Confidence Act. Section 1501 of that legislation would have replaced the Dodd-Frank Act's stress test requirement applicable to SEC- and CFTC-regulated entities with an authorization to adopt rules requiring periodic analyses of financial condition, including available liquidity, of such entities under adverse economic conditions.
Do you support this modification that the JOBS and Investor Confidence Act would have made?

> **Answer:** I believe that risks from SEC- and CFTC-regulated entities that are subject to the Dodd-Frank Act's stress tests are different from the risks posed by the largest, most complex banking organizations, and that regulations should reflect the differences in their risks.

Systemic Risk

Question 8
I am concerned about the FSOC's designations of Systemically Important Financial Institutions (SIFIs). A SIFI designation is troubling in part because it creates moral hazard: it formalizes an institution's "too big to fail" status and creates the expectation that the taxpayers will bail out a SIFI that falls into financial distress. Also troubling is FSOC's history of exercising its SIFI designation powers. Under the Obama Administration, FSOC made overreaching SIFI designations of non-banks in a manner completely lacking transparency, and without providing a clear path for de-designation.

In 2019, FSOC issued a policy that made several improvements to the non-bank designation process. These included emphasizing that designation is a last resort, requiring cost-benefit analysis and an assessment not only of the impact of a risk but also the likelihood that it will be realized, as well as creating both pre-designation and post-designation "off-ramps" to help firms and regulators avoid or reverse SIFI designation by mitigating systemic risks.

Will you commit that, if confirmed, you will support ensuring that FSOC:

a. *continues to treat SIFI designation as a last resort;*

b. *maintains a transparent process for SIFI designation;*

c. *conducts robust cost-benefit analysis for all designations; and*

d. *provides institutions with the opportunity to avoid designation and, if designated, a path to reverse such designation?*

Answer: Congress established FSOC to bring together the financial regulatory community to identify and respond to emerging threats to financial stability and to promote market discipline. FSOC should have the tools to protect our financial system from instability, whether arising from a single firm or the risky products or activities of an array of firms. The designation of individual nonbank financial companies for Federal Reserve supervision and enhanced prudential standards is one of the tools Congress provided to FSOC. The Dodd-Frank Act lists the criteria FSOC must consider in making any designation. If FSOC were to use this tool, it should do so in a manner that is transparent and accountable – and FSOC should maintain clear procedures regarding how a designated firm may seek to have its designation rescinded. Other tools may be more appropriate to address risks that stem not from one firm but from the products or activities of an array of firms. If confirmed, I will work closely with FSOC to identify, assess, and to respond to potential risks using whichever tools would be most efficient and effective given the nature of the risks. Similarly, opportunities to avoid designation or to reverse a designation should be transparent and accountable.

Question 9
Under what conditions, if any, would you advise Secretary Yellen to support the FSOC or the Financial Stability Board (FSB) designating mutual funds, ETFs, and money market funds as non-bank SIFIs?

Answer: I believe that FSOC should use the tools provided by the Dodd-Frank Act to protect our economy from systemic risks. The Secretary has said that while designation may be an appropriate tool to address certain risks arising from an individual firm, other tools may be more appropriate to address risks that arise from the products or activities of an array of firms.

Question 10
Asset managers provide investment advice to clients. They do not bear the risk of investments made by their clients. Asset managers do not own the assets that they manage.

Should asset managers be designated by the FSOC or the FSB as non-bank SIFIs? If so, under what conditions?

Answer: While designation can be an important tool to address potential risks associated with a nonbank financial company, other tools may be more appropriate for addressing vulnerabilities arising from products or activities of an array of firms, such as asset managers.

Capital Markets

Question 11
Despite the efforts of the SEC over the past four years, it still appears to be too costly for a company to go and stay public. Going public used to be a capital-raising event but it is now all too often a liquidity event for early investors like venture capital funds and a company's founders. The 1990s saw an average of around 550 IPOs annually. During the last decade, the number of IPOs were almost one-third that figure, at around 200 annually. Similarly, during the 1990s there was an annual average of about 7,200 total public companies. Now, there are 40% fewer public companies, with an annual average of around 4,300 public companies.
Do you agree that part of the IPO decline can be addressed by lowering the costs of going and staying public?

> **Answer:** Many factors, including the costs of going and staying public, have influenced the number of new IPOs and the current number of listed public companies in the U.S. If I am confirmed, I will work to promote access to capital for U.S. companies and expand investment opportunities for U.S. investors.

Question 12
In October 2017, the Treasury Department released a report and recommendations on improving the capital markets.
Which recommendations in the report, if any, do you agree with?

> **Answer**: The U.S. capital markets provide critical capital for businesses, diverse investment opportunities for investors, and important services for consumers. If confirmed, I would work to promote the strength of U.S. capital markets and a financial system that will lead to sustainable economic growth. If confirmed, I would be happy to work with you on achieving this mission.

Question 13
Going public may not be appropriate for all businesses, such as a small family-run business. Private markets play an important role in capital formation and job creation. Two years ago, new companies accounted for more than 25% of all employment gains. According to the SEC, in 2019, registered offerings accounted for $1.2 trillion (30.8%) of new capital raised, while exempt offerings accounted for approximately $2.7 trillion (69.2%) of new capital raised.
Do you agree that private markets are important to the economic growth of the United States?

> **Answer:** Yes, both public and private capital markets are important to U.S. economic growth, as each entails features that help meet the capital needs of companies of various sizes and in various stages of development.

Question 14
A small business in need of $500,000 often cannot raise that amount of funds from friends and family. However, $500,000 is often too small of an amount for a bank to make a loan or a venture capital firm to make an investment in a small business.
How would you encourage further capital formation to fill this need?

Answer: Small businesses are a vital part of the U.S. economy. The Treasury Department has long supported programs, such as the Jumpstart Our Business Startups (JOBS) Act and the State Small Business Credit Initiative (SSBCI), aimed at increasing access to capital for small businesses. Unfortunately, some businesses continue to face challenges in raising the capital they need to flourish. The Biden Administration has led on this issue, improving access to funding for small businesses through the American Recovery Plan. If I am confirmed, I look forward to working with you to improve access to credit and capital for small businesses.

Question 15

Entrepreneurs, including minority and female entrepreneurs, need capital to transform their ideas into new businesses that will create jobs.

Would minority and female entrepreneurs benefit from more opportunities to raise capital in the private markets?

Answer:

Access to capital is a significant barrier to minority and female entrepreneurs who seek to create jobs and grow wealth in their communities. I strongly support the Biden Administration's critical investments, including those being implemented now by Treasury, that expand access to entrepreneurial capital. More opportunities to raise capital would benefit entrepreneurs and communities and is important for U.S. economic growth.

Question 16

Retail investors could benefit from increased diversification of their investment portfolios and potentially higher investment returns if they had greater access to private investments, such as venture capital and private equity. Defined benefit plans frequently invest a portion of their assets in private investments. A 2018 study by the Center for Retirement Research indicates that a defined benefit plan may hold, on average, 19% of its assets in private investments. However, most Americans do not have a defined benefit plan and currently there is very little or no exposure to private investments in target date funds offered by employers' 401(k) plans.

Do you support providing employees at least a limited exposure to private investments through diversified funds with long investment horizons, such as target date funds designed for workers with a retirement date more than 20 years in the future?

Answer: I support policies that can help employees and other retail investors build wealth in order to save for a secure retirement. There are many important differences between investing in public and private markets, and between the structures and goals of defined benefit and defined contribution plans. If I am confirmed, I look forward to working with you on this issue.

Climate

Question 17
In May 2021, President Biden issued an executive order on climate-related financial risks, which directs the Treasury Department to issue a report on how such risks could be incorporated into financial regulation and supervision. I am very troubled by the potential misuse of financial regulation to further environmental policy objectives.
Do you believe it is appropriate for financial regulators to engage in environmental policy and, if so, under what authority?

> **Answer:** Climate change has already impacted the economy and the financial sector, with more frequent and severe natural disasters damaging homes, businesses, and entire communities. These impacts are expected to increase. In addition, the economic and financial transitions needed to place the economy on a sustainable path may involve additional financial risks. As a result, it is important that financial institutions measure, disclose, and manage the risks that climate change poses to their businesses. Financial regulators must also adjust their regulatory and supervisory approaches in response to new identified risks, to support safety and soundness and financial stability, consistent with their existing mandates.
>
> Financial regulators have begun work in this area, and Secretary Yellen has identified climate-related financial risks as a priority for the work of the Financial Stability Oversight Council. Treasury is also actively engaged in implementing the Executive Order on Climate-Related Financial Risk, issued May 20, 2021, which calls for a number of steps to address climate-related risks, including the issuance of a report by FSOC on this topic. I support the assessment of climate-related financial risks by financial regulators, including work coordinated by FSOC, and steps to address identified vulnerabilities based on these assessments. It is critical that these assessments proceed in an expeditious and analytically sound manner.

Bank Capital

Question 18
You have previously acknowledged that leverage capital ratios should serve as a simple and transparent backstop to risk-based capital ratios. Yet, as the Federal Reserve continues to rapidly expand its balance sheet with at least $120 billion in assets purchases per month, bank balance sheets continue to grow, putting further pressure on the leverage ratios.
If confirmed, what steps would you take to ensure that leverage ratios continue to serve as a backstop rather than a binding constraint?

> **Answer:** Leverage ratios are an important backstop to the risk-based capital requirements of banking organizations. I support the banking regulators' efforts to consider the appropriate setting of leverage ratios in light of changes in reserves. I also support regulators' efforts to ensure that changes do not erode bank capital levels.

Treasury Market

Question 19
Over the past few years, there have been several disruptions in the U.S. Treasury market (both cash and futures), which is generally considered to be the deepest and most liquid market in the world. In response to these disruptions, you have endorsed four specific regulatory reforms: a new standing repo facility, mandatory central clearing, amendments to bank capital rules, and additional data collection.
If confirmed, how would you prioritize this effort? What steps would you take to ensure that any reforms do not further disrupt the Treasury market?

> **Answer:** I am deeply committed to promoting the strength and resilience of the U.S. Treasury market. Treasury is engaged in an interagency process to study recent disruptions to the Treasury market and will consider a range of potential policy proposals. If confirmed, I would be happy to discuss this important issue with you and your staff.

Question 20
While FINRA-registered broker-dealers are required to report their trading activities of Treasury securities to TRACE, other Treasury market participants are not required to do so.
What do you believe would be the most important benefits with obtaining more complete market transaction data?

> **Answer:** Addressing TRACE data gaps will help to make available the necessary information to adequately monitor liquidity conditions in the Treasury market, which will help enable us to identify any vulnerabilities over time in this vital market.

Question 21
Some observers of the Treasury market have expressed concerns about regulatory fragmentation, with responsibilities divided between five or more agencies.
Do you believe that the current regulatory framework for oversight of the Treasury market is adequate? If not, what changes do you believe should be made?

> **Answer:** I agree with the observation that the current regulatory framework suffers from some degree of fragmentation and there are likely opportunities to be found that could reduce fragmentation and create greater efficiencies.
>
> That said, the current regulatory system is working; the regulatory agencies have good working relationships and have been able to work jointly to address financial market regulatory issues that have arisen.

Housing Finance Reform

Question 22
Over the last several Republican and Democratic Administrations, the Treasury Department has played an active role in advocating reform of the housing finance system.
Do you believe Treasury should continue to play a leadership role in housing finance reform?

Answer: I appreciate the considerable effort that you and other members of Congress have devoted to evaluating the U.S. housing finance system and developing proposed reforms. The Biden Administration is committed to housing finance policy that expands fair and equitable access to homeownership and affordable rental opportunities, protects taxpayers, and promotes financial stability. If confirmed, I look forward to working across the Administration and with Congress on housing finance policy, including regarding the GSEs' conservatorships.

Question 23
In January 2021, the Treasury Department and FHFA amended the Preferred Stock Purchase Agreement with each GSE to provide that Treasury will deliver to Congress a housing finance reform proposal by the end of September 2021.
If confirmed, will you work to ensure that Treasury delivers that proposal by September, if not sooner?

Answer: Treasury is assessing the GSEs' current status, including the recent amendments to the PSPAs, in addition to implementing programs authorized in the American Rescue Plan to help homeowners and renters. If confirmed, I will work to ensure that Treasury engages with Congress on housing finance reform in a timely manner.

Senator Lankford (R-OK)

Questions for Lily Batchelder (Tax Policy):

OECD:

1. The US was the first to enact a global minimum tax when Congress enacted the GILTI as part of the Tax Cuts and Jobs Act. No other country currently has a global minimum tax. In fact the GILTI is harsher in many aspects than the Pillar 2 minimum tax under consideration at the OECD. Yet, the Biden Administration is proposing raising the GILTI rate even higher – to 21% – while our international counterparts have yet to enact any minimum tax.
    a. Do you believe that the US should increase rates on its own companies, by doubling the GILTI rate and moving a second time, before our international counterparts and competitors have yet to enact their own minimum taxes?

    Answer: Strengthening GILTI would improve U.S. competitiveness by eliminating current law incentives to book profits in foreign jurisdictions (whether higher or lower-taxed) instead of in the U.S. Additionally, these changes can raise substantial revenue which can be used to make infrastructure and other investments to further improve U.S. competitiveness. The President's anti-inversion proposals would backstop these changes and the SHEILD proposals would create strong incentives for other countries to adopt robust minimum taxes, thus ensuring our tax system is competitive. All of these proposals can be enacted by Congress without a multilateral agreement being reached or implemented.

2. There's been bipartisan support on the Hill for the OECD negotiations – a primary driver of that support stems from bipartisan opposition to digital services taxes (DSTs), many of which discriminate against US companies. However, we know – and even heard again a few weeks ago – that the EU will move forward with plans to enact a digital levy this summer even with an agreement at the OECD.
    a. Can you commit to ensuring that any OECD agreement will require elimination of other countries' DSTs and similar discriminatory unilateral measures?

    Answer: It is my understanding that Pillar 1 would replace discriminatory measures, such as DSTs, with a nondiscriminatory approach to market-based taxation. It is also my understanding that, as part of Pillar 1, Treasury has asked for the standstill and rollback of DSTs and other similar unilateral measures. But I look forward to being briefed on these issues, including the status of the EU digital levy.

3. A final agreement reached at the OECD will require Congress to ratify a multilateral treaty and enact implementing legislation. Given the aggressive timeline being suggested for an OECD agreement, it will be increasingly important for Congress to be closely engaged with the OECD process, as approval of a treaty will require bipartisan support.

a. As negotiations continue, will you not only commit to keeping the tax-writing committees apprised of negotiations and developments, but also commit to providing meaningful opportunities for our input to shape these negotiations – to ensure that promises are not made at the OECD that might not have bipartisan support?

> **Answer:** If confirmed, I am committed to keeping Congress closely apprised of the OECD process and its developments, and to listening to Congressional input on the negotiations.

4. I am concerned about recent comments from Pascal Saint-Amans that indicate that the OECD may consider carve-outs on Pillar 2 to address China's concerns. Even if there is an agreement on a global rate, if foreign competitors are not subject to the same tax base for Pillar 2, US companies will be at a significant competitive disadvantage.
   a. Do you agree that no agreement should be reached on Pillar 2 where the US' biggest competitors, like China, are not subject to the same terms as the United States?

> **Answer:** It is my understanding that part of the goal of Pillar 2 is to create a level playing field for the U.S. relative to our economic competitors. With that goal in mind, I look forward to being briefed on this issue.

Effective Corporate Tax Rates:

1. We've repeatedly heard from Secretary Yellen that the proposed changes to the US' corporate and international tax laws are intended to stop a global "race to the bottom" on corporate tax rates. However, comparing statutory (federal and state) corporate income tax rates of the US and the OECD average excluding the US shows that the OECD rate has been relatively steady since 2008, hovering between roughly 23% and 25%. However, it is clear that the US rate at that time, 38.9% until 2017, was clearly out of sync with the rest of the developed world, including some of our top competitors. Given this data, the modification to the corporate rate in 2017 doesn't appear to be a "race to the bottom" by the US at all – instead, it was bringing the US closer in line with other OECD countries so that our companies could compete, while also broadening the tax base and encouraging companies to bring their income back to the US. Further, since that time, we haven't seen plunging rates at the OECD, as Secretary Yellen's commentary suggests.
   a. Do you believe that we're experiencing a "race to the bottom" on global tax rates? If so, what evidence are you relying on to make this claim?

> **Answer:** My understanding of OECD data is that it finds that in 1985, the average statutory tax rate among OECD countries was 43 percent; by 2000, it was 30 percent, and in 2020, 22 percent.

Charitable Giving:

1. As you may know, Congress enacted a non-itemizer charitable deduction last year, allowing single filers to deduct up to $300 in cash gifts (up to $600 for joint filers) for charitable donations that they make. Recent data has shown an uptick in small gifts since

enactment, and charitable giving numbers for 2020 are expected to be the highest on record. While there are many reasons that Americans give to charity, the data suggests that the charitable deduction, now available to those taking the standard deduction, could have some impact on this increase.

   a. Do you agree that tax incentives can encourage behavior, such as charitable giving, and that incentives like the charitable deduction should be available to all taxpayers?

2. As you may know, earlier this year, Senator Coons and I, as well as several other colleagues, a few of which also sit on the Finance Committee, introduced the Universal Giving Pandemic Response and Recovery Act, which would expand and extend the charitable deduction for non-itemizers that is currently in the code.
   a. Will you commit to working with my colleagues and I to expand the charitable deduction for individuals that do not itemize on their taxes?

Answer: I share your concern about promoting charitable giving, and agree that tax incentives can affect behavior, including charitable giving. If confirmed, I would look forward to working with Congress to find the most cost-effective ways to encourage charitable giving.

Energy:

1. President Biden and Congressional Democratic leadership have made it clear that they intend to phase out domestic conventional energy production. With that will go high-paying jobs back in Oklahoma. In addition, this position threatens our overall diversity of fuels and energy independence, making us vulnerable to instabilities, technology failures, significant weather events, and things of the like.
   a. If these jobs are already at risk of being eliminated, and effective tax rates on companies are further increased, how do you expect these employers will make up the job loss?
   b. How will the proposed changes to our domestic corporate and international tax laws impact our domestic energy producers' ability to compete with foreign-owned energy businesses?

Answer: The Biden Administration is strongly committed to American job creation, and the American Jobs Plan put that goal first and foremost. Investments in clean energy, housing, infrastructure, and research would provide a strong incentive for high quality American jobs. The domestic corporate and international tax proposals would further this goal by funding such investments, and by reducing incentives to move profits and jobs offshore.

2. Our energy security has changed vastly in the last few decades. Fifty years ago, energy supply disruptions in other parts of the world had the power to lead to the contraction of our economy and disrupt the everyday lives of Americans. Due to aggressive action to discover and develop resources at home, global supply shocks no longer pose the crisis-level risk they once did. We cannot take this for granted, but need to put policies in place

that allow domestic production to continue to serve as a stabilizing force for our economy.

a. Do you believe maintaining energy independence should be a central goal of the Treasury Department?

> **Answer:** I believe all Americans should have access to safe, secure, and affordable energy, now and into the future. If confirmed, I am committed to working towards that goal.

Questions for Ben Harris (Economic Policy):
Senator Lankford

Inflation:

1. Dr. Harris, we've seen comments from several prominent progressive economists warning of the massive size of the Democrats' American Rescue Plan – with Larry Summers even warning that this legislation was the "least responsible macroeconomic policy we've had in the last 40 years," and that "Now, the primary risk to the U.S. economy is overheating – and inflation."
   I'm concerned that the level of stimulus – especially as discussion of spending trillions more on infrastructure and in the President's Budget continues – could lead to inflation and rising interest costs, and ultimately stall economic recovery.
   Just weeks ago, we saw that the Consumer Price Index (CPI) for April 2021 was up 4.2% from that time last year. This is the sharpest year-to-year increase since September of 2008. I understand that in April of 2020 we were in the midst of the COVID-19 pandemic, and that we need to be mindful of that when drawing comparisons. However, I also know that Americans, and my Oklahoma constituents, are feeling these rising prices directly, as food and household energy costs continue to rise, and I worry that some of these effects may not be temporary.
   a. Do you agree with Summers and others who warn of these economic risks and the irresponsibility of such high spending?
   b. Are you concerned by this level of inflation? If not, how long do you expect these high rates to continue?
   c. Do you think corresponding action will be necessary?
   d. How can we contain overheating risks and promote sustainable recovery and growth?

> **Answer:** A robust recovery – which I believe we are now seeing – will involve some degree of transitory inflation, as pandemic-impacted sectors that saw price decreases in 2020 return prices to their pre-pandemic levels. Moreover, elevated demand for goods along with supply chain disruption due to the pandemic have led to some price increases for goods like motor vehicles. I expect the combined effects or reopening and higher demand due to stimulus payments to moderate in coming months, bringing inflation rates down. In particular, I expect monthly inflation rates to return to levels consistent with the Fed's 2% PCE average inflation target

later this year. To be clear, I recognize that even transitory inflation, especially for essential goods, can be difficult for American families.

Inflation expectations remain within historical ranges, and the Fed retains the tools to address any inflation risks that materialize in the medium-term.

Overall, I believe the American Rescue Plan was fiscally responsible legislation that sought to quickly end the pandemic and restore the economy to full employment. At the start of the year, nearly 10 million jobs had been lost since April 2020, and the course of the pandemic remained highly uncertain. Under these conditions, the risk of doing too little outweighed the risk of doing too much. The American Jobs Plan and American Families Plan pose limited inflationary risk, since these proposals are fully paid for, phase in over the course of multiple years, and meaningfully increase economic potential. Together, these plans will boost productivity and reduce the odds of undesirable future inflation by investing in infrastructure, reallocating labor to higher-paying/higher-productivity industries, and increasing labor force participation by addressing longstanding childcare and eldercare challenges that serve as a barrier to work.

In assessing the risks, it also important to keep in mind that prior to the pandemic, inflation had run below the Federal Reserve's 2% target for a prolonged period and inflation expectations were widely regarded as too low. In my view, the temporary price increases we are seeing today as the economy rapidly reopens will not leave a lasting imprint on long-run inflation dynamics.

<u>Senator Young (R-IN)</u>

Questions for the Record for Benjamin Harris

Question 1
The Social Impact Partnership to Pay for Results Act (SIPPRA), bipartisan legislation that I led with Senator Bennet and was enacted in early 2018, created a new federal outcomes fund at the Department of Treasury, which you would oversee as the Assistant Secretary for Economic Policy. State and local jurisdictions across the country applied for SIPPRA funds. Applications were due on May 22, 2019. That date is significant because, as of this hearing, it was more than two years ago.
After thoroughly reviewing these applications, a bipartisan commission recommended eight finalists for outcomes-based funding awards. Yet despite a statutory deadline of late November 2019 for the Treasury Department to announce its first round of awards, two years later, only one award has been announced.
The federal government has now taken eight times longer to review applications than applicants took to create projects and craft proposals. The federal interagency review process, after the Commission finished its review process, now stretches into its nineteenth month. At least one finalist, a project from my home state of Indiana, exited the process due to this delay.

Mr. Harris, if confirmed, what steps will you take to avoid further unnecessary delays, and ensure that this outcomes fund lives up to the full potential envisioned in the original bipartisan legislation?

> **Answer:** Prior to serving at the Treasury Department as a counselor to Secretary Yellen, I served for several years as the chief economist to a non-partisan evidence-based policy group that advocated for programs, like SIPPRA, that more closely tie programmatic outcomes to funding. I remain a supporter of these approaches and hope to have the opportunity to work to ensure effective implementation of the promising program.

Questions for the Record for Lily Batchelder
<u>Senator Young</u>

Question 1
Despite the Biden Administration's commitment not to raise taxes on the middle class, the Democrats' so-called COVID relief package—passed this March with zero Republican votes—prohibits states from lowering tax rates over the next four years if such state accepted COVID relief funding. The Treasury Department has since announced that states will have to justify any tax cut by demonstrating such cut was offset by other revenues.
The State of California, which is set to receive more than $27 billion in this latest COVID relief package, recently announced a budget surplus of up to $76 billion, and expects to be providing certain families with rebates of up to $600.

Ms. Batchelder, do you believe there is a meaningful significance between a tax decrease and a tax rebate?

If confirmed, do you commit to examining whether California's rebate proposal, if enacted, violates the Democrats' "no tax cut" rule?

> **Answer:** I understand there are interactions between the federal programs enacted under the American Rescue Plan and state policies being put in place because of COVID-19. If confirmed, I would look forward to being briefed on the implementation of these programs and their interactions with the tax system.

Question 2

President Biden has repeatedly and consistently affirmed that he will not raise taxes on the middle class, particularly those making under $400,000 per year. However, I am concerned about many of President Biden's proposals that will indirectly harm the middle class, including his proposal to return America's corporate tax rates to one of the highest among OECD member nations. Countless studies have shown that workers bear the brunt of corporate tax hikes. Nonpartisan research from the Congressional Budget Office has indicated that up to 70% of the burden from corporate tax hikes are borne by labor in the form of reduced wage growth or by the consumer from higher prices, while the middle class is further hit by the remaining burden on capital through a weakened 401(k).

While there is some disagreement on the exact proportion, even the most liberal models suggest that labor shares no less than a quarter of the burden, with most empirical research suggesting that the split is at least 50-50. In either case, economists agree that labor bears a substantial share of the corporate tax incidence and should be taken into account when analyzing the economic impact of a tax hike.

Ms. Batchelder, what portion of the corporate tax rate do you believe is borne by workers? Do you agree that there is a contradiction between the President's pledge to protect middle class taxpayers from an increased tax bill while at the same time supporting burdensome and inflationary policies that reduce opportunities and raise the cost of living?

> **Answer:** The incidence of the corporate tax is a heavily debated topic within economics, but the nonpartisan, career economists at JCT and Treasury assign the vast majority of the burden to the owners of capital.[35] I would tend to defer to their judgement.
>
> These models also assume that the deficits created by corporate tax cuts will be offset sometime in the future, but do not account for the potential costs of those offsets for typical workers. It is worth noting that other tax options (such as labor income taxes and payroll taxes) are estimated to fall almost entirely on labor.

Question 3

Since 1954, companies of all sizes, all along the supply chain and in major sectors from aerospace to electronics, from automobiles to pharmaceuticals and from manufacturing to information technology, have been able to deduct research and development (R&D) expenses in

[35] Joint Committee on Taxation, *Modeling the Distribution of Taxes on Business Income, JCX-14-13* (2013); Cronin et al., 2012). Cronin et al, *Distributing the Corporate Income Tax: Revised U.S. Treasury Methodology*, OTA Technical Paper No. 5 (U.S. Department of the Treasury, Office of Tax Analysis, 2012).

the year in which they are incurred. Starting in 2022, however, companies will be required to amortize or deduct these expenses over a number of years under I.R.C. Section 174. Doing so would reduce the after-tax cash flow for R&D activities and drive down the rate of return on R&D investment. I am concerned that private sector R&D will become more expensive resulting in harmful outcomes if Section 174 is allowed to go into effect in 2022.
President Biden's Fiscal Year 2022 Budget recognizes the importance of R&D to America. The Budget states:

- The United States is falling behind its biggest competitors in R&D (p. 9),
- R&D innovation creates thousands of good paying jobs (p. 10),
- R&D is key to developing clean energy technology (p. 22),
- The Administration supports historic increases in R&D spending across numerous federal agencies (p. 16),
- Technology of the future will be created in American by American businesses using American workers (p. 29), and
- The Administration vows to reestablish the United States as a global leader in R&D (p. 17).

Yet nowhere in the President's Fiscal Year 2022 Budget is repeal of Section 174 listed as an Administration priority. Similarly, the General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals (the "Green Book") contains no mention of Section 174.
I believe that a key variable in securing America's leadership in emerging technologies is reinstatement of the immediate deductibility of R&D expenses, as has been the case for the last 67 years. Senator Hassan and I have introduced S. 749, the American Innovation and Jobs Act, to repeal section 174. A similar bipartisan bill was introduced in the House by Congressmen Larson and Estes, H.R. 1304, the American Innovation and R&D Competitiveness Act of 2021.
I would appreciate your views on whether you agree that repeal of Section 174 should occur before it goes into effect in 2022 and whether the Department of the Treasury actively supports 174 repeal.

> **Answer:** The President's budget proposes repealing the foreign-derived intangible income deduction (FDII) and dedicating the revenue raised from FDII repeal to increase incentives for R&D. If confirmed, I would look forward to learning more about the most cost-effective ways to encourage R&D, including from you and your staff, and working with Congress on designing this proposal.

Questions for the Record for Nellie Liang
Senator Young

Question 1
Since the onset of the coronavirus pandemic, the United States government has pumped trillions of dollars into the economy and swelled the money supply. Since the start of his term in office, President Biden has laid out plans for over $7 trillion in federal spending. We have heard from Secretary Yellen that Republicans' inflation concerns arising from this staggering government spending were outweighed by the need for additional stimulus, despite the fact that a trillion dollars of COVID relief had yet to be spent prior to the passage of the $1.9 trillion American Rescue Plan Act.

What macroeconomic effects from this federal spending spree should we expect over the next several years?
Given the April CPI revealed the largest increase in inflation since 2008, do you agree with Secretary Yellen's recent comments at the Wall Street Journal's CEO Council Summit that there is no real inflation problem brewing?
Are you concerned about any effects that further spending—as proposed by the President, despite the trillions in deficit spending already passed into law—will have on our economy over the next few years?

> **Answer:** The American Rescue Plan Act of 2021 provided critical assistance to household, businesses, and communities so that they could weather the severe adverse effects of the COVID pandemic. This assistance will strengthen the economic recovery and help to preserve the economy's potential. I support the President's proposed additional investments in infrastructure, families, and workers, which will increase productivity and boost U.S. economic growth in coming years. In addition, the President has proposed increased revenues to pay for these investments and to mitigate debt growth. It is important to monitor risks and to respond appropriately if risks materialize.

Question 2
The $2 trillion "COVID relief" bill that was passed by Congress this March without bipartisan support included hundreds of billions of dollars in unrelated or unnecessary spending. For example, $350 billion was directed towards state and local aid funds despite recent analysis showing state revenues making a stronger comeback than expected: Bureau of Economic Analysis data reveals that state and local revenue last quarter was roughly 7 percent above pre-pandemic levels before accounting for federal funding, and California Governor Gavin Newsom announced an enormous $75 billion budget surplus for the state despite it receiving the largest share of the state funding in the American Rescue Plan.
Ms. Liang, do you believe this deficit spending is a responsible use of federal dollars?
If the coronavirus pandemic subsides with trillions of relief dollars in reserve, should such funds be returned to the Treasury—in other words, returned to taxpayers? If no, why not?

> **Answer:** If confirmed for this position, one of my responsibilities would be to oversee the financing of the federal government's obligations, but determinations regarding the appropriate level of spending and whether to redirect previously appropriated funding are made by Congress.
>
> If confirmed, I would support following all applicable requirements regarding the disposition of any unused relief funds.

Questions for the Record for Jonathan Davidson
<u>Senator Young</u>

Question 1
The Assistant Secretary for Legislative Affairs holds an important role in assisting Congress in fulfilling its responsibility of oversight of the Treasury Department. As the committee of

jurisdiction, the Senate Finance Committee will be working particularly closely with Treasury and needs full access to Treasury personnel in order to do its job.

If confirmed, do you commit to working in a timely and transparent manner with myself and members of this Committee, treating Members and staff from the Majority as well as the Minority on equal footing?

> **Answer:** I deeply respect both the majority and minority members of this Committee. If confirmed, I would like very much to work in a collaborative way with you and other members of this Committee to provide timely and accurate information in line with the traditional partnership that Treasury and this Committee have had in the past.