

**United States Senate
Committee on Finance**

Responses from Neil MacBride, Nominee for General Counsel for the Department of the Treasury
Wednesday, September 22, 2021

Questions for the Record

Senator Maria Cantwell (D-WA)

Mr. MacBride, I want to discuss an issue that is of serious concern— our growing affordable housing crisis and the need to build millions more housing units in Washington state and nationwide.

I have been working with Sen. Young, along with the Chairman and Sen. Portman, to expand and strengthen the Low Income Housing Tax Credit.

Our legislation includes several critical increases to Housing Credit resources and improvements to the program: a 50% allocation increase for the credit overall, a reduction of the current 50% bond threshold to 25% so projects can more easily access much-needed Housing Credit equity, and important basis boosts to help extremely low-income populations as well as high need areas including rural and tribal communities.

This is something we have been able to make incremental progress on, most recently last December with the enactment of the 4% floor. But as we recover from the pandemic, now more than ever families need access to more affordable housing. We have much more to do here.

I was pleased to see that the House Ways and Means reconciliation title included \$29 billion in funding for LIHTC and included many of the eligible provisions of our bill, and I hope we can match that historic investment in affordable housing here in this committee.

I look forward to working with you to strengthen and expand LIHTC this Congress.

- As we work towards these reforms, will you commit to do all you can to work with myself, Sen. Young and our colleagues on expanding and improving the Low Income Housing Tax Credit?
- Mr. MacBride, will you work to ensure that increasing the quantity and quality of affordable housing is a top priority for the Department of Treasury?
 - **Answer: I am committed to increasing the quantity and quality of affordable housing through the Low-Income Housing Tax Credit (LIHTC). The measure that Congress enacted through leadership from you and other members of this Committee is a critically important initiative that will help to make the LIHTC more effective and to increase housing affordability across the country. If I am privileged to be confirmed, I would be honored to work with you on additional measures to strengthen and improve the LIHTC.**

Mr. MacBride, the American Rescue Plan provided \$350 billion for state, local and tribal governments to address the impacts of COVID-19 and support the economic recovery of our communities. That included more than \$4.4 billion to the state of Washington.

Our state legislature has directed more than \$600 million of that funding to go towards the removal and replacement of culverts that block salmon passage—essentially, drainage systems that move streams and rivers under roads, rail and other man-made infrastructure.

Salmon are a big deal for us in the Northwest. They are vital to Washington’s economy and our identity, and our nation also has a treaty obligation to protect tribal fishing rights. But our salmon populations are declining, and we need to make every effort possible to restore those salmon runs.

We know that the most significant thing we can do is to clear these blockages that prevent salmon from returning to their native streams and restore their habitat. Our state agencies estimate that removing just those culverts owned by the state will increase the number of mature salmon by at least 200,000.

But our state hasn’t been able to move forward on putting \$600 million in federal funding towards these important projects because of a lack of clarity from Treasury. The Department’s guidance on state and local funds includes eligibility for water infrastructure projects. But the state has not gotten any assurances from Treasury that culvert projects are included in this definition.

- Mr. MacBride, will you work to address this issue and give the state of Washington the clarity it needs to move forward with being able to use these funds?
 - **Answer: I understand the importance of salmon to Washington's economy and identity. If I am privileged to be confirmed I would be pleased to work with you on this important issue to provide clarity around Treasury’s guidance on state and local funds.**
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Senator Catherine Cortez Masto (D-NV)

As a former Associate Deputy Attorney General and U.S. Attorney for the Eastern District of Virginia, you oversaw criminal enforcement and civil litigation on behalf of the United States. You also served as a federal prosecutor in the U.S. Attorney’s Office for the District of Columbia

Can you share with us how your experience will help inform and prepare you for this new role at Treasury?

- **Answer: I spent 15 years as a government attorney in public service, including in the U.S. Senate and the U.S. Department of Justice. My decade as a federal prosecutor focused on protecting public safety and defending vulnerable victims, whether of domestic violence, corporate fraud, organized crime, or terrorism. As the United States Attorney in the Eastern District of Virginia, I targeted corporate fraud, bank fraud and consumer fraud – with a focus on real world victims – using all the criminal and civil tools at my office’s disposal. This included standing up the Virginia Financial Fraud Task Force, working closely in partnership with other federal and state agencies (e.g., FBI, Securities Exchange Commission, Commodity Futures Trading Commission, U.S. Postal Inspection Service, Federal Reserve & FDIC Inspectors General Offices, Virginia Corporation Commission). I also partnered closely with Treasury’s enforcement offices to tackle national security threats and financial crimes, including with OFAC, FinCEN, SIGTARP and IRS Criminal Investigative Division. Including my work as a Senate counsel, I believe my extensive experience at the intersection of law enforcement, national security, and financial enforcement matters have prepared me well to serve as Treasury General Counsel, if I am privileged to be confirmed.**

How will you ensure - through your role - that Treasury and its agencies are proactive, responsive and fair in addressing taxpayer’s needs in an equitable manner?

- **Answer: Based on my 15 years of public services in all three branches of government, I am firmly committed to our government working fairly, efficiently, and responsively for the American people. That belief will guide my work every day if I am privileged to be confirmed.**

In your opening statement, you noted the importance of “promoting a more fair and equitable economy, maintaining an effective tax system, bolstering our national security, and ensuring the continued dynamism of the U.S. economy.” These are important goals to bring to the Treasury and its broad mission. Given your service and work as a government official on law enforcement, national security, and financial enforcement, how will you address difficult legal questions on these matters?

- **Answer: While Treasury’s responsibilities cover a range of issues that generate no shortage of complex, difficult legal questions, if confirmed I would be very fortunate to work alongside the Treasury Legal Division’s dedicated, experienced, and immensely talented lawyers and professional staff. As the “chief legal officer” of Treasury, my job would be to ensure that the Department carries out its mission in fidelity to the law.**

What do you think is a particular area or issue of emerging concern that may arise during your time in this role at Treasury?

- **Answer: There are likely several emerging or priority areas which will confront the Treasury Legal Division in the next few years, including cryptocurrency, climate change, the Department's sanctions review, and the implementation of anti-money laundering authorities under the Corporate Transparency Act.**
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Senator Elizabeth Warren (D-MA)

Question 1

We have now spoken multiple times regarding my concerns about your previous private-sector employment and your numerous trips through the revolving door. Given your recent work on behalf of clients like ExxonMobil, S&P, Wells Fargo, JP Morgan, Morgan Stanley, Facebook, AstraZeneca, and Cisco Systems, I have asked you to make some commitments that will help at least reduce the speed of the revolving door and reassure the American public that you are working for them and not clients, past or future.

You have not made those commitments to date, so let me ask one more time.

Will you commit to recuse yourself from working on any matters related to your former clients—including ExxonMobil, Wells Fargo, Morgan Stanley, AstraZeneca, and others—for four years if confirmed?

Question 2

Ethics law requires a two-year recusal commitment, and other administration officials, including Defense Secretary Lloyd Austin, were able to commit to extending their recusal period for four years. But even if you commit to a four-year recusal period, you could still seek waivers to that recusal that would allow you to participate in matters that directly affect the financial impacts of your former clients.

Will you commit, if confirmed, not to seek any waivers from any ethics recusals that prohibit you from working on matters related to your former clients?

Question 3

The revolving door centers on conflicts of interest related to what work people do before they enter government, but also what they do after government service. For example, the New York Times just reported this month that “the largest U.S. accounting firms have perfected a remarkably effective behind-the-scenes system to promote their interests in Washington,” with their employees “tak[ing] senior jobs at the Treasury Department, where they write policies that are frequently favorable to their former corporate clients,” after which “the firms welcome them back with loftier titles and higher pay.”¹ The American public deserves to know that if confirmed to this key role at the Treasury Department, you will be working from them, not on behalf of companies that you may be seeking employment from in the near future.

Will you commit not to seek employment with or be compensated by any company you interact with during your time in government for four years after you leave government service?

- **Answer: I have no financial interests in any of my former clients. If I am privileged to be confirmed, I will comply with the requirements set forth in my Ethics Agreement to terminate my outside position with and divest my financial interest in my law firm. I have**

¹ The New York Times, “How Accounting Giants Craft Favorable Tax Rules From Inside the Government,” Jesse Drucker and Danny Hakim, September 19, 2021, <https://www.nytimes.com/2021/09/19/business/accounting-firms-tax-loopholes-government.html>.

dedicated over half my career to serving and protecting our country. I will always seek to serve the good of our country and the good of the American people. I have made extensive ethics commitments as requested by the Office of Government Ethics and documented in a written agreement, which I have signed. My Ethics Agreement and the President's Ethics Pledge will require me, if confirmed and appointed, to recuse myself for a period of two years from participating personally and substantially in any particular matter involving specific parties in which I know that a former employer or client identified in my Ethics Agreement is a party or represents a party, unless I am first authorized to participate by the appropriate ethics official. If confirmed, I agree to extend this term of my Ethics Agreement from two years to four years. I will ensure that I have a robust screening process in place to help implement these recusals.

I have no intention to seek a waiver and no expectation that it will be required, but if unanticipated circumstances were to arise, I would consider available alternatives to a waiver before seeking one and would consult very carefully with career Department ethics officials. If I am privileged to be confirmed, I can pledge to you I will be mindful of not only the legal requirements that govern my conduct but also of appearances to ensure that the public has no reason to question my impartiality. I will consult with career Department ethics officials on these issues and require everyone who serves with me to ensure public service is and will remain a public trust.

I have promised to abide by the extensive post-government employment ethics rules required by Federal law and the Biden Administration, just as I have complied with the ethics rules throughout my 29-year career in public service and private industry. These statutory and Administration provisions set forth comprehensive restrictions relating to communicating back to the Federal Government on behalf of any future employers and clients. I believe that these existing rules are appropriate and sufficient to protect the public interest. If confirmed, I will carry out the responsibilities of the Treasury General Counsel honorably, and I will seek any post-government employment in full compliance with the applicable ethics rules.

Senator Mike Crapo (R-ID), Ranking Member

National Debt / Social Security and Medicare Trust Funds

I appreciate the commitment you expressed in the hearing to share information with the Finance Committee regarding Treasury and the Fed's plans to prioritize payments in the event of a breach of the national debt limit.

I am deeply concerned about the long-term stability of our government finances and their impact on Americans' economic prospects. At a time of significant economic uncertainty created by the COVID-19 pandemic, the Biden Administration delayed by almost five months the release of the Social Security and Medicare Trustees Reports, even as it has advocated for unprecedented increases in federal spending.

- Question. If confirmed as General Counsel of the Treasury Department, will you commit to urging Secretary Yellen, the Managing Trustee of the Social Security and Medicare Trust Funds, to release future Trust Fund Annual Reports each year by April 1 as required by the Social Security Act?
 - **Answer: I deeply respect the oversight function of this Committee. If I am privileged to be confirmed, I would very much like 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. I would need to be fully briefed by Treasury staff to better understand the timing issues mentioned as part of this question. If I am privileged to be confirmed, I would very much welcome this conversation so that we can provide satisfactory and timely information to the Committee.**

Taxpayer Private Information / ProPublica

On June 8, advocates at ProPublica, in the interest of a clear political agenda, began disclosing private, legally-protected taxpayer information and named particular individuals in an ongoing series of articles. ProPublica claimed that it had obtained a "vast trove of Internal Revenue Service data on the tax returns of thousands of the nation's wealthiest people, covering more than 15 years." Section 6103 (26 U.S. Code) of the Internal Revenue Code, intended to reinforce privacy protections for American taxpayers, provides for confidentiality, privacy, and penalties for certain disclosure of returns and return information.

- Question. Please describe your understanding of how Section 6103 applies to ProPublica's release of legally-protected, private taxpayer information and identify whether, if confirmed, you feel any obligation to investigate ProPublica's releases of private information, including contacting authors and executives at ProPublica.
 - **Answer: I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 USC section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax**

Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.

Conflicts of Interest

If confirmed, your ethical conduct, including conduct related to conflicts of interest, is very important particularly when serving in such an important position such as General Counsel of the Treasury Department.

- Question. Will you commit to recuse yourself from any decisions involving previous clients or employers for two years after being confirmed, in accordance with the Biden Administration's ethics pledge?
 - Answer: **I have no financial interests in any of my former clients. If I am privileged to be confirmed, I will comply with the requirements set forth in my Ethics Agreement to terminate my outside position with and divest my financial interest in my law firm. I have dedicated over half my career to serving and protecting our country. I will always seek to serve the good of our country and the good of the American people. I have made extensive ethics commitments as requested by the Office of Government Ethics and documented in a written agreement, which I have signed. My Ethics Agreement and the President's Ethics Pledge will require me, if confirmed and appointed, to recuse myself for a period of two years from participating personally and substantially in any particular matter involving specific parties in which I know that a former employer or client identified in my Ethics Agreement is a party or represents a party, unless I am first authorized to participate by the appropriate ethics official. If confirmed, I agree to extend this term of my Ethics Agreement from two years to four years. I will ensure that I have a robust screening process in place to help implement these recusals. I have no intention to seek a waiver and no expectation that it will be required, but if unanticipated circumstances were to arise, I would consider available alternatives to a waiver before seeking one and would consult very carefully with career Treasury ethics officials.**

I have committed to abide by the extensive post-government employment ethics rules required by Federal law and the Biden Administration, just as I have complied with the applicable ethics rules throughout my 29-year career in public service and private industry. If confirmed, I will carry out the responsibilities of the Treasury General Counsel honorably and will seek any post-government employment in full compliance with the applicable ethics rules.

Senator Chuck Grassley (R-IA)

In your written testimony you note that you've worked with the Criminal Investigation division of the IRS. Therefore, I assume you realize how important it is that tax information provided to the IRS is protected and is kept confidential. Since June 8, ProPublica has been publishing stories based on the apparent illegal disclosure of confidential tax information. Despite my efforts as Ranking Member of the Judiciary Committee and Ranking Member Crapo's here at Finance, we've been provided very little information as to the status of any investigations.

1. Do you agree that maintaining the confidentiality of taxpayer information is very important, and that any possible breach must be thoroughly investigated?
 2. If confirmed, do you pledge to work with me and other Senators, to carry out our constitutional duty of oversight, and keep us informed on the status of any such investigation? And, would you advise Secretary Yellen to do the same?
 3. What is the current status of active investigations into the source of the information ProPublica is publishing? If you are not able to answer this question because you are not yet confirmed, will you commit to provide me a briefing if you are confirmed?
 - **Answer: I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including taxpayer information, is illegal and must be taken extremely seriously. If I am privileged to be confirmed, I pledge to work with the Finance Committee on oversight requests. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. While I am not privy to non-public information about the current status of the investigation, if I am privileged to be confirmed I commit to make sure the Treasury Department continues to work with relevant oversight bodies, to gather the facts, ensure accountability, and work to prevent unauthorized access or disclosure to the fullest extent possible.**
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Senator John Thune (R-SD)

Question 1

Should you be confirmed, will you agree to provide timely and thorough responses to questions from members of the Senate 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 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.**

Question 2

How would you ensure the Treasury Department acts in fidelity to the law?

- **Answer: Congress’s authorizing statute, 31 USC section 301, defines the Treasury General Counsel as the Department’s “chief law officer.” Moreover, the specific responsibilities of the Treasury General Counsel are set forth in Treasury Order 107-04 [issued September 29, 2020], and include providing legal advice to the Secretary, Deputy Secretary and the other component heads related to Treasury’s statutory responsibilities; managing Treasury’s position in lawsuits; and reviewing the Department’s regulatory actions. If I am privileged to be confirmed as Treasury General Counsel, I would be bound by the authorizing statute to ensure the Department acts in fidelity with the laws Congress enacted and the binding case law of the federal courts. Having previously spent four years as a Senate counsel, I am fully committed to ensuring the Department’s legal positions comport with the laws as Congress enacted.**

Question 3

In response to the recent breach of private taxpayer information at the Internal Revenue Service (IRS), of which that information was leaked to ProPublica, the Treasury Department said that the unauthorized disclosure of confidential government information is illegal. However, it is unclear what actions the Treasury Department and IRS have taken to provide accountability over the significant security lapse, or what steps have been taken to prevent such an event from happening again.

If confirmed, how would you provide accountability at Treasury in regard to this particular breach of private taxpayer information?

If confirmed, will you commit to providing me a timely and thorough update on this particular data breach and the measures Treasury has taken to provide accountability?

- **Answer: I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 USC section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of**

Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.

Question 4

The administration has proposed requiring banks, credit unions, and other financial institutions to report annual financial account activity from their customers to the IRS, including certain deposits, withdrawals, and transactions.

Given the expansive breadth of this particular proposal, what privacy and security concerns would such an initiative present to taxpayers? Should private taxpayer information be compromised in such a process, how would the Treasury Department provide accountability?

- **Answer: My understanding is the proposed financial institution reporting provisions advanced in the President's tax compliance agenda will help shed light on taxpayers who evade their tax obligations. The tax gap is concentrated at the top of the income distribution, with the top one percent of earners with the highest incomes responsible for nearly 30% of unpaid taxes which totaled over \$160 billion in tax year 2019. This inequity is closely tied to gaps in information reporting, namely the disparity between when information is reported to the IRS by a third-party source to facilitate verifying the accuracy of taxpayer filings, and when it is not. My understanding is that the proposal would simply add two additional pieces of information on the Form 1099-INT (or successor form) that banks are already required to file. I take the issue of private taxpayer information extremely seriously and if I am privileged to be confirmed look forward to working with my Treasury colleagues to ensure that privacy and security issues are fully addressed.**
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Senator Rob Portman (R-OH)

Question 1

Part of your responsibilities as General Counsel of the Treasury Department will be reviewing regulations and other guidance issued by the Department. It is my understanding that the attorneys of the Office of Tax Policy and the IRS Office of Chief Counsel have primary responsibility for legal analysis of tax regulatory actions; whereas the Office of General Counsel examines their analysis and expertise in the review of all tax regulatory actions. Furthermore, what principles of statutory interpretation will you apply in developing and reviewing regulations?

- **Answer: If I am privileged to be confirmed, I will seek to ensure that the Department of the Treasury's approach to all federal statutes, including the tax laws, is guided by the traditional tools of statutory interpretation. Those traditional tools include the text, structure, and context of the statute, as well as any relevant precedent.**

Question 2

The bipartisan Infrastructure Investment & Jobs Act includes a provision which updates current information reporting requirements under Internal Revenue Code sections 6045 and 6045A to explicitly include cryptocurrency brokers. There is a general consensus that there should be better and more consistent reporting on cryptocurrency transactions, and that this would be good for holders of cryptocurrency. This reporting requirement would standardize basic information reporting by crypto brokers for tax purposes to help provide certainty for everyday Americans looking to invest in these digital assets.

During and after the passage of this act in the Senate there was concern about who would be included in the definition of a cryptocurrency brokers. The Treasury Department and the nonpartisan Congressional Joint Committee on Taxation and have indicated that the current language is clear and that the reporting requirements do not include entities which many feared might be considered brokers, particularly those involved with validating distributed ledger transactions, such as miners, and certain software and hardware providers. Senator Warner and I sought to clarify this provision with a colloquy to address the concern. We wanted to make it clear that a broker is defined as quote 'any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. The Congressional intent of the provision was that a broker would not include miners, stakers, hardware and software sellers for digital wallets, and certain others who play a key role in validating transactions.

Can you assure me that if the bipartisan Infrastructure Investment & Jobs Act becomes law, the regulations promulgated by the Treasury Department would be appropriately scoped according to congressional intent?

Specifically, can you commit that ancillary digital asset entities or players who do not have and cannot get information intended to be captured by the reporting requirements for brokers, will not be considered a broker under this provision?

Further, will you commit to working with Congress to implement any laws and accompanying regulations under the purview of the Treasury Department in a manner that is both timely and reflective of our intent?

- **Answer: Congress’s authorizing statute, 31 USC section 301, defines the Treasury General Counsel as the Department’s “chief law officer.” Moreover, the specific responsibilities of the Treasury General Counsel are set forth in Treasury Order 107-04 [issued September 29, 2020], and include providing legal advice to the Secretary, Deputy Secretary and the other component heads related to Treasury’s statutory responsibilities; managing Treasury’s position in lawsuits; and reviewing the Department’s regulatory actions. If I am privileged to be confirmed as Treasury General Counsel, I would be bound by Treasury’s authorizing statute to ensure the Department acts in fidelity with the laws Congress enacted and the binding case law of the federal courts. Having previously spent four years as a Senate counsel, I am fully committed to ensuring the Department’s legal positions are appropriately scoped according to congressional intent and the statutory text.**

Question 3

Section 170(h) of the Internal Revenue Code provides that land conservation and historic preservation easement transactions can qualify for charitable tax deductions provided certain conditions are met. This provision was codified in 1980, and the policy was meant to encourage land conservation and the preservation of historic buildings. In the legislation, the IRS was directed to issue detailed regulations so that potential donors of easements could be “secure in the knowledge that a contemplated contribution will qualify for a deduction.” Today, 40 years later, model easement agreements, sample deeds, or other detailed regulatory guidance have not been provided by the IRS. This guidance is needed to ensure that taxpayer have clarity on what is needed to properly claim the deduction. Instead, attorneys at the IRS have told the National Taxpayer Advocate that they will issue “guidance through litigation.” In one recent example, the IRS denied a charitable tax deduction because a historic building owner installed a wheelchair ramp to comply with the Americans with Disabilities Act (ADA). Eventually, Chief Counsel issued advice clarifying that the installation of an ADA ramp was permissible and in line with the Congressional intent of the ADA. Thousands of taxpayers who have donated easements on their properties are working their way through audits, appeals, and the U.S. Tax Court. All of this generates unnecessary expense for taxpayers and the government, and is completely counterproductive. Straightforward regulations could clear the decks of a large majority of tax controversy over conservation easements.

If confirmed, will you pledge to direct the Chief Counsel of the IRS that office revisit this “guidance through litigation” strategy related to conservation easements?

Will you pledge to issue sample easement agreements, model deeds, and detailed guidance to taxpayers so that they can be secure in the knowledge that a contemplated easement contribution will qualify for a deduction?

Will you work with the IRS Chief Counsel to establish policies that differentiate legitimate actors utilizing this congressionally authorized tax incentive from those engaging in abusive transactions?

I have posed similar questions of the Treasury Secretary, Deputy Secretary, and Assistant Secretary for Tax Policy and have received generic answers. I would like to request yes or no answers to all three of these specific asks.

- **Answer: Taxpayer certainty with regard to tax treatment in all issues is an important goal for the system at large. While I am not familiar with the important issue you raise, if I am privileged to be confirmed I will confer with my Office of Tax Policy colleagues to understand these matters. I very much appreciate the importance of creating certainty for taxpayers on this issue and commit to work with you once I am briefed on these issues.**

Question 4

During Covid-19, the IRS has struggled with processing tax forms and returns in a timely fashion as well as answering its phones to provide assistance to taxpayers. These failures and delays include significantly slower processing times for requests for Form 6166, Certification of U.S. Tax Residency, than before the pandemic.

US investors--including pension funds--need Form 6166 to demonstrate to foreign countries that the US investor is eligible for a lower tax rate on their investments because of the treaty between the US and the foreign country. Without a Form 6166, US investors pay foreign taxes at a higher rate than agreed to under our tax treaties and effectively gift a portion of their investment gains to foreign governments. It can be difficult or impossible for US investors to claim a refund of these excess taxes from foreign countries at a later date, meaning that US investors can be permanently harmed when they do not receive a Form 6166 in a timely fashion. Some countries may offer a tax reclaim procedure in theory but this has proven to be un-operable and cumbersome in practice, with US investors being unsuccessful in obtaining retrospective refunds. In those cases, relief at source is the only viable relief procedure available, stressing the importance of receiving a Form 6166 in a timely manner so tax relief is not permanently lost.

By some estimates, the IRS has issued approximately 40% of the Forms 6166 requested by US investors in 2021. For comparison, the IRS typically has issued more than 95% of the Forms 6166 requested by US investors by this point in a non-covid year. In addition, it has been difficult to get through to the IRS by phone to determine the status of a request or resolve outstanding issues in receiving a Form 6166. Hundreds of millions of dollars in refunds that US investors are entitled to is at stake. This includes refunds for pension funds that help hard-working Americans fund a comfortable retirement.

If you are confirmed, what will you do to ensure that the IRS makes it a priority to process all forms in a timely manner including the outstanding requests for Forms 6166 and increases telephone assistance for taxpayers?

Specifically, what steps will you take to ensure that the 2022 issuance process, which begins on December 1, 2021, does not suffer the same delays and other problems that have occurred during the 2021 issuance process?

- **Answer: I agree with the importance of timely issuance of Forms 6166 and, if I am privileged to be confirmed, commit to being fully briefed on these important issues. In my**

capacity as Treasury's chief legal officer, I will ensure that I provide my best legal advice in a timely fashion.

Question 5

As you know, Treasury serves as a powerful stabilizing force for our country. Part of that stability is preserved by insulating Treasury from politics, which is central to the role of the General Counsel.

Do you agree that Treasury's work to combat illicit financial activity, impose sanctions, and conduct national security reviews through the CFIUS process should be free from political interference? Do you believe the same is also true for tax administration and enforcement at the IRS?

- **Answer: I agree completely that the Treasury Department's important work, including both through the CFIUS process and through the IRS's tax administration and enforcement, should be done in a fair and even-handed manner, keeping politics out of the process.**

Can you further commit to doing everything within your power to prevent the unauthorized disclosure of taxpayer information? Furthermore, please describe the steps the Department of the Treasury and Internal Revenue Service are taking to prevent any further unauthorized disclosure of taxpayer information.

- **Answer: I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 USC section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.**
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Senator Pat Toomey (R-PA)

Pillar One Implementation

- During the Senate Finance Committee hearing on September 22, 2021, I asked if you share the view that implementation of Pillar One of the OECD/G20 Two-Pillar Solution would require a treaty vote in the Senate. You responded that you would need to dig into this issue.

As you stated, your job as General Counsel would be to “ensure the department carries out all of its activities in compliance with law.” Implementation requirements of the Two-Pillar Solution are a pressing legal issue as the Administration continues international discussions regarding this agreement.

- As a follow up to my question during the hearing, Mr. MacBride, do you agree that Pillar One would need to be approved by two-thirds of the Senate, in the same matter that all current tax treaties were approved by the Senate?
 - **Answer: Among other things, Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.**

Senator Tim Scott (R-SC)

Question 1

Under the Consolidated Appropriations Act of 2021, the Secretary of the Treasury is statutorily required to testify before the House Committee on Small Business on the operation of the COVID-19 relief programs within 120 days of the enactment of the Act. To date, Treasury Secretary Janet Yellen has flouted U.S. law by refusing to testify. If confirmed as the Treasury's top legal advisor, will you advise and counsel Secretary Yellen to follow the law and testify before Congress as legally required?

- **Answer: I deeply respect the oversight function of this Committee as does Secretary Yellen. If I am privileged to be confirmed, I would like very much to work in a collaborative way with 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.**

Question 2

Please answer the following with a “yes” or “no” response: Do you believe that an agreement (or agreements) with foreign governments that are intended to modify the current treatment of taxing rights and allow residual profits to be taxed in market jurisdictions where goods or services are used or consumed should be considered as a treaty (or treaties) in the United States, requiring ratification by two-thirds of the Senate?

Please further elaborate upon your “yes” or “no” answer.

- **Answer: Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.**

Question 3

Is it your opinion that the United States Government would lose or gain revenue from enactment of the OECD/G20 Pillar 1 agreement as outlined in the July 1, 2021 “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy”?

- **Answer: The U.S. Pillar 1 tax revenue modeling involves estimating the impact of reallocating taxing rights to the U.S. from foreign jurisdictions, from the U.S. to foreign jurisdictions, and among U.S. MNE affiliates in foreign jurisdictions. The tax impact is both direct and indirect (i.e., change in foreign tax credits).**

In general, as a large consumer market the U.S. benefits from reallocations of profit from foreign jurisdictions. To the extent that the U.S. market is more profitable than other markets and depending on the methodology for determining the relieving jurisdiction,

some profit may be reallocated to foreign markets. However, to the extent that profit reallocations occur among foreign subsidiaries of U.S.-parented MNEs, that reduces any impact on U.S. revenues.

In general, there are both positive and negative considerations, and the estimates depend on the details of the Pillar 1 proposal. While many of those are not final, we are confident that any revenue impacts on the United States will be relatively small. In some scenarios, they total in the millions rather than billions, and in some cases are approximately zero.

Question 4

Please answer the following with a “yes” or “no” response: If the Biden Administration sought implementation (domestically and globally) of the OECD/G20 Pillar 1 agreement referenced above, would you advise your principals at Treasury and the White House that this agreement should be implemented through a tax treaty requiring ratification by the Senate?

Please further elaborate upon your “yes” or “no” answer. If you believe the agreement can be implemented through means other than a tax treaty, please provide detail as to what action would be required, and by which branch or body of government, and the process by which approval would be obtained.

- **Answer: Please see my above answer to question 2.**

Question 5

In your opinion, what might be the effect on compliance costs for U.S. entities subject to a GILTI calculation that shifts to a country-by-country basis?

- **Answer: At this time, I have not been briefed on the issues you raise and thus am not in a position to proffer any opinions. If I am privileged to be confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.**
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Senator James Lankford (R-OK)

Question 1

1. Over the course of the last several months, we have seen countless articles from ProPublica, a news organization that has somehow, we're told, gotten access to thousands of taxpayers' confidential tax data. Despite countless letters and inquiries, we have yet to be provided any explanation of how this happened, who will be held responsible, and what the Treasury Department and Internal Revenue Service are doing to make sure that it stops. I understand that, if confirmed, your role as General Counsel is separate from the Inspector General's office. However, I am not convinced that the Treasury Department is giving the issue the attention and haste that it deserves.

- a. *If confirmed, how will you approach this issue once in the building?*
- b. *How will you engage with the IRS General Counsel's office to ensure that Americans' tax data is protected?*
- c. *How will you ensure that this possible breach, which jeopardizes the privacy of thousands of Americans, is given the attention and priority it deserves?*

- **Answer: I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 USC section 6103, is illegal and must be taken extremely seriously. Secretary Yellen has said that independent investigations are underway. My understanding from public reporting is that the matter has been referred to the Office of the Inspector General, Treasury Inspector General for Tax Administration, Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Columbia, all of whom have independent authority to investigate. If I am privileged to be confirmed, it would be a priority of mine to make sure the Treasury Department continues to work with relevant oversight bodies, gather all the facts, ensure accountability and work to prevent unauthorized access or disclosure to the fullest extent possible.**

Question 2

2. Section 6103 of the Internal Revenue Code provides that "returns and return information shall be confidential," and prohibits any officer or employee of the Federal or state government from disclosing such information unless authorized by the taxpayer or provided under federal law. Further, Section 7213 states that the unauthorized disclosure of returns or return information is unlawful and is a felony punishable by a \$5,000 fine and/or imprisonment of up to 5 years. Section 7213(a)(3) provides that it is unlawful for someone who receives return or return information disclosed in an unauthorized manner to willfully print or publish this return or return information.

- a. *Given this, if confirmed, how will you engage with ProPublica regarding their publication of private taxpayer data?*

b. *What steps will you take to stop ProPublica from publishing this information in the future?*

- **Answer: I am deeply concerned about the release of confidential taxpayer information. Any unauthorized disclosure of confidential government information, including as provided by 26 USC sections 6103 and 7213, must be taken extremely seriously.**

Question 3

3. Mr. MacBride, the Treasury Department's Greenbook articulates a new financial account reporting regime. This would require financial institutions to report data on financial accounts of individuals, families, and businesses. This could lead to massive amounts of taxpayer data flowing into the Internal Revenue Service.

a. *Given the apparent vulnerability of taxpayers' private information, as evidenced by numerous ProPublica stories, how will you ensure that the Treasury Department and the IRS adequately protect taxpayers' information under this proposal?*

- **Answer: My understanding is the proposed financial institution reporting provisions advanced in the President's tax compliance agenda will help shed light on taxpayers who evade their tax obligations. The tax gap is concentrated at the top of the income distribution, with the top one percent of earners with the highest incomes responsible for nearly 30% of unpaid taxes which totaled over \$160 billion in tax year 2019. This inequity is closely tied to gaps in information reporting, namely the disparity between when information is reported to the IRS by a third-party source to facilitate verifying the accuracy of taxpayer filings, and when it is not. My understanding is that the proposal would simply add two additional pieces of information on the Form 1099-INT (or successor form) that banks are already required to file. I take the issue of private taxpayer information extremely seriously and if I am privileged to be confirmed look forward to working with my Treasury colleagues to ensure that privacy and security issues are fully addressed.**

Question 4

4. Mr. MacBride, unfortunately, both recently and in the past, we've seen inappropriate treatment of certain organizations by the IRS. Most recently, it was in the proposed denial of tax-exempt status for a religious nonprofit.

a. *How will you work with the IRS General Counsel to ensure that our tax laws are both enacted responsibly and neutrally and that they are then carried out in the same manner?*

- **Answer: If I am privileged to be confirmed, I would be committed to ensuring that the Treasury Department and the IRS administer tax laws in a fair and even-handed manner, keeping politics out of the process.**

Question 5

5. Do you believe that entities engaged in the production, manufacturing, or sale of items listed in the Controlled Substances Act should be exempt from this classification, or afforded other protections and benefits, under other federal statutes within the purview of the U.S. Treasury Department?
- **Answer: I understand from public reporting that the IRS is focused on tax compliance for the cannabis industry, which remains a Schedule 1 controlled substance under federal law. If I am privileged to be confirmed, I would want to be briefed by my Treasury colleagues on the issues you raise to better understand these issues and would look forward to discussing them further with you.**

Question 6

6. The General Counsel of the U.S. Treasury Department has the ability to review every regulation that moves through the building. Should you be confirmed, your role requires you to follow the law as it is written.
- a. *How will you balance that with what you believe to be Congressional intent?*
- **Answer: Congress’s authorizing statute, 31 USC section 301, defines the Treasury General Counsel as the Department’s “chief law officer.” Moreover, the specific responsibilities of the Treasury General Counsel are set forth in Treasury Order 107-04 [issued September 29, 2020], and include providing legal advice to the Secretary, Deputy Secretary and the other component heads related to Treasury’s statutory responsibilities; managing Treasury’s position in lawsuits; and reviewing the Department’s regulatory actions. If I am privileged to be confirmed as Treasury General Counsel, I would be bound by the authorizing statute to ensure the Department acts in fidelity with the laws Congress enacted and the binding case law of the federal courts. Having previously spent four years as a Senate counsel, I am fully committed to ensuring the Department’s legal positions comport with the laws as Congress enacted.**

Question 7

7. Currently, Congressional Democrats are working to move ahead with their \$3.5 trillion reconciliation package, which would contain a litany of new programs and changes to the Internal Revenue Code. At this point in time, many of my Democrat colleagues’ proposals are moving forward without a single Senate markup and little to no legislative history.
- a. *Given that, how will you determine Congressional intent?*
- **Answer: The U.S. Supreme Court has explained that “[t]he starting point in discerning congressional intent is the existing statutory text.” Lamie v. U.S. Trustee, 540 U.S. 526, 533 (2004). My understanding is that in a situation**

where there are no other indicia of congressional intent, the statutory text and the canons of construction should be the endpoint as well.

Question 8

8. Next month, the OECD will meet again to work on their ongoing project to modify international profit allocation and minimum tax rules. While there are preliminary agreements on certain items, details remain unfinished and several countries have yet to endorse the current negotiations. Given that any final agreement would involve the ceding of taxing rights, the modification of several bilateral tax treaties, and the need for a new multilateral tax treaty, my understanding is that any such agreement would require the advice and consent of two-thirds of the Senate.

a. *Do you agree that an OECD agreement will require the adoption of a treaty, meaning 2/3 of the Senate vote affirmatively?*

- **Answer: Among other things, Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.**

Question 9

9. On their April 2021 list of preferential regimes, the OECD Forum on Harmful Tax Practices (FHTP) identified the United States' tax treatment of foreign-derived intangible income (FDII), found in section 250 of the Internal Revenue Code and put in place by Congress in 2017. In addition, the FHTP identified FDII as "in the process of being eliminated," stating that "The United States has committed to abolish this regime."

I find it concerning that FDII, which was created in the Tax Cuts and Jobs Act to incentivize companies to put their IP in the United States, was listed as a preferential regime, and I am also concerned that the U.S. Treasury Department, representing the United States at the OECD, would be forward enough to commit to abolishing the provision.

- a. *Mr. MacBride, does the U.S. Treasury Department or any official of the U.S. Treasury Department have the authority to abolish a provision of the Internal Revenue Code?*
- b. *Doesn't Congress, and only Congress, have the authority to abolish or otherwise repeal, a provision within the Internal Revenue Code?*

- **Answer: I am not familiar with the incident you note here, but I agree that the only way to repeal a federal statute is for both houses of Congress to pass a bill.**

Question 10

10. Mr. MacBride, it's my understanding that there has been a top-level agreement at the OECD on a Pillar 1 regime in which market countries would be awarded the taxing rights on at least 20% of profit exceeding a 10% margin for the biggest multinationals, and a Pillar 2 that includes a global minimum tax of at least 15% on a country-by-country basis.

As you know, 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.

Should the OECD be successful in adopting a more detailed, conclusive agreement this fall, you - should you be confirmed - would have a major role in implementation of such an agreement and corresponding legislation.

- a. How will you keep Congress, who will have a role in enacting corresponding domestic legislation and treaties, aware of your implementation plan?*
- b. Please provide your expected timeline of US implementation, should an OECD agreement be met.*
- c. Do you think it is prudent to make changes to our own global minimum tax rates before a detailed OECD agreement is met?*
 - i. Would it not be more prudent to wait until an OECD agreement is confirmed, not only because it could be difficult to reach a final deal, but also because any resulting deal could take years to implement?*

- **Answer: If I am privileged to be confirmed, I am committed to updating members of the Committee on the implementation of any agreement and corresponding legislation. I am not aware of the timeline of U.S. implementation, should an OECD agreement be met. If confirmed, I would advise Secretary Yellen on legal matters, not policy matters, so would defer to the policy experts at Treasury on the timing issue you raise.**
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Senator Todd Young (R-IN)

Question 1

As I mentioned during our questioning period in the hearing, I want to follow up on your views regarding the proper use of sanctions based upon your deep experience and expertise in sanctions law, as noted by your selection as one of “The DC sanctions lawyers to have on speed dial” by *Global Investigations Review* and your representation in matter such as *Exxon Mobil Corporation, et al. v. Mnuchin, et al.* Please note that this series of questions asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

- (i) What is your view on the legal standard and evidence necessary to confirm “serious human rights abuses” in the context of our sanctions programs?
- (ii) What is your view on the legal standard and evidence necessary to confirm corruption of foreign government officials in the context of our sanctions programs?
- (iii) How do you view Global Magnitsky sanctions implementation and enforcement as a tool to address human rights and corruption?
- (iv) In your view, does the U.S. Department of the Treasury have the resources and authorities necessary to target serious human rights abuses and corruption with sanctions?
- (v) What additional resources do you believe would be effective in the Treasury’s mission to address serious human rights abuses and corruption through sanctions? Are there any current systems or practices you believe are ineffective?
 - o **Answer: Global Magnitsky sanctions are an important tool to address human rights and corruption. Targeted sanctions, including against those who violate or abuse human rights and engage in corruption, are an effective tool to discourage malign actors and promote accountability. In 2021, the Treasury Department has applied such sanctions in a number of contexts, including against two Chinese government officials in connection with serious human rights abuses against ethnic minorities in the Xinjiang Uyghur Autonomous Region; various Cuban authorities for their role in suppressing peaceful protests; and corrupt actors in Paraguay. If I am privileged to be confirmed, I will apply the same legal standard and seek the same evidence that the Treasury Department has applied in those contexts. I would also look forward to being briefed by my colleagues at the Treasury Department regarding existing systems and practices. If confirmed, I would also welcome the opportunity to collaborate with you in ensuring that these critical efforts have the resources they need to succeed.**

Question 2

During your hearing, we touched briefly on President Biden’s Executive Order 14032 regarding the need for the United States to ensure domestic markets are not being used by the Chinese military industrial complex. Please note that this series of questions asks for your legal interpretation based upon

your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.

- (i) What additional steps can the U.S. Department of the Treasury take to protect U.S. financial markets from the Chinese military industrial complex?
- (ii) Does Executive Order 14032 and its focus on firms that operate in the surveillance technology sector include targeting of monetary surveillance entities?
 - **Answer: I share your concerns about the significant threats posed by the military-industrial complex of the People’s Republic of China (PRC), including the use of Chinese surveillance technology outside the PRC to facilitate repression or serious human rights abuse. If I am privileged to be confirmed, I look forward to being briefed by my colleagues at the Treasury Department and other federal agencies about whether additional legal authorities may be needed to address these serious threats.**

Question 3

On August 23, 2021, the International Monetary Fund (IMF) allocated \$650 billion in Special Drawing Rights (SDRs) with the approval of the U.S. Department of the Treasury – the largest allocation of Special Drawing Rights in history. The approved amount was just below the level that would have required Congressional consultation under the Special Drawing Rights Act. Since this funding is distributed to all members of the IMF, I have concerns that the new SDR allocation could represent a bonanza and a lifeline for dictators and regimes around the world. This creates a disconnect in Treasury’s stance. On the one hand, we are sanctioning regimes such as Iran, Venezuela, Nicaragua, Belarus, and Burma. And now on the other hand, the U.S. Department of the Treasury has approved millions and millions of dollars that will go to support those very same regimes.

- (i) How are our sanctions policies compatible with Treasury’s approval of this new allocation of IMF Special Drawing Rights? Please note that question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.
- (ii) What steps can the Department of Treasury undertake to ensure that SDRs do not provide a lifeline to dictators? Please note that question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.
- (iii) If confirmed, how would you advise Treasury conduct oversight on the use of SDRs among IMF members?
 - **Answer: IMF Special Drawing Rights (SDRs) are important tools in mitigating economic stagnation in global growth, particularly as low-income and developing countries re-emerge from the COVID-19 pandemic. Addressing the long-term global need for reserve assets through the recent SDR allocation will help support the global recovery from the COVID-19 crisis, which in turn will help increase**

demand for U.S. exports of goods and services—creating U.S. jobs and supporting U.S. firms.

The United States can refuse SDR transactions with any countries that we choose, including those under U.S. sanction regimes, and the Biden Administration is working to coordinate with other countries to do the same. Likewise, not all countries will necessarily be able to exchange their SDRs for hard currencies. The country would need to find a willing counterparty country to provide them with hard currency in exchange for their SDRs, which can be difficult for certain countries. Moreover, primary and secondary sanctions may deter IMF members from being willing counterparties in certain SDR transactions. The United States and other IMF members are also working with the IMF to increase transparency in how SDRs are used. All of these are important steps that the government can take in balancing its goals of global economic growth with robust enforcement of its sanctions policies.

Question 4

As you know, Article II, Section 2 of the United States Constitution states:

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur;

On September 28, 2021, Treasury Secretary Yellen said the following before the Senate Banking Committee:

I believe there are a number of ways in which Congress could implement [Pillar One], but certainly ratification of a treaty would be one way in which Congress could authorize. And certainly Congress has to authorize the transfer of taxing rights that's contemplated in Pillar One.

- (i) Based upon your training and experience as an attorney, do you believe there is a way *other* than approval of a resolution of ratification by two-thirds of the Senate for Congress to approve the Organization for Economic Cooperation and Development's "Pillar One" plan? Please answer yes or no. Note that an answer *other* than "yes" or "no" will be deemed unresponsive to this question. Please also note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.
- (ii) If your answer to (i) above is "yes," please explain the other way(s) Congress could authorize Pillar One. If your answer to (i) above is "no," please explain your reasoning. Please note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.
 - **Answer: Among other things, Pillar One will require countries to update the international tax rules allocating taxing rights among jurisdictions, which are currently enumerated in their bilateral tax treaties. As a constitutional matter, such**

updating could occur through several means, such as through an Article II treaty, a congressional executive agreement, or through legislation overriding the existing treaties. It is my understanding that Treasury has been working with Congress on a bipartisan basis to ensure congressional support of the Pillar One agreement. If confirmed, I would want to be briefed by my Treasury colleagues to better understand these issues and would look forward to discussing them further with you.

Question 5

Section 321(b) of the bipartisan Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116-260) states:

Testimony.--Not later than the date that is 120 days after the date of enactment of this Act, and not less than twice each year thereafter until the date that is 2 years after the date of enactment of this Act, the Administrator and the Secretary of the Treasury shall testify before the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding implementation of this Act and the amendments made by this Act.

- (i) Based upon your training and experience as an attorney, what is your interpretation of the meaning of “the Secretary of the Treasury” in the legislation cited above? Please note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.
- (ii) Based upon your training and experience as an attorney, do you believe that Section 321(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, cited above, requires the Secretary of the Treasury to appear personally before the Senate Committee on Small Business and Entrepreneurship Act? Please answer yes or no. Note that an answer other than “yes” or “no” will be deemed unresponsive to this question. Please also note that this question asks for your legal interpretation based upon your decades of legal experience, and does not seek information on how or what kind of advice you would provide if confirmed to this position.
- (iii) If your answer to (ii) above is “yes,” if confirmed, will you commit to advising Secretary Yellen that the law requires her to appear personally before the Senate Committee on Small Business and Entrepreneurship? Please answer yes or no. Note that an answer other than “yes” or “no” will be deemed unresponsive to this question.

If your answer to (ii) above is “no,” please explain your reasoning and please reference other examples found in the law where requirements for the Secretary of the Treasury to testify before a congressional committee have been interpreted to authorize officials *other* than the Secretary of the Treasury (when such Secretary has been duly confirmed and is currently serving) to testify in his or her place.

- **Answer: I deeply respect the oversight function of this Committee as does Secretary Yellen. If I am privileged to be confirmed, I would like very much to work in a collaborative way with 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.**
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