

**NOMINATIONS OF MARK J. MAZUR, MATTHEW
S. RUTHERFORD, AND MEREDITH M. BROADBENT**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF

MARK J. MAZUR, TO BE ASSISTANT SECRETARY FOR TAX POLICY,
DEPARTMENT OF THE TREASURY; MATTHEW S. RUTHERFORD, TO BE
ASSISTANT SECRETARY FOR FINANCIAL MARKETS, DEPARTMENT OF
THE TREASURY; AND MEREDITH M. BROADBENT, TO BE A MEMBER
OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION

MAY 8, 2012



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CONTENTS

OPENING STATEMENTS

	Page
Baucus, Hon. Max, a U.S. Senator from Montana, chairman, Committee on Finance	1
Hatch, Hon. Orrin G., a U.S. Senator from Utah	2

WITNESSES

Archer, Hon. Bill, former U.S. Representative from Texas	5
Portman, Hon. Rob, a U.S. Senator from Ohio	20

ADMINISTRATION NOMINEES

Mazur, Mark J., nominated to be Assistant Secretary for Tax Policy, Department of the Treasury, Washington, DC	6
Rutherford, Matthew S., nominated to be Assistant Secretary for Financial Markets, Department of the Treasury, Washington, DC	8
Broadbent, Meredith M., nominated to be a member of the United States International Trade Commission, Washington, DC	9

ALPHABETICAL LISTING AND APPENDIX MATERIAL

Archer, Hon. Bill:	
Testimony	5
Baucus, Hon. Max:	
Opening statement	1
Broadbent, Meredith M.:	
Testimony	9
Prepared statement	27
Biographical information	29
Responses to questions from committee members	38
Grassley, Hon. Chuck:	
Letter from Senator Grassley to Secretary Geithner, dated June 21, 2010	40
Letter from Senator Grassley to Commissioner Shulman, dated September 13, 2011	45
Letter from Senator Grassley to Secretary Geithner and Commissioner Shulman, dated April 30, 2012	53
Hatch, Hon. Orrin G.:	
Opening statement	2
Prepared statement	57
Mazur, Mark J.:	
Testimony	6
Prepared statement	59
Biographical information	62
Responses to questions from committee members	72
Portman, Hon. Rob:	
Testimony	20
Rutherford, Matthew S.:	
Testimony	8
Prepared statement	121
Biographical information	123
Responses to questions from committee members	130

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MEMBER OF THE UNITED STATES
INTERNATIONAL TRADE COMMISSION**

TUESDAY, MAY 8, 2012

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

The hearing was convened, pursuant to notice, at 10:07 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Hatch, Grassley, Crapo, and Thune.

Also present: Democratic Staff: Russ Sullivan, Staff Director; Gabriel Adler, Senior International Trade and Economic Advisor; Tiffany Smith, Tax Counsel; Lily Batchelder, Chief Tax Counsel; and Rory Murphy, International Trade Analyst. Republican Staff: Chris Campbell, Staff Director; Everett Eissenstat, Chief International Trade Counsel; and Nick Wyatt, Tax and Nomination Professional Staff Member.

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

The CHAIRMAN. The hearing will come to order.

Tom Brokaw once said, "It's easy to make a buck. It's a lot tougher to make a difference." Today the Finance Committee considers three nominees for roles where it is possible to make a difference. I welcome them and their families to the committee.

Two of these nominees are up for important positions in the Treasury Department. The third is nominated for a central role at the International Trade Commission.

Mr. Mazur, the President has nominated you to be Assistant Secretary of the Treasury for Tax Policy. In this role, you would lead Treasury's team to develop and implement tax policy. You would help negotiate tax treaties, and you would provide analysis to help shape domestic and international tax policy.

We are working to reform our tax code for the first time in more than a quarter century. It will be difficult, and we will have to make tough choices. But a more simple tax code that spurs growth is crucial for our country to remain competitive. The analysis that comes from the Treasury Department will be crucial to make sure tax reform is done right.

Mr. Rutherford, the President has nominated you to be Assistant Secretary of the Treasury for Financial Markets. In this position, you will advise the Treasury Secretary on domestic finance, financial markets, and the Federal debt.

Everyone agrees we need to reduce our deficits and our debt. We need to do it in a way that maintains stability in the markets, and it must put our economy on stable footing for the future. This is the biggest long-term challenge government faces.

Ms. Broadbent, the President has nominated you to be a Commissioner on the United States International Trade Commission, otherwise known as the ITC. As Commissioner, you would enforce U.S. anti-dumping and countervailing duty laws. These laws are essential for American manufacturers and American workers to compete for business here at home. Our companies can compete with anyone as long as they have a level playing field, and these laws help ensure that they do.

You would also help enforce U.S. intellectual property rights. An ITC report I requested found that China's intellectual property violations cost the United States economy nearly \$50 billion each year. These violations have also cost us millions of jobs. Vigorous enforcement of intellectual property rights helps innovative companies create 21st-century jobs here at home. Without that enforcement, it is hard for our companies to compete, and we depend on the ITC to enforce those rights.

As Tom Brokaw said, it is tough to make a difference. The positions you have all been nominated for involve some of the most important economic issues facing our country. We need people to fill them who are ready to make a difference.

So I congratulate you, each of you, on your nominations and thank you for being here today.

Senator Hatch?

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

Senator HATCH. Thank you, Mr. Chairman. I want to thank our witnesses for their willingness to step into the arena, and I want to thank your families for their support as well.

First, I have a few matters to address to Mr. Mazur and Mr. Rutherford.

On February 14 of this year, Secretary Geithner appeared before this committee to discuss President Obama's fiscal year 2013 budget. I, along with other members of this committee, submitted written questions for the record. Responses to those questions were due on April 30, and I specifically requested that those responses be provided by that deadline so that I would have adequate time to review them in preparation for this hearing today.

Now, those responses were not provided to me until yesterday. I have agreed with the chairman to hold this hearing, but I must

say that the Treasury Department's pattern of either refusing to respond to Senators' questions or only strategically responding the night before it wants something from this committee is getting a little bit old.

Treasury, unfortunately, seems to think that the Senate's questions come with an option to blow past deadlines and respond, if at all, whenever it chooses. Now, this failure to respond to the Senate is neither fruitful nor acceptable.

Mr. Mazur, I have seen from your questionnaire that you have worked on tax and economic policy for many years at the IRS, the Joint Committee on Taxation, and the Council of Economic Advisors, among other places. If we are actually going to be able to tackle tax reform, and I mean real tax reform, we will need all of the expertise and seriousness of purpose that we can get.

Unfortunately, unlike in 1986, the administration does not seem interested in leading the way and helping to forge a serious proposal for fundamental tax reform, and that is being, in my opinion, charitable. In fact, the President seems content to ignore our bloated tax code, which burdens the entire economy, and the looming tax hikes that are creating economic uncertainty and undoubtedly holding back the recovery and job creation. Instead, the Senate is spinning its wheels on showboats designed to generate campaign talking points rather than meaningful tax reform.

Mr. Mazur, it would be good to hear from you an actual comprehensive vision for tax reform.

Mr. Rutherford, your position would entail advising senior Treasury leadership on many matters, including the financing of the Federal debt. Though fiscal policy is generally decided by Congress, in your position you could be especially effective in providing transparency about the government's ability to meet its obligations. Treasury's failure to provide adequate information to the Senate about our Nation's fiscal situation during last year's debt limit impasse was a serious shortcoming, in my opinion.

Now, Congress will be in a better position to make sound fiscal policy if we have sound information from the Treasury Department on our fiscal position. I hope that you share my expectation that when members of Congress ask basic questions of Treasury, like how much cash is in the Federal till, the results should not be stonewalling by Treasury.

Now, I want to welcome Meredith Broadbent, who is nominated to be a member of the United States International Trade Commission. Ms. Broadbent's distinguished career includes work as a key policy advisor and counsel to the House Ways and Means Committee. She also worked within the executive branch, coordinating the work of the Office of Industry, Market Access, and Telecommunications at the Office of the U.S. Trade Representative.

Most recently, she served as senior advisor and chair of international business at the Center for Strategic and International Studies. And, while any of these accomplishments standing alone is enough to be considered successful, Ms. Broadbent served admirably in each role. She should be justly proud of her work, and I am certainly proud of you.

Finally, I want to take a minute to recognize Floyd Williams, whom I understand is in attendance today and will soon be retiring

from Federal service. Floyd has served as National Director for Legislative Affairs at the Internal Revenue Service since 1996 and can share with today's Treasury nominees what it is like to be on the receiving end of urgent requests for information from this committee.

Originally from Fayetteville, AR, Floyd worked at the Tax Foundation before working for the Treasury Department in the Office of Legislative Affairs before finally moving on to the IRS.

Floyd, if you ever miss your old job and want a letter from the committee requesting information, let me know. [Laughter.] I would be glad to oblige. I greatly appreciate your service, and I wish you well.

Mr. Chairman, thank you again, and thank you to the witnesses who are appearing today. We appreciate your willingness to serve our government, and we have every confidence that you will be able to serve well.

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

The CHAIRMAN. Thank you, Senator.

A couple of points before I begin. Number one, any request of yours to Treasury, any request you make as ranking member, is also a request of mine.

Senator HATCH. I appreciate it.

The CHAIRMAN. So I would like the Treasury to know that, if Senator Hatch makes a legitimate request, I fully support it and would like it to be answered timely. I think that is only appropriate that it be answered timely.

Senator HATCH. Well, thank you, Mr. Chairman.

The CHAIRMAN. Second, you are certainly right about Floyd. He has been such a tremendous person. We value him very much, and we regret that Floyd is retiring as Director of Legislative Affairs with the Internal Revenue Service.

You have just been terrific, Floyd, and you have just been serving in the true spirit of public service, and it means a lot to us and it means a lot to Americans, as I am sure it does to the IRS.

Thank you. You will be missed.

Senator GRASSLEY. Mr. Chairman, could I say something about Mr. Williams?

The CHAIRMAN. Absolutely.

Senator GRASSLEY. Because during a good part of his time in that position with IRS, you and I traded back and forth being chairman, and I wanted to thank him for his cooperation with me while I was chairman and ranking member.

Particularly, he is a good example of people who start at lower levels and work their way up to a very important position, because he has been a Senate page and in other jobs for the Senate before he went to the IRS.

The CHAIRMAN. You bet. You have a lot of fans here.

Now, I would like to introduce the panel. Our first witness is Mark Mazur, who has been nominated to be the Assistant Secretary of Treasury for Tax Policy.

The second witness is Matt Rutherford, nominated to be Assistant Secretary of the Treasury for Financial Markets.

And our third witness, who has been nominated for the International Trade Commission, will be introduced by her former colleague, Congressman Bill Archer.

Why don't you come on up, Bill, and why don't you make your introduction right now?

**STATEMENT OF HON. BILL ARCHER,
FORMER U.S. REPRESENTATIVE FROM TEXAS**

Representative ARCHER. Thank you, Mr. Chairman. Thank you for giving me the honor to introduce Meredith Broadbent. I know that this is normally reserved for a member of the Senate, and so I am honored to be given this opportunity.

And, as a former chairman of the Ways and Means Committee in the other body, I have a lot of fond memories of working with each and every one of you Senators who is in attendance today, although I must say that I am not eager to get back up here.

But I am pleased to be able to introduce Meredith Broadbent, who has been nominated, as you said, by the President to be a member of the International Trade Commission. I cannot think of anybody who is more qualified to hold this position, more knowledgeable about the law, and more respectful of the prerogatives of the Congress.

Meredith worked for the Ways and Means Committee trade staff for 20 years—I find it hard to believe that it really was that many years, Meredith—until the year 2002, and I worked very closely with her on all the major trade agreements that came up during that time.

She earned a reputation for integrity, wisdom, professionalism, and bipartisan cooperation. And she learned firsthand the importance of the legislative process, congressional intent, and the legislative history of trade statutes.

She originally had responsibility for organizing the committee's consideration of miscellaneous tariff bills, and I remember well the work she did for me on a bill I sponsored to establish the Trade Remedy Assistance Office of the ITC, which offers assistance to workers, farmers, and small businesses to navigate the complexities of petitioning for relief under the trade remedy statutes administered by the ITC.

I could go into a lot of details of the work that she did, and I am going to spare you that, but I do want to tell you that she drafted the Ways and Means Committee bill and the report which normalized trade relations with China, and that was a big, big thing.

She did an excellent job, and, of course, the proof of that is that the Senate adopted our bill without amendment and without any single change, and that is very unusual.

In 2002, Ambassador Zoellick asked her to join his team as Assistant USTR for Industry, and she did outstanding work there, and she led the U.S. negotiating team on industrial tariffs for the Doha round. And I am sorry to say, Meredith, you did not succeed in bringing that negotiation to an ultimate conclusion, but maybe one day it will happen.

She is someone who has earned my trust and the trust associated with the position to which she has been nominated. The judgments she will be called on to make will be technical and fact-

intensive, and I know she will apply hard work, sensitivity to the industry under consideration, and the experience she has gained here on Capitol Hill to compose thoughtful and well-reasoned determinations.

She, I know, will implement the law as it is written, and she will be responsive to your needs for data and analysis, and imaginative in her approach in assisting Congress at the ITC.

Meredith has my highest endorsement, and I urge approval of her nomination.

The CHAIRMAN. Thank you, Congressman Archer, very much. I deeply appreciate that endorsement. Clearly, you have good experience. She has worked so well and so long, Meredith has, in this.

Thank you very much for that statement.

Before we proceed, I would like to—Mr. Mazur, why don't you go ahead? You know our customary practice here is that each person summarizes his statement, and the full statement will be automatically included in the record.

So just tell us what you want us to hear. Thanks. Go ahead.

STATEMENT OF MARK J. MAZUR, NOMINATED TO BE ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. MAZUR. Thank you, Chairman Baucus, Ranking Member Hatch, and members of the Senate Finance Committee.

I am honored to have been nominated by President Obama to serve as the Treasury Department's Assistant Secretary for Tax Policy, and I am grateful for the confidence that Secretary Geithner has shown in my abilities in recommending me to the President. I also want to thank Senators and their staffs for the opportunity to meet with them over the past few weeks to discuss a wide range of tax issues.

The possibility that I could serve the Nation in the capacity of Assistant Secretary for Tax Policy is the result of a long journey that has provided me with numerous learning opportunities, plus a wide variety of disciplines.

My parents instilled in me the notion that giving back to society is important. For instance, my father served as commissioner for our local Babe Ruth League, and my mother was active in the PTA and very supportive of education in general. And I would not be here today without a strong public education system, of which I was a beneficiary from elementary school all the way through.

The opportunity to repay this support through public service has been a major motivation for my choice of career. I have been interested in working with the tax system for many years. When I was a kid, I used to sit with my dad at the kitchen table helping him organize his tax records, making sure that he would check his arithmetic on his tax return, because, frankly, he did not want to make a mistake filing his tax return. That is one of the more important things that they did, and it is one of the opportunities that every American has to interact with their government every year.

I believe my background has prepared me well for this opportunity. I received a degree in financial administration from Michigan State University, then worked as a tax accountant for General

Motors. At Stanford University I pursued a Ph.D. in business, where I was introduced to the serious study of economics.

I spent 4 years as an assistant professor at Carnegie Mellon University, where I specialized in public finance issues, and obtained an appreciation for interdisciplinary analysis of important policy questions.

I next worked for the Joint Committee on Taxation, where I got an education in the legislative process and also was part of a tremendously talented team that produced high quality work under tight deadlines.

I then spent 2 years as a senior economist specializing in public finance at the President's Council of Economic Advisors, followed that with a similar period of service at the President's National Economic Council, and then 4 years at the Department of Energy.

My next position was with the Internal Revenue Service, where I was director for research, analysis, and statistics, which gave me an appreciation for the administrative issues that are faced by the Internal Revenue Service in administering the tax code.

In all these positions, I learned important lessons on how to approach complex problems, how to work as part of a team, and how and when to rely on staff experts, and these are lessons that I will apply to my work as Assistant Secretary for Tax Policy, should I have the privilege of being approved by this committee and confirmed by the Senate.

This, indeed, is an auspicious time to be working in tax policy. We are facing momentous decisions in the design of tax policy in our medium- and long-term fiscal policy. Our Nation needs a tax system that is simple, fair, and raises adequate revenue for funding important activities of government. Right now our tax system falls short in all three dimensions.

The tax system is extraordinarily complex. Virtually everyone agrees it needs to be simpler. Having a complex system breeds a perception that there are two sets of rules, one for the well-advised and one for everyone else, and that perception of unfairness can erode the foundation of voluntary compliance on which our system depends.

Our system needs to raise adequate revenue to fund the important goods and services provided by the Federal Government. At this point, chronic Federal budget deficits characterize our fiscal policy. That needs to change in the medium and long term.

Finally, the tax system needs to have a higher degree of permanence so taxpayers can make informed judgments about long-term investments in human, physical, and financial capital. The effect of tax incentives is blunted when taxpayers are unsure what the rules of the tax system will be when they make these investments and when they file their tax returns.

These are a few of the items that, if confirmed, I look forward to working with you to address. Having served in administrations led by both political parties, I think I have demonstrated a non-partisan approach to public policymaking throughout my public service career. And, really, having a good tax system is something that affects every American household, and that should reflect the goodwill we all share as Americans.

In closing, I would like to take the opportunity to acknowledge the true professionals who staff the Office of Tax Policy at Treasury. These lawyers, economists, accountants, and other professionals are an incredibly talented team of dedicated public servants. As a taxpayer, I know I am well-served by this group, and I am honored by the ability to call them colleagues.

Finally, let me close by noting I am humbled by the possibility of serving the Nation in this new capacity. If you and your colleagues in the Senate give me the opportunity to serve as Assistant Secretary for Tax Policy, I promise to do all I can to justify your confidence in my abilities.

Thank you for the opportunity to appear here today. I would be pleased to answer any questions you may have.

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

The CHAIRMAN. Thank you, Mr. Mazur.

Next, Mr. Rutherford?

Before we begin, though, Mr. Rutherford, I will give you an opportunity to introduce your family.

By the way, stand up so we can all see and recognize you.

STATEMENT OF MATTHEW S. RUTHERFORD, NOMINATED TO BE ASSISTANT SECRETARY FOR FINANCIAL MARKETS, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. RUTHERFORD. This is my daughter, Nora, who is 18 months old; my wife, Bridget, who is about 34 weeks pregnant; my mother, Cathy; and my father, Tom.

The CHAIRMAN. That is wonderful. Let us give them all a round of applause. Thank you for your service. [Applause.]

Why don't you begin?

Mr. RUTHERFORD. Thank you, Chairman Baucus, Ranking Member Hatch, and members of the committee, for allowing me to testify before you today.

I am humbled to sit before you, and I am also honored to share this panel with Mark Mazur and Meredith Broadbent. Having worked with Secretary Geithner both at the Treasury Department and the Federal Reserve Bank of New York, I want to thank him for recommending me for the position of Assistant Secretary of the Treasury for Financial Markets. His service throughout the financial crisis has been remarkable, and I believe the United States has benefitted from his leadership and service during this difficult economic period.

I would also like to thank President Obama for nominating me for this position. It is an incredible honor. And I am deeply appreciative to staff at Treasury and the Senate Finance Committee who have worked with me throughout this entire process.

Again, I would like to thank my wife, Bridget, my daughter, Nora, and my parents for being with me today. I am very fortunate to have a very caring and wonderful family. Unfortunately, my sister cannot be here today, but she has served as a constant source of support throughout my entire life.

For the past 3 years, I have served as the Deputy Assistant Secretary of the Treasury for Federal Finance. In this capacity, my primary responsibility has been to manage the Office of Debt Management, which is responsible for making policy decisions on how

Treasury finances the government's borrowing needs. This has been a very busy time period in government finance, but I think we have achieved our objective, which is to finance the government's budget at the lowest cost over time to taxpayers.

Prior to my time at Treasury, I spent 4 years at the Federal Reserve Bank of New York in the markets group. My time there was very instructive, because, in many ways, the New York Fed is the government's closest point of contact to the financial markets. I focused on a number of different areas in the fixed income space and learned a great deal about financial markets generally.

Between my time at Treasury and the New York Fed, I feel that I am uniquely positioned to take on this new role. So, if confirmed, I would be honored to continue my career in public service, particularly during this important moment in our Nation's history.

Far too many Americans are out of work and struggling to pay their bills, and it is critically important that we work together, given the challenges that we face.

I will conclude by saying that, if I am confirmed, I look forward to working with members of the Senate Finance Committee to address these important challenges.

Thank you again for your time, and I would be happy to answer any questions that you have.

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

The CHAIRMAN. Ms. Broadbent?

STATEMENT OF MEREDITH M. BROADBENT, NOMINATED TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC

Ms. BROADBENT. Chairman Baucus, Ranking Member Hatch, and members of the Committee on Finance, thank you for the opportunity to appear before you today.

I am grateful to the President for nominating me, and to Minority Leader McConnell and Senator Portman for supporting my nomination.

If confirmed, I believe my broad experience in international trade, including my service as a staff member in Congress and as a trade negotiator at USTR, has prepared me to assume a leadership position at the U.S. International Trade Commission. To me, this is an exciting time to be considered for an assignment at the ITC.

Congress has just cleared the decks of the pending free trade agreements, and a new template for the next generation of agreements is being developed. As you work through novel issues and hone new negotiating objectives, the ITC can provide data and analytical support to inform your policy deliberations. Congress and the administration are working hard to enhance the rules-based trading system and its ability to address unfair import competition and increasingly complex trade and non-tariff barriers.

A record of fair and objective import injury investigations and import-based intellectual property determinations will be an element in helping you and your colleagues build bipartisan support for a new trade agenda among U.S. workers, farmers, and businesses.

Serving as a professional staff member for the Committee on Ways and Means during the development of the Omnibus Trade and Competitiveness Act and the implementing bills for the Uruguay Round trade agreements has given me a deep appreciation for the role that Congress intends the Commission to play in unfair trade remedy investigations and reviews. I understand the importance of objectivity in rendering injury determinations and the legislative intent behind the countervailing duty and anti-dumping laws.

My experience in administering the U.S. trade laws and as a key requestor and recipient of the ITC's analytical work while serving as a trade negotiator at USTR make me well-qualified to help direct the Commission in the production of relevant studies that will be useful to Congress and the Executive Branch.

I have seen how support for the rules-based trading system is built one industry, one worker, one farmer, one rancher at a time. Every constituent who interfaces with the ITC must receive fair and objective treatment under the trade laws.

It is on that basis, if confirmed, I would be honored to serve as a member of the U.S. International Trade Commission. Thank you for the privilege of being considered for this position.

I want to express appreciation to my husband, Chuck Riedel, and our two sons, Jess and William, for their support in my interest in serving at the ITC.

With that, I am pleased to respond to any questions.

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

The CHAIRMAN. Thank you, Ms. Broadbent.

I now have three questions, and I will ask each of the three of you, and I will just go down the line here.

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

Mr. Mazur?

Mr. MAZUR. No.

The CHAIRMAN. Mr. Rutherford?

Mr. RUTHERFORD. No.

The CHAIRMAN. Ms. Broadbent?

Ms. BROADBENT. No.

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

Mr. MAZUR. No.

Mr. RUTHERFORD. No.

Ms. BROADBENT. No.

The CHAIRMAN. Thank you.

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

Mr. MAZUR. Yes.

Mr. RUTHERFORD. Yes.

Ms. BROADBENT. Yes.

The CHAIRMAN. Thank you.

I will start with you, Mr. Mazur. We have a heck of a chore ahead of us this year and the next in reforming the tax code, both corporate and individual. I am going to ask you the open-ended question of how you think we should proceed; that is, not so much process, but substantively?

You have lots of expertise. You have been around a lot. You have analyzed these issues backwards and forwards. How do we do it? What direction do you think this country should proceed, recognizing that the world has changed so much since we reformed the code in 1986?

Mr. MAZUR. Thank you, Mr. Chairman.

First, let me say I appreciate your leadership on holding hearings on tax reform and kind of moving the ball along here in the Senate. I think that is an important set of foundation work that needs to happen in order to build public support and momentum for tax reform.

You pointed to the 1986 Tax Act as an example of past tax reforms, and, there, we spent several years both at Treasury and in the Congress developing proposals, testing them out, building momentum, finding areas for compromise where we could—a broadened tax base and lowered tax rates. And really that is what we are trying to do with tax reform here.

If we look at the tax code today, we see it is incredibly complex.

The CHAIRMAN. But back then, there was Treasury I and there was Treasury II. Do you think that something like that is necessary this time around?

Mr. MAZUR. I do not think it is necessary, but I think the President's framework for business tax reform is a step in that direction, and it lays out some of the important issues that need to be addressed, points in the direction of broadening the tax base, giving a serious look at the various tax expenditures, various parts of the code which provide special preferences, and then using whatever revenue is raised to lower rates.

And really that should lead to a tax code that is simpler, easier to navigate for taxpayers—one that rewards economic decisions and not necessarily tax planning decisions—and that would support economic growth in the long term.

The CHAIRMAN. How much work has the Treasury done thus far? The Treasury published its corporate framework, which was just that, only a framework. Everyone agrees the Is were not dotted and the Ts not crossed, and I expect that nothing is going to be forthcoming from the administration at least until after the election; that is, the Is not dotted and the Ts crossed.

In the same vein, there is no proposed individual tax reform proposal, I suspect for the same reasons. Nevertheless, to what degree is Treasury working on developing a comprehensive tax reform proposal idea, a proposal construct, for both corporate and individual?

Mr. MAZUR. There are several steps in that direction, Senator Baucus. One, as you noted, the President's framework for business tax reform does lay out some steps in the direction of a reformed tax system and really provides an opportunity for dialogue with policymakers and stakeholders to fill in the blanks.

The CHAIRMAN. Right. But is Treasury developing its own proposal that, should the President get reelected, it is going to propose next year—I assume next year?

Mr. MAZUR. So, we would be negligent if we were not doing foundational work on a variety of modeling issues and analytical issues. But at this point, there is no plan that has been developed, and we will see how this plays out.

I think right now we have an opportunity to take some steps forward on business tax reform, to look at the framework and find six or eight or ten areas of common ground, use that as a way to move forward and build some momentum toward comprehensive reform, which, frankly, as Secretary Geithner acknowledged when he was here, the goal is to look at the tax system as a whole and wind up with a reformed system that is simpler, that raises adequate revenue to fund the Federal Government, and that provides support for long-term economic growth in the United States.

The CHAIRMAN. Will the President make a proposal subsequent to the election?

Mr. MAZUR. I really cannot promise that, sir.

The CHAIRMAN. I do not have much time left. The tax gap—what is the cause of this growing tax gap; that is, the gap between income owed, but not collected?

Mr. MAZUR. Well, Mr. Chairman, you and Mr. Grassley have certainly put the tax gap front and center over the last decade or so.

At the IRS, one of the things that we learned from looking at the tax gap is, where there is information reporting, compliance is much better. And so, Congress has taken some steps to reduce the tax gap which have not yet shown up in the data by enacting debit and credit card reporting and reporting of basis on publicly traded securities.

Those should help reduce the tax gap in coming years. It is not something that you can do just with enforcement. Really it needs probably comprehensive tax reform to simplify the system and provide fewer opportunities for tax avoidance.

The CHAIRMAN. But is it primarily information reporting?

Mr. MAZUR. Information reporting is probably the one thing that could be done to have the biggest bang for the buck, yes.

The CHAIRMAN. Thank you.

Senator Hatch?

Senator HATCH. Thank you.

Mr. Mazur, President Obama frequently talks about closing loopholes to raise revenue. Now, I am concerned that it sounds like the administration's definition of a loophole may be different from how the term is generally understood.

Now, I think of a tax loophole as the use of a tax provision in a way not intended by Congress when enacted. I would like to know how you define the term "loophole." And do you have general criteria for determining what a loophole is or does your definition depend solely on who or what industry is utilizing a given tax provision?

Mr. MAZUR. Thank you, Senator Hatch, for that question.

I think you raise important issues as to how we are going to look at the overall tax system, and that we have a number of special

interest provisions in the tax code, preferences in lower rates, special deductions, and so on.

Whether we call them tax expenditures, tax preferences, or loopholes does not really matter. Each of these should be held up and analyzed, the goal being to determine whether this special provision provides larger benefits to the economy as a whole, not just a tax benefit claimed by that individual or that taxpayer, but a much larger benefit. If it passes that test, it should be part of the tax code. If it does not pass that test, it would not be desirable tax policy.

So it really does not come down to a definition of what a loophole is, really. It is a more broad or holistic view of it.

Senator HATCH. Ms. Broadbent, as you are aware, intellectual property is an increasingly important part of our U.S. economy. In my State of Utah, IP is the lifeblood of many of our industries, from information technology to the life sciences.

The ITC provides a vital tool for U.S. companies that face unfair competition from foreign imports that infringe their intellectual property interests.

Now, can you share with us some of the relevant experience you will bring to the ITC that will assist you in dealing with cases involving IP? And let us have the benefit of your knowledge on that.

Ms. BROADBENT. I appreciate that, Senator Hatch.

My experience in administering the trade statutes with respect to intellectual property focuses probably the most under the Generalized System of Preferences. I administered that at the U.S. Trade Representative's office, and we reviewed countries for consistency with the eligibility criteria and GSP, which related to intellectual property.

It is a very important area, and it is something where the U.S. law has to be enforced very strictly, and I will pay very close attention to enforcing the intellectual property responsibilities of the International Trade Commission.

Senator HATCH. Well, thank you. That is really important, as far as I am concerned.

Now, Mr. Rutherford, as you may be aware, during the debt limit impasse last year, I requested specific information from Treasury concerning available cash, taxpayer cash, held at Treasury and its projections of cash inflows and outflows, along with plans in the event that the debt limit was breached.

Now, the information was critical, as Congress was relying on guesses by local think tanks. And I asked how much cash Treasury had in its till and how much it expected to have over the short term, and I asked about Treasury's contingency plans as well.

To date, I have received only limited responses, which I find unacceptable. Now, it baffles me that even the ranking member of the Senate Finance Committee cannot obtain timely information from the Treasury about how much taxpayer money is in the till of the Federal Government.

Will you, Mr. Rutherford, agree to provide to us and to me, in particular, if I request it, information about how much money the Treasury has and how much it expects to have on a contemporaneous basis?

That is, if I ask Treasury how much money is in the till and how much it expects to have over the next couple days or weeks, will you provide such information?

Mr. RUTHERFORD. Thank you, Senator Hatch. I think that I would personally commit to working with you and your staff. I think it is critically important that we have a good working relationship on this front.

Now, I understand this has been an area of great interest to you, and I would point out that—a couple things. One is that we do publish on a daily basis the cash that we hold every single day in the daily Treasury statement. So that gets released to the public the following day.

In terms of the projections, I know that in some of the questions that you have sent over to Secretary Geithner, we have responded on a couple of different dates.

I think going forward, there is a balance that we need to strike between being responsive to you, as well as preserving some potentially market-sensitive information, because those forecasts determine some of our borrowing needs, which influence asset prices once we do make decisions on that front.

But I can personally commit to you that I will be as responsible as possible.

Senator HATCH. Thank you so much.

Mr. Chairman, my time is up.

The CHAIRMAN. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Mr. Mazur, I want to commend you for your 23 years of government service, and I think you bring an important perspective to your job because of your work with the Joint Committee on Taxation and IRS research and statistics work that you have done.

I do not have a beef with you, but I do have a beef with the Treasury Department. So do not take anything personally.

And as a background to why I raise questions about whistle-blowers, it is because you want to remember that I got the False Claims Act passed in 1986, and the Department of Justice says that has brought \$30 billion back in to the Federal Treasury. So I have great respect for most whistle-blowers who come to me with information or come to you with information.

And this is following up on something that Senator Baucus brought up, because he and I have worked together on the tax gap during the 10 years that he and I were chairman and ranking member of this committee, everything from shutting down corporate inversions and abusive deductions to improving the IRS whistle-blower program.

It has been over 5 years since the IRS whistle-blower statute was updated. The updates were intended to incentivize whistle-blowers to come forward regarding large-dollar tax cheating. And by all accounts, as reported by the IRS and the Government Accountability Office, the updates are a success. Whistle-blowers have filed thousands of claims under this new statute.

However, the IRS and Treasury response is very disappointing. I wrote to Secretary Geithner and Commissioner Shulman last

week to express my disappointment. That happens to be the third letter on the topic.

Mr. Chairman, if I could please have those letters inserted in the record, I would appreciate it.

The CHAIRMAN. Without objection.

[The letters appear in the appendix on p. 40.]

Senator GRASSLEY. These letters clearly state my concerns. More than 5 years after the statute was enacted, the necessary regulations are not finalized. The annual report has always been late. Communications with whistle-blowers are essentially nonexistent, and, as far as we know, only one award has been issued.

But just think of this one award. We had a net recovery of \$20 million to the Treasury just from one whistle-blower. My primary concern is that the foot-dragging by the Treasury and IRS will demoralize whistle-blowers so much that they will just stop blowing the whistle, and, of course, this means the tax gap gets bigger instead of smaller, and you probably are going to have more scams, like I think they found this one that I reported.

It is important that the IRS and Treasury work together to collect every dollar that is currently owed before taxes are raised, and this President continues to push for more tax increases.

So, after 5 years, whistle-blowers deserve to know at least the month and hopefully the year when they can expect guidance. If you are not able to say right now, I would give you the opportunity to give me an answer in writing.

I would like to know when I can expect to see the whistle-blower report for last fiscal year, which ended September 30, 2011, and when I can expect complete responses to my letters.

Mr. MAZUR. Thank you, Senator Grassley. First, I have certainly admired your work on the tax gap over the years and think that you and the chairman have come up with a number of approaches to address this, which has been helpful—some legislative approaches, some other approaches.

The whistle-blower program is a part of an overall approach that you have sketched out. I personally have not been involved in the regulatory guidance of the whistle-blower program, so I have to get back to you with an answer on that.

But I can tell you that, if I am fortunate enough to be confirmed, I would be very happy to work with you and your staff to understand this program and to see that it becomes a successful program.

Senator GRASSLEY. I do not think you have to work with me. I think you have to work with the Commissioner of IRS and the Secretary of Treasury, just to meet and make these awards. It is that simple. Just meet and make the awards so we do not discourage further whistle-blowing.

And why would we—when we have one example of \$20 million coming in to the Federal Treasury, and, according to Senator Baucus, we have well over \$300 billion that is in the tax gap, this is a perfect place to go.

But you know what? I kind of suspect, and I suspect this from the reluctance from 1986 until about 1993 to get the Department of Justice to enforce the False Claims Act, that there were professionals within the departments who did not want the public to

know they were not doing their job and were not following up on the fraudulent use of taxpayer money.

And I wonder if we do not have the same problem in the IRS, that these people—if they admit that whistle-blowers are bringing them in \$20 million—that somebody is not doing their job, and I think that that is a big problem.

Now, my time is up. But if I could ask one more question.

The CHAIRMAN. Go ahead.

Senator GRASSLEY. Also, to you, sir, I have conducted vigorous oversight of various executive branch agencies during my almost 40 years in the Congress. I view oversight as my constitutional duty. I consider myself an equal opportunity overseer, because I do not care whether we have Republican or Democratic Presidents.

The primary way I conduct oversight activities is to write letters. Why? Because holding these hearings, you have to get a little bit of information out of the bureaucracy. It takes staff weeks to get ready for hearings.

If you get a simple answer through a letter, that is what I try to do before you subpoena a bunch of stuff. So I ask detailed questions and request departments for certain documents. Responses to my letters and document requests are critical to conducting oversight.

So I ask this question of every nominee of every committee I serve on.

Do you agree to respond to my letters in full and in a timely manner? And when I say in full, in the first letter, not the second or third letter that you follow up to get the information you should have gotten in the first letter.

Mr. MAZUR. Mr. Grassley, if confirmed to this job, to the best of my ability, I will respond in a timely way.

Senator GRASSLEY. Well, as competent as you are, you have the ability to do it. Thank you.

The CHAIRMAN. And I might say, Senator Grassley and I help, frankly, back each other up whenever each makes a request. Some years he has been chairman, some years I have been chairman. We just feel it is best the committee members work together and help each other out.

So, again, as I mentioned earlier in the hearing, if Treasury receives a letter from the ranking member, that is, Senator Hatch—that includes Senator Grassley, who is honorary ranking member—that is a letter from me, as well, and I urge you to respond timely.

Senator GRASSLEY. He has always backed us up, too, and I thank you very much for doing that.

The CHAIRMAN. You bet.

Senator GRASSLEY. Not just recently, ever since 2001, as far as I know.

The CHAIRMAN. Thank you.

Senator Wyden?

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

I want to follow up on Chairman Baucus's question with you, Mr. Mazur.

In the 2 years after the last major tax reform bill in 1986, when a big group of progressive Democrats and Ronald Reagan got together, the country created 6.3 million new jobs—a big boost to the

economy. I do not think anybody can conclude that every one of those jobs was due to tax reform, but it certainly helped. And my view is, it would be a big shot in the arm again to pass tax reform.

And I was out of the room, so I did not get the full flavor of your response to Chairman Baucus. But my question to you is, where is the sense of urgency in terms of moving to put together a bipartisan tax reform proposal? What I got out of the earlier response was, well, there is not much going on. There is not an effort to pull together a comprehensive plan.

So let me ask, again, picking up on Chairman Baucus's question, where is this, and where is the sense of urgency to pursue it? This is something that has been done before. It has been done before, and it showed to have a very positive economic effect, and I think it will again.

So where is this, and where is the sense of urgency?

Mr. MAZUR. Thank you, Senator Wyden, for the question on tax reform, and thanks for your work in highlighting the importance of tax reform.

As you noted, in 1986, there was a major effort to reform the tax code. That effort spanned several years, basically starting in the early 1980s, culminating in the 1986 Tax Act.

I think we are in the early stages of developing public support, stakeholder support, congressional support for tax reform, and, frankly, I think this attempt is going to be more difficult than in 1986.

In 1986, we were able to, overall, do a revenue-neutral tax reform, and, frankly, with the medium- and long-term fiscal challenges we are facing, we are going to need to modestly increase revenues over the medium and long term, with modestly constrained spending. It will just be more difficult to do revenue-raising tax reform than revenue-neutral tax reform.

Now, that said, the administration has taken a first step toward this by laying out the President's framework on business tax reform. It does provide a frame for looking at tax reform on the business side of the ledger.

As Secretary Geithner has pointed out, the ultimate goal is to do comprehensive reform, but we thought that having a framework for business tax reform would at least allow there to be opportunities to find six or eight or ten areas of common ground where we could move forward and build some momentum for taking on the more difficult task of comprehensive reform.

Senator WYDEN. I would only say, respectfully, that to characterize this as being in the early stages—when you look at all that has been done, we have had one report after another, whether it is the Bowles-Simpson report, whether it is Dominici-Rivlin. Chairman Baucus has been having excellent hearings on this topic for quite some time. And the administration, even through Paul Volcker, had an excellent group.

So to say that this is in the kind of early stages, I think, number one, is not substantively accurate. And I surely would like to see you particularly in this position. You are a good man. I plan to support you. I would like to see a sense of urgency, particularly because this is so directly related to job creation, as we saw the last time it was done.

Now, one question on the corporate tax issue. The Joint Committee on Taxation last year released an analysis estimating that the lowest possible corporate income tax rate that could be enacted through legislation that is revenue-neutral under a territorial system is 28 percent.

Now, I would like to see us, particularly by closing some of the loopholes in the system, get lower than that. And Senator Coats and I and others have had ideas on how to do it. Now, there are some in the House who have said that they were told by Joint Tax that it is possible to lower the top corporate rate to 25 percent, while also moving the United States to a territorial tax system.

In your view, what would be required to lower the top corporate rate to 25 percent, transition to a territorial system, and still be revenue-neutral?

Mr. MAZUR. Thank you, Senator, for the opportunity to answer that question.

In the President's framework on business tax reform, we were able to pull together a roughly revenue-neutral plan—roughly revenue-neutral in the budget window and in the next decade—that got the corporate rate down to 28 percent. And, frankly, the arithmetic on getting to 28 percent is very difficult.

In my judgment, I think if you are looking at the corporate tax system by itself, you cannot get, in a revenue-neutral way, to 25 percent and have a territorial system. You may be able to find additional revenue outside the corporate tax system, maybe on the individual side, but in the corporate system, it would be very, very difficult to get there.

Senator WYDEN. My time is up, Mr. Chairman. If we have a second round, I might ask some more questions. Thank you.

The CHAIRMAN. You bet.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. And thank you all for coming today and responding to our questions, and for your willingness to serve.

I would like to direct a question, if I might, to Mr. Mazur, and that has to do with what many are starting to call “taxmageddon,” and that is the end of this year when the 2001 and 2003 rates expire, which would trigger a huge tax increase on our economy.

And, given the high stakes surrounding a bipartisan agreement on the issue of taxes, what advice might you give, if confirmed, to Secretary Geithner as to how to reach an agreement that will prevent this massive tax increase from taking effect, and which could very easily, I would argue, easily lapse us back into a recession.

So what are your thoughts with regard to the big train wreck that is ahead of us at the end of the year when these tax rates expire, and how might you advise Secretary Geithner with regard to how to deal with this and come to an agreement?

Mr. MAZUR. Thank you, Senator Thune.

If I was confirmed to this job, what I would advise the Secretary to do is to methodically look at the issues that are being raised item by item through the course of the year.

Right now we have a number of tax provisions that expired at the end of 2011 that really should be addressed in the short term

so taxpayers have some certainty as to what their tax situation is going to be for tax year 2012. That would be first on the list.

Then we have the 2001 and 2003 tax cuts. The President has been pretty clear in his budget what he would like to see happen, which would be to allow the tax rates for those with incomes above \$250,000 to revert back to where they were in the 1990s, but to retain the 2001 and 2003 tax cuts for the bulk of the population, 98 percent of the population.

There are also a couple of non-tax issues that need to be addressed, as well, at the end of the year. And so I guess my advice to Secretary Geithner on this would be to work with the Congress to tee up as many of these issues early on and build some—do some foundational work so that we are not pushed into a situation of having just a few weeks at the end of the year to make incredibly consequential decisions.

Senator THUNE. Do you think the agreement that was reached in 2010, the extension at that time, was a good thing? It was a 2-year extension of the existing rates.

Mr. MAZUR. Given the state of the economy at that time, I think there was need for some additional fiscal stimulus, and the extension of the tax cuts, along with the payroll tax reduction that was in place, provided that and provided additional support for the economy through 2011 and 2012. Yes.

Senator THUNE. So that was a good policy move, in your view.

Mr. MAZUR. Given the state of the economy at the time, yes. I think as we move forward, we are pivoting to a situation where we need to address the medium- and long-term budget deficits, and the economy is not quite so fragile.

Senator THUNE. Thank you.

Mr. Rutherford, the debt ceiling, the limit, is at \$16.394 trillion, which, at the time the Budget Control Act was passed, was expected to keep the government funded through November of this year. The President's 2013 budget points out the government will be just \$60 billion below the debt limit ceiling at the end of fiscal year 2012, which would be September 30 of this year.

Does the Treasury plan to institute extraordinary measures to avoid the debt limit being reached prior to the November elections; and, if so, what are those measures that you might intend to use?

Mr. RUTHERFORD. I appreciate the question, Senator. I think our best estimate now is that the tax ceiling will be reached sometime in the last couple months of the year after the election. And, at that point, we still have those same extraordinary measures that we used during previous impasses.

So I think that that would be something that we would absolutely use to continue to allow us to borrow.

Senator THUNE. But you do not anticipate hitting that before the election or triggering—

Mr. RUTHERFORD. No.

Senator THUNE [continuing]. I should ask, triggering those extraordinary measures prior to the November election?

Mr. RUTHERFORD. No. Our best estimate is that this will happen after the election. I think that some of the forecasts are obviously volatile. It is difficult to forecast with much precision 6 months out about exactly the date on which we would actually hit it.

But, obviously, we will be watching revenues and see how they are trending, as well as outlays. But we think it will be safely after the election.

Senator THUNE. And just a quick follow-up: if you have to use extraordinary measures, what might those be, what you would intend to use in order to——

Mr. RUTHERFORD. We typically redeem non-marketable Treasury securities, for example, in the G fund, which is something that Federal employees put money into. There are some authorities around the CSRDF, which is another retirement system. And we can also disinvest the exchange stabilization fund. And all three of those things we did in the last impasse last summer, as well.

Senator THUNE. I see my time is up. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I see Senator Portman has joined us. Senator, welcome. I believe you have a statement to make in support of one of the witnesses.

**STATEMENT OF HON. ROB PORTMAN,
A U.S. SENATOR FROM OHIO**

Senator PORTMAN. Thank you, Mr. Chairman. I have always wanted to be in the Finance Committee, and I finally got here on this side of the table. [Laughter.]

I was really enjoying hearing that dialogue, and I do not want to interrupt you for long, except to say that we do have a great candidate here. She is a native Ohioan, and I have had the opportunity to work with Meredith in various different posts.

She has been nominated to serve as a Commissioner on the ITC. I think she has the intellect and the qualifications and the experience to be an excellent Commissioner. She happens to be a proud Ohioan.

In addition to my working with her, we share deep roots in the Buckeye State, and I think our country would benefit from that perspective.

She was on the Ways and Means Committee with me, as some of you know, a senior professional staffer there. And as a member of the Trade Subcommittee, I relied on her judgment and expertise. She provided all the good questions for me that I asked in that subcommittee. And she was involved in some very difficult issues that addressed unfair trade barriers that were blocking manufacturing exports and agriculture exports.

I know, Mr. Chairman, you and others have worked closely with her over the years in that regard. And then a couple of years later, I had the opportunity to work closely with her when she was at the Office of the U.S. Trade Representative.

She served on my team as the assistant U.S. trade rep for industry, market access, and telecommunications, a tough job, and, again, she was responsible for developing some very important U.S. policy initiatives in the area of industrial goods, telecom, e-commerce, as lead negotiator on Doha. So she has that experience and has been very involved with looking at the plurilateral agreements on services, including with the EU, Japan, Korea, Taiwan, high technology and other issues that I know that you, Senator Hatch, are very interested in.

So she has a wealth of experience, and I think she will do a terrific job, and I hope that her willingness to serve her country in this post will be confirmed by the Senate quickly.

Thank you very much for allowing me to come and speak on Meredith's behalf.

The CHAIRMAN. You bet. Thank you, Senator.

I think a couple of Senators have a few more questions. I want to ask you one, Mr. Rutherford.

When S&P downgraded the U.S. credit rating, it created quite a stir. Some thought that the agency was not objective. I think it was, what was it, a \$2-trillion error at the time, pointed out by Treasury. S&P went back and changed their methodology. And the rating agencies have been involved with rating the debt of various countries, not just the U.S.

With our debt ceiling approaching and the fiscal cliff approaching, your thoughts, under what circumstances the agencies might downgrade U.S. debt.

Mr. RUTHERFORD. I appreciate the question. I think that I share, I think, your frustration to some extent about the methodological reasons for why they ended up downgrading the United States.

I think the initial justification that came over, as you pointed out, had a \$2-trillion error in it. When we found that, we pointed out the flaw and they came back to us with a very different reason for downgrading the United States. And that was really a political judgment about the capacity and willingness of policymakers to forge a bipartisan solution to our long-term debt problems, and I fundamentally disagree with that. I think that this country has made difficult decisions in the past, and we will make difficult decisions in the future.

So I think that they are independent companies that make unsolicited ratings on the United States. We do not pay for this rating. We do not provide them with any nonpublic information.

So I think they will probably be watching some of the issues we have been talking about today toward the end of the year and how some of those issues are resolved, but ultimately that is going to be a decision that they are going to make, and it is difficult for me to forecast exactly what their intentions will be.

The CHAIRMAN. How much are the markets influenced by their ratings?

Mr. RUTHERFORD. Well, as you know, the treasury market actually rallied. We had a significant decline in rates after the downgrade, and I think that really reflects investors' confidence in the U.S. Government's ability to meet its obligations.

So I think that that was sort of a counterintuitive response to many people, but I do think that investors continue to have full confidence in our ability to meet our long-term debt issues.

The CHAIRMAN. It is almost impossible to find, but where is the tipping point?

Mr. RUTHERFORD. I think that—

The CHAIRMAN. We are so lucky that investors worldwide have confidence in the U.S. treasuries. The rates are so low.

Mr. RUTHERFORD. Right. So that is going to be something that—

The CHAIRMAN. My expectation is that things are not always permanent. Sometimes things change. Rates might go up.

Mr. RUTHERFORD. Right.

The CHAIRMAN. So, to go back to my question, what are some of the things that may create a kind of a tipping point?

Mr. RUTHERFORD. Well, I think we just ultimately need to maintain the confidence in the markets, and we clearly have that today. I think that what is priced into the treasury market today is that we are going to put together a long-term solution to our debt issues, and I think we need to deliver on that.

Forecasting the tipping point is very difficult, as you said, and I think that the important thing that we need to do is just continue to work together and make sure that we come up with a long-term plan to maintain that confidence.

The CHAIRMAN. What is the effect of Europe or, precisely, French elections and, even more precisely, Greece?

Mr. RUTHERFORD. Well, I think the markets have been very focused on some of the political issues that have occurred in Europe recently. I think taking a step back, though, the European policy-makers need to be given some credit for what they have achieved so far. This is a very difficult situation, and I think, as the Secretary of the Treasury has pointed out on a number of occasions, Europe has really taken off the table the risk of a cataclysmic outcome.

And I think that the banking system, through the ECB's actions, has more liquidity, and sovereign debt spreads have come down quite a bit.

So it is going to remain a focus of investors, that is for sure, and they have a difficult path ahead, but I do think they have the resources to get to the right place.

The CHAIRMAN. What happens if Greece goes off the euro?

Mr. RUTHERFORD. That is a decision that the Greek voters will have to—

The CHAIRMAN. What effect will it have in the U.S.?

Mr. RUTHERFORD. I am sorry?

The CHAIRMAN. What effect will it have on the United States economy?

Mr. RUTHERFORD. Well, it will depend. I think that one of the things that we have seen is that the United States continues to be a safe haven, and we continue to see flows into our markets when there are stresses overseas.

So, again, that is maintaining that investor confidence, because we have some of the deepest and most liquid capital markets in the world. And so I would expect something like that to continue to occur.

The CHAIRMAN. Thank you.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Mr. Mazur, if we are to discuss the issues of fairness, using facts as you propose, what would be your preferred metric to measure fairness and equality? And given that metric, what would you propose as the objective?

For example, given your favorite measure, can you give me a particular year in the past where you feel the economy was closest to what you feel is optimal equality?

Mr. MAZUR. Thank you, Senator Hatch, for raising an important issue. As an economist looking at the tax system, fairness is just one of the issues that you care about. You care about efficiency, and you care about equity.

And in designing a tax system, there are tradeoffs that occur all the time. One of the things that has been a characteristic of the U.S. tax system since the early days is a notion that the amount of tax individuals pay or taxpayers pay is based on some sense of their ability to pay.

That is reflected in the notion of progressivity, that effective tax rates should be higher for those with greater incomes. And so that would be one of the characteristics of a fair tax system; that is, as you move along the income scale going toward higher and higher incomes, on average, effective rates would rise.

I do not think you can point to a particular time in history and say, that was the optimal tax system, that was the optimal situation we have had.

We have had our Federal Government grow and shrink over time. Really what you want to do with a tax system is raise adequate amount of revenue to pay for the goods and services demanded by taxpayers from the Federal Government, do it in a way that is efficient, and do it in a way that is perceived as fair.

Senator HATCH. As my friends on the other side of the aisle are repeatedly discovering, there just is not enough revenue available from taxing the so-called rich to pay for the size of government that the President desires.

What maximum upper-income tax rate would you propose to confront inequality, and how much revenue do you think that would generate? Just give us some ballpark figure, if you can.

Mr. MAZUR. Again, I think the idea of looking for a maximum tax rate is one that misses the entire point. Really what we are looking at is designing an overall tax system—part of which is individual income tax, part of which is corporate income tax, part of which is payroll tax, part of which is excise taxes, part of which is estate and gift taxes—and having that entire tax system raise an adequate amount of revenue for the Federal Government—for the goods and services that taxpayers demand from the Federal Government.

So I do not think you can just say, here is a maximum tax rate, and hold to that as a simple matter. One of the goals of comprehensive tax reform is to say, let us broaden the tax base and lower rates.

If we are successful at doing that, we would lower rates below where their current levels would be. But at this point, I cannot give you an overall estimate and say a 20-percent rate is the maximum rate or a 50-percent or 70-percent rate is the maximum rate.

If we look over the course of history in the United States, we have had maximum individual tax rates that ranged from probably 90 percent, at the most, to probably 28 percent after the 1986 Tax Reform Act. The economy has performed well in a wide variety of those situations. So I do not think you can say, here is a maximum

rate, and kind of use that as a single guidepost. It is really more of a balance.

Senator HATCH. In your testimony, you note that, “Complexity breeds the perception that the tax system has two sets of rules—one for ordinary Americans and one for those who have access to lobbyists and tax engineers.”

Now, in January of this year, *Politico* noted that 36 White House staffers owed \$833,970 in back taxes. Now, do you think there also might be a perception that there are different rules for those in power or who are close to power? And how important is it to ensure the laws are perceived as applying to everyone equally, and how can we accomplish this in tax reform?

Mr. MAZUR. Well, clearly, everyone who is in public service should pay the taxes that they owe, whether it is in the executive branch or another branch of government. Any noncompliance is too much noncompliance. So you would really want to reduce that.

Having a reformed system, one where it was simpler for taxpayers to navigate the system, one where there is a degree of permanence—the taxpayers could rely on the tax rules that would apply to them in the future, they would know what those were and they would be reliable—that would help improve perceptions of fairness.

Taxpayers would see that they were treated similarly to their neighbors who are similarly situated, an important characteristic of fairness.

Senator HATCH. Mr. Chairman, I will submit the rest of my questions in writing, and hopefully we can get a quick response.

The CHAIRMAN. Thank you.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Just a couple of other areas I want to get into.

Mr. Rutherford, you and I talked, particularly in the office, about tax credit bonds for transportation. And, as you know, the central question is that the gas tax simply is not something that is palatable to Americans at a time of all this economic hardship and skyrocketing gasoline prices. It is not palatable in terms of looking there for additional revenue given the fact that we have all this work to do in terms of infrastructure.

So what we have done on this committee is to focus particularly on trying to generate more revenue in a fashion that would be acceptable to the American people and would pencil out—in other words, it would add up, from a revenue standpoint.

And we came up with something known as Build America Bonds. We talked about it in the stimulus. I remember the afternoon Chairman Baucus asked me what I thought was going to happen with all of this. I said, Mr. Chairman, we might generate \$6 billion/\$8 billion worth of projects, and the chairman and colleagues on both sides said, well, it is worth a try.

As you know, this came in at more than \$180 billion worth of investments. So, clearly, it was attractive to the private sector, which is key, of course, to generating more revenues. So, when the administration said, let us make Build America Bonds permanent, we thought that was terrific. But, of course, that cannot pass, particularly in the House.

So we have gone back to the drawing board, and Senator Hoeven and I, in particular, have come up with a new concept, which really focuses on sort of a State version of these tax credit bonds.

Once again, the private sector has been very supportive, very interested. We have talked to Chairman Baucus and Senator Hatch and have had a lot of discussion here on a bipartisan basis, and we need new revenue that can be generated in a fashion that would be acceptable to the public.

What are your thoughts on that kind of approach?

Mr. RUTHERFORD. I appreciate the question, Senator. I think that improving infrastructure in this country is something that the administration has been very focused on, as you know. And I think in the recent budget, the support dedicated to an infrastructure bank was important in this respect, as well as the administration's belief that we should continue to extend those Build America Bonds, which I know you were so important in engineering.

And I think that, as you pointed out, they were incredibly successful. And, from a market perspective, I think the investors that I speak with, they were very receptive to this market, and a market was basically generated overnight, a very deep and liquid market.

So I think that this is the area that the administration has focused on, because it was our belief that this was an area that was incredibly successful.

But upon reflecting upon our conversation, I do think that the spirit of what you are trying to achieve with these TRIP bonds is something that is definitely worthy of consideration, and, if confirmed, I would be happy to continue to work with you on this topic, because I share your desire to improve infrastructure in this country.

Senator WYDEN. Well, thank you. And I think that is very constructive. You may know, with Chairman Baucus's support and Senator Hatch's, we were able to get a placeholder for these TRIPs in the transportation bill. Senator Hoeven and I are continuing to work with colleagues on both sides of the aisle in the House and Senate in a bipartisan way in hopes that this can be part of the effort, again, to shore up the opportunity to finance the desperately needed infrastructure.

We all know you cannot have big league economic growth with little league transportation systems. So your positive reaction and being willing to look at other approaches, I think, is very helpful, very constructive. I appreciate it.

And having been the author of the Build America Bonds the first time, with lots of other colleagues, I wish we could go there. It is just that we are going to have to look at some other approaches.

The last point that I would make is this. Ms. Broadbent, we did not have a chance to talk in the office. So I am not going to throw lots of difficult questions at you. I just simply want to convey that, particularly with the significant transformation in our economy, and particularly the digital economy—digital goods, digital services—we have been spending a lot of time looking at those issues here, and there are a whole host of questions that apply to the international arena: unfair digital imports, for example, those that infringe on copyrights.

And for all practical purposes, these are unfair trade practices, and there has been lots of bipartisan interest in looking at that in terms of a trade issue and responding in the trade arena so that we can do two things: we can protect American jobs and protect our key industries, whether they are fake Nikes or movies people do not own or somebody selling tainted Viagra.

It is not right to let people be ripped off. We have to do it in a way that does not harm the Internet and does not harm the prospects for more digital goods and services.

I am going to be supporting you when you come up for a vote here, and I would like to have a chance to talk with you about that down the road. And I guess you are spared any questions, because we did not have a chance to talk about it. But I just wanted to put that on your radar.

And, Mr. Chairman, I think it has been a valuable hearing. We have gotten a lot of important issues aired, and I thank you for this extra time.

The CHAIRMAN. Thank you, Senator. Thank you all. I wish you all very, very good luck. You will be working extraordinarily hard and will not be spending as much time as you would like with your families. Thank your families, too, for the joint effort here.

We have a lot of work to do, and I urge you, too, to not blindside this committee. That is, when something is coming up that is relevant to this committee, give us advance notice. Give us a telephone call, because the goal is to work together. The goal is not, from our side, to be adversarial, antagonistic, competitive. The goal is to be cooperative and constructive, and I know you will do the same. I just urge you to approach your work generally in that regard, but more specifically with respect to this committee.

Thank you very much. The hearing is adjourned.

[Whereupon, at 11:25 a.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

**STATEMENT OF MEREDITH BROADBENT,
NOMINEE TO BE A MEMBER OF THE INTERNATIONAL TRADE COMMISSION
TO THE COMMITTEE ON FINANCE, UNITED STATES SENATE
May 8, 2012**

Chairman Baucus, Ranking Member Hatch, and Members of the Committee on Finance, thank you for the opportunity to appear before you today.

I am grateful to the President for nominating me and to Minority Leader McConnell and Senator Portman for supporting my nomination.

If confirmed, I believe my broad experience in international trade, including my service as a staff member in Congress and as a trade negotiator at USTR, has prepared me to assume a leadership position at the U.S. International Trade Commission (ITC). To me, this is an exciting time to be considered for an assignment at the ITC.

Congress has just cleared the decks of the pending free trade agreements and a new template for the next generation of agreements is being developed. As you work through novel issues and hone new negotiating objectives, the ITC can provide data and analytical support to inform your policy deliberations.

Congress and the administration are working hard to enhance the rules-based trading system and its ability to address unfair import competition and increasingly complex trade and non-tariff barriers. A record of fair and objective import injury investigations and import-based intellectual-property determinations will be an element in helping you and your colleagues build bipartisan support for a new trade agenda among U.S. workers, farmers and businesses.

My experience serving as a professional staff member for the Committee on Ways and Means during the development of the Omnibus Trade and Competitiveness Act of 1988 and the implementing bill for the Uruguay Round Trade Agreements has given me a deep appreciation for the role that Congress intends the Commission to play in unfair trade remedy investigations and reviews. I understand the importance of objectivity in rendering injury determinations and the legislative intent behind the countervailing duty and anti-dumping laws.

This experience, together with my work on legislation which normalized trade relations with China, has given me a clear grasp of the difficult market access barriers facing U.S. exporters of agricultural and manufactured goods and the essential role that these constituencies play in advancing U.S. trade agreements.

From 2003-2008, I served as Assistant United States Trade Representative for Industry, Market Access and Telecommunications. In this position, I led the U.S. negotiating team on industrial tariffs in the Doha Round, and represented the executive branch in consultations with Congress on recent reforms to the Generalized System of Preferences program.

While at USTR, I supported Ambassador Portman in successfully concluding a \$3.4 billion plurilateral trade agreement which eliminated duties on approximately \$1 billion of U.S. exports in the high technology sector. This little known, non-controversial agreement, which made use of now expired proclamation authority, helped establish more favorable conditions of global competition for a cutting edge U.S. industry.

My experience in administering U.S. trade laws, and as a key requestor and recipient of the ITC's analytical work while serving as a trade negotiator at USTR, make me well qualified to help direct the Commission in the production of relevant studies that will be useful to Congress and the executive branch.

Having worked as congressional staff, I have seen how support for the rules-based trading system is built one industry, one worker, one farmer and one rancher at a time. Every constituent that interfaces with the ITC must receive fair and objective treatment under the trade laws.

It is on that basis that, if confirmed, I would be honored to serve as a member of the U.S. International Trade Commission.

Thank you for the privilege of being considered for this position. I want to express appreciation to my husband, Chuck Riedel, and to our two sons, Jess and William, for their support of my interest in serving at the ITC.

With that, I am pleased to respond to any questions.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE
January 19, 2011

A. BIOGRAPHICAL INFORMATION

1. **Name: (Include any former names used.)** Meredith Mathews Broadbent
2. **Position to which nominated:** International Trade Commission (ITC)
3. **Date of nomination:** November 8, 2011
4. **Address: (List current residence, office, and mailing addresses.)**

5. **Date and place of birth:** 01/01/1959; Cleveland, Ohio

6. **Marital status: (Include maiden name of wife or husband's name.)**

7. **Names and ages of children:**

8. **Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)**

Western Reserve Academy, Hudson, Ohio (1974-1977) diploma 1977

Middlebury College, Middlebury, Vermont (1977-1981) BA, European History; Minor in Economics awarded 1981

George Washington University (1984-1998), School of Business and Public Management, MBA, International Business awarded 1998

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Georgetown Center for Strategic and International Studies, African Studies Program

- Research Assistant (1981-82)
- 1800 K Street N.W.
Washington, DC 20006

Committee on Ways and Means, Subcommittee on Trade, U.S. House of Representatives

- Senior Professional Staff Member, Republican/Majority Staff (1994-2003)
- Professional Staff Member and Trade Assistant, Republican/Minority Staff (1982-1994)
- Washington, DC 20515

Office of the United States Trade Representative

- Assistant U.S. Trade Representative for Industry, Market Access and Telecommunications (2003-2008)
- 600 17th Street NW
Washington, DC 20508

The Global Business Dialogue, Inc.

- Trade Advisor (3/2009-10/2010)
- 1140 Connecticut Ave. NW Suite 950
Washington, DC 20036

Center for Strategic and International Studies

- Senior Advisor and William M. Scholl Chair in International Business (10/2010-current)
- 1800 K Street N.W.
Washington, DC 20006

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

None.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation,

company, firm, partnership, other business enterprise, or educational or other institution.)

The Technology CEO Council, Consultant (2009)

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

Member of Board of Visitors (2008-current), Member of Waring Prize Committee (2001-2008); Western Reserve Academy, Hudson, Ohio

Member, Business Relations Committee (2000-2004) and Parent Volunteer, Capital Campaign Committee (2010-current); Thomas Jefferson High School for Science and Technology, Annandale, Virginia

Member of Board of Directors, Trade Policy Forum (1995-2004)

Member of Steering Committee, the Congressional Staff Forum, Center for International Business, School of Business, Georgetown University (1997-2003)

Member of Board of Directors, Women in International Trade (1989-1993)

Member of Board of Directors, House of Representatives Child Care Center (1990-1994)

13. Political affiliations and activities:

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

None

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

Manager, Deployed RNC Volunteers and Member of Trade Advisory Committee, John McCain for President Campaign (Volunteer); Sept-Nov. 2008.

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

(Jointly with spouse)

2002	Republican National Committee	\$500.00
2004	Bush-Cheney '04	\$2000.00
2006	Nancy Johnson (R-Conn) for Congress	\$ 200.00
2006	Mike Dewine (R-Oh) for Senate	\$200.00
2008	Phil English (R-Pa) for Congress	\$250.00
2008	McCain Victory and McCain-Palin Victory	\$3550.00
2008	Barbara Comstock (R) for VA House of Del.	\$700.00 estimate
2010	Mark Kirk (R-Il) for Senate	\$175.00
2010	Rob Portman (R-OH) for Senate	\$900.00
2010	Barbara Comstock for VA House of Del.	\$400.00
2010	Paul Ryan (R-WI) for Congress	\$250.00
2011	Paul Ryan (R-WI) for Congress	\$100.00
2011	Barbara Comstock for VA House of Delegates	\$100.00
2011	Promoting our Republican Team PAC	\$500.00 possible

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Award from the Semiconductor Industry Association recognizing my work in negotiating a trade agreement governing trade in high tech products. (2007)

Award from the Caribbean/American textile and apparel industry for work on the Caribbean Basin Trade Partnership Act (2008)

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

"The Role of FTA Negotiations in the Future of U.S.-Egypt Relations." Publisher: CSIS. December 13, 2011.

"Time to Exchange Andean Preferences for Reciprocal Free Trade Agreements." Publisher: CSIS. February 23, 2011.

"The Global Trade Picture from Washington." Part of the "Global Forecast 2011." Publisher: CSIS. June 15, 2011.

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

Statement before the Senate Finance Committee, Subcommittee on International Trade, Rock Springs, Wyoming April 15, 2004. Hearing on

International Trade and the Impact on the U.S. Soda Ash Industry

Statement before the Senate Finance Committee, May 16, 2007, Hearing on the Operation of Trade Preference Programs

Statement before the House Ways and Means Committee Hearing on the Operation, Impact and Future of U.S. Preference Programs, Nov. 17, 2009

Speech on U.S.-High Technology Trade Agenda, Canada-United States Law Institute, Case Western Reserve University, April 2007

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

If appointed, I would bring to the position over 26 years of combined public service in the executive branch and Congress handling complex trade policy issues.

From 2003-2008, I served as Assistant United States Trade Representative for Industry, Market Access and Telecommunications. In this position, I led negotiations in the World Trade Organization aimed at liberalizing trade in industrial goods and represented USTR in consultations with Congress on recent reforms to the Generalized System of Preferences program. While at USTR, I successfully concluded a plurilateral trade agreement which eliminated duties on \$1 billion of U.S. exports in the high technology sector.

My experience in administering U.S. trade laws, and as a key requestor and recipient of the ITC's analytical work while working as a trade negotiator at USTR, make me well qualified to help direct the Commission in the production of relevant and timely studies that will be useful to Congress and the Executive Branch.

Serving as a professional staff member for the Committee on Ways and Means during the development of the Omnibus Trade and Competitiveness Act of 1988 and the implementing bills for the North American Free Trade Agreement and the Uruguay Round Trade Agreements gave me a deep appreciation for the role that Congress intends the Commission to play in unfair trade remedy investigations and reviews. I understand the importance of objectivity in rendering injury determinations and the legislative intent behind the countervailing duty and anti dumping laws.

This experience, together with my work on legislation granting normal trade relations treatment to China, has given me a clear grasp the difficult

market access barriers facing U.S. exporters of agricultural and manufactured goods and the essential role that these constituencies play in advancing U.S. trade agreements.

I believe my broad experience in international trade has prepared me well to assume a leadership position at the ITC.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

Yes

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

No

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

No

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

Yes

C. POTENTIAL CONFLICTS OF INTEREST

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. International Trade Commission's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the

Commission's ethics official and that has been provided to this Committee.
I am not aware of any potential conflicts of interest.

2. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

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

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

None

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

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

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

D. LEGAL AND OTHER MATTERS

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

No

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

On May 9, 1998, I received a ticket in the form of Virginia Uniform Summons #85541 to appear in General District Court (Traffic) for being in possession of an empty/open container which was on the floor of my car. This charge was dismissed and later vacated on May 4, 2001 by Judge Thomas Kelly in Arlington County District Court. (Documents attached).

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

During the time I was a hiring manager at USTR (2006), a job applicant filed an Equal Opportunity complaint against USTR alleging that he was not hired to administer the Generalized System of Preferences (GSP) Program because he was a minority. My involvement was to give a statement explaining my role in the hiring decision and that I was directed by my supervisor to hire from an internal applicant pool due to budget constraints. David Apol, Office of General Counsel, Office of the U.S. Trade Representative (202 395 9633) handled this proceeding for USTR.

4. **Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.**

Please see answer to question #D. 2 above.

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

None

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes

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

Yes

Senate Finance Committee Hearing
May 8, 2012
Questions for Meredith M. Broadbent,
Nominee to the U.S. International Trade Commission
Submitted by Chairman Baucus

1) Ms. Broadbent, the Chinese Government has in recent years made it a practice to retaliate against legitimate U.S. trade remedy cases. For instance, the official Chinese press announced that in response to U.S. duties on Chinese tire imports, China was going to apply antidumping duties to U.S. chicken and auto imports. Needless to say, I am very concerned that China would arbitrarily retaliate against the legitimate use of U.S. trade laws. And I would note that the WTO ruled that the U.S. tariffs on imports of tires from China were appropriate.

Are you concerned about reports of such Chinese retaliation? What should the U.S. government be doing about it?

I am concerned that a member of the WTO, like China, might be imposing antidumping (AD) or countervailing (CVD) duties against U.S. imports in retaliation for a decision by the United States to impose safeguard, AD, or CVD duties on imports from China. Under the WTO Agreements, China may only impose AD and CVD duties when the facts and circumstances warrant and if China has complied fully with the appropriate WTO requirements. No provision of the AD or Subsidies Agreements allows China to impose AD or CVD duties on a country's imports as a means to retaliate against that member for imposing AD, CVD, or safeguard duties on its imports from China.

A decision to seek to enforce U.S. rights under the WTO against China in such a case would be the responsibility and decision of the President and the USTR. Nonetheless, if the President and the USTR seek advice from the Commission, I would, along with my colleagues, make sure that the ITC and its staff undertake the analytical work and research necessary to support the efforts of the President and the USTR in enforcement actions under the WTO and other trade agreements.

Senate Finance Committee Hearing
May 8, 2012
Questions for Meredith M. Broadbent,
Nominee to the U.S. International Trade Commission
Submitted by Senator Stabenow

1) If we want to get our economy back on track, we need to stand up for American businesses and workers to help them compete globally. When a company decides to relocate production back to the United States and create new domestic jobs, the long-term success of this decision depends largely on the company's ability to defend itself against unfairly traded imports. An expansion of U.S. production should not adversely impact the Commission's determination for finding injury to a domestic industry, particularly when the U.S. Department of Commerce finds dumping of imported goods and subsidized foreign competition. How would you consider the impact of increased investment in U.S. production on determining whether a domestic industry is truly being injured?

The Commission's analysis of injury involves a number of statutory factors, which relate to the volume of the subject imports, their pricing and their effect on domestic prices, and their impact on the condition of the industry. When considering the impact of subject imports on the condition of the industry, for example, the statute directs the Commission to consider the domestic industry's production levels and its capital investments in the United States, amongst a number of other factors. Under the statute, none of these factors is dispositive of the issues of injury or causation, which means that an industry's decision to relocate production facilities back in the United States would only be one of many economic factors which would need to be considered as part of the Commission's injury analysis.

SUBMITTED BY SENATOR GRASSLEY

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 MICHAEL R. ENZI, WYOMING
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United States Senate

COMMITTEE ON FINANCE
 WASHINGTON, DC 20510-6200

RUSSELL SULLIVAN, STAFF DIRECTOR
 KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

June 21, 2010

The Honorable Timothy Geithner
 Secretary of the Treasury
 Department of the Treasury
 1500 Pennsylvania Avenue NW
 Washington, DC 20220

Dear Secretary Geithner:

It has been almost three and a half years since the whistleblower program revisions I authored were enacted in the *Extension of Tax Relief Act of 2006*. I shepherded this legislation through despite strong opposition from some at the Treasury and the Internal Revenue Service (IRS). Last year the Treasury Inspector General for Tax Administration (TIGTA) published a report (Report No. 2009-30-114) titled "*Deficiencies Exist in the Control and Timely Resolution of Whistleblower Claims*." This report highlights how successful the revisions have been in encouraging whistleblowers to come forward. According to this report, almost 2,000 claims had been filed in calendar years 2007 and 2008 alleging over \$70 billion of underreported income.

However, I am worried that the naysayers at Treasury and the IRS who opposed the provision in 2006 are effectively undermining the whistleblower statute. Soon after the bill was signed into law in 2006, I wrote to then-Treasury Secretary Paulson requesting to be apprised of guidance issued by the Internal Revenue Service (IRS) and the Department of the Treasury regarding the program. I am enclosing a copy of that letter and then- IRS Commissioner Everson's response.

Given this agreement, I am writing to express my concern and disappointment about the lack of notice regarding the changes to the whistleblower provisions in the Internal Revenue Manual (IRM) dated June 18, 2010, as posted on IRS.gov. I am particularly frustrated that this guidance was issued while my staff's requests during the past few weeks for the most recent annual whistleblower report to Congress have gone unanswered.

I was recently provided a copy of a PowerPoint presentation that the Director of the IRS Whistleblower Office used at the April 27, 2010, conference hosted by Taxpayers Against Fraud titled, "IRS Whistleblower Boot Camp." Based upon this presentation, I gather that these IRM changes have been contemplated for some time. Yet, neither I nor my staff, were apprised of the IRM changes nor does it appear that public comment was sought.

After reviewing the new IRM provisions, I have serious concerns that the new IRM provisions will deter whistleblowers from filing claims. I ask that implementation of the new IRM provisions be delayed effective immediately until the following questions are answered and documents provided.

- 1) Provide copies of all Office of Chief Counsel (OCC) memoranda, advice and correspondence regarding these changes.
- 2) Provide copies of minutes, or other documentation, of meetings and discussions, both internal and external, regarding the IRM changes.
- 3) Explain why the IRM changes were not released for public comment.

In addition to the IRS posting the new IRM provisions without public comment, there are many substantive concerns within the IRM. For example, the new definition of "collected proceeds" is particularly troubling because it seems to limit the payment of awards to whistleblowers only in those instances where the IRS receives cash payment from a taxpayer. An IRS spokesperson, in response to an inquiry from the media, stated that the IRS is bound by the written statute. Yet, this was never raised with me or my staff. The denial of a whistleblower award where the whistleblower's information leads to the denial of a claim for refund seems to create a perverse incentive for the whistleblower to wait until the IRS has paid an improper refund. In addition, the IRM says that satisfaction of a taxpayer's liabilities by reducing a credit balance is not within the scope of collected proceeds so the whistleblower would receive no award.

- 4) For all years for which data is available, provide the number of whistleblower claims that were denied because the IRS action, resulting from whistleblower information, did not result in actual cash collected.
- 5) If whistleblower awards were previously awarded for refund claims or other action resulting in elimination of the liability without payment, explain why this policy was changed now.
- 6) If whistleblower awards were previously awarded for tax liabilities that were satisfied from a taxpayer's credit balance, or other action resulting in elimination of the liability without payment, explain why this policy was changed now.
- 7) Compare the standard for collected proceeds to the basis for awards under the False Claims Act.
- 8) Provide documentation of discussions and decisions, including memoranda, advice and correspondence regarding these changes.

Further, section 25.2.2.8 of the new IRM related to the administrative proceeding for whistleblower rewards contains a troubling provision requiring a whistleblower to sign a confidentiality agreement before receiving access to the preliminary award report package. I have long been an advocate for open and transparent government and have questioned the use of confidentiality agreements because of the potential for misuse and abuse of these agreements. As a result, the individual would have no recourse to publicly question the award determination made by the IRS. Absent proper internal controls, this requirement of a confidentiality agreement has the potential to hush whistleblowers and provides the IRS a strong tool to force

whistleblowers to accept a reduced award. This confidentiality appears to be in direct contradiction to the spirit and intent of the whistleblower provision I authored. The goal of this law was to bring information on tax fraud and tax cheats IN from the cold, not to bring it into an agency to be placed under lock and key.

- 9) What is the purpose of the confidentiality provision required in section 25.2.2.8 of the new IRM?
- 10) Provide the names of all individuals at the IRS that proposed and drafted this provision.
- 11) Provide copies of all memorandums, legal research, and legal analysis related to this provision.
- 12) Provide a detailed explanation outlining the IRS's past, present, and proposed use of confidentiality agreements in whistleblower cases. This response should include a list of all whistleblower cases where the IRS required the whistleblower to sign a confidentiality agreement, what the terms of that confidentiality agreement were, and how often whistleblowers have objected to signing that confidentiality agreement.
- 13) In the opinion of the IRS, would the confidentiality agreement preclude a whistleblower from providing information about the preliminary award package to Congress?
- 14) Would the IRS consider it a "negative factor in determining the specific award percentage" if a whistleblower provided information on the preliminary award package to Congress, even if they signed the confidentiality agreement?

I am also troubled by the facts laid forth in the attached letter that was forwarded to my office in March of this year. The IRM clearly states that the authority to determine the amount of whistleblower awards rests with the Director of the IRS Whistleblower Office. Yet, the letter indicates that the then Deputy Commissioner for Services and Enforcement overruled the decisions of both the whistleblower Director and ad hoc committee comprised of other senior executives with respect to the amount to be awarded to Mr. XYZ.

I have learned from my almost three decades of experience with whistleblowers that government agencies will often seek to undermine or undercut the whistleblower. Prior to the 2006 changes, there was a culture of hostility towards and intimidation of whistleblowers at the IRS. That is why I created an independent Whistleblower Office at the IRS and delegated authority for reviewing claims and determining awards with that office. The actions of the then Deputy Commissioner for Services and Enforcement, and the existence of the ad hoc committee, are contrary to law.

- 15) Explain how and why the Deputy Commissioner for Services and Enforcement was permitted to override both the Director of the IRS Whistleblower Office and the ad hoc Governance Board.
- 16) Provide copies of any memos and reports prepared by the Whistleblower Office regarding Mr. XYZ's claim.

- 17) Indicate when the ad hoc committee was created, how many claims it has reviewed and the result of each review.
- 18) Provide documentation for any claim where the ad hoc committee overruled the Director of the Whistleblower Office.

The statement made by the Director of the IRS Whistleblower Office, in his May interview with The Washington Post, that the IRS has yet to issue an award under the 7623(b) of the Internal Revenue Code, is also worrisome. The TIGTA report, referenced above, revealed that as of March 30, 2009, 700 of 1,973 claims, over 35 percent of the claims processed by the Whistleblower office, were still awaiting action. The Report also noted that only 69 of the 1,973 claims, around 3 percent, had been sent to an examination office for action by an agent. See Report, Figure 1, page 3.

I understand the Fiscal Year 2009 Whistleblower Office Annual Report to Congress has been provided to Treasury for review and is expected to be released shortly. Given that no awards have been issued under the new law, when this report is provided to Congress, please also provide the following.

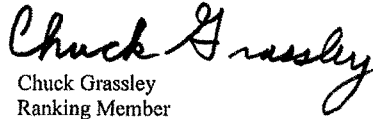
- 19) Provide an update of the information contained in the chart at Figure 1 of the 2009 TIGTA Report (attached).
- 20) Provide the highest, lowest and average number of days whistleblower claims sit in each of the offices listed in that chart.
- 21) Indicate whether any whistleblower claims have been or will be denied because of the statute of limitations and explain what IRS is doing to prevent the statute of limitations interfering with recovery of taxpayer dollars.

Finally, I would like to remind you that I asked for a response to my June 8, 2010, letter (attached) regarding the IRS's use of whistleblower information in the UBS case. I ask that you immediately contact me or my staff regarding that response as well as my request above to delay the effective date of the IRM changes released June 18.

The Treasury and IRS moved very quickly to appoint the Director of the Whistleblower Office – within two months of when the statute was enacted. Despite this early commitment to the Whistleblower Office, I am very worried that this office is not getting the support it needs and that the program is being undermined by the old guard who would like to see it fail. The potential success of the whistleblower program is indisputable. The question is whether the program will thrive and succeed, or, because of the lack of leadership at the highest levels at Treasury and the IRS, if it will fail. Failure, of course, comes at the expense of the honest taxpayer.

I look forward to your prompt attention to this matter, including a quick decision on my request to delay implementation of the IRM changes until my questions have been answered. Further, I also request that your staff provide a briefing to my staff as soon as possible to discuss your responses and many other concerns and reservations about the IRM that were not raised in this letter that I continue to have. Please contact me or my staff at (202) 224-4515 with any questions.

Sincerely,


Chuck Grassley
Ranking Member

Enclosures

cc: The Honorable Douglas H. Shulman
The Honorable William J. Wilkins

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The Honorable Douglas L. Shulman
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CHARLES E. GRASSLEY
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September 13, 2011

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Dear Commissioner Shulman:

I am writing to express my concerns about several issues raised by the report on the whistleblower program released last week by the Government Accountability Office (GAO). I also continue to have concerns about the Internal Revenue Manual (IRM) provisions regarding whistleblower claims.

Before I address my concerns, I want to first express my appreciation for the progress in managing whistleblower claims since the 2006 reforms I authored were enacted. I am thankful that leadership at the Internal Revenue Service (IRS) is making good faith efforts to embrace whistleblowers instead of reverting to the old culture of treating them like skunks at a picnic. These actions stand in stark contrast to the sky-is-falling attitude initially taken by the leaders at the Securities and Exchange Commission (SEC) in implementing the whistleblower provisions that were included in the Dodd-Frank legislation. Those provisions, like the IRS whistleblower provisions, are based on the False Claims Act (FCA) updates, which I also authored. I hope that the IRS will take an active role, along with the Department of Justice (DOJ), in advising the SEC on its implementation of the new SEC whistleblower rules. I believe taxpayers will benefit from having a strong, coordinated, multi-agency approach to combating fraud and protecting taxpayer dollars.

While the IRS has made great progress, there is still room for improvement. The GAO report makes clear that the whistleblower program has been successful in providing good information to the IRS about big-dollar tax cheating. The data shows that IRS has received tips on more than 9,500 taxpayers from 1,400 whistleblowers in just five years while only rejecting 1,300 claims so far during that time. I remain concerned, however, about the time needed to process these claims and whether the long timeframes, combined with a lack of communication with whistleblowers, discourages current and future whistleblowers. As you know, whistleblowers often come forward at great risk, both personal and financial. With the nation facing massive deficits, both Department of Treasury (Treasury) and IRS officials need to do all they can to ensure the success of what's clearly one of the best tools available to go after tax fraud.

The next whistleblower report to Congress is due for the fiscal year (FY) 2011, which ends September 30, 2011 – just three weeks away. The GAO makes excellent recommendations

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for the IRS to consider implementing for this annual report. I am disappointed that the IRS has indicated that adopting these changes is contingent upon limited resources. We know that just one tax whistleblower netted the government \$20 million. This recovery alone indicates that the money collected from whistleblower tips should more than pay for improvements needed to effectively manage whistleblower claims. I understand that recoveries are not dedicated to the IRS. However, the Treasury Secretary and IRS leadership have the authority to allocate IRS resources as needed. Improved monitoring of the program and tracking of claims will comfort current and future whistleblowers, which would, in turn, ensure the continued receipt of valuable whistleblower claims. As a result, I ask that you consider the benefits of making these changes a priority.

I am also very concerned about the timeframe for addressing whistleblower claims. The Treasury Inspector General for Tax Administration (TIGTA) noted in its 2009 report that the effectiveness of the IRS Whistleblower Program could be diminished without an effective control over, and timely processing of, claims. In my June 21, 2010, letter to Secretary Geithner, I asked for an update of the information contained in Figure 1 of the 2009 TIGTA report. I did not receive this in your November, 2010, response to me. I did not pursue it at the time because the GAO had started work on its report in September, 2010. The GAO's report contains the most comprehensive and informative data on the status of whistleblower claims. As a result, I ask that the FY2011 annual whistleblower report to Congress, and all subsequent reports, FY2011, contain the Tables 3 and 4 from the GAO report.

It is not clear from the GAO report how much time is lost because of consultations with, or delays in response, from the office of Chief Counsel. Providing independent counsel to TIGTA and the Taxpayer Advocate has been beneficial to ensuring the success of those offices. As a result, please consider reassigning an attorney from another IRS office or the Office of Chief Counsel to the Whistleblower Office to help speed the resolution of any legal questions that arise.

The GAO report indicates that each operating division has different time guidelines for subject matter expert (SME) review. I am very concerned that Table 3 of the report indicates that there are over 1,000 claims listed in SME review through FY2010, which ended September 30, 2010, and almost 200 of those were received before September 30, 2009. This indicates years of languishing in a review to determine whether a taxpayer should be even audited. The numbers in audit for these years are more troubling. According to Table 3 of the report there are almost 500 cases from fiscal year 2007 in the examination stage and almost 300 from fiscal year 2008. Given that FY2007 ended September 30, 2007, we're coming up on over four years in the audit phase. This is very worrisome. Please explain why these cases are still open, what tax years they represent and how many of these claims will wind up rejected for no assessment because of the expiration of the statute of limitations (SOL).

Please note that, in my June 21, 2010, letter I asked whether the SOL was an issue for pending whistleblower claims. The IRS's November 26, 2010, response states the following:

"In some cases, the applicable limitations periods have expired before the information is submitted and the IRS is unable to act. Generally, in cases where statute of limitations dates are imminent, the IRS has little practical opportunity to act; however, some actions may be possible on an expedited basis. In some cases, the IRS may take an issue raised by the whistleblower regarding a closed year and consider it for a year that is still open. The IRS has taken steps to reduce the time required for administrative processing of section 7623 submissions, and continues to explore additional ways to reduce this time."

When I received the November 26, 2010, response, I was not aware of the number of cases outstanding for previous years. The IRS response also does not indicate how many whistleblower claims provide information about substantial errors that may result in an *extended* SOL or whether the IRS deems that the SOL may not apply at all because of fraud considerations. As a result, I ask that the FY2011 annual whistleblower report to Congress, and all subsequent reports, FY2011, contain the following information:

- the average time per step listed in Table 2 of the report;
- the number of cases rejected because of the expiration of the SOL;
- the number of cases for which the extended SOL applies;
- the number of SOL extensions requested by the IRS and the number of such requests denied by taxpayers; and,
- the number of cases for which the SOL may not apply.

From my understanding of various IRS compliance initiatives, it seems that audits tend to move more quickly when IRS management prioritizes an issue. I understand that the IRS has decided that audits from whistleblower claims should not be prioritized over other audits. Given the large dollar claims the IRS is receiving as a result of the 2006 law changes and the problems presented by the expiration of the SOL for these claims, I ask for this decision to be reconsidered and an explanation for this policy. Please also inform me what steps have been, or will be taken, to educate IRS employees about the importance of the whistleblower program, whether and how employees that review whistleblowers claims are considered and rewarded for working with whistleblowers as part of the annual employee performance evaluation process.

The GAO report highlights that the whistleblower office does not have a process to check in with the operating divisions concerning the time in each step listed in Table 2. I am concerned that the Whistleblower Office is viewed as a delivery service – responsible only for delivering whistleblower claims to IRS offices.

The Whistleblower Office was intended to be an advocate for the whistleblower and should be raising the alarm if meritorious whistleblower claims are being ignored or overlooked by an IRS office. This larger role – of ensuring that good whistleblower claims receive appropriate attention – is one of the reasons why the Whistleblower Office consults as an equal with other IRS offices.

The independence of the Whistleblower Office was made clear in the statute because of the historic treatment of whistleblowers by the IRS, which was similar to that at other

government agencies. The IRS previously often had little to no understanding, sympathy or interest in whistleblowers. As is well known, the IRS whistleblower program was severely underutilized and extremely ineffective prior to the 2006 reform. Whistleblower claims were lost, ignored, relegated to the backroom or forgotten by the responsible divisions at the IRS. On those rare occasions when claims were considered, the IRS would form a committee made up of senior IRS managers to review these whistleblower cases and consider possible awards. In practice this internal committee was the place where whistleblower claims went to die. That is why the 2006 statute gave sole authority to the Whistleblower Office to decide awards for whistleblowers. The Congress recognized that the independence of the Whistleblower Office is vital to the success of the program.

The director of the Whistleblower Office reports directly to the IRS Commissioner, has the authority to contract or establish working relationships with whistleblowers and their advisors, and, most importantly, has the authority to either investigate whistleblower claims itself *or* assign them to the appropriate IRS office. There should be no doubt the Whistleblower Office has the authority to investigate whistleblower claims even if those claims fall within the jurisdiction of another division at the IRS.

The requirement of consultation and coordination is to ensure that the Whistleblower Office is not isolated; that all IRS offices benefit from information provided by whistleblowers and that the Whistleblower Office benefits from the expertise of all the IRS offices. It is likely that an operating division may be more efficient at conducting the actual examination. However, it is the responsibility of the Director of the Whistleblower Office to ensure that each claim is being decided on the merits. For the whistleblower program to succeed, whistleblowers need to have confidence that the IRS Whistleblower Office will ensure that a well-grounded claim will receive *objective and timely consideration*.

Please inform me what steps you will take to ensure that the Whistleblower Office is operating under its full authority, including making clear to managers the role of the Office. Please also explain how conflicts between the Whistleblower Office and other IRS offices are resolved. If they do not already exist, I ask that you develop procedures outlining the when, what, why, and how for investigations conducted by the Whistleblower Office. For example, consider sending back to the Whistleblower Office those claims that are languishing in one of the steps identified in Table 2, such as those FY2007 claims still in SME review.

I also ask that the FY2011 annual whistleblower report to Congress, and all subsequent reports, contain the following information:

- the number of investigations conducted directly by the Whistleblower Office; and,
- the number of claims in which there is a disagreement between the Whistleblower Office and other IRS offices.

The GAO report indicates that communications with whistleblowers regarding the status of their claims remains an issue. As I stated above, the IRS should be very concerned that current and future whistleblowers will become disheartened by the snail's pace for processing claims. The IRS should develop communication guidelines that fit within the privacy restrictions to communicate with whistleblowers at every step. At each of these stages the whistleblower

should be given an estimate of the time to the next step and also provided periodic updates as appropriate. Such basic information will do much to assure whistleblowers of the IRS's commitment to processing their claim. At a minimum, the Whistleblower Office should widely disseminate the information in Table 2 of the GAO report with average expected time per step.

Further, every effort should be made to provide whistleblowers who have submitted substantive claims an opportunity to meet and discuss with IRS officials responsible about the claim and its problems and merits. I am very disappointed to learn from the GAO report that the IRS has not used the authority provided to it under Internal Revenue Code (IRC) section 6103(n) to enter into contracts when processing whistleblower claims.

When first considering updates to the IRS whistleblower statute, I had drafted an amendment to IRC section 6103 to permit communications with a whistleblower. However, my Finance Committee staff was informed by the IRS directly that such statutory changes were unnecessary because the IRS would use its contract authority under 6103 to communicate with whistleblowers. The IRS has failed to date to meet its commitment to me. This is especially troubling after learning about the number of claims outstanding from FY2010 and before.

It is the utilization of outside attorneys and advisors of whistleblowers that has been a key to the success of Department of Justice with FCA claims. The Committee report language for the updated IRS whistleblower law was intended to replicate the success of the FCA.

Sec. 406(b) of the statute reads as follows:

“(b) Whistleblower office.

...

“(C) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.

“(2) Request for assistance. The guidance “issued under paragraph (1) shall specify that any assistance requested under paragraph (1)(C) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under paragraph (1)(A). No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Federal Government.”

The Committee Report placed additional emphasis on the IRS benefitting from outside assistance:

“Under the provision, the Whistleblower Office may seek assistance from the individual providing information or from his or her legal representative, and may reimburse the costs incurred by any legal representative out of the amount of the reward. To the extent the disclosure of returns or return information is required to render such assistance, the disclosure must be pursuant to an IRS tax administration contract.”

The IRM section 25.2.2.7(10) assumes a very narrow view of permissible assistance from whistleblowers and their advisors:

“The law requires the Whistleblower Office to analyze 7623(b) claims, and authorizes the Whistleblower Office to request assistance from the whistleblower or their counsel. In most cases, the IRS should be able to receive information from a whistleblower, conduct a debriefing to ensure the information provided is fully understood and that the IRS has all relevant information the whistleblower can offer, and then proceed with an investigation or examination without further assistance from the whistleblower. In some cases, there may be a need to pose additional questions to the whistleblower.”

The intent of the law, contrary to the position taken in the IRM, was not to simply ensure that all relevant information is provided by the whistleblower. Rather, the statute envisions having whistleblowers and their advisors helping to pull the oars in the examination and investigation – as is the successful practice for years with the FCA. For example, the IRS could bring in experts on a difficult valuation question.

The IRS should be using all tools available to it to speed up the processing of whistleblower claims. Such dialogue will also improve the quality of information that the IRS receives from whistleblowers and their attorneys. As a result, in order to speed up the processing of whistleblower claims, I ask you to reconsider the IRS’s position on when to seek outside assistance.

Just as I am concerned that the IRS Whistleblower Office makes its award decisions independently and without interference from IRS offices, I am similarly concerned that other government agencies not be allowed to interfere with the decisions of the Whistleblower Office. Please explain the procedures for documenting contacts with other government agencies related to specific whistleblower claims.

Table 3 of the GAO report highlights another very troubling data set – the number of claims for FY2007 through FY2009 sitting at Whistleblower Office in final review, award evaluation or suspended status. I would expect that the SOL for taxpayers to request refunds has expired for many if not all of these. It is important that the Whistleblower Office lead by example and quickly dispose of claims. Please explain why there are so many cases in these statuses for these years, the process for these cases including the expected timeline for making a determination and a final award and the expected timeline to make decisions for these cases in general. In addition, please provide the following information:

- the number of claims for which IRS has received payment from the taxpayer and for which the SOL for a taxpayer to file a refund request has expired; and,
- the number of weeks, for each case, that a claim case has been awaiting determination by the IRS Whistleblower Office and whether the whistleblower has been notified of an award determination.

I ask that you provide me a monthly update until these claims are closed. I also ask that you inform me of the communication that IRS provides to whistleblowers and their advisors during this time, particularly when the SOL for refund filings has expired.

On a similar note, the IRS should make it a priority to have a final determination on any issues brought forward by a whistleblower. For example, if a whistleblower has brought forward information on issue X and it is subject to exam and resolved – the matter should be subject to a closing agreement and payment made to the whistleblower. The IRS already has a form for this Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, or a Form 870-AD in Appeals. Currently, it appears whistleblowers must wait for all issues related to a taxpayer to be resolved and all rights of appeal exhausted before receiving a payment, even if a closing agreement is an effect. Please explain why, when a closing agreement is in effect, it is still necessary for the SOL on taxpayer refund requests to expire before a whistleblower award is paid.

In addition to concerns raised by the GAO report, I wanted to take this opportunity to express my concerns about other provisions in the IRM. In my June 21, 2010, letter, I expressed concerns about the IRS's decision, through the IRM, to limit the type of transactions eligible for whistleblower awards. I appreciate the IRS's decision to reconsider these provisions and to issue regulations in this area.

I understand a number of considered comments about the proposed regulations have been submitted by practitioners and organizations. These comments raise important points about what payments and fines should be encompassed by the awards that Treasury needs to consider given its inappropriately narrow reading of the legislation. It is important for whistleblower confidence – and tax administration – that whistleblowers be rewarded for providing information about income being reduced by net operating losses (NOLs). I understand that this is a difficult issue as IRS does not collect payments of tax in such cases and so a whistleblower award likely could not be made until a taxpayer's NOLs are fully utilized and pays taxes. Please provide an update on the status of these regulations.

Separately, I am in receipt of the letter from several advocacy organizations, a copy of which is attached. I ask that you give serious consideration to the points raised in their letter. As they note, there is a long and established history regarding the meaning of “planned and initiated.” The IRS should consider this history and practice at other federal agencies and not attempt to create its own policy that could conflict with this longstanding practice.

On a related matter, in IRM section 25.2.2.9.2.13.C, the IRS attempts to categorize a “whistleblower's role as a planner and initiator as significant, moderate, or minimal.” As stated in the letter from the three organizations, limitations for planners and initiators was intended to apply to the *chief architect* or the *chief wrongdoer*. I ask that you take into consideration the established law in this area with respect to FCA claims.


Finally, I wanted to express my disappointment with the content of the annual whistleblower report to Congress and with the extreme delays in issuing the report. I have provided my comments on the content above. In addition, given the minimal content of the reports to date, there is no reason for the report to be issued several months after the close of the fiscal year. I ask that the report be provided to Congress by November 30 each year – 60 days from the end of the fiscal year should be more than sufficient to provide the requested data.

Separately, the discussion of "Legislative and Administrative Issues" in the latest report is vague and unclear. Keeping in mind the independence of the Whistleblower Office, I ask that the FY2011 whistleblower report, and all subsequent annual reports, include the Director of the Whistleblower Office's recommendations for legislative and administrative fixes.

The GAO has done a good service by providing a road map for how the IRS can improve the IRS whistleblower program and go after big-dollar tax cheating. Now the challenge is for the IRS and Treasury to make the changes needed to provide assurance to existing and future whistleblowers so they're not discouraged by the time needed to process their claims or by the issuance of rules that contradict well-established rules for compensation of non-tax whistleblowers. The vast majority of taxpayers are honest. They're the ones who benefit from a successful whistleblower program. More tax compliance means more fairness for hardworking families who pay what they owe.

I appreciate your prompt response to the questions raised above. If you have any questions, please contact my staff at (202) 224-3744.

Sincerely,


Charles E. Grassley
Ranking Member

cc: The Honorable Max Baucus
The Honorable Orrin Hatch
The Honorable Dave Camp
The Honorable Sander Levin

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April 30, 2012

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The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
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The Honorable Douglas L. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
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Dear Secretary Geithner and Commissioner Shulman:

It has been seven months since I last wrote to Commissioner Shulman regarding the implementation of the whistleblower program at the Internal Revenue Service (IRS). While I was encouraged by the IRS's plodding but steady progress, I am now writing to convey my extreme disappointment in the management of the program. It was brought to my attention that the Director of the IRS Whistleblower program is currently participating in the Offshore Alert Conference (Conference) at the Ritz-Carlton in Miami Beach.

It is not clear to me how his attendance at the Conference furthers the administration of the IRS whistleblower program. The panel in which he is participating is titled "Enticing the Top Echelon: How the IRS, SEC and CFTC Attract High-Level Whistleblowers". Yet, the conference itself does not seem to attract whistleblowers. Under the "Who Attends" section of the conference's website, the following are listed: Global Financial Experts and Leading Offshore Firms and under "Who Should Attend" the following are listed: Offshore Providers, Offshore Clients, and Investigators".

The Whistleblower Director is not an investigator. In fact, IRS Deputy Commissioner Miller, in his response to a question about the Director's ability to pursue investigations in my September 13, 2011, letter to Commissioner Shulman, states the following: "At this time, the Whistleblower Office does not use this authority as the basis for independently conducting audits and investigations of taxpayers. This decision is based on our evaluation of a number of factors and is driven by efficiency, consistency and quality concerns discussed below". Both my letter to Commissioner Shulman and Deputy Commissioner Miller's response are attached.

Separately, the Conference agenda lists at least two other IRS employees as "featured speakers", one a special advisor to the Offshore Compliance Initiative (OCI) and another who is a Special Trial Attorney to the OCI. The IRS's Offshore Voluntary Disclosure Initiative (OVDI) and its corresponding successes with combating offshore tax evasion are the result of whistleblowers coming forward following the improved IRS whistleblower incentives I authored

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in 2006. Assuming that these two individuals are involved with the OVDI program, I would expect that they could speak on behalf of the IRS Whistleblower Office.

However, I am skeptical that it is even appropriate for these two individuals to attend. **There is certainly no reason for nineteen IRS employees to attend the conference** as was reported to me just this morning. Again, the target audience for the conference is not whistleblowers, and, in a challenging fiscal time, this is not the best use of IRS resources. **As a result, I ask that you provide the following information.**

- Provide a detailed list, by position title, of each IRS and IRS Chief Counsel employee that attended the Conference.
- For each, explain who authorized attendance for this travel and what the justification was for their attendance.
- Provide an itemized list of expenses for each employee that separately lists the following costs: conference fees, travel, accommodations, per diem expenses, and any other expenses.

Moreover, as I indicated in my September, 2011, letter, data from the IRS's own annual whistleblower report to Congress, as well as reports from the Government Accountability Office (GAO), make clear that the IRS does not have a problem attracting whistleblowers. The IRS's current problem is processing and compensating whistleblowers in a timely manner.

Since last writing to Commissioner Shulman, I have received even more correspondence from whistleblowers whose claims are not progressing at the IRS. Such correspondence, along with recent cases filed in the Tax Court and corresponding press coverage, indicate that my worst fears are coming true. The lack of progress is demoralizing whistleblowers so that I am now concerned that whistleblowers will stop coming forward. In my September, 2011, letter, I asked for monthly updates about the number of claims sitting in the Whistleblower Office for review. **The IRS has completely ignored this request and I now ask that you provide an update immediately.**

It is my understanding that the Whistleblower Office is now the source of significant delays in issuing awards. The IRS Whistleblower Director is supposed to be an advocate for whistleblowers – not those who are promoting offshore tax evasion. The Whistleblower Director's time would be better served by shepherding existing claims through the IRS bureaucracy. As a result, **I request a detailed list of the Whistleblower Director's travel for the past three years, including justifications and expense summaries. Also, I request that the Whistleblower Director's travel be curtailed immediately, with Commissioner Shulman personally approving travel, if appropriate.**

Similarly, I remain concerned that IRS Senior Management, through creation of the Whistleblower Executive Board in July, 2008, may also now be a significant source of delay. I first inquired about this board in my letter to Secretary Geithner dated June 21, 2010. Again, Deputy Commissioner Miller responded on behalf of the Secretary and this was his response:

“The Whistleblower Executive Board was created in July 2008 and meets periodically to address matters pertinent to administration of the Whistleblower Program within the IRS. The Board has not yet reviewed an award claim recommendation or determination.”

The IRS Internal Revenue Manual (IRM), section 25.2.2.8.2 states the following: “Prior to communicating the preliminary recommendation to the Whistleblower, the Director will share the preliminary recommendation with the Whistleblower Executive Board for concurrence.” However, it is not clear how often this board meets. **Provide a detailed list of all such meetings for the past three years and indicate when the next one will occur.**

In my September, 2011, letter to Commissioner Shulman, I requested that the IRS implement the GAO’s recommendations as well as a few others before the IRS submitted its next whistleblower report to Congress. The IRS response to the GAO indicated that IRS did not have the resources to implement those recommendations. As I stated in my letter, the money recovered from whistleblowers should more than cover the costs of implementing those recommendations.

In addition, Deputy Commissioner Miller repeatedly stated in his response that there was not enough time to implement those recommendations before that report was issued. I note that seven months after the end of the fiscal year, the IRS still has not provided the fiscal year 2011 whistleblower report to Congress. Given the delay in issuing this report, I expect that the recommendations have been adopted. As I stated in my last letter, there is no reason why this report should not be provided to Congress by November 30th each year. If the Whistleblower Office is doing its job of tracking claims, it should not take more than 60 days to prepare the report.

With respect to another area of concern, the two year refund statute of limitations, the Deputy Commissioner responded that there are cases “in which awards can be paid before the running of the two year refund statute. The Whistleblower Office practice is to look at the two year refund statute on a case by case basis and to move forward with payment when the facts of the particular case warrant against doing so”. **Please provide the number of claims for which the Whistleblower Office has proceeded before the two year statute of limitations has expired.**

In addition, it has come to my attention that the Whistleblower Office does not even begin to consider whether a whistleblower can receive an award before the taxpayer has exhausted all appeal rights. Given the procedure outlined in the IRM, including the requirement of review by the Executive Board, this seems like another way to delay issuing awards to whistleblowers. **Please explain this policy and the amount of time it takes the Whistleblower Office to calculate and recommend an award.**

Another issue I raised in my September, 2011, letter was how the IRS was educating employees about the whistleblower program. Deputy Commissioner Miller responded:

“In the future, the IRS plans to communicate with employees highlighting some of the successes of the Whistleblower Program and encouraging the use of whistleblower

information in audits and investigations. The Whistleblower Office will re-double its internal communication efforts, reaching out through our communications and training channels to these employees.”

Unfortunately, this response appears to be just lip service. The IRS’s January 9, 2012, press release and subsequent speeches by IRS officials, including Commissioner Shulman himself at the National Press Club earlier this month, fail to recognize the role of whistleblowers in the OVDI program. **Please provide a list of all internal communication efforts in which IRS employees, including IRS Chief Counsel employees, were educated and trained on the whistleblower program and its successes. In addition, I ask that you provide data regarding the IRS’s offshore compliance initiatives prior to the first OVDI program in 2009, including the number of taxpayers and dollars collected.**

Finally, I would like an update on the regulations regarding the whistleblower awards for whistleblowers who may also be planners and initiators. Please include in your response a list of meetings IRS officials have had with officials at the Department of Justice and the Securities and Exchange Commission. As I have said before, there is no reason for the IRS to recreate the wheel in this area. Five years after the 2006 improvements were enacted, it is irresponsible that the Treasury Department and IRS have not issued final regulations for this program.

On a similar note, the regulations regarding the definition of “collected proceeds” are incomplete. As my staff indicated to the Treasury Department staff, the regulations do not address how a whistleblower’s claims are protected and advanced in the future when the disallowance of a net operating loss, for example, reduces a future refund claim. Please explain how this issue will be addressed.

To date, the Deputy Commissioner has responded to my letters to each of you. Given my concerns that the IRS Whistleblower program does not have your support, I ask that any response to this letter be under your signatures. I appreciate your prompt response. If you have any questions, please do not hesitate to contact me or my staff.

Sincerely,


Charles E. Grassley
United States Senator

cc: The Honorable J. Russell George
The Honorable Gene L. Dodaro

**STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER
U.S. SENATE COMMITTEE ON FINANCE HEARING OF MAY 8, 2012
NOMINATIONS OF MARK J. MAZUR, MATTHEW S. RUTHERFORD,
AND MEREDITH M. BROADBENT**

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following remarks during a Senate Finance Committee hearing considering the nominations of Mark Mazur to serve as Assistant Secretary of the Treasury for tax policy, Matthew Rutherford to serve as Assistant Secretary of the Treasury for financial markets, and Meredith Broadbent to be a member of the U.S. International Trade Commission:

Mr. Chairman, thank you for scheduling this hearing, and thank you for helping to ensure that we could make it as easy as possible for our Members to participate. I also want to thank our witnesses for your willingness to step into the arena, and to your families for their support.

First, I have a few matters to address to Dr. Mazur and Mr. Rutherford. On February 14 of this year, Secretary Geithner appeared before this Committee to discuss President Obama's FY 2013 budget. I, along with other members of this Committee, submitted written questions for the record. Responses to those questions were due on April 30, and I specifically requested that those responses be provided by that deadline so I would have adequate time to review them in preparation for this hearing today.

Those responses were not provided to me until yesterday. I have agreed with the Chairman to hold this hearing, but I must say that the Treasury Department's pattern of either refusing to respond to Senators' questions, or only strategically responding the night before it wants something from this Committee, is getting old. Treasury, unfortunately, seems to think that the Senate's questions come with an option to blow past deadlines and respond, if at all, whenever it chooses. This failure to respond to the Senate is neither fruitful nor acceptable.

Dr. Mazur, I have seen from your questionnaire that you have worked on tax and economic policy for many years, at the IRS, Joint Committee on Taxation, and the Council of Economic Advisors, among other places. If we are actually going to tackle tax reform, and I mean real tax reform, we will need all of the expertise and seriousness of purpose that we can get.

Unfortunately, unlike in 1986, the administration does not seem interested in leading the way and helping to forge a serious proposal for fundamental tax reform.

And that is being charitable. In fact, the President seems content to ignore our bloated tax code, which burdens the entire economy, and the looming tax hikes that are creating economic uncertainty and undoubtedly holding back the recovery and job creation. Instead, the Senate is spinning its wheels on show votes designed to generate campaign talking points rather than meaningful tax reform. Dr. Mazur, it would be good to hear from you an actual comprehensive vision for reform.

Mr. Rutherford, your position would entail advising senior Treasury leadership on many matters, including the financing of the federal debt. Though fiscal policy is generally decided by Congress, in your position you could be especially effective in providing transparency about the government's ability to meet its obligations. Treasury's failure to provide adequate information to the Senate about our nation's fiscal situation during last year's debt limit impasse was a serious shortcoming. Congress will be in a better position to make sound fiscal policy if we have sound information from the Treasury Department on our fiscal position. I hope that you share my expectation that when members of Congress ask basic questions of Treasury — like how much cash is in the federal till — the result should not be stonewalling by Treasury.

I now want to welcome Meredith Broadbent who is nominated to be a member of the United States International Trade Commission. Ms. Broadbent's distinguished career includes work as a key policy advisor and counsel to the House Ways and Means Committee. She also worked within the executive branch, coordinating the work of the Office of Industry, Market Access and Telecommunications at the Office of the U.S. Trade Representative. Most recently, she served as senior advisor and the Scholl Chair in international Business at the Center for Strategic and International Studies. While any one of these accomplishments standing alone is enough to be considered successful, Ms. Broadbent served admirably in each role. She should be justly proud of her work.

Finally, I want to take a minute to recognize Floyd Williams, whom I understand is in attendance today, and will soon be retiring from federal service. Floyd has served as National Director for Legislative Affairs at the Internal Revenue Service since 1996, and could share with today's Treasury nominees what it is like to be on the receiving end of urgent requests for information from this Committee. Originally from Fayetteville, Arkansas, Floyd worked at the Tax Foundation before working for the Treasury Department in the Office of Legislative Affairs, and before finally moving on to the IRS.

Floyd, if you ever miss your old job and want a letter from the Committee requesting information, let me know. I would be glad to oblige. I greatly appreciate your service, and wish you well. Mr. Chairman, thank you again, and thank you to the witnesses for appearing today.

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Opening Statement of Mark J. Mazur
Nominee for Assistant Secretary of the Treasury for Tax Policy
United States Senate Committee on Finance
May 8, 2012

Thank you [Chairman Baucus, Ranking Member Hatch, and members of the Senate Finance Committee]. I am honored to have been nominated by President Obama to serve as the Treasury Department's Assistant Secretary for Tax Policy and I am grateful for the confidence that Secretary Geithner has shown in my abilities by recommending me to the President. I also want to thank the Senators and the various staff members for the opportunity to meet with them over the past few weeks to discuss a wide range of tax policy issues.

The possibility that I could serve the nation in the capacity of Assistant Secretary for Tax Policy is the result of a long journey which has provided me with numerous learning opportunities across a wide variety of disciplines. My parents instilled in me the notion that giving back to society is important. In addition to working full time as a printing supplies salesman, my father served as Commissioner of our local Babe Ruth Baseball League and my mother was active in the PTA and very supportive of education in general. I would not be here today without a strong public education system, of which I was the beneficiary from elementary through graduate school. The opportunity to repay this support through public service has been a major motivation for my choice of career.

I have been interested in the workings of the tax system for many years. I can recall sitting with my father at the kitchen table helping organize his tax records and double and triple-checking the arithmetic on the tax return because he took so seriously one of the fundamental obligations of a citizen – paying taxes to ensure adequate resources for the funding of public goods and services.

I believe my background has prepared me well for this opportunity. I received a degree in Financial Administration from Michigan State University and then worked as a tax accountant for General Motors. At Stanford University, I pursued a PhD in Business and was introduced to the serious study of economics. I spent four years as an Assistant Professor at Carnegie Mellon University, where I specialized in public finance issues and obtained an appreciation for rigorous inter-disciplinary approaches. I next worked for the Joint Committee on Taxation, where I got an education in the legislative process and in being part of a team that produced high-quality work under tight deadlines. I then spent two years as a Senior Economist specializing in public finance at the President's Council of Economic Advisers, followed by a similar period at the President's National Economic Council, and four years at the Department of Energy, with two years as the Department's Chief Economist. My next position was Director of Research, Analysis and Statistics at the Internal Revenue Service, which gave me an appreciation for the issues faced by the IRS in administering our tax system. In all these positions, I learned important lessons on how to approach complex problems and how and when to rely on staff experts. These are lessons I will apply to my work as the Assistant Secretary for Tax Policy should I have the privilege of being approved by this Committee and confirmed by the Senate.

This is an auspicious time to be working in the area of tax policy. We are facing some momentous decisions in the design of tax policy and in our medium- and long-term fiscal policy. Our nation needs a tax system that is simple, fair, and that raises adequate revenue for funding the important activities of government. Right now, our tax system falls short on all three dimensions.

The tax system is extraordinarily complex, with exceptions to exceptions to general rules characterizing much of the Tax Code. Complexity makes it hard for taxpayers who are trying to meet their obligations and provides opportunities for those who seek to avoid or evade their responsibilities. And complexity breeds the perception that the tax system has two sets of rules – one for ordinary Americans and one for those who have access to lobbyists and tax engineers. This perception of basic unfairness can erode the foundation of voluntary compliance upon which our tax system depends.

The tax system needs to raise adequate revenue to support the important goods and services provided by the Federal government. At this moment, chronic Federal budget deficits characterize our fiscal policy. This was necessary when the economy was in recession, but now that the economic recovery has begun to take hold, the Administration and Congress will need to work together to find ways to reduce on deficits. Part of this will occur naturally as economic growth leads to increased revenues, but part of this must be the result of legislative actions that put our nation's finances on a more sustainable course.

In addition to reforming the current tax system, we need to make sure that taxes owed are actually collected, to the maximum extent possible. That is, we need to shrink the size of the "tax gap," – defined as the amount of taxes legally owed that are not paid in a timely manner. This effort is not the responsibility of just the Internal Revenue Service, since both the laws passed by Congress and the guidance issued by Treasury are important determinants of the ability of the Internal Revenue Service to administer the tax law. A large and growing problem with non-compliance undermines confidence in the tax system overall and can lead to even less compliance. It is incumbent on all of us to undertake efforts to address the causes of tax non-compliance and reduce the overall size of the tax gap.

Finally, the tax system needs to have a higher degree of permanence, so that taxpayers can make informed judgments about long-term investments in human, physical and financial capital. The effect of tax incentives is blunted when taxpayers are unsure whether they will be able to claim a particular item when they file their tax return. A reformed tax system that is premised on permanent tax rules would go a long way toward improving incentives and toward reducing unnecessary complexity.

These are a few of the items that, if confirmed, I look forward to working with you to address. Having served in Administrations led by both political parties, I have demonstrated a non-partisan approach to public policy making throughout my public service career. Our tax policy decisions affect every American household, and they should reflect the goodwill that we share as Americans.

In closing, I would like to take the opportunity to acknowledge the true professionals who staff the Office of Tax Policy at Treasury. These lawyers, economists, accountants, and other professionals are an incredibly talented team of dedicated public servants. As a taxpayer, I know I am well-served by this group and I am honored to be able to call them colleagues.

Finally, let me close by noting that I am humbled by the possibility of serving the Nation in this new capacity. If you and your colleagues in the Senate give me the opportunity to serve as Assistant Secretary for Tax Policy, I promise to do all I can to justify your confidence in my abilities.

Thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

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

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.) Mark J. Mazur
2. Position to which nominated: Assistant Secretary for Tax Policy
3. Date of nomination: November 15, 2011
4. Address: (List current residence, office, and mailing addresses.)
Home:

Work:

5. Date and place of birth: June 16, 1956; Jersey City, NJ
6. Marital status: (Include maiden name of wife or husband's name.)
7. Names and ages of children:
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
Madison Township High School
Old Bridge, NJ -- Attended 1970-74; received high school diploma (1974)

Michigan State University
East Lansing, MI -- Attended 1974-78; BA Financial Administration (1978)

Stanford University
Stanford, CA -- Attended 1980-85; MA Economics awarded 1983,
PhD Business awarded 1985

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

General Motors Corporation (1978-80)
Detroit, MI
Tax Accountant

School of Urban and Public Affairs (1985-89)
Carnegie Mellon University
Pittsburgh, PA
Assistant Professor

Joint Committee on Taxation (1989-93)
U.S. Congress
Washington, DC
Staff Economist

Council of Economic Advisers (1993-95)
Executive Office of the President
Washington, DC
Senior Economist

National Economic Council (1995-97)
White House Office of Policy Development
Washington, DC
Senior Director

Council of Economic Advisers (1997)
Executive Office of the President
Washington, DC
Senior Economist

U.S. Department of Energy (1997-99)
Washington, DC
Senior Policy Advisor and Chief Economist

U.S. Department of Energy (1999 - 2000)
Washington, DC
Director, Office of Policy

U.S. Department of Energy (2000-2001)
Washington, DC
Acting Administrator, Energy Information Administration

Internal Revenue Service (2001-2009)
Washington, DC
Director, Research, Analysis, and Statistics

U.S. Department of Treasury (2009-present)
Washington, DC
Deputy Assistant Secretary of Tax Analysis

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)
None.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)
Member of the Board of Directors, National Tax Association, 2008-present.

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

National Tax Association – Member (1990 – present); Director (2008 – 2011)
American Economic Association – Member (1985 – present)
American Finance Association – Member (1988 – present)
Tax Economists Forum – Member (1989 – present)
Senior Executive Association – Member (2001 - present)
Michigan State Alumni Association – Member (1987 - present)
Stanford Alumni Association – Member (2001 – present)
American Civil Liberties Union – Member (1998 – present)
Smithsonian Institution – Member (2000 – present)
WPFW-FM – Member (2000 – present)
WXPB-FM – Member (2005 – present)
Our Lady of Sorrows Catholic Church – Member (1989-2008)
Stanford Progressive Alliance – Member (1980-1985)
Associated Students of Stanford University – Representative (1983-1984)

13. Political affiliations and activities:

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

I was nominated on October 17, 2000 to be Administrator of the Energy

Information Administration at the Department of Energy. My nomination was returned shortly thereafter, in December 2000, at the end of the Clinton Administration.

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

None.

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

2002:	Bill Richardson for Governor	\$250
	Winning Margins PAC	\$ 70
	Anne Kaiser for Delegate	\$ 80
	Strickland for Colorado	\$ 50
2003:	Winning Margins PAC	\$105
	John Kerry for President	\$ 80
	Howard Dean for America	\$130
2004:	John Kerry for President	\$250
	Kerry/Edwards Victory Fund	\$150
	Erskine Bowles for Senate	\$ 50
2005:	Bill Richardson for Governor	\$100
	Anne Kaiser for Delegate	\$ 75
2006:	Anne Kaiser for Delegate	\$105
	Bill Richardson for Governor	\$100
	Jose Cerda for Clerk	\$ 75
2007:	Bill Richardson for President	\$ 75
	Bill Richardson for President	\$250
	Bill Richardson for President	\$100
	Bill Richardson for President	\$ 75
	Anne Kaiser for Delegate	\$ 75
	Hillary Clinton for President	\$ 50
	Barack Obama for America	\$ 50
2008:	Hillary Clinton for President	\$ 50
	Barack Obama for America	\$ 75
	Barack Obama for America	\$ 75
	Barack Obama for America	\$200

Anne Kaiser for Delegate	\$ 75
2010: Anne Kaiser for Delegate	\$ 50
2011: Anne Kaiser for Delegate	\$ 75
Chicago for Rahm Emanuel	\$ 82

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Various fellowships and research assistantships while in graduate school at Stanford University.

Emil Linbach Teaching Award, School of Urban and Public Affairs, Carnegie Mellon University, 1988

Presidential Rank Award, Meritorious Executive, 2008.

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

"Do Products Offering Expedited Refunds Increase Income Tax Noncompliance?" (co-authored with Karen Masken, Joann Meikle, and Roy Nord), Proceedings of 2008 National Tax Association Annual Research Conference, 2009.

"Understanding the Tax Gap" (co-authored with Alan Plumley), *National Tax Journal*, September 2007.

"IRS Data, Data Users, and Data Sharing" (co-authored with Nick Greenia), in Improving Business Statistics through Interagency Data Sharing: Summary of a Workshop, National Academies Press, 2006.

"The National Research Program: Measuring Taxpayer Compliance Comprehensively" (co-authored with Robert E. Brown), *University of Kansas Law Review*, December 2003.

"IRS's Comprehensive Approach to Compliance Measurement" (co-authored with Robert E. Brown), *National Tax Journal*, September 2003.

"Taxation of Energy" (co-authored with Thomas Barthold), entry in MacMillan Encyclopedia of Energy, McGraw-Hill Publishing, 2001.

"Evaluating the Relative Efficiency of Baseball Players," in Data Envelopment Analysis: Theory,

Methodology, and Application, edited by A. Charnes, W.W. Cooper, A. Lewin, and L. Seiford, Kluwer Academic Publishers, 1995.

“Improving the Delivery of Benefits to the Working Poor: Proposals to Reform the Earned Income Tax Credit Program” (co-authored with George Yin, John Karl Scholz, and Jonathan Forman), *American Journal of Tax Policy*, Fall 1994.

“Designing Tax Policy to Meet Environmental Goals,” published as remarks in U.S. Environmental Policy and Economic Growth, American Council on Capital Formation Monograph, 1992.

“Expert Intermediaries and Legal Compliance: The Case of Tax Preparers” (co-authored with Steven Klepper and Daniel Nagin), *Journal of Law and Economics*, April 1991.

“Testing the Optimality of a Performance Evaluation Measure for a Gainsharing Contract” (co-authored with Rajiv Banker and Srikant Datar), *Contemporary Accounting Research*, Spring 1990.

“Optimal Linear Taxation with Stochastic Incomes,” *Public Finance/Finances Publiques*, Winter, 1989.

“The Rich, the Poor, and the Taxes They Pay: An Update” (co-authored with Joseph Pechman), *The Public Interest*, Fall 1984.

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

Testimony before the Senate Finance Committee in December 2010, “On Tax Reform: Historical Trends in Income and Revenue”.

Testimony before the Subcommittee on Energy, Natural Resources, and Infrastructure, Senate Finance Committee, in May 2010, “Clean Technology Manufacturing Competitiveness: The Role of Tax Incentives.”

Note that this listing does not include presentations or remarks over the past five years where there was no formal prepared text.

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

I have worked for over twenty years in positions focusing on fiscal policy, taxation, and public finance. During this time, I have served as an Assistant Professor at the School of Urban and Public Affairs at Carnegie Mellon University (4 years), as a Staff

Economist at the Joint Committee on Taxation in the U.S. Congress (4 years), as a Senior Economist at the Council of Economic Advisor (2 years) and as Senior Director at the National Economic Council (2 years) within the Executive Office of the President. I also worked as Senior Policy Advisor to the Secretary (2 years) and as the Director of Policy and Acting Administrator of the Energy Information Administration at the U.S. Department of Energy (2 years).

For the past decade, I have served as a career member of the Senior Executive Service within the United States Department of the Treasury. During this time, I served as the Director of Research, Analysis, and Statistics at the Internal Revenue Service (8 years) and as Deputy Assistant Secretary of the Treasury for Tax Analysis (2 years).

Prior to beginning my career in the public sector, I studied finance, economics and business at Michigan State University (B.A., Financial Administration, 1978) and Stanford University (M.A., Economics, 1983; Ph.D., Business, 1985).

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.
Not applicable.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.
No.
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.
No.
4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

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

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

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

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

None.

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

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

5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts

of interest or any legal impediments to your serving in this position.

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

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

Not applicable.

D. LEGAL AND OTHER MATTERS

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

No.

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

No.

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

Defendant in uncontested divorce. Divorce granted October 2010.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

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

None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

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

Yes.

*U.S. Senate Committee on Finance
Nominations Hearing held May 8, 2012
Questions for the Record for Mark Mazur
Received May 10-11, 2012 and Submitted May 14, 2012*

SENATOR MAX BAUCUS (D-MT):

Question 1:

Mr. Mazur, the Administration issued a framework for business tax reform earlier this year. However, we have not heard much on the individual front. What are Treasury's plans for individual tax reform? Will there be a framework for individual tax reform?

Answer:

As stated in the Budget, the Administration supports comprehensive tax reform, including reform of the individual income tax. In this regard, the President has articulated principles that should guide such reform: (1) simplify the tax code and lower tax rates; (2) reform inefficient and unfair tax breaks; (3) decrease the deficits by \$1.5 trillion over ten years while preserving progressivity; (4) increase job growth and creation in the United States; and (5) observe the Buffett rule so that those making over \$1 million pay an effective tax rate at least as large as middle class families. The Treasury Department, and the rest of the Administration, looks forward to working with Congress and other interested stakeholders in developing a tax reform plan that meets these goals. However, if confirmed, I will work with the Committee on Finance to implement the President's goals for tax reform.

SENATOR ORRIN G. HATCH (R-UT):

Question 1:

The Chairman of the Senate Budget Committee introduced a mark in April called the Fiscal Commission Budget Plan, modeled largely on a plan developed by the President's Fiscal Commission, which the President chose not to endorse. Included in the Senate Budget Committee Chairman's mark were recommended changes to Social Security, including alteration to the price index to be used in COLA adjustments for Social Security beneficiaries and increasing the maximum taxable wages. Those tax increases would, of course, hit people with wages below \$250,000 which runs counter to the President's pledge not to raise taxes, including payroll taxes, on such earners. The Fiscal Commission plan also calls for increases in retirement ages.

In 2008, then candidate Obama offered a so-called "donut whole" scheme to increase payroll taxes on those earning above \$250,000. Since then, we have heard little from the administration, including Treasury, concerning reform of Social Security, including the Disability Insurance program which faces exhaustion of its trust fund in 2016.

I have questions related to Social Security. Note that we can all acknowledge that there are various instruments available to help guide Social Security to a sustainable fiscal position, and those elements of whatever might be a full reform package can vary between possible packages. My questions are not whether you support individual elements in the context of a general reform package. My questions are whether you support individual elements on a stand-alone basis. I will take a response along the lines that "it depends on the entire package being considered" as a nonresponsive hedge. Note, also, that I am aware of the President's "principles" that he has said will guide him in any Social Security reforms, and my questions are not about those principles.

Do you support use of the so-called "chained" consumer price index as a replacement for the current price index used to compute cost of living adjustments in Social Security benefit payments? If not, why not? If so, why?

Do you support increases in eligibility ages (e.g. the "normal retirement age") related to the receipt of Social Security benefit payments? If not, why not? If so, why?

Do you support increasing in the payroll tax rate—either OASI or DI or both? If not, why not? If so, why?

Do you support increasing the maximum level of maximum taxable earnings for Social Security (OASDI) taxes? If not, why not? If so, why?

Answer:

As the Secretary has stated, it is important to improve the overall long-term solvency of our Social Security system. Outside experts and observers would note that it is difficult to meaningfully assess in isolation any one measure to improve long-term solvency. In my capacity as Deputy Assistant Secretary for Tax Analysis, I am not responsible for formulating policy stances for the Administration on specific details of the Social Security program, particularly those related to benefits. However, if confirmed, I look forward to working with you and the rest of the Committee on this important issue.

Question 2:

If confirmed, will you recommend that the payroll tax holiday be extended in the event that the state of the economy is unchanged from the current state? If not, using the unemployment rate and quarterly GDP growth as state variables, where would those variables have to be in order for you to change your assessment?

Answer:

The Administration has no plan to extend the current payroll tax holiday. Forecasts indicate continued moderate growth in our economy and employment through the end of the year and beyond. In the Administration's FY13 Budget and subsequently, the President proposed measures to foster economic growth. Should economic conditions markedly worsen; consideration of additional options to help the economy may be warranted.

Question 3:

You testified before the Senate Committee on Finance that Treasury's so-called "framework for business tax reform" opens an opportunity for dialogue. However, as the Committee Chairman aptly noted, the framework is one in which the i's are not dotted and the t's are not crossed. Another member of the Committee asked about Treasury's sense of urgency regarding tax reform.

You identified in your testimony that Treasury would be negligent if it were not doing foundational work on tax reform. Yet you also identified that "we'll see how this plays out." As President Obama recently stated: "Now, I know this is an election year. But it's not an excuse for inaction." His statement was in the context of job creation, and I believe that fundamental tax reform is precisely one area in which we can work, beginning today, and arrive at specific proposals to provide fruitful ground for job creation and economic growth, if done properly and carefully.

In the spirit of the President's words, will you, if confirmed, be opening and continuing dialogue on fundamental tax reform as soon as you take on your new role? There are, as the President has pointed out, six pre-election months and an upcoming election is no excuse for inaction. Inaction on tax reform would seem to be wasteful of potentially productive time.

Will you, if confirmed, work with members of the Committee on Finance to move beyond frameworks and principles and into specific policy reform ideas and proposals beginning immediately without waiting until after the upcoming election? If so, how do you expect to proceed?

Answer:

If confirmed, I will work with Congress on the important subject of tax reform. I will make myself available to discuss with interested Members and their tax staffs ideas for and approaches to fundamental tax reform. I would be happy to work with members of the Committee on Finance to develop and analyze specific policy proposals that would meet the President's goals for tax reform.

Question 4:

I asked you a question during your confirmation hearing regarding income equality and fairness. I inquired about, given whatever might be your favorite measure of income equality, what target you would propose that we hit. For example, given your favorite measure, I asked whether you give me a particular time period in the past where you feel the economy was closest to what you feel is optimal equality. As I understood your responses: you identified that you do not think that we can point to a particular period in the past and say it was optimal in terms of a tax system or inequality; and you suggested that issues of inequality are addressed in taxation, in part, through progressivity of the tax code.

I understand that inequality and fairness are not the sole objective in considering taxes. Equity and efficiency and perceived fairness are all important elements of structuring a tax code, as you noted. Indeed, you noted that we should seek to raise revenues efficiently and “do it in a way that is perceived as fair.” What I wonder about, especially in light of recent proposals in the Senate for a Buffet tax or tax surcharges on upper income earners or capital income, is how “fair” is to be measured and, given whatever is the measure, what is the precise objective.

It is dangerous to use introspective views of politicians about what they regard as “fair” or “fairer” as the appropriate way to set policy. Loose rules based on casual observations such as, say, a comparison of an effective income tax rate of someone with billions of wealth relative to their employee’s effective income tax rate do not appear to offer any specific target or objective aside, perhaps, from raising revenue. You seem to agree. You wrote, in a 1984 publication, that: “Relying primarily on introspection and casual investigations, people are forever arguing whether the rich or the poor are getting richer. Such arguments cannot be resolved without hard facts, however. Income inequality is a serious issue and those who make policy decisions on the basis of intuition or dogma can do considerable damage.”

- a. How, given the facts, how will we know what is the amount of alteration in the progressivity of the tax code that would be desirable to attain fairness or perceptions of fairness? If the answer is, we will never know but just need to do better, then when will we cease getting better and begin becoming worse, based on facts?

Answer:

Fairness is a normative concept on which reasonable people can disagree. That said, widely held principles suggest that taxpayers in similar economic circumstances should pay about the same amount of tax (horizontal equity) and that taxpayers who are better-off should pay a larger proportion in taxes than paid by less well-off taxpayers (vertical equity). While there

are legitimate arguments about measuring the well-being of taxpayers and about the extent to which taxes should rise more than proportionately with income to achieve vertical equity, careful systematic analysis is required to begin to address the basic questions.

The Joint Committee on Taxation, the Congressional Budget Office, and the Office of Tax Analysis all maintain state-of-the-art models of the distribution of income and federal tax burdens, which can be used to examine average tax rates and share of taxes paid across and within income classes, under current law and policy proposals. These are the types of models that should be used to evaluate the fairness of the tax code.

As to my own views of vertical equity, the Secretary has stated, and I agree, that we should strive to have a tax code that is at least as progressive as the Administration's FY 2013 Budget Policy. Moreover, high-income families should not experience effective tax rates that are lower than those faced by middle-income families.

- b. Do you agree with conclusions of the Chairman of the Council of Economic Advisors that “we can’t go back to tax policies that didn’t generate faster economic growth or jobs, but rather increased inequality?” If so, could you identify what you think those tax policies were that did not generate faster economic growth or jobs but, instead, increased inequality along with empirical evidence on causality (causality in a statistical sense, such as Granger causality, and not mere correlations)?**

Answer:

The tax law changes of the last Administration reduced tax rates and expanded preferential tax rates for capital income in a way that did little to broaden the tax base or simplify the tax system. This contributed to large budget deficits and increasing debt levels. We can do better for all Americans, by designing a tax system that is simple, fair, and raises adequate revenue for funding the important activities of the Federal government. If I am confirmed, I look forward to working with the Committee on this important effort.

- c. Do you agree with the conclusions reached by Northwestern University economist Robert J. Gordon in “Has the Rise in American Inequality Been Exaggerated” (National Bureau of Economic Research Working Paper 15351; <http://www.nber.org/papers/w15351>) that “...the increase in inequality is not a steady ongoing process; after widening most rapidly between 1981 and 1993, the growth of inequality reversed itself and became negative during 2000-2007” and that “The rise of American inequality has been exaggerated in magnitude, and its impact is now largely in the past.”? If not, what do you disagree with in Gordon’s analysis?**

Answer:

I do not agree that the impact of increases in inequality is largely in the past. For example, according to the Congressional Budget Office, between 2000 and 2007, the share of pre-tax income of the top fifth of families grew from 54.8 percent to 55.9 percent. The share of income accruing to the top 1 percent of families grew from 17.8 percent to 19.4 percent. The share of after-tax income received by the highest income families also grew during this period. Thus, while the rate of increase in income inequality may have slowed in recent years, the trend toward growing income inequality does not appear to have been reversed.

Question 5:

The blogosphere has been abuzz with a recent editorial that appeared in the Wall Street Journal, and possibly elsewhere, where Peter Diamond and Emmanuel Saez explain that “According to our analysis of current tax rates and their elasticity, the revenue-maximizing top federal marginal income tax rate would be in or near the range of 50%-70%.”

Do you or the administration support a top marginal rate of between 50% and 70%, and if so, could you narrow down the specific top rate that you prefer?

How important is the factor of revenue maximization as a factor in determining what marginal rates ought to be?

Should it be the objective of government to maximize revenue in this manner?

Do you think there is a connection between how high marginal tax rates are and economic growth?

Why would someone choose to live someplace with a 70% rate when they could move someplace else?

Answer:

The Administration has proposed a top statutory individual income tax rate of 39.6 percent. It is our belief that this top statutory rate, combined with other tax policy changes, will raise sufficient revenue to fund the necessary operations of the Federal government, consistent with achieving desirable levels of economic activity and growth.

Revenue generation is the main function of the tax system, but revenue maximization should not be the goal of the tax system. The proper objective of government is to provide the essential goods and services desired by its citizens. The tax rates and other parameters of the tax system, including the tax base, should be chosen to generate the revenue needed to pay for those important services in a way that is fair and efficient and that provides adequate incentives for economic growth.

There is a connection between high marginal tax rates and economic growth. Very high tax rates – well beyond the rates proposed by President Obama – have the potential to dampen incentives for labor supply and investment and to impede economic growth. Thus, we must consider economic growth and efficiency, as well as simplicity and fairness, when designing a tax system.

Question 6:

After Francois Hollande prevailed in the recent presidential election in France, it was reported that President Obama invited him to the White House later this month and White House spokesman Jay Carney is quoted as saying that Obama “indicated that he looks forward to working closely with Mr. Hollande and his government on a range of shared economic and security challenges.” According to a February 29, 2012 article in The Wall Street Journal, then-candidate Hollande said that taxpayers earning more than one million euros a year should be in a 75% tax bracket.”

Do you or the administration support a tax rate of 75% for any taxpayer?

How does tax reform figure in the “range of shared economic and security challenges” that President Obama and Mr. Hollande will discuss? Will assistance be sought from the new French president on tax reform?

Answer:

The Administration has proposed a top statutory individual income tax rate of 39.6 percent for the highest earning families. We do not support a tax rate of 75%.

The Administration will make its own determination of the merits of tax reform proposals, including setting appropriate marginal tax rates, a determination based on what is best for the United States.

SENATOR MICHAEL B. ENZI (R-WY):

Question 1:

Regarding tax extenders, many expired in December 2011, and some are about to expire, causing various industries significant uncertainty and, in many cases, significant job losses. It would appear that Administration leadership at this time is necessary to move a tax extenders package forward. Would you explain why the Administration has not been more actively involved? May we expect increased involvement in the near future? If confirmed, would you recommend that the Administration actively pushes for an extension of expired and currently expiring tax provisions?

Answer:

The Administration's FY2013 Budget includes approximately fifty expiring tax provisions that we propose extending through 2013. In addition, the *President's Framework for Business Tax Reform* discusses the problems created by expiring tax provisions. If confirmed, I would be pleased to work with Congress towards resolving the uncertainty created by continually expiring tax provisions.

Question 2:

As you may know, I have been opposed to the Administration's proposal to repeal LIFO inventory accounting for federal income tax purposes. A major concern regarding the proposal relates to the degree of retroactivity that would be associated with its enactment. It's my understanding that the proposal would effectively repeal deductions that were taken as many as 60 or 70 years ago when LIFO was first authorized. This element of retroactivity distinguishes LIFO repeal from the repeal of other taxpayer-favorable provisions that have appeared in various base-broadening tax reform proposals.

The Administration's response to this concern (which was included in the Administration's FY2013 budget proposal) has focused on the proposal's transition provision, which allows the taxpayer to recapture the taxpayer's LIFO reserve over a period of 10 years, rather than requiring immediate recapture. Because I have focused considerable attention on transition rules as they relate to tax reform, I have two questions regarding this particular transition provision.

- a. Is a 10-year recapture period sufficient to soften the blow to a taxpayer that has been building up its LIFO reserve for decades and is now directed to recapture all of it? What analysis was conducted to arrive at the proposed 10-year recapture period? Has the Administration had discussions with the Small Business Administration to determine whether and to what extent enactment of such a proposal might force small companies out of business entirely?

Answer:

The repeal of the last-in, first-out (LIFO) method would eliminate a tax deferral opportunity to taxpayers that hold inventories, the costs of which increase over time. In addition, LIFO repeal would simplify the Internal Revenue Code by removing a complex and burdensome accounting method that has been the source of controversy between taxpayers and the IRS.

Eliminating LIFO prospectively without requiring taxpayers to write-up their beginning LIFO inventory to its first-in, first-out (FIFO) value would result in a permanent exclusion of taxable income. A more appropriate approach is to require this write-up, which would be similar to the effect of most tax accounting method changes. Generally, taxpayers are required to recognize the difference in taxable income as if they had always been using the new method of accounting, whether that cumulative result is a reduction to income or an increase. The cumulative difference is generally recognized over one to four tax years for most accounting method changes. The Administration's proposal to repeal the LIFO inventory method would allow taxpayers to recognize the income over a period of ten tax years to minimize the impact of additional tax liability.

We expect the impact on small businesses to be small due to the complexity of the LIFO inventory method. This proposal has been included in the President's Budget Proposal for the past three years, but we would be pleased to consult with the SBA regarding its impact on small business jobs creation.

- b. Given recent focus on “fairness” in tax policy, please explain how this proposal is fair to a taxpayer who has been playing by the rules and would now be told that the rules had changed so that the taxpayer would be treated as having never been on LIFO?**

Answer:

The issue of fairness generally relates to how the burden of paying for the goods and services desired by Americans and provided by the Federal government is shared. The majority of current LIFO reserves are concentrated in a small number of large corporations, shifting the burden of the forgone tax revenue to all other taxpayers, including small businesses and individuals.

Asking LIFO taxpayers to pay an appropriate share of tax related to income from inventory sales reflects the Administration's goals of tax fairness and simplification. That said, in some cases, transition relief is appropriate. In this case, the long, 10-year recognition of the LIFO reserve is intended to provide significant relief, precisely because recognizing large amounts of income over a short period might create liquidity concerns for some taxpayers.

Question 3:

Pursuant to *The President's Framework for Business Tax Reform* (February 2012) (the Framework), the Administration proposes to lower the corporate income tax rate to 28 percent. A lower 25 percent rate would apply to manufacturing income, with an even lower rate applying to income from advanced manufacturing activities. Separately, the Administration has called for increasing the top individual income tax rate to nearly 40 percent. What concerns has the Treasury Department identified with such a large disparity between the top individual and corporate income tax rates?

Answer:

When the top individual income tax rates exceed corporate income tax rates, it is necessary to have appropriate safeguards in order to prevent tax avoidance opportunities. For example, a corporation could be used to hold a portion of an individual's investment assets so that investment income would be taxed at the lower corporate rate. As another example, an individual could use a corporation as a business entity to provide services to third parties. In these cases, a tax benefit might be obtained if the benefit of deferring current taxation at the higher individual tax rate exceeds the additional tax liability when profits are distributed to the individual.

Under certain circumstances, the existing accumulated earnings tax and the existing personal holding company tax impose an additional corporate level tax, at the tax rate applicable to dividends, which prevents realization of a rate differential benefit. These taxes would provide a basis for limiting tax avoidance motivated by the differential between the corporate and individual income tax rates. In a post business tax reform environment, it might be necessary to modify these taxes.

However, comprehensive tax reform might make it easier to deal with these potential problems, because it would be possible to adjust individual and corporate income tax rates, while still achieving other important goals.

Question 4:

Also included in the Framework is a provision that would require companies to pay a minimum tax on overseas profits. The Framework is light on details regarding the minimum tax proposal. Would you please elaborate on the mechanics of the proposal? Please provide specific examples of the application of this provision.

Answer:

As part of the Framework for Business Tax Reform, the President has established the principle of a minimum tax on the foreign income that U.S. corporations earn abroad. This is a matter of fairness and a way to help prevent the global race to the bottom on corporate tax rates.

Under the President's proposed Framework, U.S. corporations operating abroad would pay a minimum tax on their foreign income. There are numerous ways to structure this proposal. To provide one example, if a U.S. parent corporation owns a foreign subsidiary that pays tax in a particular country at a rate equal to the minimum tax rate, no additional tax would be due. If on the other hand, a U.S. parent corporation owns a foreign subsidiary that pays tax in a particular country at a rate below the minimum tax rate, the income from that subsidiary could immediately be subject to tax in the United States (though a foreign tax credit for some or all of the taxes paid to the host country could be available). In effect, the tax imposed on this income would be at the minimum tax rate, with a portion paid to the host country and the difference paid to the United States.

If confirmed, I hope to work with Congress and other stakeholders on the details of how to fit this proposal into the rest of the reformed international tax system.

Question 5:

Is the Administration more concerned with the perceived problem that U.S. multinational companies are shipping jobs offshore or shifting income offshore? Does the Administration view these as one in the same? How would the Administration's proposal to tax currently the excess profits associated with shifting intangibles to low-tax jurisdictions impact jobs and income shifting?

Answer:

The Administration is concerned with the movement of investment and jobs offshore and the shifting of income offshore. Although these problems may arise in similar situations, they present different concerns and require different responses.

The Administration is concerned with shifting jobs offshore because that represents a potential loss to American families. The Administration is concerned with shifting income offshore because that represents an inappropriate reduction in the U.S. tax base, which requires that higher taxes be imposed on other taxpayers.

The Administration has proposed to address the inappropriate shifting of profits offshore, specifically focused on the transfers of intangibles. One of these proposals in the Administration's budget and also included in the Framework for Business Tax Reform, is to tax excess returns associated with the transfer of intangibles offshore. Increased globalization and technological advances have resulted in an economy where intangible assets play an increasingly important role. Valuable intangible property can be easily moved across borders, but transactions that involve the transfer of intangibles are very difficult to price accurately in the absence of similar transactions between unrelated parties. Recent empirical analyses raise concerns that income shifting through transfers of intangibles to low-taxed affiliates has resulted in a significant erosion of the U.S. tax base. Accordingly, the excess returns proposal is designed to reduce the U.S. tax benefits of multinational companies from transferring intangibles and the related profits to offshore affiliates.

Question 6:

In the Framework, the Administration opposed adoption of a "pure territorial" tax regime. Currently, most international tax experts refer to the existing U.S. international tax regime as a hybrid that combines features of a traditional worldwide system of taxation and a territorial approach to taxing foreign earnings of U.S. companies. I have the following questions regarding the possible reforms to this hybrid system.

- a. Under what circumstances would the Administration support the consideration of a dividend exemption regime as a replacement for the existing rules that permit deferral of U.S. tax on the foreign earnings of U.S. companies?**

Answer:

The Administration believes that a pure territorial system, under which all active foreign income of U.S. companies would either be taxed little or not at all in the United States could aggravate, rather than ameliorate, many of the problems of the current U.S. tax system. A system that does not subject foreign earnings of U.S. companies to any tax would only provide greater incentives to locate operations abroad or shift profits out of the United States. Further, such a system could exacerbate the global race to the bottom on corporate tax rates.

The Administration's minimum tax proposal reduces incentives for companies to shift profits and investment to low-tax countries and helps address the global race to the bottom in corporate tax rates.

The Administration believes that tax reform should encourage investment, growth and high-quality jobs in the United States. It should reduce tax incentives for U.S. companies to locate profits overseas while ensuring that these companies are able to compete overseas. The Framework is intended to lay the foundation for a dialogue with Congress and stakeholders on tax reform measures that will achieve these goals.

- b. Does the Administration believe international tax reform should be revenue neutral or should international tax reform raise net revenues either to offset the cost, in the context of broader business tax reform, of paying for a reduction in the corporate tax rate or to provide for net deficit reduction?**

Answer:

The current U.S. international tax system creates incentives for U.S. companies to locate their operations and profits abroad, which leads to a loss of jobs here at home and an erosion of the U.S. tax base. The Administration has set forth several proposals for international tax reform in the Budget and in the Framework, including a global minimum tax, to address

these concerns. The Framework would raise revenue from reforming the international tax system and addressing weaknesses in the current system, with that revenue used to lower the statutory corporate income tax rate in a revenue neutral manner.

We believe that there is common ground on the subject of business tax reform which could advance efforts to reform the current U.S. tax system. If confirmed, I look forward to engaging in a dialogue with Congress and stakeholders on the specifics of tax reform.

- c. **Legislation I introduced in February, S. 2091 – the *United States Job Creation and International Tax Reform Act of 2012*, would create a dividend exemption system. However, it would generally only apply to foreign earnings that are taxed above 50 percent of the U.S. corporate tax rate unless the foreign subsidiary of the U.S. company could demonstrate that it met requirements for being a sufficiently active business in a particular jurisdiction, and only to the extent its earnings did not relate to intellectual property. Would the Administration support this type of "anti-base erosion" measure as part of the adoption of such a dividend exemption system? If not, please explain why such a measure would be viewed as insufficient, and outline other alternative or additional measures that the Administration would support.**

Answer:

The Administration believes that international tax reform is an important component of overall business tax reform. International tax reform should encourage investment, growth, and high-quality jobs in the United States, and it should reduce tax incentives for U.S. companies to locate profits overseas while ensuring that these companies are able to compete abroad.

The global minimum tax contained in the framework would reduce the incentive to shift profits and investment to low-tax countries and helps address the global race to the bottom in corporate income tax rates. The Framework is intended to lay the foundation for a dialogue with Congress and stakeholders on tax reform. While there is considerable debate as to how to reform the international tax system, I believe there is substantial common ground on this subject, including a shared concern about preserving the U.S. tax base by reducing incentives that encourage the shifting of investment and income overseas. This common ground could advance efforts to reform the current U.S. international tax rules, and I am committed to working with Congress and stakeholders to enact tax reform.

Question 7:

Does the Administration have a position on any of the bills currently before Congress that would impact state and local collection of income and sales and use taxes? These bills include the Marketplace Fairness Act, which would permit states to require remote sellers that lack physical presence in a state to collect sales or use tax on taxable transactions with in-state residences; the Business Activity Tax Simplification Act, which would create a bright-line test for determining when states can impose income tax on businesses that do not have a physical presence in their state; and the Mobile Workforce State Income Tax Simplification Act, which creates a safe harbor test for determining when states can impose income tax on nonresident employees traveling into the state for business purposes. If the Administration does have a position on these bills, please explain that position. If the Administration does not currently have a position, please explain why this is the case.

Answer:

The Administration has not taken a position on the various bills you mention that would affect how state and local governments collect income and sales and use taxes. However, I agree with one of the primary premises underlying these bills—that the system of collecting income, sales, and use taxes by State and local governments should be made simpler and provide clear, bright line rules for state and local governments and taxpayers to follow. Simplifying the tax system and clarifying the rules will increase fairness and tax compliance, while reducing the burdens on the sellers and employers that would collect and remit such taxes. If confirmed, I would seek to work with Congress on these important issues.

Question 8:

The Administration's tax policies are hostile toward traditional energy sources like oil, coal and natural gas. In seeking to eliminate all tax provisions related to traditional energy, I am concerned that the Administration fundamentally misunderstands the importance of these policies to the production of energy and the jobs that come with that production. If confirmed, will you commit to working with me to better understand the reasons those provisions exist in the tax code and the impact of the Administration's proposals on the industry?

Answer:

If confirmed, one of my primary goals will be to work with Congress to understand concerns on matters of tax policy. In that connection, I will, of course, work with you and your staff to review and analyze tax expenditures to determine those that have compelling rationales for their continuance and those which should be repealed.

Question 9:

I am concerned that the Administration's tax proposals related to traditional energy sources will lead to job losses and less domestic energy production. Has the Administration conducted an analysis of the impact of these policies that shows higher taxes will lead to more jobs and more domestic energy production?

Answer:

When considering the elimination of fossil fuel subsidies, the Administration carefully considered the impact their elimination would have on the overall economy. Our analysis indicates that changes in domestic fossil fuel production costs resulting from loss of these subsidies would have little effect on U.S. energy prices. Regarding oil, the domestic price of oil is determined by global supply and demand because oil is an internationally traded commodity. The U.S. contribution to the world oil supply is relatively small, and thus any changes likely will not significantly affect the world oil price. Accordingly, U.S. consumers would see little impact from the removal of oil tax preferences. In 2009, Treasury's Office of Economic Policy estimated that the enactment of similar proposals would increase total oil finding and lifting costs by less than two percent and would decrease domestic production by less than one-half of one percent. Similar findings have been reported by the Congressional Budget Office. The subsidies for the coal and natural gas industries amount to about one percent of average total revenues in these industries. As a result, the final market impact on consumption and production is likely to be very small.

SENATOR RON WYDEN (D-OR):

Question 1:

Section 1603 of the American Recovery and Reinvestment Act of 2009 provides grants for investments in certain energy production property in lieu of tax credits available under sections 45 and 48 of the Internal Revenue Code. As you know, the Department of Treasury administers the 1603 program.

Information gathered by Treasury from applicants wishing to finance a solar project with 1603 grants include information about the solar module manufacturer from which the applicants will source and the price they will pay for the modules.

To date, how much money from 1603 grants were used to procure solar modules produced by Chinese-headquartered firms?

Answer:

While applicants for section 1603 grants with respect to solar projects are required to provide cost information, which may include a separate statement of the price paid for solar modules, they are not required to identify the manufacturer of the modules.

SENATOR BILL NELSON (D-FL):

Question 1:

In 1986, Congress enacted section 382 of the tax code to prevent companies from evading taxes by buying other companies that carried significant tax losses on their books. The provision limits the ability of an acquiring company to use the net operating losses (NOLs) of a target company to offset its own revenues for tax purposes. During the financial crisis, the government's purchase and sale of private stock in distressed companies could have triggered section 382. Beginning in late 2008, the Treasury Department issued a series of notices clarifying that section 382 did not apply to the government's investments. Treasury officials have since justified these notices on the grounds that they were consistent with the purpose of section 382, made the companies stronger and attracted private capital, and helped stabilize the overall financial system.

During the financial crisis, some community banks facing similar circumstances raised capital from private investors rather than the government. These institutions do not qualify for the favorable treatment described above, and thus face higher tax liabilities because of limitations on their NOLs. Legislation introduced in the House (H.R. 1697) would, among other provisions, temporarily extend the rules set forth in Notice 2010-2 to a qualifying investment in a small bank issuer. What are your thoughts on this tax parity proposal?

Answer:

Congress enacted section 382 to prevent taxpayers from making investments in corporations with significant losses and essentially trafficking in tax losses. Notice 2010-2 generally provides that section 382 does not apply to investments in private corporations made by the Federal government pursuant to one of several programs created under the Emergency Economic Stabilization Act of 2008, Public Law 110-343. The rationale for not applying section 382 to the Federal government's investments in private corporations — both its purchase and, within strict limitations, its subsequent sale of such investments — is that the Federal government is not a taxpayer, and therefore its investments in private corporations do not raise the same tax evasion concerns that enactment of section 382.

Section 402 of H.R. 1697, if enacted, would attempt to apply the principles of Notice 2010-2 to private investments in small issuer banks. This proposal raises much different policy concerns than those addressed by Notice 2010-2. However, if confirmed, I would be happy to discuss this proposal with you and your staff.

SENATOR CHARLES GRASSLEY (R-IA):

Question 1:

Last year, I wrote to the President and asked him to define a loophole. I received a response from the Acting Assistant Treasury Secretary for Tax Policy Emily McMahon that stated the following, and I quote:

“We agree with you that tax expenditures are, in many cases, incentives that reflect intentional government policy. In this respect, they differ from pure tax loopholes, which are unintentional benefits derived by taxpayers who may have found a way to game the system.”

Yet, one section of the Treasury Greenbook is titled “Other Revenue Changes and Loophole Closers” without distinguishing which are loopholes. Using the definition provided by Ms. McMahon, please indicate which of the following items from this section are loopholes.

- Increase Oil Spill Liability Trust Fund Financing Rate by One Cent and Update the Law to Include Other Sources of Crudes
- Reinstatement and Extend Superfund Excise Taxes
- Reinstatement Superfund Environmental Income Tax
- Make Unemployment Insurance Surtax Permanent
- Provide Short-Term Tax Relief to Employers and Expand Federal Unemployment Tax Act (FUTA) Base
- Repeal Last-In, First-Out (LIFO) Method of Accounting for Inventories
- Repeal Lower-Of- Cost-or-Market (LCM) Inventory Accounting Method
- Eliminate Special Depreciation Rules for Purchases of General Aviation Passenger Aircraft
- Tax Carried (Profits) Interests as Ordinary Income
- Deny Deduction for Punitive Damages
- Eliminate the Deduction for Contributions of Conservation Easements on Golf Courses

Answer:

A tax system should be fair, simple, and efficient. This means that any special tax benefits should be clearly identified and justified on the basis of spillover benefits or fairness or economic efficiency. What matters is whether a tax provision is justified, and there can be substantial disagreement over what is an intended, as opposed to an unintended, tax benefit.

In the Budget, the entire category of these items was labeled “Other Revenue Changes and Loophole Closers”, as you noted. I would classify many of the items on this list as “other revenue changes”, specifically the first seven items and the tenth item. While there could be disagreement on the remaining three items (corporate aircraft depreciation, carried interests, and conservation easements for golf courses), I would characterize them as loophole closers.

Question 2:

In contrast to provisions for accelerated depreciation and inventory accounting methods, the exploitation of the supporting organization status by charities is for certain a loophole. Upon receiving Ms. McMahon's response last October, I wrote to Secretary Geithner and Commissioner Shulman about the George Kaiser Family Foundation's exploitation of this loophole to fund Solyndra.

I asked for a status update on the report and regulations that were mandated by the Pension Protection Act of 2006. Soon after, the report was issued but it failed to address substantively the key questions, including whether additional reforms were needed. Do you agree that supporting organization provisions continue to be abused? In addition, there is still no sign of the pay-out regulations for the most abusive supporting organizations. As with the regulations for the whistleblower program, I expect these regulations to be issued this year and that I receive an update on the status of these regulations, including the decisions made by the Treasury Department.

Answer:

The Pension Protection Act of 2006 (PPA) made significant progress in curbing the abuses that led to the passage of the legislation. We have been working diligently to complete the implementation of the provisions in the PPA, and we hope to have the regulations issued shortly. In my position as Deputy Assistant Secretary of Tax Analysis, I have not been directly involved in these regulatory matters. However, if confirmed, I would be happy to work with you and your staff on these issues and to keep you updated on the status of the regulations.

Question 3:

The President has promoted tax increases, including the Buffett Tax, as a means to achieve “fairness” in the tax code. This sentiment has been echoed by various Democratic leaders. Just last week, former Treasury Secretary Larry Summers, during a discussion on tax reform sponsored by the Brookings Institution, stated that, in addition to raising revenue, tax reform should result in more progressivity but that economic efficiency and simplification are essentially not important.

- What do you think the goals of tax reform should be?
- If fairness is one of those goals, how would you define fair and how would you incorporate that concept into the tax code?
How can the tax code be made more progressive?
- Do you share Mr. Summers’ view that economic efficiency and simplification are *not* important?

Answer:

I agree with the President’s goals for fundamental tax reform as outlined in the FY 2013 Budget: (1) simplify the tax code and lower tax rates; (2) reform inefficient and unfair tax breaks; (3) decrease the deficit by \$1.5 trillion over ten years while preserving progressivity; (4) increase job growth and creation in the United States; and (5) observe the Buffett rule so that those making over \$1 million pay no less than 30 percent of their income in taxes.

I think that fairness is an important policy consideration in tax policy design. However, fairness is a normative concept on which reasonable people can disagree. That said, widely held principles suggest that taxpayers in similar economic circumstances should pay about the same amount of tax (horizontal equity) and that taxpayers who are better-off should pay a larger proportion of income in taxes than paid by less well-off taxpayers (vertical equity).

Much of the discussion about fairness focuses on vertical equity and the notion that a well-designed tax system would be progressive; that is, characterized by effective tax rates rising with income. As the Secretary has stated, we should strive to have a reformed tax system that is at least as progressive as the Administration’s FY 2013 Budget Policy. Moreover, high-income families should not experience effective tax rates that are lower than those faced by middle-income families.

There are a number of tax parameters that can affect the fairness of the tax system. For the individual income tax, these include the tax rate schedule, standard deduction and personal exemption amounts, itemized deductions, exclusions, and tax credits.

As stated in my response to Question 1 (above), I think that efficiency and simplicity, as well as fairness are important features of a well-designed tax system.

Question 4:

Key findings from a 2007 report from the Department of Treasury titled “Income Mobility in the U.S. from 1996 to 2005” (available on <http://www.treasury.gov>) include the following.

- There was considerable income mobility of individuals in the U.S. economy during the 1996 through 2005 period as over half of taxpayers moved to a different income quintile over this period.
- Roughly half of taxpayers who began in the bottom income quintile in 1996 moved up to a higher income group by 2005.
- Among those with the very highest incomes in 1996 – the top 1/100 of 1 percent – only 25 percent remained in this group in 2005. Moreover, the median real income of these taxpayers declined over this period.
- The degree of mobility among income groups is unchanged from the prior decade (1987 through 1996).
- Economic growth resulted in rising incomes for most taxpayers over the period from 1996 to 2005. Median incomes of all taxpayers increased by 24 percent after adjusting for inflation. The real incomes of two-thirds of all taxpayers increased over this period. In addition, the median incomes of those initially in the lower income groups increased more than the median incomes of those initially in the higher income groups.

When this report was issued, you were the Director of Research, Analysis and Statistics at the Internal Revenue Service. Please state your contributions to this report. Please also provide your thoughts on whether the degree of income mobility has changed since 2006.

Answer:

The report you refer to was prepared by the staff of the Office of Tax Analysis during the Bush Administration, prior to my tenure at Treasury. At the time the report was prepared, I was Director of Research, Analysis and Statistics at the Internal Revenue Service, and I was not involved in this research. This report has not been updated and I have not examined whether income mobility has changed dramatically since 2006.

Question 5:

An IRS Statistics of Income report, which also appears to have been issued under your watch, on the 400 tax returns with highest income reported over 14 years shows that in any given year, on average, about 40 percent of the returns that were filed were not in the top 400 in any of the other 14 years.

Similarly, Tax Foundation calculations based on IRS data indicate that millionaire status is fleeting. In a review of millionaires from 1999 through 2007, the Tax Foundation found that only 6% percent of millionaires were millionaires for all nine of those years. In contrast, 50% were only millionaires for one year and only 15% for two years. Ironically, President Obama himself falls into this category as his tax returns indicate that he was a millionaire last year but not this year.

These analyses would indicate that the United States has a dynamic economy and that wealth is not static. Given that, is it reasonable to expect that a tax code that raises revenue based on annual income can ever achieve fairness?

Answer:

For many reasons, no real-world tax system will ever perfectly measure ability to pay. Year-to-year fluctuations in income reported on tax returns, differing family situations, and different levels of wealth all are factors which complicate notions of ability to pay and hence considerations of fairness over time (both vertical and horizontal equity). That said, I believe that a tax system based on annual income, which is administrable, can meet reasonable standards for fairness.

Question 6:

History also shows that higher tax rates do not lead to increased revenues. We've had a 93-percent marginal tax rate -- then 70 percent, 50 percent, 28 percent, and now a 35-percent marginal tax rate. However, regardless of how high the tax rate is, the government gets about the same amount of revenue and it works out to be about 18 percent of gross domestic product. In your opinion, if the goal of tax increases, including the Buffett tax, is to raise revenue, how would you ensure that tax increases actually result in increased revenue? What is an appropriate percentage of GDP for revenues?

Answer:

The desired level of revenue depends on the demand for goods and services provided by the Federal government, and it is not possible to discuss these issues in isolation. The tax provisions in the Administration's FY2013 Budget would raise about 20 percent of GDP toward the end of the ten-year budget window. That level of revenue together with spending reductions proposed by the Administration is responsible, in that it eliminates the primary deficit and stabilizes the debt-to-GDP ratio by 2016. The primary goal of the Buffett Rule is to improve the fairness of the tax system.

Question 7:

The predecessor to the Alternative Minimum Tax (AMT) was enacted in 1969 in reaction to concerns that 155 high income taxpayers paid no tax. The AMT, which was originally only intended to impact those 155 taxpayers, now impacts 34 million taxpayers every year. The majority of these taxpayers are middle-class families who find themselves subject to this onerous tax because, under the AMT, their deductions for children or high state income taxes are significantly reduced or even eliminated. The Buffett tax would create a new alternative minimum tax but the President hasn't indicated how he would fix the existing AMT. Do you support the concept of a Buffett tax? If yes, how would you avoid the problems that arose as a result of the current AMT?

Answer:

I agree that the current AMT has design flaws that must be addressed. A large part of the problem with the current AMT is that its parameters have not been indexed for inflation, causing the tax to apply to larger and larger numbers of families every year. Congress has addressed this concern with a series of temporary fixes, commonly called "patches" that essentially adjust exemption amounts for past inflation. As you know, the AMT "patch" that was in effect through December of 2011 has now expired, leaving millions of taxpayers uncertain about their income tax liabilities this year. The President's Budget would address both of these problems by permanently extending the AMT relief enacted in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and indexing those provisions for inflation in 2012 and beyond.

I support the concept of a Buffett rule. The Buffett rule is not a specific tax in itself, but rather a principle of tax fairness, which says that no high-income family should experience a lower effective tax rate than what middle-class families pay.

This principle could be achieved in many ways, but perhaps the best approach would be through a fundamental reform of the tax system, which would avoid many of the problems with the current law AMT. If confirmed, I look forward to working with the Committee to develop a sensible tax system that promotes growth, is simple, is fair, and raises enough revenue to pay for the important functions of the Federal government.

*U.S. Senate Committee on Finance
Nominations Hearing held May 8, 2012
Follow-Up Questions for the Record for Mark Mazur
Received May 16-21, 2012 and Submitted May 22, 2012*

SENATOR MICHAEL B. ENZI (R-WY):

Question 1:

Regarding Question #2 on LIFO repeal, the Administration has proposed to repeal LIFO, but based on your responses, no work has been conducted by the Administration to understand the impact of such a proposal on small businesses. Your response was that “we would be pleased to consult with the SBA regarding its impact on small business jobs creation,” suggesting that such consultation has not occurred.

- a. If confirmed, would you recommend to the Administration that such consultation should occur prior to any movement on a LIFO repeal proposal?**

ANSWER:

We believe the overall impact on small businesses and small business jobs creation would be limited, since relatively few small businesses maintain significant LIFO inventory reserves. Nonetheless, should I be confirmed as Assistant Secretary for Tax Policy, I would consult with the SBA on this proposal.

- b. You also commented in Question #2 that “the majority of current LIFO reserves are concentrated in a small number of large corporations.” Would you please identify and comment on the analysis and data supporting this statement?**

ANSWER:

There are two main sources of data on LIFO inventory reserves: financial data and tax data. They provide somewhat different views of the use of LIFO, though if a taxpayer uses LIFO for tax purposes, the taxpayer is obligated to also use LIFO for financial reporting purposes. However, both perspectives provide ample support for the conclusion that relatively few firms account for the vast majority of LIFO inventory reserves.

To start with financial data, fewer than 100 of the S&P 500 firms use LIFO inventory to value any part of their inventories. The majority of total LIFO reserves for these firms are accounted for by less than 10 firms (mostly in the petroleum sector).

According to tax data, about 10 percent of all corporations use LIFO to value any portion of their inventories. The largest inventories are held by the relatively small number of corporations over \$500 million in assets (0.2 percent of the total number of corporations), so we can expect that LIFO reserves would be concentrated in these larger firms as well. One study using tax data (Knittel, 2009) to examine the use of LIFO inventory showed that fewer than 3 percent of the firms in a representative sample of corporate taxpayers accounted for over 2/3 of the total LIFO amounts in ending inventories.

Question 2:

Regarding Question #3 on the potential large disparity between corporate and individual income tax rates, you suggest that it might be necessary to modify the accumulated earnings tax and the personal holding company tax “in a post business tax reform environment.” However, you then go on to state that “comprehensive tax reform might make it easier to deal with these potential problems, because it would be possible to adjust *individual and corporate income tax rates* (emphasis added).” If confirmed, would you recommend that the Administration work with Congress on comprehensive income tax reform that deals with both the individual and corporate income tax systems rather than focusing solely on “business” tax reform?

ANSWER:

The Administration has called for comprehensive tax reform, and I certainly support this goal. I believe, as does the President and Secretary Geithner, that significant improvements to the U.S. tax system and to U.S. economic performance can be made by addressing problems in the business tax system in the short term, even if more comprehensive reform may have to be addressed later. Many of the changes that would be desirable as part of a business tax reform effort would also be part of a desirable comprehensive tax reform approach that would modify the individual income tax as well as the business tax systems. So, in my view, business tax reform and comprehensive tax reform are complements, rather than substitutes.

Question 3:

Regarding Question #4 on the Administration's proposal to impose a minimum tax on overseas profits, I want to thank you for providing an example of how this proposal might be implemented. However, I am unclear as to whether any residual U.S. tax would be due when the overseas earnings are ultimately repatriated to the United States in the example. Please comment on whether any residual U.S. tax (i.e., the difference between the full U.S. corporate income tax rate and the "minimum tax rate" multiplied by the distributed earnings) would be due when the overseas earnings are repatriated to the United States.

ANSWER:

There are many ways that the global minimum tax concept could be incorporated into a reformed international tax system. In the example I provided, a residual U.S. tax would be due when the overseas earnings that were subject to the minimum tax are ultimately repatriated to the United States (as in the case of the minimum tax, this residual tax could be offset by any unused foreign tax credits associated with these earnings).

This example is just one possible approach to the complex issue of reforming the international tax system and, if confirmed, I would be happy to work with you and your staff to understand your thoughts and concerns on this important issue.

SENATOR ORRIN HATCH (R-UT)

Questions for Dr. Mark Mazur from Senator Hatch: I have the following questions related to your responses to my earlier questions for the record that I posed following the May 8, 2012 hearing to consider your nomination. My questions are posed to gather answers from you, and not primarily to learn about the administration's policy positions. Your thorough responses to all of my questions, as well as those of other members of Congress, are important in helping arrive at informed decisions.

Question 1:

In response to my earlier question (labeled Question 1 in your response), you identified that: "Outside experts and observers would note that it is difficult to meaningfully assess in isolation any one measure to improve long-term solvency." However, my question was to you and did not seek sentiments of outside experts and observers about difficulty levels. Individual reform measures in isolation, with respect to their likely contribution to long-term solvency, have been assessed by, for example, the Social Security Administration's actuaries. And many experts and observers have identified tradeoffs of individual possible reform elements and, upon having weighed those tradeoffs, have arrived at their policy preferences.

I do not believe that you answered my question, unless your identification that you are not responsible for Social Security policy stances or details of the program in your current capacity should be taken to mean that you feel unqualified at this time to provide the answers.

ANSWER:

If confirmed as Assistant Secretary for Tax Policy, I will not be making decisions on behalf of the Administration on Social Security policy. I would also note that the lessons of previous tax reform and Social Security reform efforts suggest that in order to be successful, it is necessary to build consensus on a package of reforms that, taken together, represent good policy and are able to attract broad bipartisan support from the public and their elected representatives. Attempting to evaluate individual reform proposals in isolation, outside of the context of a broader reform package, may be counterproductive to the compromises necessary to future reform efforts.

Question 2:

In response to my earlier question (labeled Question 2 in your response); you did not answer the following: “If confirmed, will you recommend that the payroll tax holiday be extended in the event that the state of the economy is unchanged from the current state?” Your response described the administration’s plans and budget, but did not indicate what your recommendation would be if the state of the economy is unchanged from the current state.

My identification of the current state of the economy allows us to abstract from forecasts and allows me to gauge what your policy recommendation might be. This would be particularly useful information for me, as your response did not seriously address the second question I asked about where the unemployment rate and quarterly GDP growth would have to be in order for you to change your assessment, aside from identifying, vaguely, that you “may” do so if conditions “markedly worsen.”

Answer:

As Secretary Geithner said during his February 16 testimony before the House Budget Committee, “I would not recommend extending the payroll tax cut because there are things you have to do to come out of a crisis you will only want to do on a temporary basis. This is one of them.” I agree with Secretary Geithner. Were economic conditions to change, one would want to consider a number of factors, including but not limited to output, employment, and income, before making a final decision on whether or not to extend the payroll tax cut at a later date.

Question 3:

In response to my earlier question (labeled Question 4: a), you discussed vague ideas about “fairness” and “equity” but did not, in my view, provide a very firm answer to my question of “...how will we know what is the amount of alteration in the progressivity of the tax code that would be desirable to attain fairness or perceptions of fairness?”

You did, however, give me a clue by stating that in your view “...we should strive to have a tax code that is at least as progressive as the Administration’s FY 2013 Budget Policy.” I am not sure what “Budget Policy” means, but presume your reference was to the proposals contained in the President’s Fiscal Year 2013 Budget of the U.S. Government. If so, please provide summary statistics that you believe are sufficient to identify progressivity in that budget, which can then provide me with a benchmark and sense of what you view as some measure(s) of progressivity that we should “at least” attain.

ANSWER:

We should strive to have a Tax Code that balances efficiency and equity concerns. In that regard, I believe that fairness concerns would be met by a tax system that incorporates a similar degree of progressivity to that in the President’s Fiscal Year 2013 Budget of the U.S. Government, and more specifically, the totality of the revenue proposals included in the President’s budget proposal.

The FY 2013 Budget Proposal improves progressivity of the tax code by, for example, allowing the top two individual income tax rates to go back to the levels of the 1990s for taxpayers with incomes over \$250,000 (joint filers), taxing dividends as ordinary income, taxing carried interest as ordinary income, making the American Opportunity Tax Credit permanent, and expanding the Earned Income Tax Credit for larger families.

Question 4:

In response to my earlier question (labeled Question 4: b.), you indicated that “...tax law changes of the last Administration...” were the policies that you identify with the President’s Chairman of the Council of Economic Advisors identification of past policies that “didn’t generate faster economic growth or jobs, but rather increased inequality.”

I asked you to also identify any statistical evidence of causality to support such a casual assertion. You did not provide any such evidence and therefore did not answer the question.

ANSWER:

I recognize that there are differences of opinion on these questions. However, the data on incomes reported over the 2000-2010 period strongly suggests that the tax cuts enacted during this period of time did little to promote overall economic growth. Both employment growth and output growth were slower than during the mid-to-late 1990s, despite substantially lower individual income tax rates. There also is a substantial body of empirical evidence and economic theory that would seem to predict such an outcome for deficit-financed tax cuts, like those enacted during the Bush Administration. For example, William Gale and Samara Potter published an analysis that predicted such an outcome for the 2001 tax cuts. In addition, several economic studies (e.g., by Alan Auerbach and Joel Slemrod) suggest that cuts in the top marginal individual income rates will do little to promote overall economic growth and instead lead to timing shifts and tax planning.

Question 5:

In response to my earlier question (labeled Question 4: c.), you did not answer the question of “...what do you disagree with in Gordon’s analysis?” You disagree with some of his conclusions, but did not identify what analytical disagreement you have with Gordon’s work. Did he commit analytical errors? Did he not use appropriate data or methods?

ANSWER:

In many areas of economics, data is imperfect and definitive conclusions can be difficult to reach. Different approaches to analyzing an issue can lead to different conclusions and only over time, if at all, will a consensus be reached.

The Gordon paper is a provocative analysis that rightly raises questions about some aspects of conventional wisdom. This paper does not provide a definitive analysis, and taken as a whole, the paper certainly does not show that income inequality is not a concern or even that the growth in income inequality has clearly reversed.

The primary contributions of the Gordon paper are adjustments and corrections to a standard measure of inequality based on the difference between the growth rate of median income and the growth rate of productivity (the income-productivity gap). This type of analysis typically attributes changes in the income-productivity gap to changes in the degree of skewness in the income distribution: the bigger the gap, the more skewness there is in the distribution and, therefore the more inequality that exists.

After making a series of adjustments, Gordon concludes that for the 1979-2007 period, the increase in income inequality as measured by the income-productivity gap has been overstated. He further argues that skewness in the income distribution (measured as the difference between the growth of mean and median incomes) contributed very little to the income-productivity gap over this period, which contradicts the assumption that the bulk of the change in the income-productivity gap is caused by increases in income inequality. For the period from 2000 to 2007, Gordon’s analysis has the income-productivity gap increasing, but he does not attribute this increase to income inequality because his measure of income skewness declined.

There are several limitations to the analysis in the Gordon paper. One is its aggregate and indirect approach to measuring changes in inequality. The aggregate, summary approach used in this paper is far removed from a detailed, micro study of income earned by households at different income levels, an approach that seems to me to provide the best evidence of changes in inequality. Studies conducted by the non-partisan Congressional Budget Office (CBO), on the other hand, take the more direct approach of measuring income for households at various income levels and do not have the limitations imposed by more indirect measures.

A second limitation of the Gordon paper is that some of his adjustments are not shared by all economists working in this area. For example, a portion of his results comes from changing the measure of inflation used in the analysis, and there is unlikely to be consensus that his modifications are appropriate. Another portion of his result comes from using median per-person income, rather than the more traditionally-used median household income, in order to conform to the productivity measure, which is computed on a per-person basis. This adjustment seems appropriate in some instances, but it does not account for a change in the number of earners per household that also could affect incomes over the period.

A third limitation is that Gordon's primary analysis is based on Census measures of income that are widely acknowledged to be flawed. One problem is top coding, in that the highest earners are assigned an income value that does not represent the true income of the household (this is done to prevent possible identification of the household). Another is that the Census measure of income is self-reported and incomplete. Particularly relevant is that the income measure excludes capital gains, an important component of income for higher income families and one that has changed a lot over the period analyzed.

Gordon acknowledges these problems, and correctly notes that Census data generally cannot be used to examine the rapid increase in income earned by those at the top end of the income distribution. Tax data can be used for this purpose, and those data clearly show the increasing shares of pre-tax and after-tax income received by the most affluent families through 2007.

While no measure is perfect for examining the dynamics of income inequality, I continue to think that the gold standard for measuring changes in income inequality remains the time series published by the CBO. This time series suggests that recent increases in income inequality are real and continued through 2007.

Question 6:

I am concerned about the Treasury Department's long-standing practice, across administrations, of not submitting IRS rules to the OMB Office of Information and Regulatory Affairs ("OIRA") for determination as to whether such rules are "major" under the Congressional Review Act ("CRA").

According to Secretary Geithner, "IRS rules generally have not been submitted to OIRA for a determination of whether they are 'major' under the CRA, because ... IRS rules generally are not 'major' within the meaning of the CRA." This reasoning seems circular, at best.

- a. What is the role of the Assistant Secretary of the Treasury (Tax Policy) in submitting, or not submitting, an IRS rule to OIRA for a determination of whether it is "major" under the CRA?**

My understanding is that of the literally thousands of rules the Treasury/IRS have promulgated since the Congressional Review Act was signed into law by President Clinton, only seven have been submitted to OIRA for a determination of whether they are 'major' under the CRA. All seven were found to be "major."

My understanding is that all seven rules that were submitted to OIRA were jointly promulgated with the Department of Labor. This suggests to me that the Department of Labor has a history of greater compliance with the CRA than does the Department of the Treasury.

ANSWER:

For each regulation that we promulgate, the Treasury Department fully complies with the Congressional Review Act (CRA). If I am confirmed, I will remain committed to ensuring that we continue to follow both the letter, and the spirit, of the CRA.

The CRA provides for the Office of Management and Budget (OMB) to determine whether a rule is a "major" rule, meaning that the regulation results in, or is likely to result in, (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Most tax regulations do not meet this standard because the effects on the economy derive from the taxpayer obligations imposed by the statute itself rather than by the regulation, which generally provides needed guidance to taxpayers on how to comply with their statutory obligations.

In addition, the Treasury Department and IRS engage in a process to ensure that guidance issued is fair and minimally burdensome. For example, Treasury and the IRS solicit input from the public regarding its rulemakings, including through notice and comment periods prior to the issuance of final rules. These comments are carefully considered and help shape the final rules that are promulgated. In addition, Treasury and IRS staff members regularly conduct extensive outreach, meet with stakeholders, and hold public hearing seeking feedback and input from taxpayers. After incorporating taxpayer feedback, each regulation goes through a review process both at the IRS and the Treasury Department during which staff experts ensure that the regulation fairly and reasonably implements the Internal Revenue Code.

The Office of Tax Policy takes seriously our obligation to promulgate rules that are fair and minimally burdensome, and we are mindful of the importance of adhering faithfully to the CRA.

- b. Why does the Department of Labor apparently routinely submit rules for OIRA determination of whether the rules are major or not, but the Treasury Department does not? Does the CRA have different requirements for the Department of Labor than it has for the Department of Treasury? Would the CRA somehow apply differently to the Department of Labor than it does to the Department of Treasury?**

ANSWER:

While I cannot speak to Department of Labor practices, I am not aware of any legal requirements under the CRA that apply differently to the Department of Labor and the Department of the Treasury. Treasury fully complies with the requirements of the CRA.

- c. If confirmed as Assistant Secretary will you work to assure that Treasury/IRS rules are submitted to OIRA for a determination of whether such rules are “major” within the meaning of the CRA?**

ANSWER:

If confirmed, I am fully committed to ensuring that the Treasury Department complies with the CRA with respect to guidance interpreting tax statutes.

SENATOR CHARLES GRASSLEY (R-IA)

Question 1:

You indicated in your response that changing the tax depreciation life for generation aviation passenger aircraft would be a loophole closer. For financial statement purposes, generally accepted accounting principles require that companies expense the cost of a capital asset over its useful life. The goal of financial accounting is to properly match revenue and expenses so that third parties, including investors, have an accurate picture of a company's finances.

Do you agree that this goal conflicts with the goal of tax reporting, which is to minimize taxable income?

ANSWER:

It is true that tax accounting rules and financial accounting rules have differing objectives, and so might not perfectly overlap. Under an income tax, the goal of tax accounting is to accurately portray the net income of the entity subject to tax. Setting aside explicit tax incentives, tax accounting rules would seek to neither overstate nor understate net income subject to tax. In contrast, a primary goal of financial accounting is to protect shareholders and other interested parties from being misled by excessively high reported income. Hence, financial accounting has at its foundation the principle of conservatism, with a preference for understating rather than overstating income. Given these differing objectives, it is not surprising that tax accounting rules often differ from financial accounting rules.

Question 2:

Since depreciation deductions will always exist for financial accounting purposes, it seems a tax deduction should also always exist.

Do you agree that, regardless of the life of the asset, a depreciation deduction is just a timing difference and the cost will ultimately be deducted from income to calculate what is taxable? Do you consider the entire accelerated depreciation system a loophole? Do you believe that bonus depreciation and expensing provisions are loopholes?

ANSWER:

Recovering the cost of an investment is essential for proper measurement of periodic income for both tax accounting and financial accounting purposes. Depreciation deductions are appropriate and necessary under an income tax and under financial accounting rules.

I do not consider the entire accelerated depreciation system a loophole, nor do I believe that bonus depreciation and section 179 expensing are loopholes. However, they all are tax preferences to the extent that the deductions exceed or accelerate those available under economic depreciation.

Question 3:

The question to consider in the context of tax reform is whether a deduction should match financial accounting deductions, whether the deduction should be accelerated as it is currently, or whether we should allow full expensing.

What are your views? Do you believe that the tax code should incentivize capital investment and domestic manufacturing?

ANSWER:

In the context of business tax reform, it is not necessary for deductions for tax purposes to be the same amounts as allowed for financial reporting purposes. In the context of deficit-neutral business tax reform, trade-offs are made between the tax base and the tax rate. Some proposals to broaden the tax base, such as slowing accelerated depreciation deductions, will raise revenue that can be used to cut the corporate income tax rates, thus improving economic incentives for investment and growth. If done in a careful manner, such a shift can provide for more uniform taxation of alternative investments, and can represent a net improvement over our current system of taxing business income.

As for specific tax incentives, I agree with Secretary Geithner that such incentives should be focused on situations where there are significant spillover benefits to the economy at large, such as for research and domestic manufacturing.

Question 4:

The listing of asset lives in the tax code stands in stark contrast to financial accounting practices. There is no master list that dictates the useful life of an asset. Companies make judgment calls which are reviewed by independent auditors. In the 1986 tax reform act, the Treasury Department was authorized to determine asset lives. This authority was repealed in 1988.

If accelerated depreciation is retained should Congress continue to be responsible for this? Or would it make sense to reauthorize the Treasury Department or possibly look to an independent panel of experts to periodically review asset lives?

ANSWER:

Congress is responsible for determining tax law, including the schedule for depreciation deductions. Congress can delegate its authority to promulgate deduction schedules, as was done in the 1986 Tax Reform Act. And Congress may rescind that authority, as was done in the case of depreciation deductions.

A periodic review of asset lives and other depreciation parameters, perhaps by some neutral body, has some appeal on a technical level, because economic realities, including actual economic depreciation, may change over time. That review could be used to inform legislative changes. If confirmed, I would be pleased to work with you and your staff to examine the merits of reinstating the 1986 provision cited in your question.

*U.S. Senate Committee on Finance
Nominations Hearing held May 8, 2012
Additional Questions for the Record (Round 3) for Mark Mazur
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SENATOR ORRIN G. HATCH (R-UT)

Question 1:

“The term ‘major rule’ means any rule that the Administrator of the Office of Information and Regulatory Affairs ... finds has resulted in or is likely to result in” A, B, or C.¹

In your answer to me on May 22, 2012, you wrote: “Most tax regulations do not meet this standard [of resulting in A, B, or C of 5 U.S.C. § 804(2)] ...”

- a. Under the CRA, is the determination of whether the regulation results in A, B, or C to be made by the Administrator of OIRA?**

ANSWER:

The Congressional Review Act (CRA) defines the term “major rule” to mean any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) finds has resulted (or is likely to result) in one of three specified criteria being satisfied. The CRA does not require that agencies submit every rule to OIRA for this determination, and it has not been the practice of the IRS and the Treasury Department to do so.

- b. Can another agency, such as the Treasury Department or the IRS, make the finding called for in section 804(2) that satisfies the requirement that the “agency promulgating [the] rule shall submit to each House of the Congress ... a report containing ... a concise general statement relating to the rule, *including whether it is a major rule*”?²**

ANSWER:

Prior to issuing each final rule, the IRS submits reports to Congress and GAO in compliance with section 801(a)(1)(A) of the CRA. As noted above, however, the CRA does not require that agencies submit every rule to OIRA for a determination regarding whether that rule is a major rule, and it has not been the practice of the IRS and the Treasury Department to do so.

- c. That is, while an informal determination as to whether a rule results in A, B, or C of section 804(2) may be made by Treasury, or IRS, or anyone, presumably the only determination of whether a rule results in A, B, or C of section 804(2) that satisfies the requirement of section 801(a)(1)(A)(ii) is such a determination by the Administrator of OIRA, right?**

¹ 5 U.S.C. § 804(2).

² 5 U.S.C. § 801(a)(1)(A).

ANSWER:

The CRA defines the term “major rule” to mean any rule that the Administrator of OIRA finds has resulted (or is likely to result) in one of three specified criteria being satisfied. The CRA, however, does not require that agencies submit every rule to OIRA for this determination, and imposes obligations on agencies, not OIRA, to submit rules to Congress. Pursuant to a longstanding agreement between the Office of Management and Budget (OMB) and Treasury, Treasury is responsible for alerting OMB to any ruling document that reasonably could be expected to have a significant economic impact, which also would enable OMB to determine whether the ruling document is “major” within the meaning of the CRA.

Question 2:

In your May 22 response, you wrote: “Most tax regulations do not meet this standard [of resulting in A, B, or C of 5 U.S.C. § 804(2)] ... because the effects on the economy derive from the taxpayer obligations imposed by the statute itself rather than by the regulation, which generally provides needed guidance to taxpayers on how to comply with their statutory obligations.”

- a. Couldn't a statute have more than one permissible interpretation? And thus, couldn't a regulation interpreting a statute have an effect on the economy that another possible interpretation wouldn't have had? And thus, couldn't a regulation have effects on the economy that wouldn't necessarily derive from the statute itself?

ANSWER:

It is certainly possible that a statute may have more than one permissible interpretation. The IRS and Treasury believe, however, that tax regulations generally do not have a significant effect on the economy, because any such impact typically derives from the statute itself. In most circumstances, the Internal Revenue Code and the legislative history are sufficiently clear for the IRS and the Treasury Department to understand Congressional intent and to promulgate rules implementing the intent of the statutory language. Nonetheless, I recognize there may be instances where the effects on the economy derive from the regulation itself.

- b. Do you agree with the 8th Circuit that Treasury's interpretation of the section 3121(b)(10) student exception from employment subject to FICA, as contained in Treas. Reg. § 31.3121(b)(10)-2(d)(3)(iii)(2005), was “not the only permissible interpretation”? See *Mayo Found. for Med. Educ. & Research v. United States*, 568 F.3d 675, 683 (8th Cir. 2009).

ANSWER:

I am not an attorney and, thus, am not well equipped to comment on specific cases. However, I agree with the general point that there may be more than one permissible interpretation of a statute.

- c. Do you believe that T.D. 8930 (Dec. 27, 2000) was the only permissible interpretation of the section 41 research credit in general, and, in particular, the only permissible interpretation of the section 41(d)(1)(B) requirement?

ANSWER:

As I note above, I am not an attorney, and I am therefore not well equipped to comment on this specific issue. Moreover, these regulations were promulgated well before I came to the Treasury Department. Nonetheless, it is clear to me that there may be more than one permissible interpretation of a statute. In this case, it is my understanding that these final regulations were one permissible interpretation and that subsequent guidance revised the interpretation.

**Opening Statement of Matthew Starbuck Rutherford
Nominee for Assistant Secretary of the Treasury for Financial Markets
United States Senate Committee on Finance
May 8, 2012**

Thank you [Chairman Baucus, Ranking Member Hatch and members of the Committee] for allowing me to testify before you today.

I am humbled to sit before you, the members of the Senate Finance Committee, today. I am also honored to share this panel with Mark Mazur and Meredith Broadbent.

Having worked with Secretary Geithner both at the Treasury Department and the Federal Reserve Bank of New York, I want to thank him for recommending me for the position of Assistant Secretary of the Treasury for Financial Markets. His service throughout the financial crisis has been remarkable, and I believe the United States has benefitted from his leadership and service during this difficult economic period.

I would also like to thank President Obama for nominating me for this position. It is an incredible honor, and I am deeply appreciative to staff at Treasury and the Senate Finance Committee who have worked with me through this process.

Thank you for recognizing my family a few minutes ago. I would like to thank my wife, Bridget Rutherford, my daughter Nora, and my parents for being here with me today. I am so fortunate to have such a caring, wonderful family. Unfortunately, my sister could not be here, but she has served as a constant source of support throughout my life, informing my worldview and molding me into the person I am today.

For the past three years, I have served as the Deputy Assistant Secretary of the Treasury for Federal Finance. In this capacity, my primary responsibility has been to manage the Office of Debt Management, which is responsible for making policy decisions on how Treasury finances the country's borrowing needs. This has been a very busy time period in government finance, but I think that we have achieved our objective, which is to finance the government's budget at the lowest cost over time to taxpayers.

Prior to my time at Treasury, I spent four years at the Federal Reserve Bank of New York in the Markets Group. My time there was very instructive because in many ways the New York Fed is the government's closest point of contact to the financial markets. I focused on a number of different areas in the fixed income space, and learned a great deal about financial markets generally. Between my time at Treasury and the New York Fed, I feel that I am uniquely positioned to take on this new role.

If confirmed, I would be honored to continue my career in public service, particularly during this very important moment in our nation's history. Far too many Americans are out of work and

struggling to pay their bills. It is critically important that we work together given the challenges that we face. I will conclude by saying that if I am confirmed, I look forward to working with members of the Senate Finance Committee to address these important challenges.

Thank you again for your time and I would be happy to answer any questions that you have.

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

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Matthew Starbuck Rutherford
2. Position to which nominated:
Assistant Secretary for Financial Markets, U.S. Treasury
3. Date of nomination:
September 23, 2011
4. Address: (List current residence, office, and mailing addresses.)
5. Date and place of birth:
Atlanta, Georgia
8/7/78
6. Marital status: (Include maiden name of wife or husband's name.)
7. Names and ages of children:
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

Lafayette College
BA Economics – May 2001
Dates Attended (8/97-5/01)

University of Chicago
MPP – June 2004
Dates Attended (9/02-6/04)

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Department of the Treasury (2009-Present)
Deputy Assistant Secretary for Federal Finance
Washington, DC

Federal Reserve Bank of New York (2005-2009)
Liaison to the Treasury
New York, NY

Export-Import Bank of the United States (2004-2005)
Banking Analyst
Washington, DC

Oil-Dri Corporation of America (2001-2002)
Communications Analyst
Chicago, IL

Anheuser Busch (September 2001)
Sales Associate
Arlington Heights, IL

Santa Barbara Parking Company (Summer 2001)
Parking Services
Santa Barbara, CA

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

None

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

None

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

Phi Beta Kappa. Member since 2001.

13. Political affiliations and activities:

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

None

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

None

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

\$50 – Obama Campaign (2008)

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Phi Beta Kappa (2001)

University of Chicago, McCormick Fellowship (2003)

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

Buybacks in Treasury Cash and Debt Management, Federal Reserve Bank of New York Staff Reports, October 2007. Authors: Kenneth Garbade and Matthew Rutherford

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

Provide the Committee with **two** copies of each formal speech.)

The speeches I have given include:

Barclay's Inflation-Linked Conference – 9/17/09
 Money Fund Forum – 10/19/09
 Fixed Income Forum – 11/05/09
 SIFMA Government Borrower's Forum 11/6/09
 RBS Investor Conference – 12/16/09
 IMN Conference – 3/1/10
 RBC Reserve Manager Conference 6/8/10
 Barclay's Rate Conference – 11/18/10
 IMF Financial Stability Conference – 3/18/11
 Real Return Conference 9/27/11

I have also participated on a number of panels, where I did not have prepared remarks.

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

I have been serving as Deputy Assistant Secretary for Federal Finance since May 2009. In that role I have been responsible for managing Treasury debt issuance, as well as all policy matters related to the Treasury market. I have also been involved in some of the other policy initiatives overseen by the Assistant Secretary for Financial Markets.

Prior to my current role, I worked in the Markets Group at the Federal Reserve Bank of New York (FRBNY). I held several positions there, the last of which was the FRBNY liaison to the Treasury.

If confirmed, I would look forward to continuing the important work of the Treasury Department. I believe my unique experience and knowledge of financial markets make me ideally suited for the position of Assistant Secretary for Financial Markets.

B. FUTURE EMPLOYMENT RELATIONSHIPS

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

Not applicable, as my current position and the position to which I have been nominated is within the Department of the Treasury.

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

No.

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

No.

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

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

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

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

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

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

None.

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

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

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

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

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

N/A

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any

court, administrative agency, professional association, disciplinary committee or other professional group? If so, provide details.

No.

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

Yes, in 2003 I received a citation for an open container on a Chicago subway platform. The fine was \$50.

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

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

None other than the citation included in my response to question 2, above.

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

None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

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

Yes.

*U.S. Senate Committee on Finance
Nominations Hearing held May 8, 2012
Questions for the Record for Matthew Rutherford
Received May 10, 2012 and Submitted May 14, 2012*

SENATOR MAX BAUCUS (D-MT):

Question 1:

Please describe the policy implications being weighed by Treasury as regards the potential issuance of floating-rate Treasury bonds. How does it benefit the Treasury to issue floating-rate Treasury bonds at a time of historically low U.S. borrowing costs? Would floating-rate Treasury bonds lengthen the maturity period of U.S. borrowing, or shorten it?

Answer:

On May 2, Treasury indicated that a decision on the potential issuance of floating rate notes (FRNs) would occur after a thorough analysis was completed.

Treasury is considering the issuance of floating rate notes for two reasons. First, we believe that it may be a useful tool to help us extend the average maturity of the debt. FRNs would allow Treasury to issue term debt, without paying the premium typically embedded in fixed rate securities. In other words, FRNs could allow us to extend the average maturity of the debt in a more cost effective manner throughout a range of interest rate cycles.

As background, Treasury has extended the average maturity from 49 months in 2009 to its current level of 63 months today. Although Treasury does not have a target for the average maturity, the current issuance strategy would likely increase the average maturity to around 70 months by 2015, the upper end of the historical range. Potential FRN issuance would not alter this path meaningfully in the near term, as the size of the program would likely be small relative to the overall stock of debt. However, it could prove a useful tool for this purpose over time.

Secondly, Treasury believes that FRNs could potentially broaden our investor base. FRNs are a widely traded instrument in the U.S. capital markets. Feedback from market participants has been positive, with many suggesting that corporate Treasurers and money funds would likely be drawn to the product.

Question 2:

Please describe why Treasury has so far declined to issue negative-yield Treasury bond, despite the fact that short term bonds have at times traded at negative yields in the secondary bond market.

Answer:

In December 2011, Treasury bill rates at times traded at negative levels in the secondary market. This was due in part to ongoing flight-to-quality flows, as well as year-end financial reporting requirements. However, Treasury auction rules prohibited the submission of bids at negative rates. The disconnect between the auction process and the secondary Treasury markets led to several auctions with extremely high bid-to-cover ratios, as investors were incentivized to bid for a significant quantity of securities.

In February 2012, Treasury indicated that it was considering changing the auction rules to allow for negative rate submissions in the auction process. At that time, Treasury suggested that such a rule would be beneficial to the taxpayer and overall market functioning.

On May 2, Treasury announced that changing the auction rules was something that was still being considered. However, prior to making a final decision, Treasury must consider a significant number of operational issues, as well as the impact across different investor classes. For example, there are over 15 IT systems throughout the government that would be impacted by this decision, and we would also have to consider the treatment of retail investors.

We anticipate that we will make a decision on this potential rule change in the near future. In the meantime, it is important to note that since December Treasury bill rates have remained above zero.

SENATOR ORRIN G. HATCH (R-UT):

Question 1:

According to the Federal Reserve, its “operation twist” program is intended to alter the term structure of federal debt, partly by reducing the supply of longer-term Treasury securities in the market. The Fed says that that “this action should put downward pressure on longer-term interest rates.” The Fed goes on to say that “the reduction in longer-term interest rates, in turn, will contribute to a broad easing in financial market conditions that will provide additional stimulus to support the economic recovery.”

Since mid-2009, the Treasury has been extending the average maturity of federal debt. This means that Treasury has been acting to increase the supply of longer-term Treasury securities in the market—the exact opposite of what the Fed’s operation twist is trying to accomplish in order to provide additional stimulus to support the economic recovery.

Please note that I full understand that the Fed is, in principle, independent of the Treasury and that the two entities have different mandates and objectives. I also understand that at a given point in time, market participants form expectations of future policies which are incorporated into market prices. Of course, if the Fed or the Treasury takes an action that alters expectations, then prices adjust. This is part of the essence of, say, innovations in monetary policy involving changes in the amount of quantitative easing or twist-like operations—to manage expectations. Treasury could, similarly, manage expectations by changing its own policy regarding the maturity structure of Treasury debt.

Do you agree that Treasury could, if it wanted, complement the Fed’s action by shrinking the average maturity of federal debt, thereby providing additional stimulus to support the economic recovery as the Fed is seeking? If not, why not? If so, then has Treasury chosen to pursue, using debt management tools, extensions of the average maturity of Treasury debt in order to reduce future risks of rising rates (e.g., rollover risk) as opposed to pursuing an objective of helping support the economic recovery?

Answer:

The Federal Reserve’s Large Scale Asset Purchases (LSAP) and Maturity Extension Program (“Operation Twist”) are both initiatives intended to lower long-term rates by purchasing securities and taking “duration,” or interest rate risk, out of the marketplace. It is true that Treasury could reduce the amount of duration in the marketplace by reducing its issuance of longer-term debt. However, as the Department has stated publicly, we believe that extending the average maturity is the best debt management strategy at this time.

The Treasury Department's stated goal is to finance the government at the lowest cost over time. We do this by issuing securities in a regular and predictable manner. We issue across the entire yield curve, and do not time the markets. It's also important to note that we have not increased the size of long-term bond auctions since they peaked in 2009, well before the Federal Reserve's actions to take duration out of the market.

Question 2:

When the Fed buys securities, it typically does so using freshly created bank reserves on which the Fed pays interest. Thus, the Fed acquires resources from private market participants in the open market by issuing short-term, interest-bearing liabilities to private market participants. Those reserve balances are highly liquid and can be turned into cash upon demand of the (non-term) reserve account holder. The Fed's reserve liabilities are much like short-term Treasury securities—they earn near-zero nominal returns currently and are highly liquid. Because the Fed is engaging in operation twist and increasing the supply of short-term government liabilities in order to finance acquisitions of longer-term government liabilities to reduce the supply of those latter liabilities, is there any sense in which the Fed is taking on some of the interest rate risk that Treasury may be seeking to avoid by, on its own, extending the average maturity of Treasury debt? If not, why not? If so, what is the sense in which, on the basis of consolidating government liabilities of the Fed and the Treasury, Treasury's actions to extend the average maturity of its debt liabilities avoid future risks of rising interest rates?

Answer:

As you identified in your first question, the Treasury and the Federal Reserve are independent entities with different mandates. Treasury only has influence over its own issuance strategy. On that basis, our job is to finance the government at the lowest cost over time.

Any fixed-income investor, including the Fed, takes on interest rate risk when they purchase longer-duration assets. This risk reflects the fact that interest rates and fixed income asset prices are inversely related. Interest rate risk is positively correlated with the duration of the asset purchased (i.e., longer maturity fixed-rate securities will experience greater price declines for a given increase in interest rates compared to shorter maturity fixed income securities).

It is important to note that interest rate risk is a risk assumed by the investor in the security, regardless of whether that investor is the Fed, a pension fund, or a bank. The risk is not borne by the issuer. As a result, Treasury does not face this type of risk.

With regards to motivation, Treasury has been very transparent since the height of the financial crisis about its desire to extend the average maturity of the debt. In early 2009, the average maturity fell to 49 months as Treasury issued substantial amounts of short-term debt to finance the emergency rescue programs. Since that time period, the debt management team has been increasing the average maturity. The average maturity of the debt currently stands at 63 months and is projected to increase to the upper end of the historical range by 2015.

Question 3:

The position for which you are nominated coordinates the inter-agency President's Working Group on Financial Markets which is composed of the Treasury Secretary and the Chairs of the Fed, the SEC and the CFTC. That Working Group, initially established by President Reagan, was set up to evaluate the stock market crash of October 19, 1987—sometimes called Black Monday. More recently, the Dodd-Frank Act established a new Financial Stability Oversight Council (FSOC) composed partly of the Treasury Secretary and the Chairs of the Fed, the SEC and the CFTC.

The FSOC has been created and costs taxpayers over \$10 million a year with costs expected to grow far further.

- a. Would you recommend that the President dissolve what has become a redundant Working Group on Financial Markets which, to my knowledge, absorbs taxpayer resources, can meet whenever it wants, and never produces meeting minutes that can be reviewed by the public? Will you provide to me, if confirmed, information concerning budgetary resources that have been devoted to work associated with the President's Working Group on Financial Markets?

Answer:

The President's Working Group on Financial Markets (PWG) published its report detailing a number of options for reforms related to money market funds on October 21, 2010 as a continuation of work that had begun prior to the passage of the Dodd-Frank Act. The PWG has not met since that time. The PWG has continuing staff work through the Financial and Banking Information Infrastructure Committee (FBIIC), which was chartered under the PWG and is charged with improving coordination and communication among financial regulators, and enhancing the resiliency of the financial sector. Treasury's Assistant Secretary for Financial Institutions chairs the committee. In addition, the Terrorism Risk Insurance Act of 2002, as amended, requires the PWG to submit a report to the Senate Banking Committee and the House Financial Services Committee in 2013 regarding the long-term availability and affordability of insurance for terrorism risk.

Treasury does not employ any full time employees (FTEs) to work on PWG issues on a full time basis. Treasury administers the work of the PWG through existing staff within the offices of Domestic Finance and General Counsel on an ongoing basis. It's also important to note that going forward the FSOC will be funded by assessments on financial institutions, not tax revenues.

- b. In October of 2010, the President's Working Group on Financial Markets issued a report on money market funds, with reform options that the Working Group requested the FSOC consider. According to the Treasury Department, the report was "...one part in a series of steps that the regulatory community will be taking in the coming months to implement financial reform..." It appears, therefore, that Treasury views the President's Working Group on Financial Markets as part of the "regulatory community." It is, of course, in the sense that the Group contains regulators. It seems confusing, however, that the Group, consisting of FSOC members makes recommendations to the FSOC as a whole through a vehicle (the report on money market funds) external to the FSOC. Will you explain to me, if confirmed, why the FSOC members in the Working Group do not simply pursue their policy prescriptions directly in the FSOC itself? Will you explain to me Treasury's intentions for future use of the President's Working Group on Financial Markets to make recommendations to other parts of the regulatory community?

Answer:

The October 2010 report issued by the President's Working Group on Financial Markets (PWG) was a result of work that had been underway prior to the enactment of the Dodd-Frank Act in July 2010. Since the enactment of the Dodd-Frank Act, the FSOC has considered the need for reforms to the money market fund industry. The topic has been discussed at several FSOC meetings and was one of the recommendations included in the FSOC's 2011 annual report.

Treasury anticipates that the FSOC will continue to be a forum where potential money market fund reforms are discussed on an interagency basis. In addition, as required by the Dodd-Frank Act, each year the FSOC's annual report will include recommendations to enhance the integrity, efficiency, competitiveness and stability of the United States financial markets, to promote market discipline, and to maintain investor confidence. These recommendations may include recommendations for regulatory actions, as the FSOC considers appropriate. Treasury does not currently intend to make use of the PWG to make recommendations to other parts of the regulatory community in the future.

Question 4:

During your testimony before the Senate Committee on Finance, you provided only partial assurances to me that you would provide contemporaneous information, if I were to request it, concerning Treasury's cash positions and short-term forecasts of those positions. You seem to have hedged, in particular, concerning the forecasts by saying that some sort of balance would have to be struck regarding information sharing because some of the information that Treasury holds privately is labeled by Treasury to be "market sensitive."

In the recent debt limit impasse, the President identified publicly that he could not offer assurance that Social Security payments could be made if the debt limit was breached. Military leaders in the field of battle identified to our troops that assurance of payment for service could not be assured if the limit was breached. When I asked Treasury of its expectations regarding short-term cash flows, I was denied information out of concerns over market sensitivity. However, my Utah constituents were facing financial sensitivities and uncertainties. If a retired constituent from Sandy Utah asked me about the chances that the government would have enough cash in the till to pay his Social Security benefit payments, all I could say is: I don't know and Treasury won't tell me what to expect. If a soldier's family in Ogden Utah asked me about the chances that the soldier would receive her payments so that the family could pay their mortgage on time, all I could say is: I don't know and Treasury won't tell me what to expect. I do not believe that we have balance between concerns over release to Congress of market sensitive data and my constituents' concerns about their financial futures.

Congress and the military community and the intelligence community have found ways to share sensitive information. Financial regulators and the private sector share sensitive information (e.g., I doubt whether the Office of the Comptroller of the Currency [OCC] would allow one of the banks it regulates to withhold information from the OCC on the basis of it being "market sensitive"). Yet we seem not to have found ways for Treasury and financial regulators to share whatever they label as "sensitive" information with Congress. I believe that this is a fruitful topic of continued dialogue.

- a. Will you, if confirmed, promise to work with me to help resolve the issue of Treasury withholding information from Congress that Treasury self-identifies to be "market sensitive?"

Answer:

If confirmed, I will work with you to help resolve the issues you have identified relating to market-sensitive information.

- b. Will you, if confirmed, provide timely updates on Treasury's forecasts of when the debt limit will be attained, and information concerning Treasury's forecasts of how much "headroom" will be made available through Treasury's use of various "extraordinary measures" that have been used in the past to remain below the debt limit and any plans to use measures that have not been used in the past?

Answer:

Yes.

- c. Do you believe that past employees of the Treasury Department who worked with Treasury's cash inflow and outflow projection models possess nonpublic information derived from their previous work with the model contents which could be useful for constructing models in the private sector for personal benefit? If so, do they therefore possess market-sensitive information about the model, or is the market-sensitive information related solely to inputs into the model? If not, then will you inform me, if confirmed, whether Treasury will share its cash forecasting model with Congress?

Answer:

Employees of Treasury in many different capacities work with nonpublic information. Treasury employees, like all executive branch employees, are subject to ethics rules, including rules regarding the use of nonpublic information and laws prohibiting insider trading.

Treasury does not have a cash forecasting "model." Rather it has a detailed forecasting process. Treasury staff gathers public and nonpublic information, evaluates the data based on past monthly and daily trends, and makes informed judgments on near- and longer-term cash flows. It should be recognized that Treasury's cash projection process is inherently imprecise and subject to error.

Treasury believes it is important to have a strong working relationship with Congress, and is committed to providing accurate, up-to-date information to Congress and to the public.

- d. Will you, if confirmed, assist me in determining what market sensitive information is shared between the Treasury and employees of the Federal Reserve who participate in the daily cash position management conference call, and why sharing such information with the Federal Reserve but not Congress provides proper balance?

Answer:

Treasury's daily call with the Federal Reserve Board and the Federal Reserve Bank of New York (FRBNY) was established to provide the FRBNY with the information it needs to manage bank reserves and to assist Treasury in maintaining its targeted Reserve Bank balance. The specific information that is shared on the call can vary over time, depending upon cash management needs. I would be pleased to work with you to ensure a high degree of transparency regarding these matters.

Question 5:

I have previously asked Treasury about information concerning the Treasury Borrowing Advisory Committee (TBAC); yet have not received responses to all questions that I put forward. Will you, if confirmed, assist me in answering the following questions that will be helpful to me in fulfilling my oversight responsibilities?

- a. Is there a schedule with dates of future TBAC meetings and, if so, where might I find the schedule?**

Answer:

The Treasury Borrowing Advisory Committee (TBAC) meets regularly four times per year. The group typically meets on the Tuesday before the February, May, August and November quarterly refunding announcement. Treasury announces the exact date of the upcoming refunding one quarter in advance on the Treasury website at the following link:

<http://www.treasury.gov/resource-center/data-chart-center/quarterly-refunding/Pages/qtr-refunding-index.aspx>

The next quarterly refunding will be Wednesday, August 1, 2012, meaning that the TBAC meeting will be held on Tuesday, July 31, 2012. In addition, consistent with provisions in the Federal Advisory Committee Act (FACA), Treasury is required to publish a notice in the Federal Register, 14 days in advance, of any TBAC meeting. The meeting notice must include the date, time, and location of the upcoming meeting.

- b. When does Treasury send to TBAC members pre-meeting information, which often or perhaps always includes questions concerning whatever appears to market participants and Treasury to be timely and fruitful areas of inquiry for both sides of the Treasury securities market to discuss and analyze? Is there a fixed lead time?**

Answer:

Treasury typically sends questions of interest to two committee members, on a rotating basis, approximately two weeks prior to our meetings in Washington. Committee members are required to sign a confidentiality agreement upon receipt of the question. They are prohibited from discussing the question with anyone who has not signed a confidentiality agreement.

- c. Are there ever, say in a period of heightened financial market stress, Committee conference calls or other interchanges outside of the normal quarterly meetings?**

Answer:

Treasury has not convened a TBAC conference call during the Obama Administration. We know of at least one occasion in which TBAC members initiated a conference call to prepare for a TBAC meeting. Treasury has regular communications with investors, including individual members of the TBAC.

SENATOR JOHN KERRY (D-MA):

Question 1:

- a) **In 2010, the Securities and Exchange Commission altered Rule 2a-7 and enhanced liquidity and transparency requirements for money market mutual funds; however, the SEC is now planning to propose additional reform measures for the industry. Have you studied the impacts of the 2010 reforms?**

Answer:

Money market funds (MMFs) contributed to instability during the financial crisis in 2008 and at the time, the previous Administration was forced to intervene to prevent a widespread run. In February 2010, the SEC took actions to reduce the risk of this industry by adopting new portfolio credit, maturity and liquidity requirements in rule 2a-7. In addition, the SEC also imposed requirements to disclose each fund's portfolio holdings and "shadow" net asset value.

MMFs have become more resilient as a result of these new rules. For instance, MMFs currently hold liquidity in excess of new daily and weekly minimum liquidity requirements set by rule 2a-7.

Although money market funds are more resilient today, further steps are needed to improve the stability of the industry and reduce money funds' susceptibility to runs. This was a recommendation of both the President's Working Group Report in 2010 and the Financial Stability Oversight Council's 2011 Annual Report. The SEC and other members of the FSOC are actively discussing reform proposals, while trying to maintain money funds' important role in the allocation of credit in the economy.

- b) **Money market mutual funds are a large buyer of government debt at the local, state and federal level and several state and local officials have voiced concern that further reform could impact demand for their debt. How important are money market mutual funds as purchasers of Treasury Bills?**

Answer:

Approximately one-third of the \$2.9 trillion money market mutual fund industry is comprised of taxable government funds. Government funds' holdings of Treasury bills fluctuate over time, but are certainly an important asset held by these funds. The safety and liquidity of Treasury bills makes them a key component of many investors' portfolio.

- c) **Many money market fund industry participants have released recent data indicating that significant numbers of shareholders will exit money market funds if the SEC moves forward with its planned reforms. What impact could this have on the Treasury's borrowing costs?**

Answer:

Demand for Treasury bills is extremely high, given that they are the safest and most liquid investment in the world. Money market mutual funds are an important investor in the bill market, but we have a very broad investor base for our securities. For example, in Treasury's bill auctions, we consistently see demand in excess of our security offerings. In the first quarter of 2012, our auction bid-to-cover ratios averaged approximately 5:1. In other words, for every dollar of securities we offered, we attracted nearly 5 dollars of bids.

*U.S. Senate Committee on Finance
Nominations Hearing held May 8, 2012
Follow-Up Questions for the Record for Matthew Rutherford
Received May 16-21, 2012 and Submitted May 22, 2012*

SENATOR ORRIN G. HATCH (R-UT):

Questions for Mr. Matthew Rutherford from Senator Hatch: I have the following questions related to your responses to my earlier questions for the record that I posed following the May 8, 2012 hearing to consider your nomination. My questions are posed to gather answers from you, and not primarily to learn about the administration's policy positions. Your thorough responses to all of my questions, as well as those of other members of Congress, are important in helping arrive at informed decisions.

Question 1:

In response to my earlier question (labeled Question 1 in your response), I do not believe that you responded to the following inquiry: "...has Treasury chosen to pursue, using debt management tools, extensions of the average maturity of Treasury debt in order to reduce future risks of rising rates (e.g., rollover risk) as opposed to pursuing an objective of helping support the economic recovery?"

I understand, as you identify, that the Treasury Department's stated goal is to finance the government at the lowest cost over time. Finance costs could be lowered as a result of economic recovery. The question is whether, in pursuing the stated goal of Treasury in its financing of government, Treasury is choosing to forego an alternative possible goal of helping support the economic recovery.

ANSWER:

As you note, Treasury's stated goal has been to extend the average maturity of the debt. This was a policy that has been pursued since early 2009, when the average maturity fell to below 50 months – a multi-decade low. We are pursuing this policy because we believe that it helps us achieve our goal of financing the government at the lowest cost over time.

We do not believe that shortening our average maturity by issuing significant amounts of short-term debt would be a prudent debt management strategy. As Mary Miller, Undersecretary of the Treasury for Domestic Finance, said in a Letter to the Editor published on March 21, 2012, in *The Wall Street Journal*, "We understand the future risk of rising rates and are structuring our borrowing accordingly." Nonetheless, we are constantly assessing our strategy to make sure that we are striking the right balance of debt issuance.

Although the economy is recovering more gradually than we would like, we have now seen 11 consecutive quarters of economic growth. We do not believe that our debt management strategy has caused us to "forego an alternative possible goal of helping support the economic recovery." In fact, interest rates are at historical lows. Last week the 10-year Treasury yield closed at 1.7 percent, the lowest level on record.

The Administration has advocated pro-growth policies since taking office in 2009. As we have stated on a number of occasions, we believe it is important to ensure that we continue to pursue policies that provide support to the economic recovery.

Question 2:

In response to my earlier question (labeled Question 2 in your response); I believe that the risk to which I was referring is not the risk identified in your response. Perhaps my question was not clear or was misunderstood. I asked, in what you label as Question 2, "...what is the sense in which, on the basis of consolidating government liabilities of the Fed and the Treasury, Treasury's actions to extend the average maturity of its debt liabilities avoid future risks of rising interest rates?"

Your response, in part, was that interest rate risk is a risk assumed by the investor in the security; that the risk is not borne by the issuer; and that, consequently, Treasury does not face this type of risk.

My question asked about risks to consolidated Federal Reserve and Treasury-issued government liabilities of rising interest rates. Of course, as issuer, Treasury does not face interest rate risk in the sense of potential losses from price changes on outstanding issues. Treasury and the Fed do face, however, what is sometimes called "rollover risk" associated with interest rate changes. Unless I am mistaken, avoidance of such risk can be a rationale for extending the average maturity of Treasury obligations—to avoid having to refinance short-term debt in a period of rising rates, for example. As the U.S. Government Accountability Office has written: "...shorter-term securities generally carry lower interest rates but add uncertainty to the government's longer-term interest costs and require Treasury to conduct more frequent auctions to refinance them as they mature, which also poses rollover risk." And as a senior Treasury official wrote in a March letter to the editor of the Wall Street Journal: "We understand the future risk of rising rates and are structuring our borrowing accordingly."

While Treasury extends the average maturity of its debt, perhaps partly to avoid rollover risks, the question is whether such risks are being absorbed by the Federal Reserve given growth in its issuance of a massive stock of bank reserves, which are short-term, interest-bearing, liquid government obligations. Should interest rates normalize, for a given stock of reserves and a given inflation objective, the Fed would likely have to pay higher rates on reserve holdings. Of course, net income of the Fed after operating expenses and capital reserve alterations is remitted to the Treasury so that changes in that income, perhaps because of interest rate changes, influence the consolidated balance sheet of Treasury and the Fed.

ANSWER:

The Federal Reserve finances the purchase of assets in its Large-Scale Asset Purchase Program (LSAP) through the creation of bank reserves. These bank reserves earn the Federal Reserve's interest rate on excess reserves, which is currently set at 25 basis points. Currently there are approximately \$1.5 trillion of excess reserves in the banking system.

Theoretically, if the Federal Reserve decides to increase interest rates, they will pay a higher amount on the excess reserves in the system. However, that is an independent policy decision to be made by the Federal Reserve.

The Treasury and the Federal Reserve are independent entities with different mandates. Treasury only has influence over its own liability profile. On that basis, our job is to finance the government at the lowest cost over time.

Question 3:

In response to my earlier question (labeled Question 3 in your response), I asked: "Would you recommend that the President dissolve what has become a redundant Working Group on Financial Markets which, to my knowledge, absorbs taxpayer resources, can meet whenever it wants, and never produces meeting minutes that can be reviewed by the public?" You did not answer that question adequately.

The Treasury Department's website, in describing the position to which you have been nominated, states that the person in that position "...coordinates the inter-agency President's Working Group on Financial Markets." Consequently, if confirmed and if Treasury's website contains accurate information, you would be coordinating the President's Working Group (PWG) on Financial Markets.

The information you provided in your response to my question identified that the PWG is required to submit a report in 2013 regarding terrorism insurance according to the Terrorism Risk Insurance Act of 2002. While that is true, the so-called "Dodd-Frank Act," in Section 502, grants the recently established Federal Insurance Office (FIO) authority to assist the Secretary in administering the Terrorism Insurance Program established under the 2002 Act. While some may find it fruitful to have the FIO and PWG operating in the same area, unless there are other requirements of the PWG beyond the terrorism insurance report due in 2013, it appears to me that the PWG at the very least will then be redundant. My question therefore remains as to whether you would recommend dissolution of the PWG.

ANSWER:

Once the PWG has submitted the statutorily required report to Congress in 2013, Treasury would recommend retiring the PWG.

Question 4:

In response to my earlier question (labeled Question 4 in your response), you identified that "...Treasury does not have a cash forecasting 'model.'" Rather, you say, it has a "...detailed forecasting process." If there is no "model" used, then no one who has worked for Treasury could know it. They would, however, know the "forecasting process." It is not clear to me how the semantic distinction, if any, is helpful. It would be surprising to me if in the "process" of forecasting cash flows, some sort of forecasting (e.g., statistical) "model" is not used.

Is there any model used, where by model I mean a formalization of relationships among random variables used for statistical inference, or do Treasury forecasters merely make informed guesses? If so, on what basis are those guesses formulated? What are the elements of the "forecasting process" that are "market sensitive?" Please identify what constitutes the forecasting process, including identification of the inputs into the process and what informational inputs are market-sensitive.

ANSWER:

Treasury's cash forecasting process involves the estimation of future governmental cash flows. Treasury's estimation of future cash flows can be broken down into the estimation of governmental receipts, outlays for government operations, and net cash flows from the issuance of Treasury securities. Each of these categories, including examples of market sensitive inputs, is discussed further below. Because the forecasting process involves projections of the future, there is necessarily a margin of error to Treasury's estimates; there is, for example, significant volatility with respect to projected receipts and outlays for any particular day.

The government receives cash from a number of sources, including withheld taxes, estimated and final individual tax payments, Social Security and other payroll taxes, corporate income taxes, excise taxes, estate and gift taxes, customs duties, and other sources. Treasury prepares cash projections for each of these receipt sources, taking into account the fact that inflows from some sources of cash have distinctive patterns at different points on the calendar. An example of a projected receipt that would be market sensitive would be Treasury's plans for the sale of TARP assets.

The government's payments are made when so requested by government agencies. Treasury translates agencies' preliminary estimates into estimated outlays, based upon historical data, business rules for when payments are required, contacts with individual agencies, and other forecasting methodologies. Agencies' estimates of their outlay requirements reflect future policy plans, some of which may be market sensitive.

The final aspect of cash forecasting involves estimating the impact of Treasury security issuances and redemptions. This includes forecasting the net impact of both marketable and non-marketable Treasury securities that are issued to the public. Although Treasury publicly announces its estimates of net marketable borrowing once per quarter, intra-quarter developments may necessitate changes from the announced projections, and such changes are considered market sensitive.

