

Questions for the Record for Demetrios Kouzoukas

U.S. Senate Committee on Finance “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas” September 28, 2023

Chairman Wyden

- 1. The role of public trustees is a unique role in public service. Rather than starting a new job in public service, you now wear ‘two hats’: one as the public trustee to the Social Security and Medicare Trust Funds, and the other ‘hat’ representing your non-government day jobs. Can you talk about how you will approach dealing with any apparent conflict wearing your two ‘hats’?**

The role of the Boards of Trustees for the Social Security and Medicare Trust Funds is one that by its very nature addresses this question. Specifically, the role of the Boards of Trustees for the Social Security and Medicare Trust Funds is not to make policy in any way; rather the role is to help provide information and data regarding the fiscal and actuarial status and future of the programs. By participating in that process, the public trustees enhance the credibility of that information and data by being an outside set of eyes and ears in the assembly and drafting of the Board’s report. This process enables policymakers including members of Congress to make the best decisions around the future of the programs. As such, the role is separate from the public trustees’ non-government jobs. Further, in my ethics agreement, I agree, if confirmed, to consult with the Designated Agency Ethics Official if an actual or potential conflict does arise during my appointment, as well as to take measures necessary to resolve such conflict.

- 2. Looking at each of your backgrounds, you both have extensive experience in the Medicare program, including coverage and solvency. You would bring a different perspective than past public trustees, many of whom have Social Security, pensions, or economic backgrounds. This can be a good thing, as it is important to have a fresh, outside perspective to the discussion. If confirmed, you would serve as the public trustee for the Social Security Trust Funds as well. While the Trustees use the same demographic and economic assumptions to develop the Social Security and Medicare Trustees Reports, changes to those assumptions can have different impacts on each trust funds’ solvency. Can you talk about how you would approach your role as Social Security public trustee, and whether it would differ from your role as Medicare public trustee?**

I agree the Social Security and Medicare programs overlap a great deal. And it makes sense that the same Board members have historically served on the Boards for both at the same times. The programs share not only assumptions but also largely the same population, many aspects of their financing, and their breadth and economic impact.

If I am confirmed, I would approach the two roles differently to some extent by identifying and taking into account the differences in the history and design of the two programs. This would include, for example, the administration of the Social Security program as a cash payment rather than a third-party reimbursement program, as well as considering what Social Security's longer history tells us about the ability to make good predictions.

Senator Warren

1. What is the total compensation you received for your 2021 Clover Health board service?

In accordance with the company's policies, I received \$58,250 and 25,608 restricted stock units.

a. What were the components of this compensation?

The components were a cash retainer and restricted stock units.

b. Did you receive a bonus from Clover Health? If so, how big was this bonus, and for what activities did you receive this bonus?

No.

2. What is the total compensation you received for your 2022 Clover Health board service?

In accordance with the company's policies, I received \$90,000 and 20,271 restricted stock units. (My 2022 Financial Disclosure Report lists, per the instructions for the relevant line, the amounts paid in 2021 and in 2022 through the filing date for a total of \$103,250.)

a. What were the components of this compensation?

The components were a cash retainer and restricted stock units.

b. Did you receive a bonus from Clover Health? If so, how big was this bonus, and for what activities did you receive this bonus?

No.

3. What is the total compensation you expect to receive for your 2023 Clover Health board service?

In accordance with the company's policies, I received \$70,000 and expect to receive approximately \$24,000. I also received 213,576 restricted stock units (including 36,585 units on a one-time basis) which would be considered income for 2024 upon vesting after a year of continuous service. (It is typical for members of a Board of Directors to receive equity grants in one year which vest in a future year if still on the Board, are considered income for that future year at the value at that point in time, and may be reported in different ways on a Financial Disclosure Report depending in part on the timing of the report.)

a. What are the expected components of this compensation?

The components are a cash retainer and restricted stock units.

b. Are you eligible to receive a bonus for your 2023 service?

c. If so, how big are the potential bonuses and for what activities might you receive this bonus?

No, I believe that I am not eligible to receive a bonus for the remainder of 2023. As specified above, some of the restricted stock units referred to above were on a one-time basis.

4. How many shares of Clover Health stock do you own, whether or not such equity is part of your compensation for board service?

a. What is the current value of those shares?

I have 45,879 vested shares. As of October 25, 2023, their value is \$41,659. In addition, there are 213,576 shares which would vest in 2024 after a year of continuous service and be considered income then at the value at that point in time.

5. Do you have any stock options for Clover Health stock? If so, please describe the number and conditions related to these stock options.

No.

6. Do you have any other financial interest in Clover Health, beyond the compensation you receive for your board service and your shares of Clover stock?

No, other than possibly through personal mutual funds or similar holdings.

7. What portion of Clover Health's annual revenue in 2022 came from Medicare Advantage payments?

The company has reported the following revenue and claims incurred information for its Medicare Advantage segment in 2022:

Year ended December 31, 2022 (in thousands)

Premiums earned, net (Net of ceded premiums of \$470)	\$1,084,869
Non-Insurance revenue	—
Other income	2,577
Intersegment revenues	—
Net medical claims incurred	996,410

8. Do you agree that Clover Health has a financial interest in matters affecting the payments the government makes to Medicare Advantage plans?

Yes, the company generally has an interest in certain payment decisions made by the Secretary of Health and Human Services. These decisions are not made by the Boards of Trustees for the Social Security and Medicare Trust Funds, which do not make policy in any way.

9. Are Clover Health board members required to meet a code of ethics, or otherwise subject to any ethics requirements?

Yes, the company has adopted a code of business conduct and ethics.

a. If so, have Clover Health officials determined that your board service for the company and your service as a Medicare and Social Security Trustee would be consistent with that ethics code?

The company has not informed me of inconsistencies with the code and my service, if confirmed, on the Boards of Trustees for the Social Security and Medicare Trust Funds.

10. Do you have any other financial interests or serve in any capacity on behalf of any other company with business interests affected by the Medicare or Social Security programs?

I don't believe so, other than possibly through personal mutual funds or similar holdings.

11. Do the Public Trustees help oversee the financial operations of the Medicare trust funds?

The Medicare Trustees Report typically includes a section regarding the "financial operations" of the Medicare trust funds. That section is a statement of revenues and expenditures, which the Social Security Act specifies be included in the reports. The Medicare Boards of Trustees, which includes the public trustees, are responsible for and oversee the production of the reports, including this section.

12. Are the Public Trustees responsible for representing the interests of the public on the Medicare and Social Security trust funds?

While they are not considered “representative members” under the Federal Advisory Committee Act regulations, public trustees, along with the other members of the Boards of Trustees for the Social Security and Medicare Trust Funds, represent the public in the work of trustees. In particular, the public trustees are members of the public who serve the function of informing, along with the other trustees, policymakers and the public about the size of any trust fund deficits that would need to be resolved in order to avert program insolvency.

13. Does the role of a Public Trustee involve developing projections and recommendations related to the solvency of the Medicare trust funds?

The relevant Social Security Act provisions related to the role of the trustees reference “general policies followed in managing the Trust Fund” and also require that the Medicare Board of Trustees report annually to the Congress on the financial and actuarial status of the HI and SMI trust funds. This includes solvency projections based on current law.

14. Does the Medicare system currently face any solvency issues?

Yes, this year’s Medicare Trustees Report projected that, under current law, the Medicare Hospital Insurance (HI) Trust Fund reserves will become depleted in 2031.

15. Do you agree that Medicare Advantage plans have been found to overcharge the government for coverage provided to beneficiaries?

Yes, there have been instances where federal agencies have made such findings with respect to specific Medicare Advantage plans. The Boards of Trustees for the Social Security and Medicare Trust Funds do not have a role in that process or discuss those cases.

16. Has Clover Health been investigated by the Department of Justice for “upcoding,” the practice of adding additional risk codes to beneficiaries’ medical records to secure higher capitated payments from the Centers for Medicare and Medicaid Services (CMS)?

The company publicly disclosed an inquiry by the U.S. Attorney’s Office for the Eastern District of Pennsylvania, as further described in the company’s previous annual and other filings. Also, an article published online in 2021 referred to a former employee of the company being asked about “promoting higher level coding” in connection with that inquiry.

17. In your ethics agreement with the Social Security Administration, did you agree to recuse from any particular matter that would have a direct and predictable effect on your financial interests, or the financial interests of an entity whose interests are imputed to you, unless you receive a waiver?

As part of my nomination process, the Social Security Administration's (SSA) Office of the General Counsel and the U.S. Department of Health and Human Services' Office of the General Counsel thoroughly reviewed my financial holdings, and private sector employment and positions. Based on that review, I signed an ethics agreement drafted by the SSA and approved by the U.S. Office of Government Ethics. SSA's Designated Agency Ethics Official (DAEO) forwarded that agreement to the White House and Senate along with a letter stating that he found "no conflict of interest or other problem under applicable laws and regulations" between my disclosures and the proposed position.

As part of that agreement, I agreed I would not, if confirmed, personally and substantially participate in particular matters that would have a direct and predictable effect on my financial interests, or the financial interests of an entity whose interests are imputed to me, unless I received a waiver or qualified for a regulatory exemption. I also agreed that, if I am confirmed, and circumstances arise where an actual or potential conflict may exist during my appointment, I will consult with the SSA's DAEO's office and take measures necessary to resolve such conflict, including recusal from the matter. It is my understanding from the DAEO's office that, generally, the content of the Trustees Reports do not meet the definition of "particular matter" nor do the reports have a direct and predictable effect on the Medicare Advantage program.

a. Will you commit to making this agreement publicly available?

Pursuant to the appropriate rules and regulations, yes, I agree to make this agreement available to the public.

18. If confirmed as a Public Trustee, would you only be eligible to receive a waiver if it is found that the financial interest at issue is not so substantial as to be deemed likely to affect the integrity of your government service?

SSA's DAEO determined that there is "no conflict of interest" caused by my financial interests, including private-sector positions, thoroughly reviewed as part of the usual vetting process. Additionally, while a waiver of a conflict could be granted if the DAEO determined that the facts of a situation supported such a waiver, the DAEO has not indicated that such a waiver would be required; I understand this is because, as made clear by the DAEO's conclusion that there is "no conflict of interest" and underlying determinations, if confirmed, I will not be participating in particular matters, and instead I will be participating in matters of general applicability that are also not likely to have a direct or predictable effect on the financial interests imputed to me. Therefore, I do not anticipate a waiver being required or applicable.

19. In your ethics agreement with the Social Security Administration, did you also commit to avoid any *appearance* of a conflict of interest in the event that you are confirmed?

In that agreement, I committed, if confirmed, to consult with the DAEO's office if an actual or potential conflict does arise during my appointment, as well as to take measures necessary to resolve such conflict.

20. Would Clover Health's interests be imputed to you, as a member of its Board of Directors?

Yes, the interests thoroughly reviewed by the DAEO in reaching the conclusion referred to above that there is "no conflict of interest" include those imputed by virtue of serving as a member of the Board of Directors.

21. Do you agree that, under 18 U.S.C. § 208 and 5 C.F.R. § 2635.402, you would have to recuse from any particular matters that would have a direct and predictable effect on Clover's financial interest, if that interest is substantial enough to likely affect the integrity of your service?

The Social Security Administration's (SSA) Office of the General Counsel and the U.S. Department of Health and Human Services' Office of the General Counsel thoroughly reviewed my financial holdings, and private sector employment and positions. SSA's DAEO determined my financial interests do not conflict with the position for which I have been nominated. Based on that review, I signed an ethics agreement drafted by the SSA and approved by the U.S. Office of Government Ethics in which I stated that if I were asked to participate personally and substantially in any particular matter that had a direct and predictable effect on the financial interests imputed to me, including Clover Health, I would recuse myself from that matter unless I obtain a waiver or a regulatory exemption applied.

It is my understanding, from the DAEO's office, that the work of the Boards of Trustees for the Social Security and Medicare Trust Funds does not fall within the definition of a particular matter at 5 C.F.R. 2635.402(b)(3) (defining "particular matter" as not extending to the "consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons"). Also, there was a determination of the DAEO that the duties of the Boards of Trustees for the Social Security and Medicare Trust Funds do not have a direct and predicable effect on the Medicare Advantage program as defined at 5 C.F.R. 2635.402(b)(1) (defining "direct and predictable effect" as specifically excluding an effect where the "chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter").

22. If the Trustees address the threats that overpayments to Medicare Advantage plans pose to the financial health of the Medicare program, potentially leading to the adoption of policies that place more restrictions on Medicare Advantage, would such changes likely cut into the profitability of Clover?

While the Centers for Medicare and Medicaid Services publishes annual parameters for the "gain/loss margin" of Medicare Advantage plans which are incorporated into the

annual bid submission and review process, to my knowledge, the Trustees Reports have not discussed topics like "overpayments" to Medicare Advantage plans, either as defined in the Social Security Act or more generally. If I am confirmed, and the topic came up, I would consult with the appropriate ethics officials.

The role of the Boards of Trustees for the Social Security and Medicare Trust Funds is not to make policy in any way; rather the role is to help provide information and data regarding the fiscal and actuarial status and future of the programs. By participating in that process, the public trustees enhance the credibility of that information and data by being an outside set of eyes and ears in the assembly and drafting of the Board's report. This process assists policymakers such as members of Congress to make the best decisions around the future of the programs.

23. Do you believe that a reasonable person could at least find an appearance of a conflict of interest in a Board Member of a Medicare Advantage plan serving as a Public Trustee?

The vetting process administered by the Social Security Administration prior to my nomination for this position resulted in a conclusion by the SSA's DAEO that, in addition to there being "no conflict of interest", there is no "other problem under applicable laws and regulations." I understand from the DAEO's office that the reasonable person test discussed in relevant federal regulations with language like that in this question requires examination of relevant facts like the role of the Boards of Trustees for the Social Security and Medicare Trust Funds being not to make policy in any way, the determination of the DAEO that those duties do not have a direct and predicable effect on a Medicare Advantage plan, the terms of my ethics agreement requiring me to seek agency counsel should circumstances change, and the position of Trustee being a Special Government Employee expected to work less than 60 days in a calendar year. These facts support the DAEO's correct conclusion that there is no "other problem under applicable laws and regulations", including the appearance of a conflict of interest as described in relevant regulations or more generally.

24. Are you aware of anyone who has previously served as a Public Trustee while also being compensated by a Medicare Advantage plan?

a. Are you aware of anyone who has previously served as a Public Trustee while also being compensated by *any* private health insurance company?

I am not personally aware of all the employment arrangements or compensation of previous public trustees.

25. If confirmed as a Public Trustee, do you plan to quit the Clover board?

a. If not, how do you propose to comply with federal ethics law and avoid any apparent conflict of interest while simultaneously serving as both a Public Trustee of Medicare trust funds and a Board Member of a Medicare Advantage plan?

Prior to being nominated for this position, I discussed my positions with SSA, and the U.S. Department of Health & Human Services. They advised that it would be consistent with the ethics laws and regulations to retain the current positions that I hold in the private sector, and therefore it is my current intention to retain those approved positions, including specifically the Clover Health Board. The public trustees' position is considered a "special government employee," serving fewer than 60 days in any year, and therefore it is traditional and expected that persons in this role also hold positions in the private sector.

My ethics agreement specifies the activities and roles that I would continue if confirmed as a public trustee. This agreement was reviewed and approved by SSA's DAEO and the Office of Government Ethics. Additionally, the DAEO forwarded that agreement to the White House and Senate along with a letter stating that he found "no conflict of interest" between my disclosures and the proposed position. I am grateful to President Biden and his team for the review, as part of the nomination process, of my credentials and qualifications as well as present private sector positions that I would continue if confirmed. If confirmed, in the event there are new questions that arise, as stated in the agreement mentioned above, I will consult with the DAEO's office, as I have to date, and take any measures identified as necessary as part of that process.

Senator Crapo

1. What is your understanding of the role of the Trustees with regards to recommending or setting policy?

The role of the Boards of Trustees for the Social Security and Medicare Trust Funds is not to make policy in any way; rather the role is to help provide information and data regarding the fiscal and actuarial status and future of the programs. By participating in that process, the public trustees enhance the credibility of that information and data by being an outside set of eyes and ears in the assembly and drafting of the Board's report. This process enables policymakers such as members of Congress to make the best decisions around the future of the programs.

2. Have you addressed any potential conflicts of interest in your ethics agreement with the Social Security Administration in consultation with the U.S. Department of Health & Human Services and the U.S. Office of Government Ethics?

Yes.

3. Do you commit to not participating personally or substantially in any particular matter that to your knowledge would have a direct and predictable effect on your financial interests unless a waiver has been issued or a regulatory exemption applies?

Yes.

- 4. If a potential conflict of interest arises, will you consult with agency officials and take the measures necessary to resolve the conflict?**

Yes.