

**NOMINATIONS TO THE  
U.S. DEPARTMENT OF COMMERCE  
AND THE FEDERAL TRADE COMMISSION**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

FIRST SESSION

NOVEMBER 15, 2011

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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**NOMINATIONS TO THE  
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**TUESDAY, NOVEMBER 15, 2011**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:29 p.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

The CHAIRMAN. The hearing will come to order, please.

I want to welcome and to congratulate the three nominees who are appearing before the Commerce Committee today.

And you, too, Senator Kohl. You're already in the Senate, so I assume we don't have to approve you, but you're here and we welcome you. I value your commitment to public service, and I always say this because I mean it, given what people think about public service these days and politics these days doesn't in any way detract from the majesty of the experience of following public service and drilling down and keeping drilling down and expanding your knowledge.

We can't seem to make bills pass well enough to satisfy the needs of the country, but that does not take away from the courage and the steadfast, and I believe the awesomeness of those who volunteer to come and do this. So thank you for that attitude.

I'm going to start today with Jon Leibowitz, who's been nominated to have a second term as Commissioner and Chairman of the Federal Trade Commission.

I'm a fan. During his seven-year term as a Commissioner and during the past three years as Chairman, Mr. Leibowitz has shown that he understands the vital role of the FTC as the Nation's premier consumer-protection body.

You may remember during the Wall Street—the Dodd—  
Senator BOXER. Frank.

The CHAIRMAN.—Frank, that they wanted to eliminate the Federal Trade Commission and give everything to the Federal Reserve Commission and have them set up a consumer—and, I think, there's somebody running for Senate in Massachusetts that can tell you that didn't work out very well. We kept the Federal Trade

Commission and we kept its powers, and it's an awesome body, which has been around for a long time doing incredible work.

Under Jon Leibowitz's leadership, the FTC has used its enforcement and rulemaking authorities to improve financial protection for consumers who are at risk with scams and frauds, developed important proposals to modify FTC rules on child-privacy protection and lead the way in contemplating new privacy and data-security frameworks, all very complicated and controversial stuff in an ever-evolving online and mobile world.

I appreciate Chairman Leibowitz's hard work and I look forward to your continued service at the FTC.

Also welcome, Ms. Maureen Ohlhausen who has been nominated to serve as Commissioner at the FTC. She comes to the position with many years of experience in privacy, data security and cyber-security law, which we need.

She also comes with strong understanding and appreciation of the institution, having served on the staff of the FTC for many years. I'm confident that she will continue the long bipartisan tradition that is one of the hallmarks of the Commission.

Ms. Rebecca Blank has been nominated to serve as Deputy Secretary of Commerce. It's nice to get somebody passed in Congress, you know? Takes a long time around here. Hopefully, we'll get this done.

We just confirmed the Secretary of Commerce late last month. I'm embarrassed at how long that took. I'm pleased that, with his nomination and this nomination, the leadership of the department will be well set.

Ms. Blank has had a distinguished career in economics. Over the past 3 years, she served in a variety of positions in the department, including serving as Acting Deputy Secretary and Acting Secretary of the department. She has performed these duties admirably and I believe she is a very strong pick for Deputy Secretary.

So these two agencies that these nominees seek to lead and to serve on are vital to our country and our economy, and we need highly qualified professionals to take on these positions, and we're lucky that they have agreed to put themselves up for public scrutiny and, hopefully, nomination.

The Ranking Member is not here. Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. I'll be brief. I want to thank Dr. Rebecca Blank, Jon Leibowitz, Maureen Ohlhausen for agreeing to serve.

Dr. Blank has done an admirable job keeping the Commerce Department running smoothly. In addition to her role as Under Secretary for Economic Affairs, she has served as Acting Secretary and Acting Deputy Secretary, and I thank her for her service and want to hear her plans for moving the department and our economy forward.

I also extend a special welcome to Federal Trade Commission Chairman Leibowitz, who has roots in my home state of New Jersey, and no wonder he's wise.

Chairman Leibowitz attended high school in Englewood, New Jersey. Since being sworn in as Chairman in 2009, he's made consumer protection a priority, and I look forward to his testimony.

Ms. Ohlhausen is nominated to join Mr. Leibowitz as an FTC Commissioner. This is her first nomination, but she knows the FTC well, having worked with the agency for more than decade.

And I'm eager to hear from each of these nominees, Mr. Chairman, particularly about how we can protect consumers and strengthen our economic recovery.

Thank you.

The CHAIRMAN. If there are not others, I would call on Senator Herb Kohl from the State of Wisconsin to introduce our first witness.

**STATEMENT OF HON. HERB KOHL,  
U.S. SENATOR FROM WISCONSIN**

Senator KOHL. Mr. Chairman and members of this Committee, I appear here today to introduce Chairman Jon Leibowitz and to strongly support his confirmation to another full term as a Commissioner of the Federal Trade Commission. Jon has served as a Commissioner since 2004 and as its Chairman since March of 2009.

As many of you know, this nomination is a matter of particular pride for me because Jon served as my Chief Counsel on my Judiciary Committee staff for 12 years until 2001. Jon proved to be extraordinarily able in this position. I know him to be highly dedicated, an excellent lawyer with a sharp mind and deeply committed to public service.

Since joining the FTC, Jon has become known as a strong protector of full and robust competition in the economy and as a passionate champion for consumers.

His many achievements as FTC Chairman include the FTC settlement last year with Countrywide, where consumers received repayment of a total of \$108 million for the excessive fees they were charged by Countrywide in connection with their home mortgages, his actions to combat pay-for-delay settlements, which deny consumers the benefits of low-cost generic drugs, his initiatives to protect consumer privacy on the Internet and his vigorous enforcement of antitrust laws to protect consumers in many key industries, from healthcare to computer hardware.

A hallmark of Jon's chairmanship of the FTC is his encouragement of collaboration among his colleagues on the Commission working hard to ensure that his agency strives to the fullest extent possible to reach decisions that reflect consensus across party and ideological lines.

Since he joined the Commission in 2004, Jon has shown our entire nation those leadership qualities that I recognized years ago. His outstanding performance at the FTC fully warrants his renomination for a second term as a Commissioner. I urge my colleagues to join me in supporting his renomination to another full term.

I thank you, Mr. Chairman, for giving me the opportunity to appear before you today.

The CHAIRMAN. Senator Kohl, you are a distinguished visitor. We're grateful for your presence here today. I thank you for the service that you have done on this day and all days.

I'd like to give the Ranking Member, Senator Hutchison, a chance to make a remark, and then I think Senator Boxer wants to make a remark also.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,  
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Mr. Chairman, I'm happy to yield to anyone who has another commitment, because I'm going to stay. OK.

Thank you, Mr. Chairman, for, of course, holding this hearing, and I am pleased that Dr. Blank is coming back before the Committee for the position of Deputy Secretary at the Department of Commerce. We just confirmed Secretary Bryson, and it is important that we get his Deputy in place as soon as possible, so they can have the full leadership team.

Dr. Blank is in a unique position, having served for almost a year as Acting Deputy Secretary and Acting Secretary for the 2 months while the confirmation of Secretary Bryson was pending.

I'm also pleased to see our two nominees for the Federal Trade Commission, Maureen Ohlhausen and Chairman Leibowitz. The FTC's mission is a critical one, we all know, and its expansive jurisdiction covers both consumer protection and antitrust issues in a broad range of industries.

Because the FTC covers such a broad umbrella of issues, I'll be interested to hear the nominees' views on industry regulation through agency rulemaking.

While there is a place for carefully considered regulation, we must be careful not to regulate for the sake of regulating, and before any new directives are issued, they should be carefully considered against all alternatives to ensure a balanced and fair approach that will not stifle innovation or competition nor impede job growth.

This is particularly important in the online world. As pervasive as the Internet now is, online business models and services and self-regulatory programs are still fairly new. They are evolving every day. Any rules in this space, whether regulatory or legislative, would have to be informed by this dynamic environment, so regulating before the markets develop could be harmful.

I do have some other concerns regarding recent and upcoming action by the Committee that I hope we can clarify and that would include the Interagency Working Group on Food Marketing, which is finalizing its recommendations and will soon send them to Congress. I'm unclear on the way in which the working group arrived at its recommendations and I would like to talk to Chairman Leibowitz about that.

And Mr. Leibowitz also has been a staunch supporter for prohibiting so-called reverse-payment settlements for pharmaceuticals, which would be on my agenda to ask of him as well as Ms. Ohlhausen.

So I do think we need to proceed with the hearing, and I appreciate very much your calling it.

The CHAIRMAN. Thank you, Ranking Member Hutchison.  
Senator Boxer.

**STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you, Chairman Rockefeller and Ranking Member Hutchison.

I want to say to all the nominees I'm supporting all of you, so never fear about that, but due to my schedule, I can't stay to hear the testimony.

I would love to engage Chairman Leibowitz, not that he would answer me, but just by a nod of the head, so I know he's working on a couple of issues. And if he can't do the nod of the head, I'll call him later.

But there are two things that I think are really important, and I don't know if my colleagues have heard about this, but the first issue involves the processing of gift receipts at national retail stores.

Thanks to the work of the CBS-TV station in Sacramento, California, we learned earlier this year that Walmart stores were short-changing customers returning items using gift receipts.

For example, in one instance, the station's producers purchased various items from Walmart totaling \$51, but when they later returned the items using their gift receipt, which blanks out the price, they got back \$27, and it was shocking, and it was done over and over again. In other cities, the same thing happened.

So, Mr. Chairman, it would be as if I went out and bought you a Christmas gift or a birthday gift and spent \$35 and then you had a duplicate. You bring it back and you get back \$15, and you say, "What a chincy colleague I had there. She could have at least spent 35 bucks on me."

The point is that's out and out theft. And when they answered the question, the store said, oh, this was just a staff problem. But what was happening is because it was reiterated in other places—yes, Walmart blamed the staff for the errors. Producers in Dallas did the same thing, and they had the same exact problem, and in other national retail chains. So what's happening here? It sounds like it's some type of a scam going on.

And so anyway, I wrote to you, Mr. Chairman Leibowitz, and I just want to know that this has been brought to your attention, because I wrote—I've written you a couple of times.

I know it's hard for you to say too much, but I would hope that in the near future we would see a response from you on this. It's very disturbing. It's just like somebody's going and picking somebody's pocket. It's just the same deal, and then there's, you know, deniability.

And then the second issue has to do with voice-mail security. In September, I wrote wireless phone carriers T-Mobile and Sprint to bring to their attention a vulnerability with their security systems, because private voice-mail information is at risk of hacking.

T-Mobile and Sprint do not require customers to input a number when they call their voice-mail from their own cell phone, and this is a major problem, because it leaves customers at risk of hacking through simple free and easy-to-use software called "Spoofing Software."

Verizon and AT&T have changed their security systems to require customers to input their voice-mail pin whenever they access their voice-mail which prevents Spoofing Software from working.

I asked T-Mobile and Sprint to update their security, but they're saying no, and they're arguing that they have no vulnerability.

In July, the *National Journal* reported that you supported the FTC having jurisdiction over wireless carriers in order to deal with voice-mail security issues, and, by a nod of the head, do you still hold that opinion?

OK. It's not quite a nod. So I will follow up on that issue with you.

But, Mr. Chairman, I so appreciate this time, and I so appreciate your leadership, and if I could say that the two of you are really a great model. Senator Inhofe and I are learning from you, and we've just reported out a bill that we did working together, and it's just a pleasure to be with you. Thank you.

The CHAIRMAN. Thank you, Senator Boxer.

And Chairman Leibowitz.

Chairman LEIBOWITZ. Mr. Chairman, would you like me to start or—

The CHAIRMAN. Yes, and you and Maureen Ohlhausen and Dr. Blank are all seated. Why don't you begin?

**STATEMENT OF HON. JON D. LEIBOWITZ, NOMINATION  
TO BE COMMISSIONER AND CHAIRMAN,  
FEDERAL TRADE COMMISSION**

Chairman LEIBOWITZ. Chairman Rockefeller, Ranking Member Hutchison, Senator Lautenberg, Senator Pryor, Senator Udall, I'm pleased to appear before you with Maureen Ohlhausen, a former FTC official who we hope will soon be back at the agency in a new role as Commissioner.

And I'm delighted to be here with my colleagues on the Commission, Tom Rosch, Edith Ramirez and Julie Brill.

I'm also joined by my wife, Ruth Marcus, by far my better half—some of you know her, so you know that's true—our daughters, Emma and Julia, and my in-laws, Arnold and Judy Marcus, who are somewhere back there.

It's been a wonderful opportunity to serve on the FTC for the past 7 years, including the last two-and-a-half as Chairman.

Just 3 years shy of our centennial, as you mentioned, Senator Rockefeller, we are the nation's premier consumer protection agency. We play a critical role in freeing the marketplace from predatory, fraudulent and anticompetitive conduct that tilts the playing field against consumers and honest business people, and we focus on a wide range of goods and services from high-tech computer chips to children's mobile apps to one-way truck rentals.

The Commission's great strength is that we are bipartisan. We are collegial and we work hard to reach decisions by consensus. We are inspired by a staff that is widely recognized as one of the most professional, dedicated and highly qualified in the Federal Government.

As you know, we are a small agency with a big mission. Let me highlight just a few of the issues we're going to continue to focus on.

Pursuing unfair or deceptive practices aimed at financially distressed consumers will remain a priority at the FTC. The exponential growth of the Internet, combined with the current economic downturn has fueled a resurgence in what we call last-dollar frauds. These are targeted at the most vulnerable Americans, and they include foreclosure-rescue scams, sham debt relief and bogus job opportunities.

Since 2009, the FTC alone has brought more than 90 cases against these predators, and thanks to you and the Ranking Member for protecting our jurisdiction here during Dodd-Frank. Leveraging our resources and working cooperatively with the state attorneys general and other Federal and state agencies, we have partnered in more than 400 such cases.

As just one example, this past summer, the FTC concluded a case against Countrywide for mishandling consumer loans in bankruptcy and charging excessive fees for mortgage servicing. We mailed, as Senator Kohl mentioned, \$108 million in redress checks to more than 450,000 homeowners.

Consumer privacy will continue to be a major focus from both the enforcement and the policy perspectives. Ever-evolving technologies, such as mobile devices, open up the riches of the Internet, but they also pose new threats. The FTC has responded by bringing nearly 100 spam and spyware cases, more than 30 data-security cases and almost 80 cases for violations of Do-Not-Call in the past decade.

Last December, we also released a preliminary staff report highlighting self-regulatory principles that seek to protect consumer privacy, while, at the same time, making certain that industry can continue to innovate on the Internet.

Of course, protecting privacy in the face of new technologies will remain a challenge. We're aware of this Committee's concerns about the privacy implications of mobile apps, geolocation devices and facial recognition, the value of industry-wide codes of conduct and the difficulty of safeguarding consumer privacy when users of electronic devices every year seem to grow younger as well as more tech savvy than their parents. We look forward to working with you to address these issues.

Healthcare competition will remain very high on the FTC's agenda. Families struggling to make it in tough economic times are particularly vulnerable to rising healthcare costs. We push back against this trend, challenging proposed hospital mergers likely to raise prices and fighting various anticompetitive restrictions on healthcare goods and services.

An especially egregious practice, we believe, that we work to restrict and not to ban is the pay-for-delay pharmaceutical settlement. These sweetheart deals between brand-name and generic drugmakers delay the entry of lower-priced generics on the market and cost Americans billions of dollars annually in higher prescription prices.

Equally troubling, these agreements add to the Federal deficit, because taxpayers fund about one-third of the nation's prescription drugs through Medicare, veterans' programs and the like.

The FTC will continue to monitor petroleum markets closely. We are keenly aware of the impact of gasoline prices on American fam-

ilies. Households have only limited ability to reduce their gasoline consumption, and increased prices severely cut into their ability to buy other necessary goods.

And, finally, given the agency's jurisdiction over broad sectors of the economy, we will continue to produce various industry studies, many of which have been requested by Congress and virtually all of which emphasize self regulation. These include periodic reports on the marketing of violent entertainment to children. We examine movies, music and video games, and, next year, we'll look at content-based applications or apps, which all too often don't give adequate guidance to parents.

One recent study concerns as Senator Hutchinson mentioned—the marketing of healthy foods to kids. The feedback from stakeholders has helped us make significant improvements to the report's recommendations. I know this committee will have questions about the part of the report written by the FTC on marketing, and I will be happy to try to answer your questions.

To conclude, if I'm fortunate enough to be confirmed, I will continue to tackle this broad portfolio of issues with the same energy, focus and bipartisanship that our agency has applied in the past and to work with this Committee and with my wonderful colleagues at the Commission for the benefit of American consumers. Thank you.

[The prepared statement and biographical information of Chairman Leibowitz follow:]

PREPARED STATEMENT OF HON. JON D. LEIBOWITZ, NOMINATION TO BE  
COMMISSIONER AND CHAIRMAN, FEDERAL TRADE COMMISSION

I am pleased to appear before you with Maureen Ohlhausen, a former FTC official, who we hope will soon be back at the agency in a new role as a Commissioner. And I am delighted to be here with my colleagues on the Commission: Tom Rosch, Edith Ramirez, and Julie Brill. I am also joined by my wife, Ruth Marcus, and our daughters, Emma and Julia.

It has been a wonderful opportunity to serve on the FTC for the past seven years, including the past two-and-a-half as Chairman. Just three years shy of our centennial, the FTC is the Nation's premier consumer protection agency. We play a critical role in freeing the marketplace from predatory, fraudulent, and anticompetitive conduct that tilts the playing field against consumers and honest businesspeople. And we focus on a wide range of goods and services—from high-tech computer chips to children's mobile apps to one-way truck rentals.

The Commission's great strength is that we are bipartisan, collegial, and work hard to reach decisions by consensus. We are inspired by a staff that is widely recognized as one of the most professional, diligent, and highly qualified in the Federal Government.

As you know, we are a small agency with a big mission. Let me highlight just a few of the issues on which we will continue to focus:

Pursuing unfair or deceptive practices aimed at financially distressed consumers will remain a priority for the FTC. The exponential growth of the Internet, combined with the current economic downturn, has fueled a resurgence of what we call "last dollar frauds." These are targeted at the most vulnerable consumers and include foreclosure rescue scams, sham debt relief, and bogus job opportunities. Since 2009, the FTC alone has brought 90 cases against these predators. Leveraging our resources, we partnered with State Attorneys General and other Federal and state agencies on more than 400 such cases.

As just one example, this past summer, the FTC concluded a case against Countrywide for, we alleged, mishandling consumer loans in bankruptcy and charging excessive fees for mortgage servicing. We mailed more than \$108 million in redress checks to 450,000 homeowners.

Consumer privacy will continue to be a major focus from both enforcement and policy perspectives. Ever-evolving technologies, such as mobile devices, open up the

riches of the Internet but also pose new threats. The FTC has responded by bringing almost 100 spam and spyware cases, more than 30 data security cases, and nearly 80 cases for violations of Do Not Call in the past decade. Last December, we also released a preliminary staff report highlighting critical self-regulatory principles that seek to protect consumers' privacy while allowing industry to continue to innovate on the Internet.

Of course, protecting privacy in the face of new technologies will remain a challenge. We are aware of this Committee's concerns about the privacy implications of mobile apps, flash cookies, geo-location, and facial recognition; the value of industry-wide codes of conduct; and the difficulty of safeguarding privacy when users of electronic devices every year seem to grow younger as well as more tech-savvy than their parents. We look forward to working with you to address these issues.

Healthcare competition will remain very high on the FTC's agenda. Families struggling to make it in tough economic times are particularly vulnerable to rising health care costs. We push back against this trend, challenging proposed hospital mergers likely to raise prices and fighting various anticompetitive restrictions on health care goods and services.

An especially egregious practice that we work to restrict is the "pay-for-delay" pharmaceutical settlement. These sweetheart deals between brand-name and generic drug makers delay entry of lower-priced generics on the market and cost Americans billions of dollars annually in higher prescription prices. Equally troubling, these agreements add to the Federal deficit because taxpayers fund about one third of the Nation's prescription drugs through Medicare, veterans' programs, and the like.

The FTC will continue to monitor petroleum markets closely. We are keenly aware of the impact of gasoline prices on American families—households have only limited ability to reduce their gasoline consumption, so increased prices severely cut into their ability to buy other necessary goods. This past summer, FTC staff issued a study that examined the various factors that increase the price of gasoline, such as OPEC's inherently anticompetitive behavior and rising demand in China and India. We also opened an investigation when we learned of anomalous behavior among oil refineries—profit margins were going up at the same time utilization rates were going down. Let me assure you, if we find violations of the law, we will aggressively pursue them.

Finally, given the agency's jurisdiction over broad sectors of the economy, we will continue to produce various industry studies—many of which Congress requested and emphasize self-regulation. These include periodic reports on the marketing of violent entertainment to children—we examine movies, music, and video games, and next year, we will look at apps, which all too often don't give parents guidance. The most recent study concerns the marketing of healthy food to kids. The feedback from stakeholders has helped us make dramatic improvements to the report's recommendations. I know this Committee will have questions about the marketing part of that report, written by the FTC, and I will be happy to answer them.

To conclude, if I am fortunate enough to be confirmed, I will continue to tackle this broad portfolio of issues with the same energy, focus, and bipartisanship that our agency has applied in the past, and to work with this Committee for the benefit of American consumers.

Thank you.

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#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Jonathan D. Leibowitz.
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: March 4, 2011.
4. Address (List current place of residence and office addresses):  
 Residence: Information not released to the public.  
 Office: Federal Trade Commission, 600 Pennsylvania Ave NW, Washington DC 20580.
5. Date and Place of Birth: Born June 17, 1958 in New York City, NY.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).  
 Married to Ruth Allyn Marcus, Journalist, *Washington Post*; children: Emma Rose Leibowitz—age 15; Julia Rachel Leibowitz—age 13.
7. List all college and graduate degrees. Provide year and school attended.

University of Wisconsin (1976–1980), BA 1980.  
 New York University School of Law (1981–1984), JD 1984.

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Chairman, Federal Trade Commission, Washington, D.C. (2009 to present)  
 Commissioner, Federal Trade Commission, Washington, D.C. (2004–2009)  
 Vice President, Congressional Relations, Motion Picture Association of America, Washington, D.C. (2000–2004)  
 Chief Counsel, United States Senator Herb Kohl, Senate Judiciary Committee, Washington, D.C. (1989–2000)

Democratic Chief Counsel and Staff Director:

Senate Judiciary Committee Subcommittee on Antitrust, Business Rights and Competition (1997–2000);

Senate Judiciary Committee Subcommittee on Terrorism and Technology (1995–1996);

Senate Judiciary Committee Subcommittee on Juvenile Justice (1991–1994)

Counsel, United States Representative Edward Feighan (1987–1988)

Counsel, United States Senator Paul Simon, Senate Judiciary Committee (1986–1987)

Attorney, Lane and Edson, Washington, D.C. (1985–1986)

Attorney, Cole, Raywid and Braverman, Washington, D.C. (1984–1985)

Summer Associate, Katten Muchin Zavis Pearl & Geller (Summer 1983)

Employee, Sib's-by-the-Sea, St. Thomas, U.S. Virgin Islands (1981)

Employee, Vantage Publishing, New York, N.Y. (1980–1981)

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years: None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, D.C. Bar, 1986 present

Member, New York State Bar Association, Admitted 1986; Retired 1987 to present

Member, Sports Club LA, 1170 22nd St. NW, Washington, D.C.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

Chairman, Federal Trade Commission, 2009 to present.

Commissioner, Federal Trade Commission, 2004–2009.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

I have made no contributions of \$500 or more for the past 10 years.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

*Phi Beta Kappa*, University of Wisconsin, 1980

Knapp Fellowship (for Undergraduate Honors Thesis)

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

**Speeches and Remarks**

*2011*

Remarks to the Association of Magazine Media (Magazine Publishers of America)

Washington, D.C.

April 12, 2011

Remarks at “Enforcers’ Roundtable” at ABA Antitrust Section Spring Meeting

Washington, D.C.

April 1, 2011

Remarks at American Antitrust Institute Luncheon Honoring Art Amolsch

Washington, D.C.

March 31, 2011

Welcome Remarks at the International Competition Network (ICN) Cooperation Roundtable

Washington, D.C.

March 29, 2011

Remarks to the Newspaper Association of America Board of Directors

Dallas, Texas

March 25, 2011

Remarks at Boston College Law School

Newton, Massachusetts

March 17, 2011

Remarks at the International Association of Privacy Professionals (IAPP) Global Summit

Washington, D.C.

March 10, 2011

Remarks at the National Association of Attorneys General (NAAG) Spring Meeting

Washington, D.C.

March 7, 2011

“Public Sector Lawyering: A Conversation with FTC Chair Jon Leibowitz”

Remarks at the Indiana University Maurer School of Law

Bloomington, Indiana

March 3, 2011

Remarks at the Asia-Pacific Economic Cooperation (APEC) Privacy Workshop

Washington, D.C.

March 1, 2011

Remarks at the Giles Sutherland Rich American Inn at Court

Washington, D.C.

February 16, 2011

“Helping Business Bear the New Financial Consumer Protection Regime”

Remarks at the United States Chamber of Commerce

Center for Capital Markets Competitiveness

Washington, D.C.

January 20, 2011

*2010*

Remarks at the American Antitrust Institute (AAI) Conference on the Future of Private Antitrust Enforcement

Washington, D.C.

December 7, 2010

Remarks on the Release of the Preliminary FTC Staff Report on Privacy

Washington, D.C.

December 1, 2010

“Fighting for the Middle Class: The FTC Tackles Mortgage Rescue Fraud”

Remarks at a Middle Class Task Force Event with Vice President Biden

Washington, D.C.

November 19, 2010

Remarks at the ABA Antitrust Section Fall Council Meeting  
 Washington, D.C.  
 November 17, 2010  
 Keynote Address at the Global Forum 2010  
 Washington, D.C.  
 November 8, 2010  
 Lewis Bernstein Memorial Lecture  
 St. John's School of Law  
 Queens, New York  
 October 12, 2010  
 Remarks at Common Sense Media Press Conference for the Net Cetera Community Toolkit  
 Washington, D.C.  
 October 8, 2010  
 Opening Statement  
 FTV/CMS Workshop on Accountable Care Organizations  
 Washington, D.C.  
 October 5, 2010  
 Remarks at "Toward Healthy Informed Communities: The Knight Commission Report One Year Later"  
 Washington, D.C.  
 September 29, 2010  
 Remarks at the Fordham Competition Law Institute Annual Conference  
 New York, New York  
 September 24, 2010  
 "Making the Grade? A Year at the FTC"  
 Remarks at the Fourth Annual Global Antitrust Enforcement Symposium  
 Georgetown Law Center  
 Washington, D.C.  
 September 21, 2010  
 Remarks at FTC Press Conference on Intel Corporation  
 Washington, D.C.  
 August 4, 2010  
 Remarks announcing FTC Debt Settlement Rule at a Middle Class Task Force Event with Vice President Biden  
 Washington, D.C.  
 July 29, 2010  
 Remarks at FTC/OECD Roundtable on the OECD Consumer Policy Toolkit  
 Washington, D.C.  
 July 21, 2010  
 Introductory Remarks at the Third FTC News Media Workshop  
 Washington, D.C.  
 June 15, 2010  
 Remarks at FTC Press Conference Regarding Settlement with Countrywide  
 Washington, D.C.  
 June 7, 2010  
 "A Doctor and a Lawyer Walk Into a Bar: Moving Beyond Stereotypes"  
 Remarks to the American Medical Association House of Delegates  
 Chicago, Illinois  
 June 14, 2010  
 "Where's the Remote? Maintaining Consumer Control in the Age of Behavioral Advertising"  
 Remarks at the National Cable & Telecommunications Association  
 The Cable Show 2010  
 Los Angeles, California  
 May 12, 2010  
 Opening Remarks at the International Consumer Protection Enforcement Network (ICPEN) Conference  
 Washington, D.C.  
 May 6, 2010

Remarks at the Roundtable Conference with Enforcement Officials  
 58th ABA Section of Antitrust Law Spring Meeting  
 Washington, D.C.  
 April 23, 2010

Remarks at the Association of National Advertisers Advertising Law and Public Policy Conference  
 Washington, D.C.  
 March 18, 2010

Remarks to the Consumer Federation of America's Consumer Assembly Conference  
 Washington, D.C.  
 March 11, 2010

Introductory Remarks at the Second FTC News Media Workshop  
 Washington, D.C.  
 March 10, 2010

Remarks at FTC Press Conference Regarding Settlement With LifeLock (with Illinois AG Lisa Madigan)  
 Chicago, Illinois  
 March 9, 2010

Remarks at FCC Workshop: Consumers, Transparency and the Open Internet  
 Washington, D.C.  
 January 19, 2010

Remarks at the 36th Annual ABA Mid-Winter Meeting  
 Miami, Florida  
 January 16–18, 2010

Remarks at Pay for Delay Press Conference with Subcommittee Chairman Bobby Rush  
 Washington, D.C.  
 January 13, 2010

2009

Remarks on the Release of *Net Cetera* with Education Secretary Duncan and FCC Chairman Genachowski  
 Washington, D.C.  
 December 16, 2009

Introductory Remarks for Sizing Up: Food Marketing and Childhood Obesity Workshop  
 Washington, D.C.  
 December 15, 2009

Introductory Remarks for OECD's Empowering E-Consumers Workshop  
 Washington, D.C.  
 December 8–9, 2009

Introductory Remarks for the FTC Privacy Roundtable  
 Washington, D.C.  
 December 7, 2009

Introductory Remarks for FTC/DOJ Horizontal Merger Guidelines Workshop  
 Washington, D.C.  
 December 3, 2009

"Creative Destruction" or Just "Destruction": How Will Journalism Survive the Internet Age?  
 Opening Remarks at the FTC News Media Workshop  
 Washington, D.C.  
 December 1–2, 2009

Remarks at "Operation Stolen Hope" Mortgage Fraud Event with Senator Harry Reid  
 Las Vegas, Nevada  
 November 24, 2009

Remarks at National Archives Panel Discussion Regarding Supreme Court Justice Louis Brandeis  
 Washington, D.C.  
 November 17, 2009

Remarks at the Commission Nationale de l'Informatique et des Libertés (CNIL)  
 Paris, France  
 October 20, 2009

Remarks at FTC/DOJ/NAAG Antitrust Program  
 Columbia University School of Law  
 New York, New York  
 October 7, 2009

Federal Trade Commission Enforcement of the Antitrust Laws  
 Remarks at the 36th Annual Conference on International Antitrust Law & Policy of the Fordham Competition Law Institute at Fordham Law School  
 New York, New York  
 September 24, 2009

Introduction of Philip Lowe and Announcement of Joint FTC/DOJ Project to Modernize the Horizontal Merger Guidelines  
 Remarks at the Third Annual Georgetown Law Global Antitrust Enforcement Symposium  
 Washington, D.C.  
 September 22, 2009

Remarks at FTC/Treasury/DOJ/HUD/State Attorney General Mortgage Modification Roundtable  
 Washington, D.C.  
 September 17, 2009

Remarks at “Operation Loan Lies” Press Conference Involving Law Enforcement Action Against Companies Involved in Alleged Foreclosure Rescue Scams (with California AG Jeny Brown)  
 Los Angeles, California  
 July 15, 2009

Remarks at the ABA Antitrust Section General Counsel Dinner  
 Washington, D.C.  
 June 29, 2009

“Pay-for-Delay” Settlements in the Pharmaceutical Industry: How Congress Can Stop Anticompetitive Conduct, Protect Consumers’ Wallets, and Help Pay for Health Care Reform (The \$35 Billion Solution)  
 Remarks at the Center for American Progress’ Event, “Low Cost Solutions to Health Care Through Generic Competition”  
 Washington, D.C.  
 June 23, 2009

Remarks to the National Community Pharmacy Association  
 Washington, D.C.  
 May 13, 2009

Remarks to the Computer & Communications Industry Association (CCIA) at the Newseum  
 Washington, D.C.  
 May 6, 2009

Welcome Remarks at the ICN/Unilateral Conduct Workshop  
 Washington, D.C.  
 March 23, 2009

Remarks at the FTC Data Security Workshop  
 Washington, D.C.  
 March 17, 2009

Remarks at the 2009 Center for Democracy and Technology Gala  
 Washington, D.C.  
 March 10, 2009

#### 2008

“Tales from the Crypt” Episodes ’08 and ’09: The Return of Section 5 (“Unfair Methods of Competition in Commerce are Hereby Declared Unlawful”)  
 Remarks at the FTC Workshop: Section 5 of the FTC Act as a Competition Statute  
 Washington, D.C.  
 October 17, 2008

Remarks at the Fourth Annual In-House Counsel’s Forum on Pharmaceutical Antitrust  
 National Harbor, Maryland  
 May 21, 2008

“Excuse Me, I Think Your Shoe Is Ringing!” Getting Smart About Mobile Marketing Remarks at the FTC Town Hall Meeting on “Beyond Voice: Mapping the Mobile Marketplace”  
Washington, D.C.  
May 6, 2008

Social Networking Privacy: An Oxymoron?  
Opening Remarks for Panel at State of the Net Conference  
Washington, D.C.  
January 30, 2008

## 2007

So Private, So Public: Individuals, The Internet & The Paradox Of Behavioral Marketing  
Remarks at the FTC Town Hall Meeting on “Behavioral Advertising: Tracking, Targeting & Technology”  
Washington, D.C.  
November 1, 2007

Truth or Consequences: The FTC Approach to Advertising  
Remarks at the National Advertising Division Annual Conference  
New York, New York  
September 24, 2007

Childhood Obesity and the Obligations of Food Marketers or Whether or Not You Are Part of the Problem, You Need to Be Part of the Solution  
Remarks at the FTC/HHS Forum on Childhood Obesity  
Washington, D.C.  
July 18, 2007

Navigating Between Dystopian Worlds on Network Neutrality: With Misery and Wretchedness on Each Side, Can We Find a Third Way?  
Remarks to the Broadband Connectivity Competition Policy Workshop  
Washington, D.C.  
February 13, 2007

Remarks at the ABA Consumer Protection Conference  
Washington, D.C.  
Tuesday, January 30, 2007

## 2006

Remarks on “Information Security Breaches: A View from the U.S. and EU”  
Hunton & Williams  
Washington, D.C.  
November 17, 2006

The Changing Internet: Hips Don’t Lie  
Remarks at the “Protecting Consumers in the Next Tech-ade” Group Meeting  
Washington, D.C.  
November 6, 2006

How Settlements Make Strange Bedfellows: Or How the Federal Trade Commission has Managed to Unite the Entire Pharmaceutical Industry (But Only in Opposition to the FTC’s Position on Exclusion Payment Settlements)  
Remarks at the Generic Pharmaceutical Association’s Annual Policy Conference  
Washington, D.C.  
September 29, 2006

Remarks at PFF Aspen Summit Working Dinner  
Aspen, Colorado  
August 21, 2006

Remarks at the Center for American Progress Panel “The Internet and the Future of Consumer Protection”  
Washington, D.C.  
July 24, 2006

Statement Concerning Whois Databases before the Internet Corporation for Assigned Names and Numbers (“ICANN”) Meeting  
Marrakech, Morocco  
June 2006

Exclusion Payments to Settle Pharmaceutical Patent Cases: They're B-a-a-a-ck!  
 (The Role of the Commission, Congress, and the Courts)  
 Remarks at the Second Annual In-House Counsel's Forum on Pharmaceutical  
 Antitrust  
 Philadelphia, Pennsylvania  
 April 24, 2006  
 Remarks at the ABA Spring Meeting 2006  
 Washington, D.C.  
 March 30, 2006  
 Remarks at the Anti-Spyware Coalition Public Workshop  
 Washington, D.C.  
 February 9, 2006  
 Remarks at the Internet Caucus State of the Net Conference  
 Washington, D.C.  
 February 8, 2006

#### 2005

Remarks at the American Express Consumer Action Conference  
 Washington, D.C.  
 November 16, 2005  
 Competition in the Information Society: Uncorked and Unplugged  
 Remarks before the 2005 Global Forum  
 Brussels, Belgium  
 November 8, 2005  
 Following the Yellow Brick Road to a More Competitive Landscape  
 Remarks before the FTC/DOJ Workshop on Competition Policy in the Real Es-  
 tate Industry  
 Washington, D.C.  
 October 25, 2005  
 Remarks at the Direct Marketing Association 2005 Conference  
 Atlanta, Georgia  
 October 17, 2005  
 Municipal Broadband: Should Cities Have a Voice?  
 National Association of Telecommunications Officers and Advisors (NATOA)  
 25th Annual Conference  
 Washington, D.C.  
 September 22, 2005  
 Thinking Creatively About Remedies: Building on the Muris and Pitofsky  
 Years: Evolving Remedies from "Time-Outs" to Civil Penalties (Not the Third  
 Rail of Antitrust)  
 Remarks at the American Antitrust Institute Symposium  
 Washington, D.C.  
 June 21, 2005  
 Health Care and the FTC: The Agency as Prosecutor and Policy Wonk  
 (Health Care as the New Cement; and Actions Against the Pharmaceutical In-  
 dustry as a Game of Whack-a-Mole)  
 Remarks at the Antitrust in HealthCare Conference  
 American Bar Association/American Health Lawyers Association  
 Washington, D.C.  
 May 12, 2005  
 The Good, the Bad and the Ugly: Trade Associations and Antitrust  
 Remarks at the American Bar Association Antitrust Spring Meeting  
 Washington, D.C.  
 March 30, 2005

#### 2004

Spam, Authentication and Ensuring the Promise of the Internet  
 Welcoming Remarks on Day Two, FTC/NIST E-mail Authentication Summit  
 November 10, 2004

#### Publications

Jon Leibowitz, Opinion, *FTC Chairman: 'Do Not Track' Rules Would Help Web Thrive*. U.S. NEWS AND WORLD REP., Jan. 3, 2011, available at <http://www.usnews.com/opinion/articles/2011/01/03/ftc-chairman-do-not-track-rules-would-help-web-thrive-jon-leibowitz>.

Jon Leibowitz, Op-Ed., *This Pill Not To Be Taken With Competition: How Collusion Is Keeping Generic Drugs Off the Shelves*. WASH. POST, Feb. 25, 2008, at A15.

Jon Leibowitz, *Thinking Creatively About Remedies: Building on the Muris and Pitofsky Years: Evolving Remedies from "Time-Outs" to Civil Penalties (Not the Third Rail of Antitrust)*, 80 TUL. L. REV. 595 (2005).

Herb Kohl and Jon Leibowitz, *Keenen Peck-A Tribute*, 1990 WIS. L. REV. 291 (1990). Additionally, as Commissioner and Chairman I have participated in many FTC matters and have helped to write opinions and have on occasion issued separate statements. The following are some of these that are available on the FTC website.

#### 2011

Statement by FTC Chairman Jon Leibowitz Regarding Court Ruling on Red Flags Rule. March 4, 2011.

#### 2010

Statement by FTC Chairman Jon Leibowitz on Department of Commerce's Green Paper on Consumer Privacy. December 16, 2010.

Statement by FTC Chairman Jon Leibowitz Regarding House and Senate Passage of Legislation to Combat Deceptive Online Sales Tactics. December 15, 2010.

Statement by FTC Chairman Jon Leibowitz Regarding House and Senate Passage of Legislation Clarifying Red Flags Rule. December 8, 2010.

Statement on the Release of the 2010 Horizontal Merger Guidelines, Project No. P092900. August 19, 2010.

Concurring Statement with Commissioner Brill, In the Matter of Kellogg Company, FTC File No. 082 3145. June 3, 2010.

#### 2009

Statement on "Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries." December 2009.

Statement with Commissioner Rosch, In the Matter of Intel Corporation, Docket No. 9341. December 16, 2009.

Statement on "Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries." December 3, 2009.

Statement on passage of H.R. 3126, the Consumer Financial Protection Act of 2009 by the House Energy and Commerce Committee. October 29, 2009.

Statement on Senate Judiciary Committee's Passage of the Preserve Access to Affordable Generics Act (S. 369). October 15, 2009.

Statement Regarding the Announcement that Arthur D. Levinson Has Resigned from Google's Board. October 12, 2009.

Statement on Letter From Bureau of Consumer Protection Director David C. Vladeck to Jane Horvath, Google Inc. Concerning the Google Books Project. September 3, 2009.

Statement on Crude Oil Price Manipulation Rule Making, Project No. P082900. August 6, 2009.

Statement on Trade Associations' Privacy Principles for Behavioral Advertising. July 2, 2009.

Joint Statement with Commissioners Harbour and Kovacic, In the Matter of Endocare, Inc. and Galil Medical, Ltd. File No. 0910026. June 9, 2009.

Statement on "Authorized Generics: An Interim Report of the Federal Trade Commission." June 2009.

Concurring Statement, In re *FTC v. Watson Pharmaceuticals et. al.* February 2, 2009.

Concurring Statement on "Federal Trade Commission Staff Report: Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, and Technology." February 2009.

## 2008

Concurring Statement, *FTC v. Ovation Pharmaceuticals, Inc.*, (United States District Court for the District of Minnesota). FTC File No. 0810156. December 16, 2008.

Concurring Statement on the “Rescission of Federal Trade Commission Guidance Concerning the Cambridge Filter Method For Testing the Tar and Nicotine Yields of Cigarettes.” November 26, 2008.

Statement Concurring in Part and Dissenting in Part, In the Matter of Carlyle Partners IV, L.P., a limited partnership, PQ Corporation, INEOS Group Ltd., a corporation, and James Ratcliffe, an individual. FTC File No. 071 0203. September 19, 2008.

Concurring Statement on “Marketing Food To Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation: A Federal Trade Commission Report To Congress.” July 29, 2008.

Dissenting Statement on “FTC Staff Comment to the Hon. William J. Seitz Concerning Ohio Executive Order 2007–23S to Establish Collective Bargaining for Home Health Care Workers.” February 2008.

Statement Concurring in Part and Dissenting in Part, *FTC v. Cephalon, Inc.* (United States District Court for the District of Columbia). Civil Action No.: 1:08-cv-00244, FTC File No.: 061-0182. February 13, 2008.

Statement Concurring in Part and Dissenting in Part, United States of America (for the FTC), *Plaintiff*, v. *Member Source Media LLC*, doing business as *ConsumerGain.com*, *PremiumPerks.com*, *FreeRetailRewards.com*, and *GreatAmericanGiveaways.com*, and Chris Sommer, individually and as Manager of Member Source Media LLC, Defendants (United States District Court for the Northern District of California). Civil Action No.: CV-08 0642; FTC File No.: 072-3042. January 30, 2008.

Statement, with Commissioner Harbour, Concurring in Part on “Accounting for Laws That Apply Differently to the United States Postal Service and Its Private Competitors: A Report By the Federal Trade Commission.” January 2008.

## 2007

Concurring Statement, Proposed Acquisition of Hellman & Friedman Capital Partners V, LP, (Click Holding Company) By Google Inc., FTC File No. 071 0170. December 20, 2007.

Statement Concurring in Part, Dissenting in Part, In re Member Source Media, LLC and Chris Sommer. December 12, 2007.

Dissenting Statement on In re Adteractive, Inc. November 28, 2007.

Dissenting Statement on “Federal Trade Commission Report On Spring/Summer 2006 Nationwide Gasoline Price Increases.” August 2007.

Statement with Commissioner Harbour, Concurring in Part and Dissenting in Part, In the Matter of Kmart Corporation, Kmart Services Corporation, and Kmart Promotions, LLC, corporations. FTC File No.: 062 3088. August 15, 2007.

Concurring Opinion, In the Matter of Evanston Northwestern Healthcare Corp., Docket No. 9315. August 6, 2007.

Concurring Statement on “Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance: A Report to Congress By the Federal Trade Commission (July 2007).” July 2007.

Concurring Statement on “Broadband Connectivity Competition Policy.” June 2007. Dissenting Statement, In re DirectRevenue LLC. June 29, 2007.

## 2006

Concurring Statement Regarding the Staff Report: “Municipal Provision of Wireless Internet.” October 10, 2006.

Concurring Opinion, In the Matter of Rambus, Inc., Docket No. 9302. August 2, 2006.

Concurring Statement on “The Federal Trade Commission Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases: A Commission Report to Congress.” May 2006.

Statement with Commissioner Harbour on the Acquisition by Comcast Corporation and Time Warner Cable Inc. of the Cable Assets of Adelphia Communications Corporation, and Related Transactions, File No. 051 0151. January 31, 2006.

2005

Statement Regarding TRUSTe's Trusted Download Beta Program. November 16, 2005.

Statement Concurring in Part and Dissenting in Part, *FTC v. Sun Spectrum Communications Org.* ("Beneficial Client Care"), Matter No. X04-0015. October 24, 2005.

Concurring Statement on "Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition: A Federal Trade Commission Report (2005)." July 2005.

Statement Concurring in Part and Dissenting in Part, *FTC v. Creaghan A. Harry*, individually and doing business as Hitech Marketing, Scientific Life Nutrition, and Rejuvenation Health Corp. (United States District Court, Northern District of Illinois, Eastern Division), FTC File No: 042-3085, Case No.: 04C-4790, June 15, 2005.

Dissenting Statement on "Subject Line Labeling as a Weapon Against Spam: A CAN-SPAM Report to Congress." June 2005.

Concurring Statement, In the Matter of Genzyme Corporation and Ilex Oncology, Inc. February 4, 2005.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

03/16/11	Before the Committee on Commerce, Science, and Transportation, United States Senate	Prepared Statement of the Federal Trade Commission on the State of Online Consumer Privacy
07/27/10	Before the Committee on Commerce, Science, and Transportation, United States Senate	Prepared Statement of the Federal Trade Commission on Consumer Privacy
07/27/10	Before the Subcommittee on Courts and Competition Policy of the Committee on the Judiciary, United States House of Representatives	Prepared Statement of the Federal Commission: Oversight of the Federal Trade Commission Bureau of Competition and the Department of Justice Antitrust Division
06/09/10	Before the Subcommittee on Antitrust, Competition Policy, and Consumer Rights of the Committee on the Judiciary, United States Senate	Prepared Statement of the Federal Trade Commission: How the Federal Trade Commission Works to Promote Competition and Benefit Consumers in a Dynamic Economy
05/20/10	Before the Subcommittee on Financial Services and General Government of the Committee on Appropriations, United States Senate	Prepared Statement of the Federal Trade Commission On the Commission's Fiscal Year 2011 Funding Request and Budget Justification
02/04/10	Before the Committee on Commerce, Science, and Transportation of the United States Senate	Prepared Statement of the Federal Trade Commission on Financial Services and Products: The Role of the Federal Trade Commission in Protecting Consumers
09/10/09	Before the Committee on Homeland Security and Governmental Affairs, United States Senate	Prepared Statement of the Federal Trade Commission on Scams Related to the Economic Stimulus: "How the FTC Works to Halt Fraudulent Schemes Exploiting the Economic Downturn and the Stimulus Package"
07/08/09	Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives	Prepared Statement of the Federal Trade Commission on "Proposed Consumer Financial Protection Agency: Implications For Consumers and the Federal Trade Commission"

03/31/09	Before the Subcommittee on Financial Services and General Government of the Committee on Appropriations, United States House of Representatives	Prepared Statement of the Federal Trade Commission On "Leveraging FTC Resources to Protect Consumers of Financial Services and Promote Competition"
03/24/09	Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives	Prepared Statement of the Federal Trade Commission on "Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public"
09/23/08	Before the Subcommittee on Financial Services and General Government, and the Subcommittee On Labor, Health and Human Services, Education, and Related Agencies, of the Committee on Appropriations, United States Senate	Prepared Statement of the Federal Trade Commission on Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation
05/14/08	Before the Committee on Appropriations, Subcommittee on Financial Services and General Government of the United States Senate	The President's Fiscal Year 2009 Funding Request and Budget Justification for the Federal Trade Commission
04/08/08	Before the Committee on Commerce, Science, and Transportation of the United States Senate	The Federal Trade Commission Reauthorization Act of 2008
05/2/07	Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee On Energy and Commerce, United States House of Representatives	On Protecting Consumer Access to Generic Drugs: The Benefits of A Legislative Solution to Anticompetitive Patent Settlements in the Pharmaceutical Industry
04/10/07	Before the Commerce, Science, and Transportation Committee of the United States Senate	Oversight Hearing on Technology Issues at the Commission
01/17/07	Before the Committee on the Judiciary of the United States Senate	On Anticompetitive Patent Settlements in the Pharmaceutical Industry
09/15/06	Before the Subcommittee on Trade, Tourism and Economic Development of the Committee on Commerce, Science, and Transportation, United States Senate	Prepared Statement of the Federal Trade Commission on Internet Governance: The Future of ICANN
07/20/06	Before the Special Committee on Aging, United States Senate	Prepared Statement of the Federal Trade Commission on Barriers to Generic Entry
05/11/06	Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives	Social Security Numbers in Commerce: Reconciling Beneficial Uses With Threats to Privacy
2/01/06	Before the Committee on Energy and Commerce, United States House of Representatives	Prepared Statement of the Federal Trade Commission on Phone Records for Sale: Why Aren't Phone Records Safe from Pretexting?
06/15/05	Before the Committee on Commerce, Science, and Transportation of the United States Senate	Data Security and Cross-Border Fraud

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

As a Commissioner of the FTC since 2004 and its Chairman since 2009, I have come to know well the agency's jurisdiction, resources, and capabilities. I care deeply about the many challenges currently facing American consumers, whom the Commission is charged with protecting. My time at the FCC has been the most rewarding of my career. I would be honored to be able to continue helping to guide the Commission in its mission of protecting consumers against unfair or deceptive acts or practices and promoting competition.

A primary function of the Commission is to bring law enforcement cases in the areas of consumer protection and competition. Doing this effectively requires not only knowledge of the law, but also knowledge of the challenges faced by consumers

and businesses. My background as a lawyer and as a former chief counsel and staff director on the Judiciary Committee, and specifically, the Antitrust Subcommittee, has helped me in this regard. My six years at the Commission have added considerably to my knowledge of antitrust law and policy as well as the law and policy of consumer protection matters.

My background and disposition also have provided me another skill that I think is indispensable to the job of FTC Chairman—the ability to work well with and build consensus among people with widely divergent views.

The FTC is a bi-partisan agency, and this structure has served the agency and the public well. Despite its party composition, however, the Commission usually acts by consensus and I am proud to have worked to continue this tradition during my tenure as Chairman. Aside from relations with other Commissioners and public officials, I believe that a willingness to listen and an ability to understand the differing views of the many parties involved in agency actions is critical to fulfilling the Commission's mission.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The Chairman of the FTC is the administrative head of the Commission, and I have been serving in this capacity since 2009. The Commission has approximately 1200 employees located in Washington, D.C. and regional offices around the country, and an annual budget approaching \$300 million. It is the Chairman's responsibility to ensure that the agency has proper management and accounting controls, and to evaluate, monitor, and report on the effectiveness and efficiency of those controls. The FTC has developed programs to comply with specific statutory requirements to ensure proper management and accounting controls:

- (1) To comply with the Federal Managers' Financial Integrity Act of 1982, the FTC established a separate branch, the Financial Policy, Evaluation and Control Branch, within its Financial Management Office. The duties of this branch are to ensure that the ongoing internal control assessment program provides assurance that proper accounting and administrative controls are in place and operating effectively.
- (2) To comply with the Federal Information Security Management Act of 2002, the agency has established a security compliance program that ensures mission sensitive information is safeguarded.
- (3) To comply with the Government Performance and Results Act of 1993, the agency develops annual performance plans and reports on its performance and financial status in its annual Performance and Accountability Report (PAR) to monitor the effective use of its resources in meeting its mission goals.

20. What do you believe to be the top three challenges facing the department/agency, and why?

I believe the top three challenges facing the Commission are (1) ensuring that the agency continues to stay abreast of and adapt to the technological changes affecting consumers and the marketplace; especially involving privacy; (2) stopping financial frauds and protecting consumers made vulnerable by the economic downturn; and (3) making the best use of the agency's limited resources.

Technological advances have changed the way people interact, both socially and commercially. While these advances have produced great benefits for consumers, they also pose new challenges. The Internet has enhanced cultural awareness by allowing people to communicate globally at little cost, but it has also enabled malefactors from around the world to prey on American consumers. The ease with which technologies permit personal information to be broadly shared has many benefits, including facilitating social interactions, making financial credit quickly available, and assisting in medical diagnosis, but the collection and use of this personal information has also raised serious questions about privacy. On the competition front, technological changes have demanded that the FTC be quick and adaptive in its analysis of marketplace issues. The Commission's decision in May 2010 not to seek to block Google's acquisition of mobile advertising network company AdMob, for example, was appropriately influenced by recent developments in the market, most notably a move by Apple Computer Inc.—the maker of the iPhone—to launch its own, competing mobile ad network.

The financial hardships that so many American consumers face today have caused the FTC to make a priority of targeting the fraud and the sharp practices that aim to take the last dollar out of their pockets. In the past year, the FTC has brought more than 40 law enforcement actions to stop scams that prey on consumers suffering from the financial downturn. By working closely with state attorneys general,

the Commission has expanded the reach of law enforcement efforts through hundreds of additional cases. In the past five years, the agency has filed more than 100 actions against financial service providers, and in the past ten years has obtained more than \$500 million in redress for consumers of these services. The FTC also is engaged in rulemaking and consumer education efforts related to financial services, both to define and stop fraudulent practices and to arm consumers with necessary information to enable them to avoid these frauds. Despite this activity, more can and should be done. A challenge facing the agency will be to determine how the Commission can best work with the new Consumer Financial Protection Bureau to ensure that consumers of financial products and services are better protected, but that these protections do not subject businesses to conflicting, redundant, or overly burdensome directives from the two agencies.

The final principal challenge facing the Commission is to find a way to leverage limited resources to best serve the FTC's mission. The FTC is a small agency with a big mission. Our jurisdiction is broad, and covers both consumer protection and competition. Each year, the Commission receives hundreds of thousands of complaints. While we don't have the resources to investigate all of them, we use our expertise and talented staff to target the areas that harm consumers the most and to respond quickly and effectively to emergent problems. Working closely with other Federal agencies, state attorneys general, businesses, trade associations, consumer advocates, and others, the Commission needs to continue to be an aggressive defender of consumers.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I am partially vested in the Motion Picture Association of America's (MPAA) 401(k) plan administered by Mass Mutual. No contributions were made after I resigned from the MPAA in September 2004. From my years working for Congress and at the FTC, I will be entitled to a pension after I retire, and I have invested in the Thrift Savings Plan.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. 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 Federal Trade Commission'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 the ethics agreement that I have entered into with the Commission's Designated Agency Ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten 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.

There is none.

5. Describe any activity during the past ten years in which you have been 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.

As Chairman and as a Commissioner of the FTC since 2004, I have advocated for and against numerous pieces of legislation, and the FTC has provided guidance and technical assistance to Congressional and Committee staff on both sides of the aisle. In these capacities I have also been involved in the execution of laws, deciding when and how to handle cases involving consumer protection and competition. In my capacity as a Commissioner and as Chairman of the FTC, I have also affected public policy, through varied actions including case selection, advocacy, statements, reports, research, and workshops. Please see attachments B and C for more information on my speeches, remarks, statements, and publications.

As Counsel to Senator Kohl and to the Judiciary Committee from 1989 through 2000 and to Senator Simon and Congressman Feighan before that—I worked on a large number of legislative matters. These ranged from bankruptcy reform to crime policy to increasing the filing thresholds for merger reviews to encouraging the de-

ployment of satellite television. In other words, one of my principal responsibilities was to influence legislation; during that time, I probably gave recommendations for literally hundreds of floor and committee votes. When I left the Hill to work for the MPAA, my principal legislative focus was more limited: to support measures that would reduce film piracy, especially on the Internet.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Since joining the FTC in 2004 I have acted in accordance with all applicable ethics laws and regulations, particularly the Standards of Conduct for Employees of the Executive Board, 5 C.F.R. § 2635. I have worked closely with FTC ethics officials to ensure that my conduct upholds the agency's reputation for ethical behavior. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee. I am proud that during my tenure as Chairman, the FTC's ethics program has been recognized for excellence by the Office of Government Ethics.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

During my service as FTC Chairman and Commissioner, the agency has been involved in a large number of civil and administrative proceedings. These are detailed on the agency's website, [www.ftc.gov](http://www.ftc.gov). Additionally, I was named in my official capacity as Chairman of the FTC in the matter *D.R. Horton, Inc. v. Jon Leibowitz, Chairman, et al.*, 2010 U.S. Dist. LEXIS 117627 (N.D.Tex. Nov. 3, 2010). Plaintiff D.R. Horton sought declaratory and injunctive relief related to a civil investigative demand issued by the Commission in November 2009. Defendants Chairman Leibowitz and the FTC successfully moved to dismiss the complaint on the ground that the court lacked subject matter jurisdiction.

I have not been involved in any MPAA-related litigation or agency proceeding. The MPAA, however, represented its member companies in connection with issues of common interest to the motion picture and television industry, and during the time I was an officer there, the MPAA was a named party in litigation and regulatory proceedings in this regard, and in disputes arising in the ordinary course of its business.

The only other civil litigation in which I have been involved was a 1986 landlord-tenant case in which I represented myself.

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, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

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

There is nothing further.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees?

If confirmed as a Commissioner of the Federal Trade Commission, I would work diligently with my fellow Commissioners to do so.

2. Will you ensure that your department/agency does whatever it can to protect Congressional witnesses and whistleblowers from reprisal for their testimony and disclosures?

If confirmed as Commissioner of the Federal Trade Commission, I would work diligently with my fellow Commissioners to do so.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. 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

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RESUMÉ OF JON LEIBOWITZ

**Experience**

**Federal Trade Commission—2004 to Present**

*Chairman* (March 2009 to Present)

*Commissioner* (September 2004 to March 2009)

Supervise independent agency charged with protecting consumers and promoting competition. Areas of special interest include: spearheading law enforcement efforts, rulemaking, and consumer education to protect consumers in the financial downturn; spurring law enforcement and policy initiatives to protect consumer privacy, especially online; supporting efforts to make Do-Not-Call registrations permanent (enacted in 2008); prioritizing cases, research, and legislation challenging anti-competitive pharmaceutical (“pay-for-delay”) settlements; encouraging the Commission to issue a report on consumer protection and competition concerns with respect to so-called Net Neutrality and municipal broadband; finalizing update of merger guidelines; and supporting legislative efforts to ensure the FTC retained jurisdiction over financial fraud and has the authority it needs to confront modern challenges. Testified before Congress on behalf of the Commission twenty times over the last 5 years.

**Motion Picture Association of America**

*Vice President, Congressional Affairs* 2000–2004

Represented interests of film industry before Congress on intellectual property protection, anti-piracy initiatives, and First Amendment issues.

**Senate Judiciary Committee and Senator Herb Kohl**

*Democratic Chief Counsel and Staff Director* 1980–2000

*Subcommittee on Antitrust, Business Rights and Competition* (1997–2000)

*Subcommittee on Terrorism and Technology* (1995–1996)

*Subcommittee on Juvenile Justice* (1991–1994)

Drafted legislation, formulated strategy, built coalitions, negotiated agreements, developed hearings, and supervised subcommittee staff. Had overall staff responsibility for Senator’s policies and positions on Judiciary Committee. Representative issues included mergers and acquisitions, competition policy, oversight of the FTC and the DOJ Antitrust Division, consumer protection, privacy, telecommunications, and judicial selection, including Supreme Court nominations. Directed bipartisan initiatives relating to delivery of broadband technology to consumers, airline pricing, computer industry business practices, and telephone and cable competition. Worked on Hart-Scott-Rodino Antitrust Improvements Act, which increased filing thresholds for merger reviews and raised fees for large mergers, and the Brady Law, which required a waiting period and background check for handgun purchases.

**U.S. Representative Edward Feighan**

*Counsel* 1987–1988

Counseled House Judiciary Committee Member on issues related principally to antitrust, economic competitiveness, crime, and gun control.

**Senate Judiciary Committee and Senator Paul Simon**

*Counsel* 1987–1988

Worked on Senator’s Committee staff and handled variety of issues, including securities regulation, civil rights, and civil liberties matters.

*Private Practice* 1984–1986

Represented firm clients on corporate, commercial, and securities matters.

**Education**

New York University School of Law, J.D.—May 1984

University of Wisconsin, *Phi Beta Kappa*, B.A. in American History June 1980

The CHAIRMAN. Thank you, Chairman Leibowitz.  
I'd like to go to you, Dr. Blank. I'm not sure of the protocol of all of this, but if I just mix it up a little bit, nobody will care. But we care about you.

**STATEMENT OF DR. REBECCA M. BLANK, NOMINATION TO BE  
DEPUTY SECRETARY, U.S. DEPARTMENT OF COMMERCE**

Dr. BLANK. Thank you very much, Chairman Rockefeller, Ranking Member Hutchison and other distinguished members of the panel. I appreciate the opportunity to be here today, and I'm honored to be the nominee for Deputy Secretary at the U.S. Department of Commerce. I'm particularly pleased at the opportunity to work with the newly confirmed Secretary, John Bryson.

And I want to introduce my husband who is with me today, Hanns Kuttner. Unfortunately, our daughter, Emily, is at school. She's got a major exam this afternoon, so she could not be here.

After more than 2 years at the Department of Commerce, I continue to be very excited about the work this organization does. In today's economy, there is no more important job than helping American businesses create jobs by being competitive and innovative.

Each bureau in commerce supports American business, whether by providing weather forecasts, GDP statistics, trade assistance or measurement standards. To do that well, the department has to function well. During the past year, as Acting Deputy Secretary, I've served as the department's Chief Operating Officer, responsible for management and budget issues across the department's 12 bureaus. From August through September, I was privileged to serve as the Acting Secretary of Commerce.

In both roles, I have been closely involved in the execution of commerce's programs. If confirmed, I hope that my experience will provide important continuity for the department, particularly as we advance vital national programs, such as NOAA's satellite program, in a tight fiscal environment.

Over this past year, I've implemented a department-wide performance-measurement system. This provides quarterly information on how well each bureau is serving customers and managing its work.

For example, we're tracking how long it takes to approve grants within the Economic Development Administration, and they have reduced that number from months to approximately 20 days.

The U.S. Patent and Trademark Office is tracking how long it takes to provide patents, and their patent backlog has been reduced by 10 percent this last year, even as applications surged.

In addition, I've worked with an excellent commerce team to design and implement an ongoing set of administrative cost savings. We expect to reduce our administrative costs by \$143 million in Fiscal Year 2012, with even greater savings in 2013.

Ensuring that this broad department and its bureaus have appropriate management and accounting controls requires at least three things.

First, sound judgment to identify what activities and information needs to be monitored in order to identify problems early and to track progress on high-risk activities. Second, a first-rate staff that

run the day-to-day work of the bureau. And, last, a data system that provides accurate information on performance. Good information is necessary for good management decisions.

I came to the Acting-Secretary role having already served a year and a half as Under Secretary for economic affairs. Since joining the department in 2009, I've been responsible for the final management and oversight of the Census Bureau and the Bureau of Economic Analysis.

In that role, I oversaw \$6 billion in budget expenditures in Fiscal Year 2010, much of it appropriated for the Decennial Census. Ultimately, the census came in on time and \$1.8 billion under budget, at least in part because of close attention to management and budget issues.

Prior to arriving at Commerce, I had the opportunity to work in the public, the private and the not-for-profit sectors. I have served as Dean of the Gerald R. Ford School of Public Policy at the University of Michigan, gaining important management experience in that role.

If confirmed as Deputy Secretary of Commerce, I would dedicate myself to two primary goals. First, pushing forward on the initiatives designed to support American businesses, helping them grow and create jobs.

This includes, for instance, working with NTIA on spectrum allocation or NIST to expand opportunities for faster and more effective technology transfer. Similarly, developing a strategy to support American manufacturing and doing more to promote investment in the U.S. by foreign and domestic firms will also spur job creation.

Second, I will work to increase the department's efficiency by reducing our overhead costs, so some portion of budget reductions are absorbed by a decline in administrative costs.

Major changes in the administrative structure of a department can only occur as part of a multi-year process with strong central commitment, communication and leadership. It should be the responsibility of the deputy secretary to see that that happens.

As the global economy continues to expand, American companies must be innovative at home and competitive abroad. A primary mandate of the Department of Commerce is to provide the public goods, the data, the scientific information and the services that allow American businesses to compete effectively. If confirmed, I pledge to work with you to advance that agenda.

I appreciate the opportunity to be here today and for your consideration of my nomination, and I look forward to your questions. Thank you.

[The prepared statement and biographical information of Dr. Blank follow:]

PREPARED STATEMENT OF DR. REBECCA M. BLANK, NOMINATION TO BE DEPUTY SECRETARY, U.S. DEPARTMENT OF COMMERCE

Chairman Rockefeller, Ranking Member Hutchison, and distinguished members of the Committee, thank you for the opportunity to appear before you today as the nominee for Deputy Secretary of the U.S. Department of Commerce. I am honored President Obama nominated me for this position. I am particularly pleased at the opportunity to work closely with our newly-confirmed Secretary, John Bryson. I would also like to introduce my husband, Hanns Kuttner, who is able to be here today. Our daughter Emily is in school today.

After more than two years at the Department of Commerce, I continue to be excited by its breadth and by the issues in which it engages. In today's economy, I do not believe there is a more important job than helping to create jobs and improve American competitiveness. At the Department of Commerce, our primary mission is to provide the critical public infrastructure that supports private sector growth and innovation. Each Bureau in Commerce supports American businesses, whether by providing weather forecasts, GDP statistics, trade assistance, or measurement standards.

During the past year, as Acting Deputy Secretary, I've served as the Department's Chief Operating Officer, responsible for all management and budget issues across the Department's 12 bureaus and overseeing more than 46,000 employees. During the three months of August through October, I was privileged to serve as Acting Secretary of Commerce. In both roles, I have led the budget and management process and have been closely involved in monitoring the execution of Commerce's programs. If confirmed my experience will allow me to hit the ground running as the permanent Deputy Secretary. For instance, over the past year I have managed a Department-wide performance measurement system, which provides information on how well each Bureau is serving customers and managing its work. We are tracking how long it takes to approve grants in the Economic Development Administration (EDA), how long it takes to provide patents at the U.S. Patent and Trademark Office (PTO), measuring customer satisfaction with National Institute of Standards and Technology (NIST) products, tracking the timely release of data from the Census, and tracking coastal restoration by the National Oceanic and Atmospheric Administration (NOAA). In addition, I have worked with an excellent Commerce team to design and implement an ongoing set of administrative cost savings. We expect to reduce our Administrative costs by \$143 million in Fiscal Year 2012, with even greater savings in Fiscal Year 2013.

Ensuring that this broad Department and its Bureaus have appropriate management and accounting controls requires at least three things: First, sound judgment to identify what activities and information need to be monitored in order to identify problems early and to track progress on high-risk activities; second, a first-rate staff, both in the Deputy Secretary's office and within the Bureaus, who oversee the day-to-day work of the Department, from human resource management, to acquisitions, facilities, and budgets; and lastly, a data system that provides accurate information on performance. Good information is necessary for good management decisions. For example, we have started tracking information on the hiring process within each Bureau and documenting how much time each step in the process takes. This has allowed us to identify bottlenecks and reduce the time to hire, which helps attract stronger candidates. As a result of this effort, the average time to hire an employee within the Department of Commerce has gone from 105 days in 2010 to 79 days in the last quarter of 2011.

I came to the Acting Deputy Secretary role having already served a year and a half as Under Secretary for Economic Affairs and as the Secretary's principal economic advisor. Since joining the Department of Commerce in 2009, I have been responsible for final management and oversight of the Census Bureau and the Bureau of Economic Analysis. In the Economics and Statistics Administration, I supervised a staff of economists and policy analysts who utilize Commerce data to shed light on current policy issues through reports and internal collaboration. I also oversaw \$6 billion in budget expenditures in Fiscal Year 2010, much of it appropriated to fund the 2010 Decennial Census, the largest peacetime operation our government undertakes. I was closely involved with the final planning, execution, and oversight of the 2010 Census and worked with Census Director Bob Groves and his senior leadership, receiving weekly, sometimes daily, reports on key issues. Ultimately, the Census came in on time and \$1.8 billion under budget, in part because of close attention to management and budget issues.

Prior to arriving at Commerce, I've had the opportunity to work in the public, private, and not-for-profit sectors. Many years ago, I worked with a variety of heavy manufacturing industries as a consultant for an economic forecasting company, a job which taught me a great deal about the real world of business. I went on to acquire a Ph.D. in economics. In the years since I've held three types of positions.

First, as an economic researcher, I have always been deeply interested in the ways in which the U.S. economy interacts with government policy. My work has focused on labor markets, on the well-being of American families, on effective measurement of key economic concepts, and on the impact and evaluation of government policy efforts.

Second, I have served in a number of management positions. For eight years, I was the Dean of the Gerald R. Ford School of Public Policy at the University of Michigan. In this role, I oversaw and managed a growing educational and research

enterprise. While Dean, I successfully quadrupled the budget of the Ford School, built a new building, and started both an undergraduate and Ph.D. degree program. I worked within the budget, human resource, and planning systems of the University of Michigan, making sure that they were effectively implemented within my unit and working to improve these systems when needed. In addition, I have worked on the Boards of Directors of a number of non-profit organizations, with responsibility for overseeing their financial and management decision-making. I have run two major research centers, including the University of Michigan's National Poverty Center, effectively overseeing their staffing, finances, and programs.

Third, I have been a public servant and government employee. I worked as a Senior Staff Economist at the Council of Economic Advisers during the George H.W. Bush Administration, and I returned as one of the three CEA members during the second term of President Clinton.

If confirmed as Deputy Secretary of Commerce, I would dedicate my time to three goals. First, I would push forward on initiatives designed to support American businesses and help them grow and create jobs. This includes working with NIST to expand opportunities for faster and more effective technology transfer from labs to market; working with the National Telecommunications and Information Administration (NTIA) on spectrum reallocation; working with the International Trade Administration (ITA) and Minority Business Development Agency (MBDA) to promote exports and expand the National Export Initiative; working with PTO as it effectively implements the patent reform provisions of the America Invents Act and reduces the time needed for patent approval; working with EDA on effective economic development initiatives; and working with MBDA to support America's minority business entrepreneurs. I would expect to work closely with NOAA, particularly making sure that its weather satellite program is adequately funded and well operated and its fisheries management programs are implemented effectively. Two key areas where I expect to be involved, with Secretary Bryson's leadership, is to work across the Bureaus within Commerce to develop a strategy to support and promote American manufacturing and to promote investment in the U.S. by both foreign and domestic firms.

Secondly, I would work to increase the Department's efficiency by reducing our overhead costs so that some portion of budget reductions are absorbed by a decline in administrative costs rather than imposing harmful cuts on important programs. I have highlighted some of our performance excellence initiatives already, but at the Department of Commerce we have launched a variety of cost-cutting initiatives, including acquisition reforms to reduce purchase costs, IT reforms, and facilities consolidation. Within an organization as complex and large as the Department of Commerce, these sort of administrative changes often require cultural changes in how work is organized and performed, changes that are not always welcomed by those who are used to long-time pre-existing systems. Hence, this type of change can only occur as part of a multi-year process with strong central commitment, communication, and leadership. It should be the responsibility of the Deputy Secretary to see that this process proceeds smoothly and effectively, and it is a responsibility for which I am well-equipped.

Finally, we must address the challenge at Commerce, and at many other Departments, of retaining a skilled and motivated workforce. In the midst of pay freezes and potential benefit cuts, we need to ensure that government employment is an attractive option for hard-working, motivated, and skilled young adults. Without a first-rate civil service, the Department cannot deliver on its core functions for American businesses and our economy.

As the global economy continues to expand, American companies must be innovative at home and competitive abroad. A primary mandate of the Department of Commerce is to provide the public goods—the data, the scientific information, and the services—that allow American businesses to compete effectively. If confirmed, I pledge to work with you to advance that agenda.

I appreciate the opportunity to come before you today and for your consideration of my nomination. I look forward to your questions. Thank you.

#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):

Rebecca Margaret Blank  
 Rebecca M. Blank  
 Becky Blank

2. Position to which nominated: Deputy Secretary, Department of Commerce.

3. Date of Nomination: November 1, 2011.
4. Address (List current place of residence and office addresses):  
 Residence: Information not released to the public.  
 Office: U.S. Department of Commerce, 1401 Constitution Ave, NW Washington, DC 20230.
5. Date and Place of Birth: September 19, 1955; Columbia, MO.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children.  
 Spouse: Johannes (Hanns) Charles Kuttner, Visiting Fellow, Hudson Institute, Washington, D.C.; child: Emily Christa Kuttner, Age 15.
7. List all college and graduate degrees. Provide year and school attended.

Institution	Dates attended	Degrees received	Date of degree
University of Minnesota	9/73–6/76	B.S. Summa Cum Laude	1976
Massachusetts Institute of Technology	9/79–6/83	Ph.D. (Economics)	1983

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

U.S. Department of Commerce, Washington, D.C.

*Acting Secretary*, August 2011–October 2011

*Acting Deputy Secretary*, November 2010–March 2011 and May 2011–August 2011; and October 2011–present.

*Under Secretary for Economic Affairs*, June 2009 to present.

Brookings Institution, Washington, D.C.

*Robert S. Kerr Senior Fellow*, Economic Studies, 2008–09.

*Robert S. Kerr Visiting Fellow*, Economic Studies, 2007–08.

University of Michigan, Ann Arbor, MI

*Joan and Sanford Weill Dean of Public Policy*, Gerald R. Ford School of Public Policy, 1999–2007.

*Henry Carter Adams Collegiate Professor of Public Policy*, Gerald R. Ford School of Public Policy, 1999–2008.

*Professor of Economics*, Department of Economics, 1999–2008.

*Co-Director*, National Poverty Center, 2002–2008.

Council of Economic Advisers, Washington, D.C.

*Member-nominee*, 1997–98; *Member*, 1998–99.

*Senior Staff Economist*, 1989–90.

Northwestern University, Evanston, IL

*Director*, Joint Center for Poverty Research, 1996–97.

*Professor of Economics*, 1994–1999; *Associate Professor of Economics*, 1989–94.

*Research Faculty*, Center for Urban Affairs and Policy Research. 1989–99.

*Associate Professor*, School of Education and Social Policy. 1989–93.

*Co-Director*, Northwestern/University of Chicago Interdisciplinary Training Program in Poverty, Race, and Underclass Issues. 1991–96.

Princeton University, Princeton, NJ.

*Assistant Professor of Economics and Public Affairs*, 1983–89.

Department of Economics and Woodrow Wilson School of Public & International Affairs.

Massachusetts Institute of Technology, Cambridge, MA.

*Visiting Assistant Professor of Economics*, 1988–89.

University of Wisconsin-Madison, Madison, WI.

*Visiting Fellow*, Department of Economics and Institute for Research on Poverty, Fall 1985.

Data Resources, Inc. Chicago, IL.

*Consultant & Educational Coordinator, 1976–79.*

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years.

Consultant for the State of Connecticut, Commission on Children, Nov–Dec 2007.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Board of Directors, *MDRC* (formerly Manpower Demonstration Research Corporation), 2000–09.

Board of Trustees, *Urban Institute*, 2007–09.

Board of Directors, *Economic Policy Institute*, 2008–09.

Board of Directors, *Citizens' Research Council of Michigan*, 2000–08.

Visiting Committee, *Kennedy School of Government*, Harvard University, 2004–09.

Advisory Council, *Spotlight on Poverty and Opportunity*, 2007–09.

*National Academy of Sciences*

Division Committee for the Behavioral and Social Sciences and Education (DBASSE), National Research Council, 2003–08.

DBASSE Executive Committee member, 2005–08.

Committee on the Fiscal Future of the United States, 2008–09.

*DIW* (a research/policy think tank). Berlin, Germany

Honorary Advisory Council, *DIW-DC*, 2008–09.

Association for Public Policy Analysis and Management

President, 2007.

Executive Committee member, 2006–08.

Board Chair, *Public Policy and International Affairs Program*, 2003–06.

Vice President, *American Economic Association*, 2007.

Board of Editors, *American Economic Journal: Economic Policy*, 2007–09.

Co-Editor, *Labour Economics*, 2004–2007; Associate Editor, 2007–09.

Advisory Board, *Journal of Economic Education*, 2002–09.

National Advisory Board and Senior Research Affiliate, *National Poverty Center*, University of Michigan, 2008–09.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Social Club/Organization	Dates	Position (Member/Officer)	Restrictive Membership Policies (Yes/No)
Bread for the World, Washington, D.C.	1976– present	Member	No
Amnesty International, New York, NY	Around 2001– present	Member	No
Westmoreland Congregational Church, UCC, Bethesda MD	2008– present	Member Co-chair, Outreach Ministries Committee (2009– present)	Expects members to generally accept the religious precepts of the United Church of Christ
First Presbyterian Church, Ann Arbor MJ	2000–08	Member and Elder (2004–2008)	Expects members to generally accept the religious precepts of the Presbyterian Church

Social Club/Organization	Dates	Position (Member/Officer)	Restrictive Membership Policies (Yes/No)
Economic Dinner Club, Ann Arbor, MI	1999– 2008	Member	None
American Economic Association	1981– present	Member, Exec Com- mittee member (1995–97); Govern- ment Relations Com- mittee member (2009) and Vice President (2007)	None
Labor and Employment Relations Association	1983– present	Member	None
Midwest Economics Association	1990– 2005	Member, President (2001–02)	None
Committee on the Status of Women in the Economics Profession	1981– present	Member, Exec Comm member (1990–94), Chair (1994–96)	None
National Poverty Center, University of Michigan	2008–09	Senior research affil- iate and member, Na- tional Advisorv Board	None
Angell School PTO, Ann Arbor, MI	2001–07	Member	None
Westland Middle School PTA, Bethesda, MD	2007–10	Member	None
Oxbridge Neighborhood Association, Ann Arbor, MI	1999–08	Member	None
Association for Public Policy Analysis and Management (APPAM)	1985– present	Member, President (2007), Executive Committee (2006–08), Policy Council (2001– 04)	None
Ann Arbor Art Center	2001– present	Member	None
Friends of the National Zoo	1997–99; 2007– present	Member	None
Economists for Peace and Security (earlier Economists Against the Arms Race)	About 1990– present	Member	None
Bethesda-Chevy Case High School PTA	2010– present	Member	None
Westmoreland Hills Citizens’ Association, Bethesda, MD	2009– present	Member	None
DIW	2001–04	Member, Scientific Advisory Committee	None

13. Have you ever been a candidate for and/or held a public office (elected, non elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period: None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Leila D. Wallace Award, First Place in Extemporaneous Speaking, National Debate and Speech Contest, 1973

Phi Beta Kappa, 1975  
 National Science Foundation Graduate Fellowship, 1979–82  
 Sloan Foundation Graduate Fellowship, 1982–83  
 National Fellowship for Women in the Sciences, National Science Foundation, 1988–89  
 David Kershaw Award, 1993, Association for Public Policy Analysis and Management (awarded to the young scholar whose research has had the most impact on the public policy process)  
 Faculty Research Associate, National Bureau of Economic Research, 1990–2009  
 Faculty Affiliate, Institute for Research on Poverty, 1994–2009  
 Member (an elected honorary position), National Academy of Social Insurance, 1997 to present  
 Richard A. Lester Prize for the Outstanding Book in labor Economics and Industrial Relations, 1997 (for the book *It Takes A Nation: A New Agenda for Fighting Poverty*)  
 Faculty Affiliate, Institute for Research on Poverty, 1994–2009  
 Senior Research Affiliate, National Poverty Center, 2002–2009  
 Lifetime National Associate, National Academy of Sciences, 2004 to present  
 Fellow, Society of Labor Economists, 2006 to present  
 Fellow, American Academy of Arts and Sciences, 2005 to present  
 Research Fellow, IZA (Institute for the Study of Labor), 2007 to present  
 Outstanding Alumni Achievement Award, University of Minnesota, 2008  
 Eleanor Roosevelt Fellow, American Academy of Political and Social Science, 2010 to present

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

### Publications

#### Books

*Changing Inequality*. Berkeley: University of California Press. 2011.  
 Insufficient Funds: Savings, Assets, Credit and Banking Among Low-Income Households (with Michael S. Barr). New York: Russell Sage Foundation. 2009. (Co-editor with Barr and co-author on one article in the volume.)  
*Working and Poor: How Economic and Policy Changes are Affecting Low Wage Workers* (with Sheldon Danziger and Robert Schoeni). New York: Russell Sage Foundation. 2006. (Co-editor with Danziger and Schoeni and co-author on two articles in the volume.)  
*Measuring Racial Discrimination* (with Marilyn Dabady and Connie Citro). Washington, D.C.: National Research Council, National Academy Press. 2004.  
*Is the Market Moral? A Dialogue on Religion, Economics, and Justice* (with William McGurn). Washington, D.C.: Brookings Institution. 2004.  
*The New World of Welfare* (with Ron Haskins). Washington, D.C.: Brookings Institution. 2001. (Co-editor with Haskins and co-author of two articles in the volume.)  
*Finding Jobs: Work and Welfare Reform* (with David Card). New York: Russell Sage Foundation. 2000. (Co-editor with Card and co-author of two articles in the volume.)  
*It Takes A Nation: A New Agenda for Fighting Poverty*. Princeton: Princeton University Press. 1997.  
*Social Protection vs. Economic Flexibility: Is There a Tradeoff?* Chicago: University of Chicago Press. 1994. (Editor and author of two articles in the volume.)  
*Do Justice: Linking Christian Faith and Modern Economic Life*. Cleveland, OH: Pilgrim Press. 1992.

#### Journal Articles and Book Chapters

“How Should We Think About Measuring Innovation and Change?” *Survey of Current Business*. Vol 90(2):2–4. February 2010.

- "The Role of Economics in the Welfare-to-Work Reforms of the 1990s." In *Better Living Through Economics*. John J. Siegfried, ed. Cambridge, MA: Harvard University Press. 2010.
- "What We Know, What We Don't Know, and What We Need to Know About Welfare Reform." In *Welfare Reform and Its Long-term Consequences for America's Poor*. James P. Ziliak, ed. Cambridge, UK: Cambridge University Press. 2009.
- "Economic Change and the Structure of Opportunity for Less-Skilled Workers." In *Changing Poverty, Changing Policies*, Maria Cancian and Sheldon H. Danziger, eds. New York: Russell Sage Press. 2009.
- "The New American Model of Work-Conditioned Public Support." In *United in Diversity? Comparing Social Models in Europe and America*, Jens Alber and Neil Gilbert, eds. Oxford, UK: Oxford University Press. 2009.
- "A Cautionary Tale About the Use of Administrative Data: Evidence from Age of Marriage Laws" (with Kerwin Kofi Charles and James M. Sallee). *American Economic Journal: Applied Economics*. Vol 1(2): 128–149. April 2009.
- "The Growing Problem of Disconnected Single Mothers" (with Brian K. Kovak). In *Making the Work-Based Safety Net Work Better*, Carolyn J. Heinrich and John Karl Scholz, eds. New York: Russell Sage Press. 2009.
- Improving the Measurement of Poverty* (with Mark H. Greenberg). The Hamilton Project Discussion Paper 2008–17. December 2008.
- "A Christian Perspective on the Role of Government in a Market Economy." In *Global Neighbors: Christian Faith and Moral Obligation in Today's Economy*, Douglas A. Hicks and Mark Valeri, eds. Grand Rapids, MI: Eerdmans. 2008.
- "The Changing Incidence and Severity of Poverty Spells Among Single Mothers" (with David Card). *American Economic Review*. Vol 98(2): 387–91. May 2008.
- "How to Improve Poverty Measurement in the United States." *Journal of Public Analysis and Management*. Vol 27(2): 233–54. Spring 2008. Reprinted in *Poverty, Welfare, and Public Policy*, Douglas J. Besharov and Douglas M. Call, eds. Wiley-Blackwell. 2010.
- "Improving the Safety Net for Single Mothers Who Face Serious Barriers to Work." *Future of Children*, Vol 17(2): 183–97. Fall 2007.
- "Assessing Racial Discrimination: Methods and Measures" (with Douglas S. Massey). In *Fragile Rights Within Cities: Government, Housing, and Fairness*. John Goering, ed. Lanham, MD: Rowman and Littlefield. 2007.
- "Introduction" and editor of the special issue, "Evaluating Social Policy Changes in EU Countries." *Journal of Labour Economics*. Vol 13(6):665–6. December 2006.
- "Was Welfare Reform Successful?" *The Economists' Voice*. Vol 3(4):Article 2. (<http://www/bepress.com/ev/vol3/iss4/art2>). March 2006. Reprinted in *The Economists' Voice: Top Economists Take on Today's Problems*, Joseph E. Stiglitz, Aaron S. Edlin, and J. Bradford DeLong, eds. New York: Columbia University Press. 2008.
- "Are Less-Educated Women Crowding Less-Educated Men Out of the Labor Market?" (with Jonah Gelbach). In *Black Males Left Behind*, Ronald B. Mincy, ed. Washington, D.C., Urban Institute Press. 2006.
- "What Did the 1990s Welfare Reforms Accomplish?" In *Public Policy and the Income Distribution*, Alan J. Auerbach, David Card, and John M. Quigley, eds. New York: Russell Sage Foundation. 2006.
- "Market Behavior and Christian Behavior." In *Faithful Economics: The Moral Worlds of a Neutral Science*, James W. Henderson and John Pisciotta, eds. Waco, TX: Baylor University Press. 2005.
- "Poverty, Policy and Place: How Poverty and Policies to Alleviate Poverty are Shaped by Local Characteristics." *International Regional Science Review*. Vol 28(4):441–64. October 2005.
- "An Overview of Welfare-to-Work Efforts." *CESifo DICE Report, Journal of Institutional Comparisons*. Vol 3(2): 3–7. Summer 2005.
- "Tracing the Economic Impact of Cumulative Discrimination." *American Economic Review*. Vol 95(2):99–103. May 2005.
- Comment on "Assessing the Impact of Welfare Reform on Single Mothers." *Brookings Papers on Economic Activity*. 2004(1):96–102. 2004.
- "Selecting Among Anti-Poverty Policies: Can an Economist be Both Critical and Caring?" *Review of Social Economy*. Vol 61(4):447–69. December 2003.

- "Economics, Policy Analysis, and Feminism" (with Cordelia W. Reimers). In *Feminist Economics Today: Beyond Economic Man*, Marianne Ferber and Julie Nelson, eds. Chicago: University of Chicago Press. 2003.
- "The Less Skilled Labor Market in Michigan." In *Michigan at the Millennium*, Chapter 18, Charles L. Ballard, Paul N. Courant, Douglas C. Drake, Ronald C. Fisher, and Elisabeth R. Gerber, editors. East Lansing, MI: Michigan State University Press. 2003.
- "Changes in the Distribution of Children's Family Income Over the 1990s" (with Robert Schoeni). *American Economic Review*. Vol 93(2):304–8. May 2003.
- "U.S. Welfare Reform: What's Relevant for Europe?" *CESifo Economic Studies*. Vol 49(1):48–74. 2003. Reprinted in *Hacienda Publica Espafiola*, Monografta 2003, pp15–36.
- "What Do Economists Have to Contribute to Policy Decision-Making?" *Quarterly Review of Economics and Finance*. Vol 42(5):817–26. Winter 2002.
- "Evaluating Welfare Reform in the U.S." *Journal of Economic Literature*. Vol 40(4): 1105–66. December 2002.
- "Can Equity and Efficiency Complement Each Other?" *Labour Economics*. Vol 9(4): 451–68. September 2002.
- "Comments on *Promoting Economic Literacy*." *American Economic Review*. Vol 92(2): 476–77. May 2002.
- "The Clinton Legacy for America's Poor" (with David T. Ellwood). In *American Economic Policy in the 1990s*. Jeffrey A. Frankel and Peter R. Orszag, eds. Cambridge, MA: MIT Press. 2002.
- "The Economics of Welfare Programs." In *International Encyclopedia of the Social and Behavioral Sciences*, Neil J. Smelser and Paul B. Baltes, eds. Oxford: Pergamon. 2001.
- "Labor and the Sustainability of Output and Productivity Growth" (with Matthew Shapiro). In *The Roaring Nineties: Can Full Employment be Sustained?* Alan B. Krueger and Robert Solow, eds. New York: Russell Sage. 2001.
- "What Can Other Countries Learn About Fighting Poverty from U.S. Welfare Reform?" *Zeitschrift fur Sozialreform*. Volume 47(4):464–80. July/August 2001.
- "Declining Caseloads/Increased Work: What Can We Conclude About the Effects of Welfare Reform?" *Economic Policy Review*. Vol 7(2):25–36. 2001.
- "What Causes Public Assistance Caseloads to Grow?" *Journal of Human Resources*. Vol 36(1):85–118. Winter 2001.
- "An Overview of Trends in Social and Economic Well-Being, by Race." In *America Becoming: Racial Trends and Their Consequences*, Neil J. Smelser, William J. Wilson and Faith Mitchell, eds. Washington, D.C.: National Academy Press. 2001.
- "Strong Employment, Low Inflation: How Has the U.S. Economy Done So Well?" *Canadian Public Policy*. Vol 26( Supplement):S175–86, July 2000.
- "Enhancing Opportunities, Skills, and Security of American Workers." In *A Working Nation: Workers, Work and Government in the New Economy*, with David T. Ellwood, Rebecca M. Blank, Joseph Blasi, Douglas Kruse, William A. Niskanen, and Karen Lynn-Dyson. New York: Russell Sage Foundation. 2000.
- "Comment: The State of British Economics." *Economic Journal*. Vol 110(464):350–54. June 2000.
- "Fighting Poverty: Lessons from Recent U.S. History." *Journal of Economic Perspectives*. Vol 14(2):3–19. Spring 2000. Reprinted in *Race, Poverty and Domestic Policy*, C. Michael Hemy, ed. New Haven: Yale University Press. 2004.
- "When Can Public Policy Makers Rely on Private Markets? The Effective Provision of Social Services." *Economic Journal*. Vol 110(462):C34–C49. March 2000.
- "Gender and Race in the Labor Market" (with Joseph Altonji). In *Handbook of Labor Economics, Volume 3C*. Orley C. Ashenfelter and David Card, eds. New York, NY: Elsevier Science Press. 1999.
- "What Goes Up Must Come Down? Explaining Recent Changes in Public Assistance Caseloads" (with Geoffrey Wallace). In *Economic Conditions and Welfare Reform*. Sheldon Danziger, ed. Kalamazoo, MI: Upjohn Institute. 1999.
- "Labor Market Dynamics and Part-time Work." In *Research in Labor Economics, Vol 17*. Solomon W. Polachek, ed. Greenwich, CN: JAI Press. 1998.

"Trends in the Welfare System." In *Welfare, the Family, and Reproductive Behavior: Research Perspectives*. National Research Council, Robert Moffitt, ed. Washington, D.C.: National Academy Press. 1998.

"Contingent Work in a Changing Labor Market." In *Generating Jobs: How to Increase Demand for Less-Skilled Workers*. Richard B. Freeman and Peter Gottschalk, eds. New York: Russell Sage Foundation. 1998.

"Why Has Economic Growth Been Such an Ineffective Tool Against Poverty in Recent Years?" In *Poverty and Inequality: The Political Economics of Redistribution*, Jon Neill, ed. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. 1997.

"Research and Policy Reflections on the Structural Changes Occurring in North American Labour Markets." In *Transition and Structural Change in the North American Labour Market*, Michael G. Abbott, Charles M Beach and Richard P. Chaykowski, eds. Kingston, Ontario: IRC Press at Queen's University. 1997.

"Policy Watch: The 1996 Welfare Reform." *Journal of Economic Perspectives*. Vol 11(1): 169-77. Winter 1997.

"The Misdiagnosis of Eurosclerosis." *The American Prospect*. No. 30:81-85. January-February 1997.

"State Abortion Rates: The Impact of Policies, Providers, Politics, Demographics, and Economic Environment" (with Christine C. George and Rebecca A. London). *Journal of Health Economics*. Vol 15:513-53. Fall 1996.

"Trends in the Working Poor: The Impact of Economy, Family, and Policy" (with Rebecca London). In *America's Working Poor*. Thomas R. Swartz and Kathleen Maas Weigert, eds. Notre Dame, IN: University of Notre Dame Press. 1996.

"When Do Women Use AFDC and Food Stamps? The Dynamics of Eligibility vs. Participation" (with Patricia Ruggles). *Journal of Human Resources*. Vol 31(1):57-89. Winter 1996.

"Trends in Poverty in the United States." In *The State of Humanity*, Julian L. Simon, editor. Cambridge, MA: Blackwell. 1995.

"Teen Pregnancy: Government Programs Are Not the Cause." *Feminist Economics*. Vol 1(2):47-58. Summer 1995.

"Poverty and Public Policy in the 1990s." In *Populations at Risk in America*. George J. Demko and Michael G. Jackson, eds. Boulder, CO: Westview Press. 1995.

"Changes in Inequality and Unemployment Over the 1980s: Comparative Cross-National Responses." *Journal of Population Economics*. Vol 8(1):1-21. February 1995.

"Outlook for the U.S. Labor Market and Prospects for Low-Wage Entry Jobs." In *The Work Alternative: Welfare Reform and the Realities in the Job Market*. Demetra S. Nightingale and Robert H. Haveman, eds. Washington, D.C.: Urban Institute Press. 1995.

"Policy Watch: Proposals for Time-Limited Welfare." *Journal of Economic Perspectives*. Vol 8(4):183-93. Fall 1994.

"The Employment Strategy: Public Policies to Increase Work and Earnings." In *Confronting Poverty: Prescriptions for Change*. Sheldon H. Danziger, Gary D. Sandefur, and Daniel H. Weinberg, eds. Cambridge, MA: Harvard University Press. 1994.

"Does a Larger Social Safety Net Mean Less Economic Flexibility?" In *Working Under Different Rules*, Richard B. Freeman, ed. New York: Russell Sage Foundation. 1994.

"Short-term Recidivism Among Public Assistance Recipients." *American Economic Review*. Vol 84(2):49-53. May 1994.

"The Widening Wage Distribution and its Policy Implications." In *Aspects of Distribution of Wealth and Income*. Dimitri B. Papadimitriou, ed. New York: St. Martin's Press. 1994.

"Poverty, Income Distribution, and Growth: Are They Still Connected?" (with David Card). *Brookings Papers on Economic Activity*. Vol 1993(2):285-325. 1993.

"Why Were Poverty Rates So High in the 1980s?" In *Poverty and Prosperity in the Late Twentieth Century*, Dimitri B. Papadimitriou and Edward N. Wolff, eds. London: Macmillan Press. 1993.

"Responding to Need: A Comparison of Social Safety Nets in the U.S. and Canada" (with Maria Hanratty). In *Small Differences that Matter*, David Card and Richard Freeman, eds. Chicago: University of Chicago Press. 1993.

- “What Should Mainstream Economists Learn from Feminist Theory?” In *Beyond Economic Man: Feminist Theory and Economics*, Marianne A. Ferber and Julie A. Nelson, eds. Chicago: University of Chicago Press. 1993.
- Multiple Program Use in a Dynamic Context: Data From the SIPP* (with Patricia Ruggles). Report to the U.S. Bureau of the Census, No 9301. December 1992.
- “Using the Survey of Income and Program Participation to Understand Poverty and Economic Need,” (with Patricia Ruggles). *Journal of Economic and Social Measurement*. Vol 18:155–76. 1992.
- “Down and Out in North America: Recent Trends in Poverty in the U.S. and Canada” (with Maria Hanratty). *Quarterly Journal of Economics*. Vol 107(1):233–54. February 1992.
- “A Feminist Perspective on Economic Man?” In *Revolutions in Knowledge: Feminism in the Social Sciences*, Susan R. Zalk and Janice Gordon-Kelter, eds. Boulder, CO: Westview Press. 1992.
- “The Effects of Double-Blind versus Single-blind Reviewing: Experimental Evidence from the *American Economic Review*.” *American Economic Review*. Vol 81(5):1041–67. December 1991. Reprinted in *Publishing Economics: Analyses of the Academic Journal Market in Economics*, Joshua Gans, ed. Cheltenham, UK: Edward Elgar. 2000.
- “Recent Trends in Insured and Uninsured Unemployment: Is There an Explanation?” (with David Card). *Quarterly Journal of Economics*. Vol 106(4):1157–89. November 1991.
- “Understanding Part-time Work.” In *Research in Labor Economics, Volume 11*, Lauri J. Bassi and David L. Crawford, eds. Greenwich, CN: JAI Press. 1990.
- “Are Part-time Jobs Bad Jobs?” In *A Future of Lousy Jobs? The Changing Structure of U.S. Wages*, Gary Burtless, editor. Washington, D.C.: The Brookings Institution. 1990.
- “Recent Trends in Housing Conditions Among the Urban Poor” (with Harvey S. Rosen). In *Research in Urban Economics, Volume 8*, Mark A Hughes and Therese J. McGuire, eds. Greenwich, CN: JAI Press. 1990.
- “Linking Faith and Economics: The UCC Experience” (with Audrey R. Chapman). *PRISM: A Theological Forum for the United Church of Christ*. Vol 5(1):5–14. Spring 1990.
- “Why Are Wages Cyclical in the 1970s?” *Journal of Labor Economics*. Vol 8(1):16–57. January 1990.
- “Analyzing the Duration of Welfare Spells.” *Journal of Public Economics*. Vol 39(3):245–73. August 1989.
- “Women and the Economics of Military Spending” (with Lourdes Beneria). In *Rocking the Ship of State: Towards A Feminist Peace Politics*, Adrienne Harris and Ynestra King, eds. Boulder, CO: Westview Press. 1989.
- “Disaggregating the Effect of the Business Cycle on the Distribution of Income.” *Economica*. Vol 56(2):141–63. May 1989.
- “The Role of Part-Time Work in Women’s Labor Market Choices Over Time.” *American Economic Review*. Vol 79(1):295–99. May 1989.
- “The Effect of Medical Need and Medicaid on AFDC Participation.” *Journal of Human Resources*. Vol 24(1):54–87. Winter 1989.
- “Poverty and Policy: The Many Faces of the Poor.” In *Prophetic Visions and Economic Realities: Protestants, Jews, and Catholics Confront the Bishops’ Letter on the Economy*, Charles R. Strain, editor. Grand Rapids, MI: William B. Eerdmans Publishing Co, 1989.
- “Women’s Paid Work, Household Income, and Household Well-Being.” In *The American Woman 1988–89: A Status Report*, Sara E. Rix, editor. New York, NY: W.W. Norton & Co, 1988. p123–61.
- “The Effect of Welfare and Wage Levels on the Location Decisions of Female-Headed Households.” *Journal of Urban Economics*. Vol 24(2):186–211. September 1988.
- “Simultaneously Modeling the Supply of Weeks and Hours of Work Among Female Household Heads.” *Journal of Labor Economics*. Vol 6(2):177–204. April 1988.
- “Welfare Payment Levels and the Migration of Female-Headed Families.” In *Readings, Issues, and Questions in Public Finance*, Eleanor Brown, editor. Homewood, IL: Richard D. Irwin, Inc, 1988.

"Part-Time Work and Wages Among Adult Women." *Industrial Relations Research Association Series, Proceedings of the 39th Annual Meeting*. Madison, WI: Industrial Relations Research Association, May 1987. p479–86.

"Macroeconomics, Income Distribution and Poverty" (with Alan S. Blinder). In *Fighting Poverty: What Works and What Doesn't*, Sheldon H. Danziger and Daniel H. Weinberg, eds. Cambridge, MA: Harvard University Press, 1986.

"The Effect of U.S. Defense Spending on Employment and Output" (with Emma Rothschild). *International Labour Review*. Vol 124(6):677–97. December 1985.

"The Impact of State Economic Differentials on Household Welfare and Labor Force Behavior." *Journal of Public Economics*. Vol 28(1):25–58. October 1985.

"An Analysis of Worker Sectoral Choice: Public vs. Private Employment." *Industrial and Labor Relations Review*. Vol 38(2):211–24. January 1985.

#### Book Reviews

"A Review of America Works." *Industrial and Labor Relations Review*. Vol 62(2):252–253. January 2009.

"A Review of the Labor Market Discussion in the 2006 *Economic Report of the President*." *Journal of Economic Literature*. Vol 44(3):669–73. September 2006.

"A Review of *The Moral Ecology of Markets*." *International Journal of Social Economics* Vol 33(11–12): 862–63. Fall 2006.

"Worker Needs and Government Response: A Comment on *Working in America: A Blueprint for the New Labor Market*." *Industrial and Labor Relations Review*. Vol 55(4): 733–36. July 2002.

"A Review of *The Color of Opportunity: Pathways to Family, Welfare, and Work*." *Journal of Economic Literature*. Vol 40(2):550–51. June 2002.

"A Review of *Does Training for the Disadvantaged Work?, What Employers Want, and Job Creation and Destruction*." *Journal of Policy Analysis and Management*. Vol 16(1): 311–4. Fall 1997.

"A Review of *Welfare Realities*." *Journal of Economic Literature*. Vol 33(3):1363–4. September 1995.

"A Review of *The Evaluation of the Washington State Family Independence Program*." *Industrial and Labor Relations Review*. Vol 48(4):860–1. July 1995.

"A Review of *Impostors in the Temple*," *Journal of Economic Education*. Vol 24(3): 283–6. Summer 1993.

"A Review of *Evaluating Employment and Training Programs*," *Journal of Policy Analysis and Management*. Vol 12(3):596–8. Summer 1993.

"A Review of *Understanding the Gender Gap*," *Economica*. Vol 59(233):123–4. February 1992.

"A Review of *Dollars and Dreams*," *Journal of Economic Literature*. Vol 27(1):92–3. March 1990.

"A Review of *Working but Poor*," *Journal of Economic Literature*. Vol 26(4):1795–6. December 1988.

"A Review of *Work, Health and Income Among the Elderly*," *Journal of Human Resources*. Vol 23(3):397–411. Summer 1988.

"A Review of *Gender in the Workplace*," *Journal of Economic Literature*. Vol 26(2): 728–9. June 1988.

#### Articles For A Broader Public

"Counting the Cost." *Sojourners*. Commentary. Vol 38(4):7. April 2009.

"Poverty and Economic Stimulus" (with Mark H. Greenberg.) *Real Clear Politics*, On-line opinion piece. February 10, 2009.

"Promoting Banking Services among Low-Income Customers." *New England Community Developments*. Federal Reserve Bank of Boston. 2008, Issue 3.

"Fighting Poverty in the Land of Opportunity." *Charlotte Observer*, editorial. Wednesday, December 17, 2008.

"Decreasing Poverty and Increasing Opportunity in America." A memo to President-Elect Obama. The Brookings Institution. November 24, 2008.

"Remeasuring Poverty." *Los Angeles Times*, editorial. Sunday, September 25, 2008.

"How to Wage the Next War on Poverty: Advising and Grading the Candidates." *Pathways: a magazine on poverty, inequality and social policy*. Issue 1: 17–20. Winter 2008.

“Should Michigan Raise the Minimum Wage?” *Detroit Free Press*, editorial. Sunday, March 5, 2006.

“Living Faithful Lives in a Market Economy,” *Church and Society*, Presbyterian Church (U.S.A.) Vol 96(4): 12–17, March/April 2006.

“Wege aus der Armutsfalle: Lehren aus der Reform der Öffentlichen Fürsorge in den USA.” *Neue Zürcher Zeitung*, (Zurich, Switzerland), special section on economic issues. Sunday, August 31, 2003.

“Welfare Reform Reauthorization” (with Ron Haskins). *Poverty Research News*. Joint Center for Poverty Research. Vol 5(6). November–December 2001.

“Welfare and the Economy.” *Welfare Reform and Beyond*, Policy Brief No. 7. Washington, D.C., Brookings Institution. September 2001.

“Economy Poses Challenge to State’s Welfare System.” *Detroit Free Press*, editorial. Tuesday, September 11, 2001.

“Revisiting Welfare” (with Ron Haskins). *Washington Post*, editorial. February 14, 2001.

“A Helping Hand Isn’t Enough.” *Chicago Tribune*, editorial. May 29, 1997.

“Welfare Recipients Aren’t the Only Ones with Plenty of Hard Work Ahead.” *Chicago Tribune*, Sunday Perspective. January 12, 1997.

“Uncertain Days Ahead for America’s Poor.” *Chicago Tribune*, editorial. November 17, 1995.

“Unwed Mothers Need Role Models, Not Roll Backs.” *Wall Street Journal*, editorial. March 7, 1995.

“Block Grants Ignore Feds’ Welfare Role.” *Newsday*, editorial. February 16, 1995.

“The Welfare Pit: The Climb Out Isn’t Easy or Cheap.” *Chicago Tribune*, editorial. March 23, 1994.

“The New Model Democrat: Can We Look to Clinton for a New Model of Economic Activism?” *New Economy*. Autumn 1993. p32–5.

“Assisting Low Income Women into the Labor Market.” Testimony to the Clinton Administration Task Force on Welfare Reform. August 11, 1993.

“Social Scientists and the Problem of Poverty,” *The Chronicle of Higher Education*. Vol 38(48):B1. August 5, 1992.

*Growth is Not Enough: Why The Recovery of the 1980s Did So Little to Reduce Poverty*. Report to the Joint Economic Committee, Congress of the United States. Washington, D.C.: Joint Economic Committee Reports, September 26, 1991.

“Families Must Be our Priority.” *Chicago Tribune*, editorial. September 30, 1991.

“Poor Kids Might Want to Go North.” Joint with Maria Hanratty). *Cleveland Plain Dealer*, editorial. August 28, 1991.

#### *Current Working Papers*

“The Impact of Earnings Disregards on the Behavior of Low Income Families” (with Jordan Matsudaira). National Bureau of Economic Research Working Paper #14038. May 2008.

“Public Policies to Alter the Use of Alternative Financial Services Among Low-Income Households.” Paper prepared for the Federal Reserve Board of Governors. April 2008.

“Labor Markets and Human Capital Investment in Michigan: Challenges and Strategies” (with James M. Sallee). Paper prepared for the conference Where Do We Go From Here? An Agenda-Setting Conference for the Economic Issues Facing Michigan. March 2006.

“What Has Welfare Reform Accomplished? Impacts on Welfare Participation, Employment, Income, Poverty, and Family Structure,” (with Robert Schoeni). National Bureau of Economic Research Working Paper No. 7627. Cambridge, MA: NBER. March 2000.

#### *Speeches:*

In my recent roles inside government (Under Secretary, Acting Deputy Secretary, and Acting Secretary), I have given frequent public talks on issues related to my work and Administration policy.

Prior to joining government service in 2009, I typically gave seminars, speeches, served as a panelist, or was in a public discussion multiple times each month. Many of these talks addressed particular aspects of the current economic situation.

Among the most visible talks that I gave prior to joining the Administration in 2009 are the named lectures I was invited to deliver, which I list here:

*Distinguished Public Policy Lecture*, Institute for Policy Research, Northwestern University, April 2009.

*Aaron Wildavsky Lecture*, Goldman School of Public Policy, UC-Berkeley, March 2009.

*Sulzberger Lecture*, Sanford Institute of Public Policy, Duke University, September 2008.

*McMyler Lecture*, Department of Economics, Case Western Reserve University, April 2007.

*American Enterprise Lecture*, Furman University, March 2007.

*Alice Cook Lecture*, School of Industrial and Labor Relations, Cornell University, October 2006.

*Kurt W Rothschild Lecture*, Department of Economics, Johannes Kepler University, Linz, Austria, November 2005.

*Bazzani Lecture*, Institute for Government & Public Affairs, University of Illinois, October 2004.

*Monroe-Paine Lecture*, Truman School, University of Missouri, March 2003.

*Wellington-Burnham Lecture*, Department of Economics, Tufts University, October 2002.

*Merrick Lecture*, Department of Economics, University of Virginia, April 2002.

*Adam Smith Lecture*, European Association of Labour Economists, September 2001.

*J Douglas Gibson Lecture*, School of Policy Studies, Queen's University, Canada, March 2000.

*Distinguished Lecture on Economics in Government*, Society of Government Economists, January 2000.

*Frank Paish Lecture*, Royal Economic Society, April 1999.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

"Understanding the Impact of the Drilling Moratorium on the Gulf Coast Economy." Testimony to the Small Business Committee, U.S. Senate. September 16, 2010.

"Understanding the Recently Released Data from the Census Bureau on Income, Poverty and Health Insurance Coverage for 2008." Testimony to the Joint Economic Committee, U.S. Congress. September 10, 2009.

"What Business Should Do to Prepare for the H1N1 Flu." Testimony to the Committee on Small Business, U.S. House of Representatives. September 9, 2009.

"Nominations Hearing, Under Secretary for Economic Affairs." Testimony to the Senate Commerce, Science, and Transportation Committee. May 19, 2009

"What Do the Recently-Released U.S. Poverty Numbers Tell Us?" Testimony to the Joint Economic Committee, U.S. Congress. September 25, 2008.

"Why the United States Needs an Improved Measure of Poverty." Testimony to the Subcommittee on Income Security and Family Support, House Ways and Means Committee, U.S. Congress. July 17, 2008.

"What Does the Unemployment Rate Indicate about the Weak Labor Market?" Testimony to the Subcommittee on Income Security and Family Support, House Ways and Means Committee, U.S. Congress. April 10, 2008.

"If the Economy's So Bad, Why is the Unemployment Rate So Low?" Testimony to the Joint Economic Committee, U.S. Congress. Hearings on the Release of the February 2008 Unemployment Numbers. March 7, 2008.

"Employment, Job Opportunities, and Inequality among Workers in the U.S. Economy." Testimony to the House Financial Services Committee. U.S. House of Representatives, Hearings on the State of the Economy, the State of the Labor Market and Monetary Policy. February 16, 2007.

“Nominations Hearing, CEA Member.” Testimony to the Senate Committee on Banking, Housing, and Urban Affairs. October 1997.

“The Causes and Consequences of Rising Out-of-Wedlock Birthrates.” Testimony to the Subcommittee on Human Resources, Ways and Means Committee, U.S. House of Representatives, Hearings on Welfare Reform. January 13, 1995.

“Current Trends in the Poverty and Income Statistics.” Testimony to the Subcommittee on Human Resources, Ways and Means Committee, U.S. House of Representatives. September 10, 1992.

*Growth is Not Enough: Why The Recovery of the 1980s Did So Little to Reduce Poverty.* Report to the Joint Economic Committee, Congress of the United States. Washington, D.C.: Joint Economic Committee Reports, September 26, 1991.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have been closely involved with the programs of the Department of Commerce since I was sworn in as Under Secretary for Economic Affairs in June 2009. I became Acting Deputy Secretary in November 2009, served as the Acting Secretary for almost 3 months while awaiting Secretary Bryson's confirmation and am now back in the Acting Deputy Secretary position. As a result, I am well acquainted with the Department and its activities. I have worked closely with the leadership in all the Department's twelve Bureaus as well as in the Office of the Secretary. And I have met with many of the individuals and organizations (both within and outside the government) who partner with the Department on issues such as trade and innovation. I am particularly familiar with the budget and management issues of the Department. During my time as Acting Deputy Secretary and Acting Secretary, I worked to implement the FY 2011 budget following an extended Continuing Resolution; to shepherd the FY 2012 budget as it moved through the Administration and then to the Congress; and to prepare a proposed FY 2013 budget for the Office of Management and Budget. I have implemented a Department-wide performance measurement system, worked closely on reducing administrative costs, and overseen a wide variety of management issues across the various Bureaus within the Department of Commerce. Furthermore, I am highly familiar with the substantive work of the Department and have worked closely with the Bureaus on issues that range from the National Export Initiative, to investments in weather satellites, to patent reform, to Census data improvements, to supporting innovation and tech transfer, and a host of other topics.

My background as an economist has been particularly helpful in preparing me for this job in the Department of Commerce. I am familiar with cost-benefit analysis and program evaluation. I also understand the economic policy issues that Commerce is deeply involved with, including trade, competitiveness, innovation, spectrum management, and economic development. Furthermore, my time as a researcher and university administrator has helped me understand the parts of Commerce that support scientific research and its applications. This includes the work of the National Institute of Standards and Technology (NIST), as well as much of the research work inside NOAA. As Under Secretary, I became very familiar with the data available from the Census Bureau and the Bureau of Economic Analysis.

After more than two years at the Department of Commerce, I continue to be fascinated by its breadth and by the issues in which it engages. Each Bureau in Commerce supports American business in one form or another, whether providing weather forecasts, GDP statistics, trade assistance, or support to manufacturers. At this particular moment in time, when America is in need of a strong, stable, and competitive economy, I do not believe there is any more important job than helping to support private sector growth and innovation. I would count myself honored and fortunate to be able to serve as Deputy Secretary of the Department of Commerce, whose primary mission is to provide the government services that foster private sector growth and opportunity.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

Upon joining the Department of Commerce in 2009 as Under Secretary for Economic Affairs, I was responsible for final management oversight of the Census Bureau and the Bureau of Economic Analysis. In FY2010, this meant that I was responsible for over \$6 billion in budget expenditures, much of it appropriated to fund the 2010 Decennial Census. I was closely involved with the final planning, execu-

tion, and oversight the 2010 Census. I worked closely with Census Director Bob Groves and his senior leadership, receiving weekly (and sometimes daily) reports on key issues, with particular attention to information that would provide an early signal of potential problems. This included ongoing attention to budgets and expenditures. Ultimately, the Census came in \$1.8 billion under budget, in part because of close attention to management and budget issues.

As Acting Deputy Secretary since November 2009, I have served as the Chief Operating Officer of the Department with responsibility for all management and budget issues. Making sure that the Department and its Bureaus have appropriate management and accounting controls requires at least three things: (1) Judgment about which data to watch and what information is needed to adequately monitor high-risk activities; (2) A first-rate group of staff, both in the Deputy Secretary's office and within the Bureaus, who oversee the day-to-day work of the Department, from human resource management, to acquisitions, to facilities, to budgets; and (3) A data system that provides information on management and accounting performance. Good information is necessary to good management decisions. For instance, we have started tracking information on the hiring process within each Bureau, documenting how much time each step in the hiring process takes. This has allowed us to identify bottlenecks and reduce the time to hire, which helps attract stronger candidates. As a result of this effort, every Bureau inside Commerce is reporting shorter hiring times. This is one example of the sort of management controls that need to be implemented across all areas of activity.

Prior to joining the Department of Commerce, I served as Dean of the Gerald R. Ford School of Public Policy at the University of Michigan. In this role, I quadrupled the budget of the Ford School, built a new building, and started both an undergraduate and Ph.D. degree program. As Dean, I was part of the leadership team at the University of Michigan, a large educational and research organization with 32,000 faculty and staff and over 40,000 students.

I worked within the budget, human resource, and planning systems of that University, making sure that they were effectively implemented within my unit and occasionally working to improve these systems when needed.

In addition, I have worked on the Boards of Directors of a number of non-profit organizations, with responsibility for overseeing the financial and management decision-making within these organizations. I have run two major research centers, effectively overseeing their staffing, finances, and programs.

20. What do you believe to be the top three challenges facing the department/agency, and why?

*First, the Department has a number of important initiatives that need to move forward, even in an environment where overall resources are reduced.* Many of these initiatives are designed to more effectively support American businesses so they can expand and create more jobs in the current economy. These high-priority activities include: (1) Implementing a strategy to improve America's competitiveness in a global economy, by expanding the opportunities for innovation. This means effective technology transfer (NIST), ensuring our manufacturing sector has all the tools it needs to compete (NIST, ITA, ESA), economic development (EDA), support for minority businesses (MBDA), and spectrum management (NTIA); (2) Supporting the work of NOAA, particularly making sure that its weather satellite program is adequately funded and well operated, as well as making sure that its fisheries management programs are implemented effectively; (3) Strengthening export promotion activities, as part of President Obama's National Export Initiative. Exports have been leading economic growth, and expanding the strength and competitiveness of America's export sector is crucial, as is ensuring a level playing field for American companies in overseas markets; and (4) Implementing the America Invents Act, the new law that will reform the patent office and reduce the time needed for patent approval.

*Second, particularly in the current budget environment, the Department of Commerce has to run more efficiently.* This means reducing overhead costs, so that budget reductions can be at least partially absorbed by reduced administrative costs rather than reduced funding for programs. Within the Department of Commerce, we have launched a variety of initiatives designed to do this, including acquisition reforms (intended to reduce purchase costs); IT reforms (designed to consolidate IT systems and make better use of IT); and facilities consolidation. Within an organization as complex and large as the Department of Commerce, these sort of administrative changes often require cultural changes in how work is organized and performed, changes that are not always welcomed by those who are used to long-time pre-existing systems. Hence, this type of change can only occur over a multi-year process with strong central commitment, communication, and leadership. It should be the

primary job of the Deputy Secretary to see that this process proceeds smoothly and effectively.

*Finally, a challenge for Commerce (as well as other Departments) is to retain a skilled and motivated workforce.* In the midst of pay freezes and potential benefit cuts, we need to ensure that government employment is an attractive option for hard-working, motivated, and skilled young adults. Without a first-rate civil service, the Department cannot deliver on its core functions. For instance, a large number of Senior Executive Service (SES) leaders are retirement-eligible across Commerce's bureaus. Replacing this group with equally talented new SES hires will be a major and important challenge in the years ahead.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts: None.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

I have no commitments or agreements about maintaining an affiliation with any organization.

I expect to maintain my membership with several professional organizations that reinforce my credibility as an economist and policy expert. This includes:

- American Economic Association
- Labor and Employment Relations Association
- Association for Public Policy Analysis and Management

I maintain membership in several issues/advocacy organizations:

- Bread for the World
- Amnesty International
- Economists for Peace and Security

I am a member of several community organizations:

- Westmoreland Hills Citizens Association
- Bethesda-Chevy Chase High School PTA
- Westmoreland United Church of Christ
- Friends of the National Zoo
- Ann Arbor Art Center

3. 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 Commerce's designated agency ethics official to identify any 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.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten 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 Commerce's designated agency ethics official to identify any 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. Describe any activity during the past ten years in which you have been 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.

In the years prior to joining the government in 2009, I signed several petitions that gathered signatures from economists to support specific legislative initiatives. To the best of my recollection, this includes a petition in favor of increasing the min-

imum wage, a petition supporting revisions to the official poverty measure, and a petition in favor of the Employee Free Choice Act. I also signed a statement by a group of economists urging states to do everything possible to limit their cuts to human services in the budget crisis of 2008–09.

Prior to joining government, I regularly engaged in written and verbal discussions of the current economy, analyzed policy options and stated my support for a variety of economic policy approaches. I was particularly active in a series of conversations with interested parties about improved ways to measure U.S. poverty. There was legislation introduced in 2008 in the House and Senate to implement an improved poverty measure, which I verbally endorsed on a number of public occasions.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Commerce'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.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

I have never been personally involved in any litigation or administrative agency proceeding.

In their long history, the Universities for which I have worked have been regularly involved in various litigation and administrative proceedings.

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, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. 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.

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#### RESUMÉ OF REBECCA M. BLANK

##### **Experience**

##### **United States Department of Commerce (DOC), Washington, D.C.**

*Acting Secretary of Commerce—8/1/11 to 10/1/11*

Cabinet-level responsibility for the programs and mission of the Department of Commerce.

*Acting Deputy Secretary of Commerce—11/1/10 to 8/1/11 and 10/1/11 to present*  
Chief Operating Officer for the Department of Commerce (DOC), an agency with 11 Bureaus, 45,000 employees and a budget of approximately \$9 billion. Key issues:

- Dealt with difficult budget and management issues in the FY2011 budget year; oversaw a process to deal with significant proposed budget cuts in the FY2012 and FY2013 budgets.
- Headed a major effort to reduce administrative costs inside the Department through reforms in the acquisition and HR process, changes in IT systems, and restructuring of several Bureaus.
- Implemented a Department-wide performance measurement system that was used as a model for other departments
- Worked with a number of Bureaus inside DOC, to help them more effectively meet their core mission priorities. This includes efforts to increase exports, to effectively fund and operate weather satellites, the restructure the Census Bureau's regional offices, etc.

*Under Secretary for Economic Affairs—6/1/09 to present*

Head of the Economics and Statistics Administration (ESA), serving as principal economic advisor to the Secretary and overseeing the two premier Federal agencies which produce economic and demographic data, the Census Bureau and the Bureau of Economic Analysis. Key issues:

- Managed a \$1.1 billion budget for ESA and its two agencies, with oversight for another \$7 billion in spending during FY2010 related to the 2010 Census.
- Oversight of the 2010 Decennial Census, requiring involvement in a wide range of management and political issues. The 2010 Census, the largest domestic Federal deployment ever undertaken, established 500 temporary offices with 650,000 temporary employees. Despite predictions of disaster by outside observers in the previous year, the Census came in \$1.6 billion under budget and met or exceeded performance standards.
- As head of DOC's economic analysis team, tracked key economic trends and regularly reported on these within and outside DOC. Collaborated with other agencies in DOC to analyze the economic effects of innovation, export policy, broadband expansion, etc.
- Solicited and produced a series of policy-oriented reports, in partnership with agencies across the Administration, including a report on the status of the middle class (for the Vice President's Middle Class Task Force); an analysis of the size of the Green Economy; a study of the role of minority and women-owned businesses in Federal contracting (for the Department of Justice); and a report on women's social and economic well-being, and a study of access to credit among women-owned businesses (for the White House Council on Women and Girls.)
- Advocated for improved Federal data. Worked across agencies to generate support for a number of key initiatives including a new poverty measure and legislation to allow enhanced business data sharing to improve industry statistics.
- Implemented a performance-based management system within ESA and its two agencies; provided ongoing senior leadership during extensive management revisions within the Census Bureau, including major changes to HR systems, creation of a new research division inside Census, and the implementation of a program to reduce costs and increase innovation.
- Served as the Secretary of Commerce's representative to the Pension Benefit Guarantee Corporation Board, which regulates all defined benefit pension plans in the private sector.

**Brookings Institution, Washington, D.C.**

*Robert S. Kerr Senior Fellow—7/1/08–6/1/09*

*Robert S. Kerr Visiting Fellow—9/1/07–6/1/08*

After spending a year at Brookings on sabbatical leave, I accepted their offer to stay permanently. I was not at Brookings long enough to initiate the full complement of research and policy projects I had hoped to establish there.

**University of Michigan (UM), Ann Arbor, MI**

*Dean, Gerald R. Ford School of Public Policy—8/99–8/1/07*

*Henry Carter Adams Collegiate Professor of Public Policy—8/99–6/1/08*

*Professor of Economics—8/99–6/1/08*

*Co-Director, National Poverty Center—9/02–6/08*

Dean of the newly-established Gerald R. Ford School of Public Policy, overseeing all issues relating to the program and institutional management of the Ford School.

- In the first year, negotiated the arrangements to name the school for President Gerald R. Ford, a graduate of the University of Michigan.

- Substantially expanded faculty and staff, deepening areas of historical strength and expanding strength in other areas, particularly on the international side.
- Launched a successful endowment fundraising effort from private donors. I faced the challenges of fundraising for a new institution with limited alumni (few of whom were wealthy.) By the end of 2007, I had raised just under \$50 million for student scholarships, program activities, faculty research, and a new building.
- Initiated a series of new programs, including a new Ph.D. program, an undergraduate degree program, a science policy certificate, and two international exchange programs.
- Successfully persuaded UM to move forward with a new 85,000 square foot building for the Ford School, shepherding this building through the approval, design, funding, and construction stages. It was occupied in August 2006.
- Substantially expanded research activities and revenues through outside grant dollars. Established the International Policy Center, which pulled together faculty from across UM. Also established the National Poverty Center and the Center for Local, State, and Urban Policy.
- Substantially enhanced staff and administrative services, building a team of senior staff who oversaw a large expansion in budgets, staff, students, and organizational complexity.

#### **Council of Economic Advisers, Washington, D.C.**

*Member (served while member-nominee for 9 of these months)—9/1/97–7/1/99*

Served as one of three Senate-confirmed members on the White House Council of Economic Advisors in President Clinton's second term. In this role I was senior economic advisor on a host of internal policy discussions, including Social Security reform, unemployment insurance reform, and policies around race and gender. I played both an internal and external role in helping to interpret the rapidly expanding economy of the late 1990s.

#### **Northwestern University, Evanston, IL**

*Professor of Economics—1994–99*

*Director, Joint Center for Poverty Research—1996–97*

*Associate Professor of Economics—1989–94*

*Associate Professor, School of Education & Social Policy—1989–93*

Served as senior faculty researcher and teacher, with outside funding support from a variety of sources. I was the founding director of the Northwestern University/University of Chicago Joint Center for Poverty Research, established with a \$7 million/5 year grant from HHS.

#### **Council of Economic Advisers, Washington, D.C.**

*Senior Staff Economist—9/1/89–8/1/90*

#### **Princeton University, Princeton, NJ**

*Assistant Professor of Economics and Public Affairs—9/1/83–8/1/89*

#### **Massachusetts Institute of Technology, Cambridge, MA**

*Visiting Assistant Professor of Economics—1988–89*

#### **University of Wisconsin-Madison, Madison, WI**

*Visiting Fellow—Fall 1985*

#### **Data Resources, Inc., Chicago, IL**

*Consultant and Educational Coordinator—6/76–8/79*

#### **Education**

Ph.D. in Economics, Massachusetts Institute of Technology, June 1983.

B.S. in Economics, Summa Cum Laude, University of Minnesota, June 1976.

#### **Awards & Honors**

*American Academy of Political and Social Science*, Eleanor Roosevelt Fellow, Elected 2010.

*University of Minnesota*, Outstanding Alumni Achievement Award, 2008.

*American Academy of Arts and Sciences*, Fellow, Elected 2005.

*Society of Labor Economists*, Fellow, Elected 2006.

*National Academies of Science*, Lifetime National Associate, Named in 2004.

*National Academy of Social Insurance*, Fellow, Elected 1997.

*National Bureau of Economic Research*, Faculty Research Associate, 1990–09; Faculty Research Fellow, 1985–90.

*IZA* (a European labor market research organization in Bonn). Research Fellow, Named in 2007.

*Institute for Research on Poverty*, Faculty Affiliate, 1994–2009.

#### **Selected Named Lectures**

James P. Houck Lecture, Department of Applied Economics, University of Minnesota. May 2010.

President's Speaker, American Statistical Association, July 2009.

Distinguished Public Policy Lecture, Institute for Policy Research, Northwestern University, April 2009.

Aaron Wildavsky Lecture, Goldman School of Public Policy, UC–Berkeley, March 2009.

Sulzberger Lecture, Sanford Institute of Public Policy, Duke University, September 2008.

McMylar Lecture, Department of Economics, Case Western Reserve University, April 2007.

American Enterprise Lecture, Furman University, March 2007.

Alice Cook Lecture, School of Industrial and Labor Relations, Cornell University, October 2006.

Kurt W. Rothschild Lecture. Department of Economics, Johannes Kepler University, Linz, Austria. November 2005.

Bazzani Lecture, Institute for Government & Public Affairs, University of Illinois. October 2004.

Monroe-Paine Lecture, Truman School, University of Missouri. March 2003.

Wellington-Burnham Lecture. Department of Economics, Tufts University. October 2002.

Merrick Lecture. Department of Economics, University of Virginia. April 2002.

Adam Smith Lecture. European Association of Labour Economists. September 2001.

J. Douglas Gibson Lecture. School of Policy Studies, Queen's University, Canada. March 2000.

Distinguished Lecture on Economics in Government, Society of Government Economists. January 2000.

Frank Paish Lecture, Royal Economic Society. April 1999.

*1997 Richard A. Lester Prize* for the Outstanding Book in Labor Economics and Industrial Relations.

*1993 David Kershaw Prize*. Awarded biannually by the Association of Public Policy Analysis and Management to the young scholar (under age 40) whose research has had the most impact on the public policy process.

#### **Other Professional Activities**

*MRDC (formerly Manpower Demonstration Research Corp)*, New York, NY

Board of Directors, 1993–97, 2000–09.

*Urban Institute*, Washington, D.C.

Board of Trustees, 2007–09.

*Economic Policy Institute*, Washington, D.C.

Board of Directors, 2008–09.

*Kennedy School of Government*, Harvard University, Cambridge, MA

Visiting Committee, 2004–09.

*DIW (a German research /policy think tank)* Berlin, Germany

Scientific Advisory Committee, 2001–2004; Advisory Council, DIW–DC, 2008–09.

*Center for Budget and Policy Priorities*, Washington, D.C.

Board of Directors, 1994–97.

*Citizens' Research Council of Michigan*

Board of Directors, 2000–08

*National Academies of Science*, Washington, D.C.

Member, Division Committee for the Behavioral and Social Sciences and Education (DBASSE) 2003–08; Served as member or chair of multiple NAS scientific panels.

*Association for Public Policy Analysis and Management*

President, 2007; Executive Committee member, 2006–08; Policy Council member, 2001–04.

*Public Policy and International Affairs Program*

Board chair, 2003–06; Vice chair, 2001–03.

*American Economic Association*

Vice President, 2007; Executive Committee, 1995–97; Committee on the Status of Women in the Economics Profession (a subcommittee of the AEA) Chair, 1993–96; Executive Board 1990–96.

*Midwest Economic Association*

President, 2001–02; Vice President, 1994–95.

**Editorial appointments**

Board of Editors, *American Economic Journal: Economic Policy*, 2007–09

Co-Editor, *Labour Economics*, 2004–07. Associate Editor, 2007–09.

Co-Editor, *Journal of Human Resources*, 1995–97.

Board of Editors, *American Economic Review*, 1993–97.

Advisory Board, *Journal of Public Economics*, 1993–97.

Advisory Board, *Journal of Economic Education*, 1992–97, 2002–09.

Advisory Board, *Feminist Economics*, 1994–97.

The CHAIRMAN. Thank you very much.

If anybody has not had the chance to read Dr. Blank's bio, don't, because you'll be so depressed by your own that you'll probably leave the hearing.

Ms. Ohlhausen, please.

**STATEMENT OF MAUREEN K. OHLHAUSEN, NOMINATION TO  
BE COMMISSIONER, FEDERAL TRADE COMMISSION**

Ms. OHLHAUSEN. Thank you. Chairman Rockefeller, Ranking Member Hutchison and members of the Committee, it is a great honor to have been nominated by the President to serve as a Commissioner of the Federal Trade Commission.

Thank you for the opportunity to appear before this Committee and for the time and attention you and your staff have devoted to this hearing.

I'd like to take the opportunity to introduce my family, who's sitting behind me, my husband, Peter, my son Kevin—

The CHAIRMAN. Yes, well could they stand up? You see, with Chairman Leibowitz, nobody stood up.

Ms. OHLHAUSEN. OK.

The CHAIRMAN. So everybody was introduced, but there was just a sea of faces. OK. There we go.

Ms. OHLHAUSEN. My husband, Peter, my son Neil, my daughter Katie, my son Brian, my son Kevin. And behind him is Kevin's fiancée, Suzanne Collier, and my mother-in-law Anita Ohlhausen.

I'm also honored to be appearing with FTC Chairman Jon Leibowitz, who was a Commissioner during my previous tenure at the agency and who, as Chairman, has led the agency to many successes during his tenure. If confirmed, I look forward to joining him and many other former colleagues at the Commission.

I will be very fortunate, if I am confirmed, to have the opportunity to return to public service at the FTC, an agency that has played an important role in American economic life for almost 100 years.

I've spent much of my legal career at the Commission, first in the General Counsel's office, then working for an FTC Commissioner, and, finally, serving as the Director of the Office of Policy Planning.

In these positions, I gained extensive knowledge about the FTC's mission, which is to prevent business practices that are anti-competitive or deceptive or unfair to consumers, to enhance informed consumer choice and public understanding of the competi-

tive process and to accomplish these missions without unduly burdening legitimate business activity.

I also gained in-depth experience of the variety of tools the Commission may employ to advance this mission, both as an enforcer and as a policy leader.

My work in private practice with Wilkinson Barker and Knauer, as well as my academic activities, have also focused on the FTC and broadened my understanding of the Commission's role and capabilities.

The American economy and American consumers face many challenges today, and the FTC can help them meet these challenges. The FTC has a strong track record of aggressive enforcement against fraud and deception, and the current Commission has continued those efforts by attacking last-dollar frauds, such as bogus job opportunities and fraudulent debt relief that flourish during hard economic times.

Other challenges are related to the breathtaking technological progress that American society has experienced in the last few years with the explosive growth in Internet usage by consumers and businesses and the growth of smartphones.

These two new technologies have offered consumers great benefits in terms of convenience, connectedness and access to content and services, while, at the same time, heightening concerns about privacy and data security.

The task for the FTC is to help consumers protect their privacy without diminishing consumer benefits or hampering competition in industry innovation.

The Commission currently has a reassessment of its privacy framework underway, and, if confirmed, I look forward to consulting with my colleagues, the FTC staff, Congress and consumer and industry groups to strike a balance that best serves consumers' needs and preferences.

These technological changes have also spurred the creation of new combinations, business models and practices that can drive innovation and competition in high tech and other markets.

Antitrust law plays an important role in ensuring that markets do not suffer from anticompetitive mergers or harmful practices, and I believe in strong antitrust enforcement.

Antitrust law is meant to protect consumers, not particular competitors, and economics is an essential tool for determining the likely competitive impact of any business combination or behavior. A freely functioning market, subject to antitrust oversight, provides the most benefits for consumers.

In addition to the Commission's enforcement work, I value the FTC's policy research and development activities, including its expert economic studies, as well as its excellent consumer and business education efforts.

I also support the FTC's competition advocacy program which can play a crucial role in highlighting government-imposed restraints on competition.

I believe the FTC should use its many tools to help ensure that consumers enjoy the benefits of a well-functioning market.

In conclusion, if I am confirmed, I hope that my knowledge of the Commission and its many capabilities, combined with my expertise

in consumer protection and competition, will help the agency fulfill its mission to protect consumers.

Thank you very much.

[The prepared statement and biographical information of Ms. Ohlhausen follow:]

PREPARED STATEMENT OF MAUREEN K. OHLHAUSEN, NOMINATION TO BE  
COMMISSIONER, FEDERAL TRADE COMMISSION

Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, it is a great honor to have been nominated by the President to serve as a Commissioner of the Federal Trade Commission. Thank you for the opportunity to appear before this Committee and for the time and attention you and your staff have devoted to this hearing. I am also honored to be appearing with FTC Chairman Jon Leibowitz, who was a Commissioner during my previous time at the agency and who, as Chairman, has led the agency to many successes during his tenure. If confirmed, I look forward to joining him and many other former colleagues at the Commission.

I will be very fortunate, if I am confirmed, to have the opportunity to return to public service at the FTC, an agency that has played an important role in American economic life for almost 100 years. I have spent much of my legal career at the Commission, first in the General Counsel's office, then working for an FTC Commissioner, and finally serving as the Director of the Office of Policy Planning.

In these positions I gained extensive knowledge about the FTC's mission, which is to prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these missions without unduly burdening legitimate business activity. I also gained in-depth experience of the variety of tools the Commission may employ to advance this mission, both as an enforcer and as a policy leader. My work in private practice with Wilkinson Barker and Knauer, as well as my academic activities, have also focused on the FTC and broadened my understanding of the Commission's role and capabilities.

The American economy and American consumers face many challenges today and the FTC can help them meet these challenges. The FTC has a strong track record of aggressive enforcement against fraud and deception, and the current Commission has continued those efforts by attacking "last dollar" frauds, such as bogus job opportunities and fraudulent debt relief, that flourish during hard economic times.

Other challenges are related to the breathtaking technological progress that American society has experienced in the last few years, with the explosive growth in Internet usage by consumers and businesses and the growth of smart phones. These new technologies have offered consumers great benefits in terms of convenience, connectedness, and access to content and services, while at the same time heightening concerns about privacy and data security. The task for the FTC is to help consumers protect their privacy without diminishing consumer benefits or hampering competition and industry innovation. The Commission currently has a reassessment of its privacy framework underway and, if confirmed, I look forward to consulting with my colleagues, the FTC staff, Congress, and consumer and industry groups to strike a balance that best serves consumers' needs and preferences.

These technological changes have also spurred the creation of new combinations, business models, and practices that can drive innovation and competition in high tech and other markets. Antitrust law plays an important role in ensuring that markets do not suffer from anticompetitive mergers or harmful practices, and I believe in strong antitrust enforcement. Antitrust law is meant to protect consumers, not particular competitors, and economics is an essential tool for determining the likely competitive impact of any business combination or behavior. A freely functioning market, subject to antitrust oversight, provides the most benefits for consumers.

In addition to the Commission's enforcement work, I value the FTC's policy research and development activities, including its expert economic studies, as well as its excellent consumer and business education efforts. I also support the FTC's competition advocacy program, which can play a crucial role in highlighting government-imposed restraints on competition. I believe the FTC should use its many tools to help ensure that consumers enjoy the benefits of a well functioning market.

In conclusion, if I am confirmed, I hope that my knowledge of the Commission and its many capabilities, combined with my expertise in consumer protection and competition, will help the agency fulfill its mission to protect consumers.

## A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):  
Maureen Kraemer Ohlhausen (maiden name Maureen Elizabeth Kraemer).
2. Position to which nominated: Federal Trade Commissioner.
3. Date of Nomination: July 21, 2011.
4. Address (List current place of residence and office addresses):  
Residence: Information not released to the public.  
Office: 2300 N St., NW, Suite 700, Washington, DC 20037.
5. Date and Place of Birth: April 5, 1962; New York, NY.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).  
Spouse: Peter Ohlhausen, President, Ohlhausen Research, Inc.; son: Kevin Ohlhausen, age 24; daughter: Katherine Ohlhausen, age 22; son: Brian Ohlhausen, age 19; son: Neil Ohlhausen, age 17.
7. List all college and graduate degrees. Provide year and school attended.  
University of Virginia, B.A. 1984.  
George Mason University School of Law, J.D. 1991.
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.  
*Wilkinson Barker Knauer, LLP (2009 to present)*: law firm partner and head of FTC practice, counsel clients on consumer protection and competition matters, such as consumer privacy and data security requirements, antitrust investigations, advertising and marketing matters, and issues involving FTC authority and jurisdiction.  
*Business Software Alliance (2009)*: technology policy counsel, analyze issues and develop public policy positions in areas such as innovation, privacy, and e-commerce and articulate positions through white papers, reports, and conferences.  
*Federal Trade Commission (1997–2008)*:  
Director, Office of Policy Planning (2004–2008): member of agency senior staff, manage staff of five attorneys, head agency-wide efforts on various competition and consumer protection issues, particularly in areas of e-commerce and technology; head agency strategic plan review and agency self assessment.  
Deputy Director, Office of Policy Planning (2003–2004): help manage staff of 4 attorneys and oversee agency-wide efforts on various competition and consumer protection issues.  
Attorney Advisor, Office of Policy Planning (2001–2003): assist in agency efforts on various competition and consumer protection issues.  
Attorney Advisor, Office of Commissioner Orson Swindle (1998–2001): advise Commissioner on antitrust and consumer protection issues.  
Attorney, Office of General Counsel (1997–1998): provide legal advice on a variety of legal issues, including the scope of FTC authority.  
*George Mason University School of Law (2006–2007)*: Adjunct professor, taught classes in unfair trade practices and Internet privacy  
*U.S. Court of Appeals for the D.C. Circuit (1992–1997)*:  
Special Assistant to Judge Sentelle and panel for appointing independent counsel (1995–1997): provide legal research and administrative support.  
Law Clerk to Judge Sentelle (1994–1995): performed legal research and helped draft appellate decisions in all areas of law.  
Staff Attorney (1992–1994): researched and wrote legal memoranda for three-judge panels on motions, emergency matters, and matters disposed of without oral argument in all areas of law.  
*U.S. Court of Federal Claims (1991–1992)*: Law Clerk to Judge Yock, performed legal research and helped draft opinions for government contracts matters and other claims against the government.  
*Levan, Schimel, Richman & Belman (1988)*: Summer associate at law firm.

*CT Corporation (1984–1987)*: provide assistance to attorneys in corporate matters, such as drafting articles of incorporation.

9. Attach a copy of your resume. Attached at end of Section A.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Wilkinson Barker Knauer, LLP (2009 to present) non-equity partner.  
Business Software Alliance (1/2009 to 11/2009) technology policy counsel (employee)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

American Bar Association, Antitrust Section, member (approximately 2002 to present); Senior Editor Antitrust Law Journal (2008 to present), other editorial positions (2005 to 2008); member Competition and Public Policy Task Force (2008 to 2010); Vice-chair Advocacy Committee (2007 to 2008).

Federal Communications Bar Association, member (2010 to present) Virginia State Bar, member (1992 to present).

D.C. Bar, member (2010 to present).

Girl Scouts of America, Troop Leader (1998 to 2001) (Girl Scouts of America restricts “Girl Membership” to girls in grades K–12, “Adult Membership” is open to women and men 18 years of age or older).

Federalist Society, member (estimated 1992 to 2002).

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Bush-Cheney '04	12/03/03	\$2,000
John McCain 2008	4/26/07	\$250
John McCain 2008	5/1/08	\$250
McCain Victory 2008 (John McCain final recipient)	7/24/08	\$1,000
McCain-Palin Victory 2008 (RNC final recipient)	9/15/08	\$800

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

J.D. with distinction; American Jurisprudence Award for Excellence in Business Associations; B.A. with distinction; National Merit Scholar; Echol's Scholar (top 5 percent of incoming class at University of Virginia).

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

#### *Publications*

The FTC's New Privacy Framework, Antitrust Magazine, Spring 2011

COMPETITION AS PUBLIC POLICY (Am. Bar Ass'n book) (editor with Bernard Nigro and Charles Compton) (2010)

The FTC Complaint Against Intel: Implications for Consumer Protection, The CPI Antitrust Journal (Apr. 2010)

Editor's Note to Symposium: The End of the Microsoft Case? 75(3) Antitrust Law Journal 691 (2009)

Moving Sideways: Post-Granholt Developments in Wine Direct Shipping and their Implications for Competition (with Gregory P. Luib), 75(2) *Antitrust Law Journal* 505 (2008)

Enforcement Perspectives on the Noerr-Pennington Doctrine, *Antitrust Magazine*, Spring 2007

Identifying, Challenging, and Assigning Political Responsibility for State Restrictions on Competition, 2 *Competition Policy International* 151 (2006)

Issues in Real Estate Brokerage, *Antitrust Source*, Nov. 2005

Obesity and Advertising Policy (with Todd J. Zywicki and Debra Holt), 12(4) *George Mason Law Review* 979 (2005)

Ban on Charitable Solicitations Likely Unconstitutional (with Thomas Pahl) *Free Speech & Election Law Practice Group Newsletter*-Volume 3, Issue 3, Winter 2000

#### *Speeches*

Standard Setting and Information Sharing Issues for Trade Associations (panel discussion)

D.C. Bar Association Antitrust Symposium,  
Feb. 2011

Rewriting the Telecomm Act: Has the Time Come? (panel discussion)  
2010 Federalist Society National Lawyers Convention  
Nov. 2010

FTC Issues for Broadcasters  
Representing Your Local Broadcaster Program  
Apr. 2010

Supersizing the FTC & What It Means for Media, the Internet, and Advertising (panel discussion)  
Progress and Freedom Foundation Capitol Hill Briefing  
Apr. 2010

Keynote speech and panel on the future of the Internet  
Telecommunications Policy Research Conference  
Sept. 2008

Market Studies: The U.S. FTC Perspective  
Office of Fair Trading Conference on Market Studies, London  
June 2008

Regulatory Review: Bureau Chiefs & Legal Advisors on Media Matters (panel discussion)  
The Cable Show  
May 2008

Non-Litigation Advocacy (panel discussion)  
American Bar Association, Antitrust Spring Meeting  
Mar. 2008

Competition Policy in Regulated Sectors  
Korea Development Institute Conference, Seoul  
July 2007

The Pros and Cons of Antitrust in Deregulated Markets  
Stockholm, Sweden  
Nov. 2004

Antitrust Fundamentals (presentation and discussion)  
American Bar Association, Antitrust Spring Meeting  
Apr. 2000 and 2001

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

Hearing before the Subcommittee on Housing and Community Opportunity, U.S. House of Representatives, on Competition in the Real Estate Brokerage Industry, Testimony on Behalf of the FTC (July 25, 2006).

Hearing before the Subcommittee on Commerce, Trade, and Consumer Protection, U.S. House of Representatives, Consumer Protection and Competition

Issues Concerning the Contact Lens Industry, Testimony on Behalf of the FTC (September 15, 2006).

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

Starting with my experience as a law student, I excelled in antitrust law and decided to pursue a career in that field at a Federal antitrust agency. I was fortunate enough to first get the chance to serve as a law clerk at the D.C. Circuit, which honed my legal research and writing abilities and provided me an excellent background in administrative law. I put these abilities to good use in my role as an attorney in the FTC's Office of General Counsel, where I worked on issues involving the scope of Commission's authority, particularly limitations on its power over common carriers, and the interplay between the antitrust laws and the First Amendment.

As an attorney advisor with Commissioner Orson Swindle for three years, I helped review a number of large mergers and some non-merger antitrust matters, a wide variety of consumer protection cases, including some of the earliest online privacy cases, and a variety of reports on the petroleum industry, competition issues, and advertising issues. During this time, I gained in-depth experience of how the Commission functions both internally and externally and also established strong relationships with the staff in the Bureaus of Consumer Protection, Competition, and Economics, as well as in the other supporting offices.

During my tenure at the Office of Policy Planning, I helped develop Commission positions on a number of cutting-edge issues, such as barriers to e-commerce, restraints on advertising, and the impact of new technologies on consumer protection and competition. I also oversaw outreach to other agencies, international organizations, the business community, and consumer organizations on a variety of topics. As Director of the Office of Policy Planning and a member of the Commission's senior staff for four years, I headed a number of agency-wide efforts in areas such as real estate competition and broadband Internet access. I also testified on behalf of the agency before Congress, the Antitrust Modernization Commission, and the Organization for Economic Cooperation and Development. In addition, I contributed to FTC testimony and submissions on numerous other occasions.

I also played a key planning and evaluation role for the agency, heading up the drafting of the FTC's five year strategic plan for 2006 to 2011. In addition, I led an agency self-assessment, *The Federal Trade Commission at 100: The Continuing Pursuit of Better Practices* (Jan. 2009), which involved nine separate roundtables and input from dozens of commentators.

In my role as the head of the FTC practice at Wilkinson Barker Knauer, LLP, I closely follow FTC issues such as privacy, advertising, and antitrust matters, both at the Commission, in Congress, and in the courts. I have advised clients on how to adhere to FTC requirements and helped them prepare comments to the FTC on various privacy issues.

My professional association and academic activities have also centered on FTC-related matters. As a senior editor of the American Bar Association Antitrust Law Journal, and through my various other activities and publications, I have helped play a role in advancing scholarship and informing the bar, industry, and the public on important antitrust and consumer protection matters. I have also co-chaired the Federal Communications Bar Association Annual Privacy Symposium for the last two years. Finally, as an adjunct professor at George Mason University School of Law, I taught unfair trade practices and the emerging law of Internet privacy, both of which are highly relevant to the FTC's mission.

I wish to serve as an FTC Commissioner because I believe my deep knowledge of the Commission, combined with my expertise in competition and consumer protection matters, can help fulfill the agency's mission as defined in its recent strategic plan: "To prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these missions without unduly burdening legitimate business activity." During my almost 12-year tenure at the FTC and in my other legal activities and scholarship, I have focused on these goals and believe I can advance them further as a Commissioner.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

As a Commissioner, I believe it would be my responsibility to ensure that the FTC has proper management and accounting controls. In my time at the FTC, I oversaw the completion of the agency's 2006–2011 strategic plan as required by the Government Performance and Accountability Results Act of 1993. This required a description of the relation between performance goals or measures in the annual performance budget and the strategic goal framework, among other factors. I was also involved in the agency's annual budget process, both as an attorney advisor to Commissioner Swindle and in my role as the Director of the Office of Policy Planning and am thus generally familiar with the FTC's budget and other financial responsibilities. In addition, my experience in leading the FTC's self assessment in 2008 to 2009 also gave me insight on how to manage a competition and consumer protection agency.

20. What do you believe to be the top three challenges facing the department/agency, and why?

I believe the top three challenges facing the FTC are as follows:

1. New technologies have heightened concerns about privacy and data security while also offering consumers great benefits in terms of convenience, connectedness, and access to free content and services. The challenge for the FTC will be to address consumer protection concerns in a targeted way that does not diminish consumer benefits or industry innovation.
2. New business models combined with new technologies also have created new competition challenges, such as strong first mover advantages and the convergence of previously separate platforms. This evolution will require a careful approach that preserves competition while avoiding actions that hamper innovation in business models as well as in technology. Also, the convergence of common carrier services with non-common carrier services may raise jurisdictional challenges for the FTC.
3. Many Federal agencies will likely be facing reduced resources for the foreseeable future and the FTC, like other agencies, will need to use its limited resources to the greatest effect to benefit consumers. Unfortunately, during times of economic distress, schemes that exploit consumers seem to proliferate, such as credit counseling or job seeking scams, so the need for FTC consumer protection activity will likely increase. Also, there may be an increase in mergers as interest rates stay low and weakened businesses seek to consolidate. This would also raise the demands on the FTC competition resources.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I have a 401(k) account through my current employer, Wilkinson Barker Knauer, LLP. The 401(k) plan is administered by the American Bar Association Retirement Funds. If I am still employed there, the firm will start making contributions to my 401(k) plan on July 1, 2011. However, the firm's contributions will not vest until December 1, 2011. If I leave the firm prior to December 1, 2011, I will not receive any of the firm's contributions to my 401(k) plan. In addition, when I leave the firm, I will receive a severance payment that is a prorated share of my 2011 annual bonus based on my billings to the date of my resignation. My other retirement accounts are with the Federal Thrift Savings Plan or with excepted investment funds.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

I plan to remain a member of the American Bar Association Antitrust Section but will resign as an editor of the Antitrust Law Journal if confirmed.

3. 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 Federal Trade Commission'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 the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to the Committee. I am not aware of any other conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten 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 Federal Trade Commission'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 the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to the Committee. I am not aware of any other conflicts of interest.

5. Describe any activity during the past ten years in which you have been 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.

During my tenure as technology policy counsel at the Business Software Alliance, I provided background information on military health information record systems and attended meetings with Congressional staff in connection with the Alliance's efforts to remove a requirement for open source software health information technology contained in an early version of the American Recovery and Reinvestment Act of 2009.

In 2011, I worked with a client to draft some small wording changes to an early version of the Commercial Privacy Bill of Rights Act (Kerry McCain Privacy Bill), which the client then discussed with Congressional staff. My efforts amounted to approximately 5 hours of work.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain: 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, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees?

If confirmed as a Federal Trade Commissioner, I would work diligently with the Chairman and my fellow Commissioners to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

If confirmed as a Federal Trade Commissioner, I would work diligently with the Chairman and my fellow Commissioners to do so.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. 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.

**Experience**

*Wilkinson Barker & Knauer, LLP*, December 2009 to present: As the lead partner for the firm's Federal Trade Commission practice, counsel clients on consumer protection and competition matters, such as consumer privacy and data security requirements, antitrust investigations, advertising and marketing matters, and issues involving FTC authority and jurisdiction.

*Business Software Alliance*, Technology Policy Counsel, January 2009 to November 2009: Senior member of the policy staff responsible for working with major software and hardware member companies to develop policy positions in areas such as innovation, privacy, and e-commerce, and articulating these positions through white papers, reports, and conferences.

**Federal Trade Commission**

*Director, Office of Policy Planning*, 2004 to 2008: Member of agency senior staff responsible for developing and implementing FTC Chairman's policy agenda on cutting edge competition and consumer protection topics, with emphasis on identifying emerging issues and evaluating the competitive impact of regulation through advocacy in state, federal, and international fora. As head of the Commission's Internet Access Task Force, directed a wide-ranging inquiry into issues surrounding net neutrality and oversaw the issuance of the Broadband Connectivity Competition Policy Report. Represented the agency in testimony before Congress and the Antitrust Modernization Commission.

*Office of Policy Planning*, Deputy Director 2003–2004; Attorney Advisor 2001–2003.

*Attorney Advisor*, Office of Commissioner Orson Swindle, 1998–2001. Advised Commissioner on antitrust and consumer protection issues.

*Attorney*, Office of the General Counsel, 1997–1998. Advised Commission on a variety of legal issues.

**U.S. Court of Appeals for the D.C. Circuit**

*Law Clerk/Special Assistant*, 1994–1997, Chambers of the Honorable David B. Sentelle.

*Staff Attorney*, 1992–1994. Researched and wrote memoranda for three-judge panels on motions, emergency matters, and matters disposed of without oral argument in all areas of law.

**U.S. Court of Federal Claims**

*Law Clerk*, 1991–1992, Chambers of the Honorable Robert J. Yock.

**Education**

*George Mason University School of Law, Arlington, VA.*

Juris Doctor with Distinction, May 1991. Class rank: 41168; American Jurisprudence Award for Excellence in Business Associations. Research assistant to professor William Kovacic.

*University of Virginia, Charlottesville, VA.*

Bachelor of Arts with Distinction, May 1984. National Merit Scholar; Echols Scholar (top 5 percent of incoming class).

**Publications**

*The FTC's New Privacy Framework*, Antitrust Magazine, Spring 2011; COMPETITION AS PUBLIC POLICY (Am. Bar Ass'n 2010) (editor with Bernard Nigro and Charles Compton); *The FTC Complaint Against Intel: Implications for Consumer Protection*, The CPI Antitrust Journal (Apr. 2010); *Editor's Note to Symposium: The End of the Microsoft Case?* 75(3) Antitrust Law Journal 691 (2009); *Moving Sideways: Post-Granholm Developments in Wine Direct Shipping and their Implications for Competition* (with Gregory P. Luib), 75(2) Antitrust Law Journal 505 (2008); *Enforcement Perspectives on the Noerr-Pennington Doctrine*, Antitrust Magazine, Spring 2007; *Identifying, Challenging, and Assigning Political Responsibility for State Restrictions on Competition*, 2 Competition Policy International 151 (2006); *Issues in Real Estate Brokerage*, Antitrust Source, Nov. 2005; *Obesity and Advertising Policy* (with Todd J. Zywicki and Debra Holt), 12(4) George Mason Law Review 979 (2005).

**Associations and Activities**

Member, Virginia State Bar, admitted 1992; District of Columbia Bar, admitted 2010.

Senior Editor, Antitrust Law Journal 2008 to present; Associate Editor (2006–2008); Assistant Editor (2005–2006).

Member, ABA Competition and Public Policy Task Force (2008–2010).

Vice Chair, Advocacy Committee, American Bar Association, Section of Antitrust Law (2007–2008).

George Mason University School of Law, Adjunct faculty: Unfair Trade Practices (Fall 2006 and Summer 2007), Emerging Law of Internet Privacy (Summer 2006).

The CHAIRMAN. Thank you very much, and thank all of you.

I'm going to start with a Boxer-like question for Chairman Leibowitz. The press has a lot to say about possible settlement between the FTC and Facebook. You cannot, under any circumstances, comment on anything that I'm saying, so that leaves me more time to say what I feel.

Chairman LEIBOWITZ. OK.

The CHAIRMAN. I want to convey to you my personal perspective that any commission action with regard to Facebook should contemplate two aspects. One, the requiring of Facebook to obtain informed consent from their users, so that the company does not deceive consumers with respect to its privacy policy.

Number two, a rigorous enforcement regime regarding what they promise their users.

It has frankly been my experience in watching this company in its very rapid growth that they have changed privacy settings on users without notifying them first. I think they need very strict monitoring, and so I say that to you, and no comment is required.

Chairman LEIBOWITZ. Just to say we hear you loud and clear and we appreciate your understanding that we cannot comment on this matter.

The CHAIRMAN. I know that. OK. But you can on the next one. And that was brought up by Ranking Member Kay Bailey Hutchison. It's actually one of the more interesting questions about a committee which used to be not as consumer oriented as this one now is, consumer protection. We're into that very heavily. It's a priority for us.

Now, the FTC should be aggressive in taking on businesses, both large and small, that profit from harming ordinary Americans with unfair deceptive practices, but there are those also who say, yes, that sounds good, but the FTC should be careful not to overburden business and should respect self-regulation.

And from that you get into the question is this a job-killer regulation or is that a myth? And I'm going to be very interested in what your general thoughts are, as well as yours, Ms. Ohlhausen.

Chairman LEIBOWITZ. Well, with respect to sort of consumer privacy, in many issues involving consumer protection, we take a two-pronged approach. One prong is we go after malefactors, companies that engage in unfair or deceptive acts or practices. And, as I said, we have brought more than 90 cases against companies in the last two-and-a-half years that have offered Americans foreclosure-rescue scams, sham debt relief, and more than 100 privacy cases. We take those issues very seriously.

And on the policy front, we do believe in self-regulation, and we have seen companies step up to the plate when they want to, when they're responsible. Again, I think sometimes the specter of legislation, particularly in the privacy area, is very helpful in getting

some companies to understand the benefits of self-regulation, and so we commend this Committee for all of your efforts in this area.

And then sometimes, of course, in some areas like data security, we have come to a consensus decision that we do support legislation because it would benefit consumers.

So it's really a two-pronged approach. One prong is enforcement. One is policy.

We always start with self-regulation and we like to hope for the best, and we've seen some progress in some areas. We need to see more progress in others.

The CHAIRMAN. That was a careful answer, and not entirely satisfactory to me because you say the threat of regulation can often do the trick. A lot of people have been listening about threats of self-regulation for a very long time and it never really arrives. They know that, so they build that into a cost of doing business and don't conform.

So just clarify for me, again, what deserves regulation? What deserves a chance at self-regulation?

Chairman LEIBOWITZ. Well, again, if a company makes, for example, a commitment, "we will protect your data," and they don't, then that is generally a violation of the FTC Act. It's an unfair, deceptive act or practice, and we will go after that company, and we have.

From a policy perspective, again, we have very little regulatory authority, as you know, Senator, and so we like to support regulation. We believe in using the bully pulpit, and, if that doesn't work, at times, we support legislation.

And so, for example, in our privacy report, which we released last year, which I know you're familiar with, we called for more privacy by design. We called for more choice and more transparency.

Very few people read privacy notices online. I asked our staff to take a look at privacy notices in the mobile space, because so much commerce is moving to mobile. And we found one privacy policy that took 109 clicks to get through. So you should not read that while you're driving. I don't think any consumers read that at all.

When we see real problems in the marketplace, the first approach we take, even if it's not a violation, is to try to get companies to do a better job, and sometimes they do, and sometimes they don't.

And so, again, we brought more than 100 spam and spyware cases, more than 30 data-security cases, and 79 Do-Not-Call cases in the last decade. We brought a major case against Google involving its Buzz Network, because it took information that we alleged it had committed to keeping private and used it to jumpstart its first attempt at a social network.

And we want to work with this committee on legislation, and we have worked with Members of this Committee on both sides of the aisle.

I hope that's not too unsatisfactory, but we will continue this conversation, Senator, I'm sure.

The CHAIRMAN. OK. It was much better.

Chairman LEIBOWITZ. Thank you.

Ranking Member Hutchison?

Senator HUTCHISON. Well, thank you, Mr. Chairman. I am not clear from your answers really what you are using as guidelines, and so let me take on the Interagency Food Marketing Working Group.

The FTC, along with the FDA, the CDC, and the USDA, were tasked with studying and developing recommendations for standards for the marketing of food toward children 17 and younger.

However, there are concerns about what is being said is going to come out, and it is not going to be recommendations for Congress, but, rather, guidelines, and, further, that some of the guidelines are actually going to say that certain things should not be done that are considered actually healthy by the Department of Health and Human Services and the U.S. Department of Agriculture in the 2010 dietary guidelines which they put out.

So tell me what is myth and what is true and what kind of standard are you using from the authorization that Congress gave, juxtaposed against what you're going to actually put out?

Chairman LEIBOWITZ. That's a great question, and it came from the Appropriations Committee, as you know. Senator Harkin and then Senator Brownback tasked us with this, with being part of what we call the Interagency Working Group.

We're responsible for the nutrition part, and what we are going to do—and we actually had a hearing on this particular matter in the House about 2–1/2 weeks ago and we put testimony in and we can make that part of this record.

We're going to make recommendations. They are voluntary. They are unenforceable. We're going to make it utterly clear that there's no private right of action that will come out of these recommendations.

We put out the guidance, initially, as you know, and we did what we always do. We put out guidance which is we listened to stakeholders, and all the stakeholders acknowledged that there is a serious childhood obesity problem.

But we got a lot of comments and we are making modifications on the marketing side. We're going to carve out 12 to 17 year olds. We are only going to apply the recommendations to children ages 2 to 11. We are going to carve out charitable. We are going to carve out sports after school. We are going to stick to what the CFBAI, which is the self-regulatory entity of the largest food marketing companies, came up with, which is marketing in measured media.

And so I think that the guidance, and I hope it comes out quickly, because there's a lot of hubbub about what the agencies might do, I think when we do it you will see that, it will be much more practical. I can assure you it will be on the marketing side, which we are responsible for. And it will be more balanced, and I think folks who care about this issue, no matter what their preconceptions are, will think it is going forward.

And I want to make two other points on this. One is that we have no intention of regulating. We have no authority to do it, even if we did, there would be serious First Amendment issues.

And the other is that, after we released the draft guidance, which we were taking comments on, the major food-marketing companies came up with their own self-regulatory standards, and that was very, very significant. We had been calling for this as an agen-

cy since probably 2006. So we are aware of the changes in the marketplace and we are making changes in our guidance.

Senator HUTCHISON. Let me just ask you if—since you are going to be putting these guidelines out and some of them are even in opposition to guidelines from other Federal agencies or recommendations from other Federal agencies, then could someone bring a case before the FTC that there is an unfair or deceptive trade practice based on the voluntary guidelines that are going to come out from this committee in which the FTC participated?

Chairman LEIBOWITZ. Absolutely not, Senator. Absolutely not.

Senator HUTCHISON. Do you think that you have followed the authorization from the Committee, from the appropriations—

Chairman LEIBOWITZ. I do think we have followed the guidance from the appropriations language. We are going to make recommendations to Congress.

The one area where I would say we've pushed back is if you look at the appropriations report language. It says children 2 to 17, and we put that out for comment. We actually thought, based on our work and other studies we had done about food marketing to children, that children ages 12 to 17 have different cognitive abilities. Commercials, or advertising, if they influence children, influence younger children much more than older ones.

So the one area where I think we will push back as a Commission, or where we will, is in only applying this guidance to younger children, ages 2 to 11. That's what the self-regulatory approach of the CFBAI, the major food marketers, is as well.

Chairman HUTCHINSON. Well, thank you. I do have other questions, if we have a second round, Mr. Chairman, but my time is up. Thank you.

The CHAIRMAN. Thank you, Senator Hutchinson.

Senator Lautenberg.

And, also, I want to say to Senator Pryor, although he made a late arrival, he is the Chair for this entire discussion, so you get an extra 2 minutes in your questioning.

Senator LAUTENBERG. Pryor doesn't mean priority, you know. Thanks, Mr. Chairman.

Dr. Blank, Federal agencies are expected to ensure that the benefits of proposed regulations exceed their costs, and yet we are seeing a broad assault on regulations that protect public health, the environment, consumers.

Do you believe that we can confirm the fact that Federal regulation is always a net positive for our economy and our society?

Dr. BLANK. So I think President Obama has been clear that we need regulations on things like safety and security and health and that those regulations are often very appropriate and very necessary.

I spend a lot of time talking to different business groups, and I rarely hear of people who are against regulations per se. What they are upset about is when regulations are imposed in a discretionary manner or when they are changing and it is uncertain exactly what the rules are and how they can best be followed.

That said, clearly, all of the administration agencies have been asked to do cost-benefit analysis of their specific regulations, and we are doing that at the Department of Commerce. And to the ex-

tent we identify regulations that impose undue burdens, we will be discussing that and seeing whether we can make changes.

Senator LAUTENBERG. Is it thought now that putting regulations into the system are a more arduous task than it has been in years past? Is it tougher to get things into place?

Dr. BLANK. I don't know that I have a good answer to that. We do a limited amount of regulation inside the Department of Commerce and I don't think that's true in the areas that we regulate, but it could be true in some other places.

Senator LAUTENBERG. Yes, because you used the word arbitrary, and I think that therein lies the umbrella that takes care of those who dissent from having regulation put into place, even if it does yield a net benefit.

So we discuss these things here at length, and there are two sides in every story, as you know, and I'm not sure that it's always meritorious in some way, but it doesn't matter, not to our ability to get things going here.

Tobacco companies, Mr. Chairman, continue to spend billions of dollars each year on advertising and promotions that lure children into smoking, keep smokers hooked.

Now, as FTC Chairman, what actions might be taken to expose the truth about tobacco marketing and the health risks of these products?

I remind you that I was the Senate author of the no-smoking in airplanes.

Chairman LEIBOWITZ. I'm aware of that, Senator, and we have a very proud history in this area. In 1964, just after the Surgeon General came out with its cigarette report or report on cancer, it was the FTC that put the first warnings on labels with a cigarette-labeling rule. Subsequently, Congress turned that into legislation.

We will continue to do periodic reports. We did one this July and we expect to have another one out next year on the advertising expenses of tobacco companies.

I think what we've seen, as you know, is that for tobacco involving smoke, the advertising expenses have gone down, but smokeless tobacco agencies have gone up, and we will continue to be involved in that.

Some of our jurisdiction over things like testing went over to the FDA in legislation 2 years ago, and they are the appropriate entity to look at testing. We are not any more. But we will continue to stay involved in this issue.

Senator LAUTENBERG. Thank you.

Dr. Blank, we know that changes in ocean chemistry caused by carbon dioxide will affect our food supply and the health of our oceans, yet research on ocean acidification is still in its infancy.

Now, I wrote a law in 2009 requiring NOAA to lead an inter-agency effort to study the effects of ocean acidification. Are you familiar enough with this to say that you're going to continue to build on the Administration's commitment to better understanding in addressing this growing problem? Because it portends bad things for our ecology, I think.

Dr. BLANK. Thank you, senator. I appreciate that law and the nudging that you have given to us, that authorization to do more work and research on the ocean-acidification issues. They are obvi-

ously important both for the ecology of coastlines as well as for the survival of various fish stocks, and both of those are central to NOAA's mission.

We have certainly tried to move forward as quickly as we can on implementation of the provisions within your law. I know there's a lot of interest in pursuing this research on ocean acidification. There's a strong sense this is a very important area, and I certainly will pledge to you that I will continue to make sure that work moves forward.

Senator LAUTENBERG. Thank you, Mr. Chairman. Thank you to all the witnesses.

The CHAIRMAN. Thank you, Senator Lautenberg.  
Senator Pryor.

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you, Mr. Chairman.

And, Dr. Blank, if I could start with you, there's, in some quarters, a belief, maybe, that the United States cannot manufacture anymore, and I disagree with that, and I think most on this committee disagree with that.

But, also, Gary Pisano and Willie Shih from the Harvard Business School, have just suggested that a country will eventually lose its competitive edge in R&D design and engineering unless there's a strong domestic manufacturing base. Do you agree with that?

Dr. BLANK. Yes, I do, sir.

Senator PRYOR. And why?

Dr. BLANK. I believe that there is a lot of evidence that, first of all, the presence of manufacturing is closely linked with the presence of engineering and design, and you cannot maintain design and engineering in this country if there is not production occurring nearby.

Second, I do think that particularly advanced manufacturing, high-value added products are a comparative advantage in this country and a real driver of a very important sector of our economy, which has actually been expanding and leading the economic growth of the last year.

Senator PRYOR. I hope that'll be a major focus of you as you serve in this capacity, is try to make sure that we have the right kind of manufacturing in this country.

The second question I have for you, Dr. Blank, is that the National Export Initiative, you know, is setting out to try to double U.S. exports over 5 years. Senator Tom Udall and I recently introduced a bill titled, the "Clean Energy Technology Manufacturing and Export Assistance Act," S. 1586.

How can the Department of Commerce and the International Trade Administration more effectively promote the export of U.S. clean-energy services and products?

Dr. BLANK. So that's an excellent question, and I'd certainly welcome a conversation with you and your staff on the ideas that you have and that are in this bill.

I mean, I don't know that clean-energy products, in terms of promoting their export, are notably different than other products. We need to have a real advantage in this country in producing these

and innovating in them and doing the design and the patenting and the technology transfer that gives our industry an edge over the rest of the world. And if we don't have that background of research and design, we're not going to have the leadership in exported manufacture.

So, I mean, it's similar to other products. We have to really work on supporting the whole range of this manufacturing industry, so that it stays in this country.

Senator PRYOR. Yes, I think that's part of the idea there is if the Department of Commerce can help us open those export markets for U.S.-manufactured products, it just helps our marketplace here to continue to develop and grow and be the leader.

Let me turn, if I may, to the other two witnesses, and I guess, Chairman Leibowitz, I'll start with you. I want to ask a question that I'm not sure you can comment on, and it has to do with pharmacy-benefit managers. And there's a merger between Express Scripts and Medco, supposedly, if I understand what the news accounts say. They already have somewhere between 50 and 60 percent of the market for prescriptions, and the merger of these two companies could impact more than 135 million Americans. That's about a third of the U.S. population.

And I have concerns about the consolidation of the marketplace with PBMs. And, again, I don't know if you can comment on that, but I wanted to express my concern, and if you can comment, I would love to hear your comments.

Chairman LEIBOWITZ. I can comment to say—because the companies have acknowledged this—that we are reviewing the merger. We are going to apply the appropriate standard under the Clayton Act, which is if the merger may substantially lessen competition, we will challenge it. If it doesn't, we won't.

I have seen that figure, 50 to 60 percent. I think that may be within PBMs as opposed to within all prescriptions written or all medicines consumed.

But because it is a matter under investigation, I will leave it at that, except to say we hear your comments and we are working very diligently with two of our bureaus, the Bureau of Economics and the Bureau of Competition, to review this proposed deal.

Senator PRYOR. Thank you.

Ms. Ohlhausen, did you have any comments on that?

Ms. OHLHAUSEN. Just that I am aware that the commission has an investigation and if I'm confirmed I would certainly want to talk to the bureaus and my colleagues to determine if there's a competitive problem.

Senator PRYOR. Thank you.

This committee continues to look for bipartisan consensus on data security, and I want to thank the Chair and Ranking Member for trying to get us to that consensus, but I'd like to switch gears a little bit and ask the both of you about privacy.

I read the FTC's proposed update on the Children's Online Privacy Protection Rule, and it says, let's see, in addition to children under 13, I believe that teens also face challenges in the online world, so not just 13 and under, but teens generally.

And that sort of raises the question of what you two believe would be the core components of meaningful privacy legislation,

regulation and principles regarding teens, again, not just 13 and under, but teens generally.

Chairman LEIBOWITZ. So, as you know, we put out guidance on COPPA. We are taking comments on it, and we have seen a lot of support from stakeholders, but also comments, and we will be reviewing those as we go forward with the rulemaking.

For teens, as you know, they are not covered if they are 13 to 17, but we are very, very concerned about privacy and social media aimed at teens. As you know, teenagers have an incredible ability to use the Internet, but, sometimes, they act impulsively—not my children, of course—and their judgment can be in doubt, and so it's an area we are very, very concerned about.

I would say that is one of the reasons we are going to do a deeper study into applications. We have found that some of them are not rated, even if they are content-based, particularly in the mobile space. And some of them are rated, but may not be rated accurately because they are self-rated. And so that is an area we are going to continue on.

And then if you look at our privacy report, we talk a little bit about teens, and some of the areas we have looked at in the draft privacy report, which we hope to finalize by the end of the year, include geolocation and things like Do-Not-Track.

So we want to work with you as Subcommittee Chairman and work with this whole Committee, because I know it is a very important issue to you and it is an important issue to us.

Ms. OHLHAUSEN. And I agree that I think teens raise distinct issues than younger children, where the parent really controls or should control their interaction and their release of data, but they are different than adults.

So I do think it's important to take a close look at the issues and make sure that they have a clear understanding of, you know, what data is being collected about them, how it's being used and that they're not just sort of pulled into doing something they don't really understand what the ramifications will be.

Senator PRYOR. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Pryor.

Senator McCaskill.

**STATEMENT OF HON. CLAIRE McCASKILL,  
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. Thank you, Mr. Chairman.

On the voluntary guidelines on food marketing, let me ask you this, I noticed over the weekend—and I'm trying to avoid sugar and starch. I think it's important, but I didn't need changes in advertising to get me to do that. I mean, I kind of knew I wasn't healthy and got to work on it.

And so I noticed an advertisement over the weekend, where a young boy and his father were playing touch football, and Tony the Tiger was playing with them. And they walked inside after they played touch football together, and Tony the Tiger kind of walked with them. And then the father and the son sat down and had a bowl of frosted flakes. Would that be against the guidelines?

Chairman LEIBOWITZ. I don't think so. Of course, they are recommendations. They are voluntary. They are not enforceable.

Senator MCCASKILL. Well, but—

Chairman LEIBOWITZ. No, no, no—

Senator MCCASKILL.—people can advertise—

Chairman LEIBOWITZ.—I think I saw that same advertisement and it was to a general audience.

Now, the industry itself, the CFBAI has made its own pledges about what should or shouldn't be advertised, and if frosted flakes are within that group, by a certain period of time, they will phase out advertisements targeted to audiences age 2 to 11.

And so we will put out final guidance that will reflect, to a large extent, the support for self-regulation and for the guidance that the food-marketing companies have put into place, and—

Senator MCCASKILL. I think the food-marketing companies are doing a good job trying to do some of this on their own, but let me get back to my question.

Chairman LEIBOWITZ. Sure.

Senator MCCASKILL. Would that advertisement violate the voluntary guidelines that are going to be issued by the interagency group? Yes or no.

Chairman LEIBOWITZ. I think the answer is almost certainly not.

Senator MCCASKILL. OK.

Chairman LEIBOWITZ. The caveat is that I would need to see where it is and where it is placed, but almost—

Senator MCCASKILL. I would love you to look—have your folks look at the commercial and look at the guidelines and get back to me with a specific answer, because the young boy in the ad is certainly younger than 11, and it is Tony the Tiger, and I don't think Tony the Tiger—I mean, although—I remember my mother not buying me frosted flakes, even though I thought Tony the Tiger was cool. That's how old Tony the Tiger is. He's been around a long time. I want to make sure we are using some common sense here.

Let me ask you another question about your jurisdiction, Mr. Leibowitz.

I'm curious about your entry into labeling of alcohol products. This is brand new. And you and I have talked before in this hearing about how much work you have to do that you can't get to because you don't have enough folks, and, typically, the alcohol and tobacco agency, the bureau is somebody who has always taken the jurisdiction on labeling and marketing of alcohol.

And for you to go there when this has never happened before, I am curious as to how that happened, since I think you've got plenty to do without entering into new areas.

Chairman LEIBOWITZ. Well, we certainly do have plenty to do. Now, we have done, by either statutory obligation from Congress or through appropriations language, we have done—and I'll get back to you on this—periodic, almost annual alcohol-advertising reports—and they are very supported by industry—about how much industry is spending on advertising.

With respect to the Four Loko case, we worked with the FDA and we sent them warning letters and they stopped putting caffeine in these fortified alcohol drinks, which are known around campuses as Blackout in a Can—

Senator MCCASKILL. Yes. No—Listen—

Chairman LEIBOWITZ. I know you're not suggesting—

Senator MCCASKILL. No, I think we need to do something about this product.

Chairman LEIBOWITZ. Right.

Senator MCCASKILL. The question is your jurisdiction versus the Bureau of Alcohol and how this happened that you stepped into an area that you have never, ever been in before as opposed to the Bureau of Alcohol—Treasury.

Chairman LEIBOWITZ. I want to get back to you on this. I believe, at least with the warning letters, we certainly consulted with BATF or the Bureau of Alcohol. But let me get back to you and give you a fuller answer.

Senator MCCASKILL. Yes, that would be perfect.

Chairman LEIBOWITZ. I understand your concern.

And the one thing we also did was because some had raised concerns about this, we put a draft consent decree on the record and then we opened it up for comments, and we are extending the comment period for people who have comments or entities that do, and we will take those comments into account.

Senator MCCASKILL. I don't want anyone to misinterpret. Sometimes I—my sarcasm gets me trouble on this committee because people take things out of context. I don't want anyone to interpret my questions that I don't think something needed to be done about this product.

Chairman LEIBOWITZ. No, I understand.

Senator MCCASKILL. The question is who should be doing it? And I'm trying to keep you guys focused on this huge body of work you have without beginning other areas that typically you have not gone in.

Chairman LEIBOWITZ. And, Senator, we appreciate that. We are a small agency with a big mission and we do worry that the quality of our work is being strained by the quantity of demands placed on us. And so when we head to the outer area of our jurisdiction, it is not always a good idea. So I hear what you're saying. Thank you.

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

The CHAIRMAN. Sarcasm?

Senator MCCASKILL. Me?

The CHAIRMAN. Impossible.

Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you to all our witnesses here.

I guess I'd start with you, Dr. Blank, because, you know, I chair the Subcommittee on export promotion, which includes tourism, and Senator Blunt and I—he's ranking Republican—have been working together. We have a bill that we would love to get done very quickly.

We're having our hearing Thursday to speed up the—help the State Department to speed up their visa approvals. As you know, we've lost 16 percent of the international tourism market. Every

point we've lost is 160,000 jobs. It's an immediate way to bring jobs in our country.

Could you talk about how the Department of Commerce views the economic impact of getting additional tourists in the U.S.?

Dr. BLANK. So one of the things that I think is much underappreciated is the fact that foreign tourists are a major export for the United States. It's people from abroad buying U.S. goods and services. And this is a potentially vastly expanding market, particularly with the growth in middle income, families in China and Brazil and some of the other large countries. So this is a central part to the National Export Initiative in terms of expanding exports within the Department of Commerce.

As you know, we play a key role on the Tourism Policy Counsel working with State Department on the visa issue. My understanding is there has been some real progress on this issue.

Senator KLOBUCHAR. There has been.

Dr. BLANK. I know that there's more progress that needs to be made. And we also, obviously, worked on standing up the Corporation for Travel Promotion, and that's moving forward and I think recently announced its international advertising efforts, and work with the Travel and Tourism Advisory Board from the private sector. So—

Senator KLOBUCHAR. Very good. Yes, there's been some market improvements in the last few months. We're excited. Tom Knight over at the State Department has been helping, and I know you've been doing a good job. So we're looking forward to the hearing tomorrow and getting some of that out there—or Thursday.

Mr. Leibowitz, two issues I want to ask you about. The first is the grey-market issue. I've been working very hard on this drug-shortage issue. The president did an administrative order a week ago, endorsed the bill that I, with Senator Casey, Senator Collins and others, to give the FDA some early warning.

Could you talk about if there's a mechanism for the FTC to address the vendors who essentially have a monopoly on specific drugs that are in shortage?

Chairman LEIBOWITZ. Well, we are aware of your legislation, and, of course, if the drug shortage is due to anticompetitive behavior, a conspiracy to violate the antitrust laws or some sort of monopolization, we would have jurisdiction there.

We are also working with the FDA, which has more information. And HHS, which, as you know, just issued a report to see whether there is something that we can do that would be useful in this area, because, obviously, it's a serious problem.

Senator KLOBUCHAR. OK. And then I wanted to get at the marketing guidelines. I know a few of my colleagues have asked those questions, but—So just to get this clear, you considered these voluntary. Do you have authority to issue industry-wide regulations or do you think that they are voluntary suggestions or how do you consider them?

Chairman LEIBOWITZ. These are voluntary recommendations. They are unenforceable. We do not have regulatory authority here.

And, as you know, Senator, because we've talked about it, I believe that the marketing guidance that we are going to come out with, because, again, we don't do the nutrition side, but the mar-

keting guidance will be very, very balanced, and I think people will like it.

And we did listen to stakeholders when we put out the first draft for comment.

Senator KLOBUCHAR. So you've made some changes, I know, because I was—been very involved on the AG committee on the—a lot of the nutrition work we've done and we've seen some market improvements, my daughter, I see them in the school every day with what's in the vending machines, things like that.

But so they're voluntary, and you've also worked on some of the changes. I remember 2-percent milk was included for a while. And what's happening with low-fat yogurt?

Chairman LEIBOWITZ. Right. So, we don't do the nutrition, but low-fat yogurt, certain types of cereal, one of my daughters went through a period where she was eating Special K with yogurt and fruit for breakfast, and I thought this was a small triumph for parenting.

Senator KLOBUCHAR. It is, when the other choice might be waffles or toast, that is—

Chairman LEIBOWITZ. Right. And I found out that in the draft nutrition guidance, it would not have met the standards because it had too many grams of sugar. I think the draft cut-off was at seven. It was at eight and it had seven or it was a nine and it had 10, and so I was actually very surprised by that.

But I know that the Department of Agriculture and HHS are working hard. I like to think when they come up with their modified or final nutrition guidance—again, it will be recommendations. It is not a regulation. It will be a more balanced nutritional meal of sorts.

Senator KLOBUCHAR. OK. Thank you very much. I appreciate all three of you being here. Thank you.

The CHAIRMAN. Thank you, Senator Klobuchar.

Chairman Leibowitz and also Ms. Ohlhausen, the—Oh, I'm—Kelly, I'm sorry. Senator Ayotte. Ayotte. Got it right?

**STATEMENT OF HON. KELLY AYOTTE,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Yes, you did. Thank you, Mr. Chairman.

The CHAIRMAN. You're welcome.

Senator AYOTTE. Chairman Leibowitz, Ms. Ohlhausen and Dr. Blank, I appreciate your being here.

I also wanted to echo what Senator McCaskill said. I share her concerns to address this jurisdictional issue because I know the BATF is also looking at this and want to make sure that it's clear guidance. So I look forward to your answer on that and appreciate it.

Chairman LEIBOWITZ. Thank you.

Senator AYOTTE. Chairman, I've also been concerned about the open-ended nature of the FTC's statutory authority extended to it under Section 5. The business community needs certainty, guidance and predictability when it comes to antitrust laws, and, frankly, every other type of regulation, so that they can comply.

In your written testimony, you said that if we find violations of the law, we will aggressively pursue them, and I wholeheartedly agree with that.

But the problem is that, in many instances, the business community is unsure about what your interpretation of the law is, and, therefore, who may be liable and what they may be liable for.

And there are some instances where the FTC threatens to enforce a standard and only the FTC knows what that standard is. So if the FTC is working to eliminate, for example, deception and unfairness under Section 5, isn't it absolutely necessary to start with properly providing notice of which standard you're going to apply? And, also, can you define for me your view of what the proper limits are with your authority under Section 5?

Chairman LEIBOWITZ. Right. So this is a great question, and you're absolutely right. Businesses want certainty and we ought to provide guidance to them.

Section 5, unfair methods of competition, was created by this Committee in 1914, when you created the FTC and drafted the FTC Act, is a modest penumbra around the antitrust statutes.

But whenever we have used it—and I have gone back and read the legislative history of the statute—you wanted to give us broader jurisdiction, but limited remedies.

So, for example, unlike the Antitrust Division, we don't put people in jail. We don't fine malefactors. But in the instances in which we have used Section 5 recently—and, of course, we have used that statute as a Commission going back to our early years—the touchstone has always been harm to the competitive process, harm to competition, harm to consumers. And we have only used it twice, since I have been Chairman, and I think most people understand that is a fairly judicious use. Both times they were unanimous bipartisan votes and we issued guidance.

So we issued guidance in the U-Haul case, which involved an invitation to collude. We alleged that U-Haul's executives reached out to Budget Rent-a-Car and said, "Let's raise prices for trucks in Florida." And if Budget had said yes, we would have kicked it over to the antitrust division's criminal section for criminal prosecution, because that is hardcore price fixing.

Fortunately, Budget did not, and so the best way to reach it and perhaps the only way to reach it is as an unfair method of competition.

The other time we used it was in the Intel case involving what we believed to be anticompetitive behavior. We also used the Sherman Act for monopolization. We ended up settling, I think on good terms for consumers and competition, and on good terms for Intel. Again, it was a unanimous vote. And we will continue to look toward ways to give folks guidance.

But I'd also say that the Supreme Court, the last two times it has looked at this issue, in the Sperry and Hutchinson case and in Indiana Federation of Dentists, which was written by your predecessor as attorney general, Justice Souter, has acknowledged the scope of Section 5. But we want to work with you on this.

Senator AYOTTE. Well, I appreciate it, because I love the word penumbra, but it's only a word that lawyers could love. So—

Chairman LEIBOWITZ. I understand.

Senator AYOTTE. To the extent you can give guidance, it's very appreciated, so people can comply and we get better results for consumers as well.

I wanted to ask Dr. Blank about when you and I met, we talked about my concerns about overregulation of the fishing industry, and particularly the catch shares program.

In fact, Senator Brown and I have been so worried about our fishermen that we introduced a bill, as you're familiar with, that would actually eliminate that program because of the detrimental impact on our small fishermen and to commercial and recreational fishing.

So can you help me—you said you'd work closely with NOAA to make sure its fisheries management programs are implemented effectively.

What do you think went wrong in implementing the catch shares program? And how would you go about improving the program to make sure that we don't eliminate these fishermen who get their livelihood in a very important way?

Dr. BLANK. So catch shares is one program to manage fish stocks. It's not the only program, and it has been implemented in a number of places around the country quite successfully. There clearly have been some more problems in New England.

I would note that the selection of what type of management program is used is actually done collaboratively with the local fish-management councils, so that, in that sense, it's a voluntary choice amongst a number of different choices.

I think that, you know, there has not been as much consultation back and forth and, you know, in terms of NOAA's interactions with some of the fisheries councils inside—you know, in an open and completely transparent way with some of the fisheries councils in the New England region. That has been a problem.

We've obviously, in the past, had some problems with our law enforcement that I think we have completely cleaned up, but it was—You know, we need to do this well if we're going to do it.

And I think we have sometimes not been quite as transparent as we need to be about the science on which—you know, the basis on which we set various stocks and, you know, decide sort of what the catches should be. We have to be quite clear about what that's based on and why we're saying what we're saying. And both those issues of transparency and communication and collaboration, I think, are most important.

Senator AYOTTE. Thank you. I appreciate your answer, Dr. Blank. And my time is up.

I just want to say this is a very important issue to a noble profession in the Northeast. And I am hopeful that we will start a relationship where there is that communication transparency there and that laws are enforced fairly and not to eliminate these fishermen who have—many of them, this livelihood has been in their families, and it's something that we want to preserve in New England, and, obviously, keep those jobs.

Dr. BLANK. Thank you.

The CHAIRMAN. Thank you Senator.  
Senator Boozman.

**STATEMENT OF HON. JOHN BOOZMAN,  
U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. Thank you, Mr. Chairman.

I'd like to follow up on one of Senator Pryor's questions, Mr. Leibowitz and Ms. Ohlhausen, about the potential merger of Express Scripts and Medco, and, with that, I'm told that approximately 135 million people, more than one-third of Americans, would rely on—a large, kind of a mega PBM.

One of my concerns is community pharmacy, and in much of rural America, community pharmacy, in many cases, is the healthcare provider, and with the ability to push entities into things that are best for the PBM, especially now pushing things into mail order.

We have all of the closures of the post offices, which, again, we don't think of, but, if you're having to drive, 10–15 miles to get your prescription and things, that really is a big deal.

I guess my question is do you all, when you make your considerations, do you factor in things like that? Is that something that comes into play?

Chairman LEIBOWITZ. That is a really good question, Senator. Let me just start on community pharmacists. My mother-in-law, who is actually in the room, was a pharmacist. My father-in-law was a professor of pharmacology. I have met with community pharmacists on a variety of issues, often involving PBMs, and so I listen to them, and we do at the Commission. So we are aware of their concerns.

I cannot talk about a particular merger, other than to acknowledge that we are doing this, that we are reviewing Express Scripts, Medco. But I can say that we look not only at price effects, but non-price competition effects as well.

So non-price effects might be, for example, reduction in service, closing of stores. Those are factors that we will take into account as we review this proposed acquisition.

Senator BOOZMAN. Thank you.

Ms. OHLHAUSEN. And, Senator, I agree. Talking about mergers in general, it's always very important to look at the impact on the ultimate consumer of any merger. So that's the type of consideration that you go in.

Senator BOOZMAN. Good. Very good.

One other thing, and, again, this kind of goes with the senator's question while ago about Section 5. As you know, a group of attorney generals from 36 states and three have written you a letter and basically said that they would like to get more aggressive with stolen IT, those kind of things, and are willing to work in conjunction with you to really start policing this.

And I guess what I would like to know is, where do you see Section 5 entering into that and how can we accomplish that? That is a huge deal.

Chairman LEIBOWITZ. Well, these are very serious concerns, I know, for the Attorneys General who wrote us, and their letter, again, acknowledged the scope of Section 5. And so we just received it, I think, a week ago Monday. It is circulating around the Commission. Whenever you get a letter from 36 state AGs, plus—you're right, three from the territories.

Senator BOOZMAN. Three from the territories.

Chairman LEIBOWITZ. Three from the territories. You take it really seriously, and we will try to come up with a consensus response.

But it also points out that we are an agency that is supposed to stop anticompetitive conduct.

But going back to Senator Ayotte's question, we need to have limitations on Section 5. Not everything that someone raises with us is an unfair method of competition. That may not rise to the level of antitrust violation.

So we need to think that through as a Commission, and with some luck, we will have Ms. Ohlhausen with us helping us to think these issues through.

Senator BOOZMAN. Well, again, I think that is almost unprecedented, having that kind of response, you know, from so many Attorney Generals.

Chairman LEIBOWITZ. It is.

Senator BOOZMAN. And it is a huge problem, and so perhaps using Section 5 or with your help figuring out how we can do something else to eliminate the problem, because it is a huge problem, that would be very helpful.

Chairman LEIBOWITZ. We hear you and we will factor that into our consideration. Thank you, Senator.

Senator BOOZMAN. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Boozman.

Dr. Blank, had two extraordinary experiences—well, many more than that, but the question I want to ask you, in West Virginia, when I was Governor, I spent a lot of time going overseas trying to market West Virginia products.

And then when I came here, I spent a lot time trying to go overseas and get Japanese countries and Taiwanese companies to come here to West Virginia to locate, and it worked. It was really hard. It was a really hard sell.

And I remember, years ago, trying to get somebody to increase their obvious capacity through clean-water—you know, I mean, just that incredible system where they could have really marketed it overseas, but they had the feeling that they wouldn't do well overseas. Maybe it's an Appalachian thing, I don't know, but they just had the feeling that they wouldn't do well, and so they did not go on that trip in which they could have scored tens of millions of dollars of business.

Fast forward, we had the U.S. and Foreign Commercial Service, and then they left at a certain point. They were very helpful on exports.

Now, I had—the only hearing I've ever had as Chairman, on exports, in Charleston, West Virginia. We had some folks from the Commerce Department down there, and a whole lot of people turned up from West Virginia, which really surprised me. In other words, it was a packed courthouse, as it turned out.

And exports are on their mind, particularly because the coal industry is suffering in a variety of ways. Our state economy is changing. We're going to a higher-tech economy. It's a very uncomfortable shift because sections of the state have been in certain pat-

terns for decades and decades and decades, and so we need some help.

And what I would love to see is to go back to the U.S. and Foreign Commercial Service—but now you could do it under the International Trade Administration—a couple of people in West Virginia, the difference from your department—the difference that they would make in people being adventuresome and confident and willing to take a risk. I mean, risk taking is what we need more than anything in West Virginia, not necessarily football, but risk taking, and that comes with encouragement.

And one of your deputy secretaries was down there and he sort of turned everybody on their head simply by what he said. And then we turned around and he pointed out to us that our exports had gone up almost at twice the rate in the State of West Virginia as was true in the entire country, and nobody could believe that. Well, why couldn't they believe that? Because they're, in a sense, trained not to believe that, and it's wrong. So what we need are some enablers there.

Now, heaven knows what's going to happen to your budget. I understand; but I really want to make the point that people who encourage those who are interested in exporting to follow through on it, and following through on it make a huge difference in West Virginia.

That hearing was the subject of a lot of talk for several months after it was completed. I thought it was going to be somewhat of a routine hearing. It was anything but that. People were hungry for thinking about exports.

So I want to plant that thought in your head. You can't possibly answer it now because you're not there yet, but you know there's a certain virtue to my question.

Dr. BLANK. Yes, as you probably know, the vast majority of companies that export export to only one country, and one of the things that we are working on is expanding that realm. And then there's large—you know, only a very small number of American companies export at all, and, in some sense, this is the mission of ITA and our domestic and foreign commercial services to expand that.

One thing that we are working on, which I think is very important, particularly for rural areas, you know, no matter what we do, in terms of offices, not everyone is going to be able to walk through the door of one of our offices. So we are working very hard on expanding and making much more user-friendly our online services, so that people can get to us, get to us more rapidly, get better services on line, know who to contact if they want to hold conversations, if they want someone to come out and work with them, and those sorts of changes to our *export.gov* website, as well as to a larger web portal that is going to open up access to all sort of business-related services across the government, called Business USA, is very high on my priority list.

The CHAIRMAN. Good.

Chairman Leibowitz and Ms. Ohlhausen, I'm very vigorous on the subject of protecting privacy, particularly online privacy and particularly children's online privacy. There's so much talk about the fact that you don't have the power, in fact, to enforce it. People know that, so you can—it's like me having a hearing. I can have

a hearing and I can embarrass some people, but I can't do anything about it unless I pass legislation.

That being in mind, to me, the most efficient way of people being able to protect their privacy is what I would call, and what you would call, Do Not Track online capability. In other words, you click once and the message goes out to everybody for all time that unless you retract it, they cannot do it. There are no ways around it.

Now, I would be interested in both of your thoughts about that, because that's a strong action to take. But, you know, as you look at what's happening in the world of bullying and sexual predating towards younger children, but, really, it's a world that takes pride in its new frontiership and it's unregulated, we-can-do-anything-we-want status.

And it was interesting, I listened to Mark Zuckerberg and Sheryl Sandberg talk on Charlie Rose the other night, and their conversation, for an hour, was replete with that kind of thinking. It's, the world is ours. We are the future. And any sense of restraint or not once was a single consequence, collateral-damage type thing that was brought up by either of them. And Charlie Rose was enthralled by both of them, so he didn't help either.

So my question to each of you would be how—and you have a report which gets very close to that. I have legislation which gets exactly to that. And I would be interested in your thoughts about it, both of you.

Chairman LEIBOWITZ. Well, I guess I would say that I think there is a way in which a hearing plus legislation does more than simply admonish someone. I think sometimes it lights a fire under them. And at least with respect to Do Not Track, we are seeing lots of support for this in the advertising industry.

Now, there are different flavors of it or versions of it, as you know. We have called for Do Not Track through browsers, which we think would be very, very successful, and Microsoft and Mozilla and Apple have all endorsed it, as have a number of advertising networks.

There's also the Digital Advertising Alliance, which has some ways to go, but has made very meaningful strides toward giving consumers this kind of choice one click away or two clicks away.

And I was speaking last week at something called the ad:tech Conference. It is the largest convention of Internet advertisers. And I was surprised at how much support there was for this, and it is in part because when consumers are more empowered on the Internet, they have more trust in going on the Internet, and they do more commerce. And most of the Internet advertisers recognize that the sky won't fall down if they give consumers choice. And we, of course, think giving consumers choice is always a good idea.

I would say that if we don't see more progress by industry, I am sure that your legislation will be moving through the Committee and we will be working with you. I am happy to work with you. I would have to go back and talk to the Commissioners about that, but we will help you with it.

And then, finally, if you violate the law, if you say something to a consumer in the privacy space, like, "we will protect your data," or "we will protect your information," and then you do not honor

that commitment, we will go after you, and we have done that on numerous occasions, and, sadly, we will probably have to do it on numerous occasions going forward.

So we want to work with you on Do Not Track and we want to work with companies to help them do this, hopefully voluntarily.

The CHAIRMAN. Ms. Ohlhausen.

Ms. OHLHAUSEN. Yes. And I also agree that it's very important that consumers' preferences and choices be respected. The FTC has brought some good enforcement cases where consumers thought they were opting out of tracking and they were actually tracked, and I think that has made some very good progress in that area. And the FTC's report on privacy from December 2010 talked about a Do Not Track option.

And I would, if I'm confirmed, be very interested to talk to the FTC staff and see what they think about the feasibility of having some sort of one-click option, whether it's through an opt-in system or through a browser, and also get their views on the self-regulatory process, the Digital Advertising Alliance and some of the progress that's been made in the browsers to get an idea.

But I do agree that it's important that consumers have confidence when using the Internet, confidence about how their information will be used and how it's collected.

Chairman LEIBOWITZ. And if I could just add one thing, Senator, my kids can go online and order clothes from, say, Forever 21. In one click they can figure out what size, what color, where to deliver it. You know, the people who designed that should be the people who design Do Not Track, because it needs to be one click away. It needs to be clear to consumers. I don't think we are quite one click away yet in the industry.

The CHAIRMAN. Not quite yet. Thank you, all three of you, very much.

Senator Hutchison.

Senator HUTCHISON. Since you have explored Do Not Track, on the Do Not Fax, we've all gotten the faxes on our home fax machines that are advertisements, and you have a little number that you call and say take my number off your list.

I got one just recently that was a new innovation, and it was the advertisement and then to get off their list, you had to go online to a website.

Now, first of all, there are a lot of people who have fax machines and do not have computers, older people especially. And it's a hassle. If you're getting a fax, you're right by a phone, so you can call and you can take care of it, although I wish that there was one button that you could say—You call this number and you will be forever barred from getting unwanted advertising on the fax machine.

So if you can figure out the Do Not Track with one button, would you also take up Do Not Fax?

And especially do you think that there should be something that would not allow them to use a website on a computer to get off a fax line?

Chairman LEIBOWITZ. Yes. Many of us have had the circumstance of having fax after fax after fax come through our homes. It might be your only phone line or you might actually have things you want to do and you do not need these advertisements.

You know, we have the Do Not Call Registry. There are more than 200 million phone numbers that are on it. It has been a fabulous success. Dave Barry called it the most successful government program since the Elvis stamp.

And on faxes, we still have a ways to go. I think we need to work with the Federal Communications Commission on that, but we will absolutely get back to you and see what we can do to make it clear and easier for consumers, because, yes, it is, at the very least, a nuisance.

Senator HUTCHISON. Ms. Ohlhausen, do you have a view on that?

Ms. OHLHAUSEN. To be honest, I don't know a lot about the Do Not Fax rule that exists, but I would be happy to look into it.

Senator HUTCHISON. I would like to ask you, Ms. Ohlhausen, because we have certainly focused on the chairman, who has a record. That's the hazard of having a record when you come up here.

But I'd like to know some of your views on regulation. You've had, certainly, a long background at the FTC and you know these issues.

Do you think the FTC has the authority that it needs to assure that we don't allow deceptive trade practices and unfair trade practices or do you think there is enough? Mr. Leibowitz has suggested that perhaps the FTC needs more authority. Just tell us what your general view of regulation is.

Ms. OHLHAUSEN. Certainly, Senator. So my general view of regulation is that it, you know, can be appropriate and, you know, often very necessary to protect consumers.

The FTC in the FTC Act, Section 5, has a very broad authority, and it's used it quite effectively, I think, over time.

In some instances, when the FTC has perceived problems, issues that are harming consumers, but they can't quite reach it through Section 5, Congress has been able to give them additional authority to make a rule or if there's a new law to reach that kind of conduct. So, over time, I think, that's a process that's worked fairly well, where gaps have been identified and Congress has given the FTC further direction. I think it's sort an iterative process where the FTC gets a good idea through enforcement.

I think data security is a very good example of that right now, where the FTC has brought over 30 data-security cases and has found that, you know, it might be beneficial to actually have some legislation that gives it additional authority.

So I see that as a useful process. Identify the problem first, determine if there's—you know, can be reached through current law, and if it can't, then try to get additional authority to reach those kind of consumer problems.

Chairman LEIBOWITZ. I agree with Ms. Ohlhausen, and we are an enforcement agency more than we are a regulator, but we always look at costs and benefits whenever we put anything out for guidance.

Senator HUTCHISON. Let me ask Ms. Ohlhausen, Chairman Leibowitz has advocated outlawing the reverse payments in pharmaceutical patent litigation settlements, and I'd like to know your view on this issue.

Ms. OHLHAUSEN. Yes, I think those kinds of settlements have the potential to be anticompetitive in certain circumstances. So I be-

lieve that it's important to evaluate them sort of on their own merits, you know, on a case-by-case basis, to see if they are being used in an anticompetitive way.

Senator HUTCHISON. Do you think that the government really has a role in limiting settlement options between private litigants?

Ms. OHLHAUSEN. Well, a settlement between private litigants is—you know, an agreement is sort of—An agreement can be between two competitors. Settlements are often a very efficient way to resolve a private conflict, to resolve an issue between two private parties.

But, as in any agreement between two private parties, it can have the potential to be anticompetitive. So I think they need to be looked at.

Senator HUTCHISON. Even though a judge is going to approve that settlement?

Ms. OHLHAUSEN. A judge, you know, may approve it, and I'm not confident that a judge would always be applying the antitrust laws to the settlement to make sure it's not anticompetitive. So I think that having an antitrust expert look at it is helpful.

Chairman LEIBOWITZ. And I would like to add that we view this as a Commission. This has been a priority for us going back to Tim Muris, the first Republican Chairman under President Bush, and, really, Bob Pitofsky, the last Democratic chairman under President Clinton, every single commissioner, Democrat, Republican and Independent, has called for restrictions on these agreements.

And the way we look at it is that it distorts the marketplace, because, of course, there should be settlements.

And 70 percent of the settlements we review, and in the 2003 Medicare Modernization Act, you required us to review those agreements, do not involve compensation from the brand to the generic and the generic delaying entry.

Brands have much higher profit margins than generics. Generics have small profit margins, because there are multiple competitors, as you both know, on the marketplace 6 months after the first generic gets in.

So if the brand can put a big bag of compensation on the table and the generic can earn more by not competing, by sitting it out—and, again, this doesn't happen always. It doesn't happen in most settlements, but it happens in a few—then we think that that is a problem.

And so we have brought cases. The circuits are split, you know. We have supported certain types of a legislative approach that would involve burden shifting, not banning.

But it is a complicated issue and, Senator, you're right, of course—it is intuitive to support settlements. We are too litigious a society. Courts do not have time to actually litigate all these cases. So we like to think that we are on the right side of this issue.

I believe, at some point, a case will get to the Supreme Court and that will resolve it. Maybe Congress will pass legislation. Maybe it won't. But I think it will get resolved in the next few years.

And the only other point I would mention is the legislation introduced by Senators Kohl and Grassley. It has scoring effects of several billion dollars—I think \$4.8 billion in reduced cost to govern-

ment. We estimate that these deals cost about \$3.5 billion each year to consumers in the cost of higher healthcare and higher co-pays, but it is a complicated issue. There is no doubt about it.

Senator HUTCHISON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hutchison.

And I think it's been a very helpful hearing, and it's brought up a variety of interesting points.

Actually one of the most interesting, Chairman Leibowitz, came from you with the statement that you're not seeking necessarily more powers and everything, but you're seeking more people, and, you know, that applies just as much to the Department of Commerce.

None of us know what's going to happen. None of us know what the Super Committee is going to do or not do, whether we're going to go into a sequestration. That won't really take effect until 2013, but everybody's on tenterhooks.

So, in fact, you can't go ahead and make commitments to things that you really feel strongly about, because you're not sure that the budget's going to be there or maybe you're sure the budget isn't going to be there, and so you just don't do it.

And that's something that the public generally does not figure into your angst factor. You have to worry about that all the time, enough money and enough people and more and more demand as people get more and more savvy, particularly in the telecommunications field.

So thank you all three very much.

Chairman LEIBOWITZ. Thank you.

The CHAIRMAN. And I look forward to all three of you being in your proper places.

Hearing is adjourned.

[Whereupon, at 4:09 p.m., the hearing was adjourned.]

## A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO HON. JON D. LEIBOWITZ

*Question 1.* In May, I wrote a letter to Apple and Google asking them whether the software applications for their popular smartphones are in compliance with COPPA. The FTC recently announced its first COPPA enforcement action against a mobile application developer. Chairman Leibowitz, can you tell me about the Commission's recent COPPA enforcement action against a mobile application developer?

*Answer.* In August 2011, the FTC announced a settlement with W3 Innovations, LLC, a small company that does business as "Broken Thumbs Apps." The FTC's settlement also named company president and owner Justin Maples. W3 develops and distributes mobile gaming apps on the Apple platform. The FTC alleged that several of W3's interactive apps—including Emily's Girl World, Emily's Dress Up, Emily's Dress Up & Shop, and Emily's Runway High Fashion—sent and received information via the Internet and were "online services directed to children" as defined in the FTC's COPPA Rule.

The Emily's apps at issue in the FTC action allowed children to play virtual versions of classic games such as "Cootie Catcher" and "Truth or Dare," and to design outfits and create virtual fashion models. Each of the apps encouraged children to send comments and submit blog postings to "Emily" via e-mail, and to post messages online.

The FTC's complaint alleged that W3 failed both to provide direct notice to parents of their information collection and disclosure practices and to obtain verifiable consent from parents prior to collecting, using, or disclosing children's personal information (e.g., e-mail addresses, blog postings). The consent decree requires W3 to comply with COPPA in the future, delete all improperly collected children's personal information, pay a \$50,000 civil penalty, and keep certain records to demonstrate compliance.

*Question 2.* I urge the FTC to remain vigilant about children's privacy issues and to use all the tools at its disposal to protect children's privacy. Chairman Leibowitz, what can I expect to see the FTC do in this area during your second term as Chairman?

*Answer.* The FTC remains committed to protecting children's privacy as children increasingly engage online. As you are aware, the FTC recently published proposed changes to the Children's Online Privacy Protection Rule and will be taking comments on this proposal until December 23, 2011. Once the comment period is closed, we will move as expeditiously as possible, but it is very important to give careful thought and consideration to all the comments and the policy implications of any change.

In addition, our enforcement of the COPPA Rule continues apace. Most recently, the FTC announced a settlement with Jones O. Godwin, the individual operator of the child-directed social networking website *www.skidekids.com*. The agency expects to announce additional COPPA enforcement actions in the months to come. As a complement to our law enforcement actions, agency staff routinely assists website operators with Rule compliance, regularly updating business education materials and responding to inquiries from operators and their counsel.

*Question 3.* During the debate over the Dodd-Frank Act, I worked hard to preserve FTC's authorities and prevent the transfer of consumer protection authority for financial products and services over to the Consumer Financial Protection Bureau (CFPB.) The result will be that there are two "cops on the beat" in this essential area. How do you anticipate that the FTC and the CFPB will work together? Once the CFPB has a director in place and begins to exercise its full authority, what role do you see for the FTC in consumer financial protection?

*Answer.* Thank you for your work to preserve the FTC's role in protecting consumers of financial products and services. In these tough economic times, consumers

need “cops on the beat,” and the FTC is eager to continue serving as one of those cops.

The FTC is primarily a law enforcement agency. We have engaged in aggressive law enforcement actions to protect consumers of financial products and services. We have been especially active in our law enforcement activities targeting fraud and other egregious practices seeking consumers’ last dollars, including loan modification and foreclosure rescue services, debt relief services, debt collection, and alternative financial services, such as payday loans. With the Dodd-Frank Act, the scope of the Commission’s law enforcement authority did not change. The FTC, therefore, will continue to be vigilant in monitoring the marketplace for violations of the laws we enforce, and we will continue to act quickly and effectively against those who violate them.

The FTC will be a willing and able law enforcement partner of the CFPB. The Dodd-Frank Act requires that the Commission and the CFPB enter into a Memorandum of Understanding (“MOU”) by January 21, 2012, setting forth, among other things, how the two agencies will cooperate and coordinate law enforcement activities. The two agencies currently are actively engaged in drafting such an agreement.

While the MOU is being drafted, the two agencies have moved forward with extensive and detailed discussions to promote coordination and avoid duplication in our law enforcement efforts, and to provide consistent guidance to industry members seeking to comply with the laws both agencies enforce. Other senior FTC officials and I have met with CFPB officials on a number of occasions to discuss generally how the two agencies can work together effectively. In addition, the FTC and the CFPB recently entered into an information-sharing agreement that permits staff investigating targets and prosecuting cases to share non-public information. The two agencies further have established staff level enforcement working groups on six topics: (1) credit reporting; (2) debt collection; (3) debt relief (mortgage assistance relief, debt relief, and credit repair services); (4) mortgage advertising; (5) mortgage servicing; and (6) online lending. These groups have met and will continue to meet on a regular and frequent basis to discuss trends in industry practices, enforcement targets, investigative techniques, actions that will be filed, and numerous law enforcement-related issues.

Given that the FTC is primarily a law enforcement agency, coordination and cooperation between the FTC and the CFPB related to law enforcement activities is the main focus of our partnership. But I would be remiss if I did not mention that we are cooperating and coordinating with the CFPB on a broad range of non-law enforcement issues. The FTC staff is providing views and sharing its experience with the CFPB staff to assist the CFPB in its supervision, examination, rulemaking, consumer education, research, consumer complaint process, and numerous other activities and initiatives to implement the Dodd-Frank Act.

*Question 4.* There are some who believed that the FTC should step back and let the CFPB take over all aspects of consumer financial protection. I am pleased to see that the FTC has not taken that approach and has continued aggressive enforcement. In your next term, I urge you to stay vigilant and continue to protect consumers from financial frauds and scams. Chairman Leibowitz, do you believe the Commission will remain aggressive with your authority and not take a back-seat to the CFPB?

*Answer.* The Commission will continue to be vigilant in monitoring the marketplace for violations of the laws we enforce, and we will continue to act quickly and effectively against those who violate them. In fulfilling our statutory mandate, we will be a willing and able law enforcement partner of the CFPB. And we will be an equal partner.

In its law enforcement work, the Commission will continue to be “a cop on the beat,” vigorously protecting consumers from financial frauds and scams. The persistence of the economic downturn has continued to put financially-strapped consumers at risk of harm, and, therefore, we have focused our law enforcement efforts on protecting them from mortgage assistance relief scams, debt relief frauds, and egregious debt collectors. For example, the FTC issued the Mortgage Assistance Relief Services Rule in 2010 and has brought 35 law enforcement actions against providers of such services during the last 3 years. Similarly, the Commission issued debt relief amendments to the Telemarketing Sales Rule in 2010, and we have filed 18 law enforcement actions against providers of debt relief services in the last 3 years. The Commission will continue to be active in protecting consumers from these and other financial frauds and scams.

*Question 5.* Since the repeal of Prohibition, states have been the primary authority when it comes to regulating the distribution and sale of alcohol. States have enacted varied laws that presumably reflect the attitudes and beliefs that their citi-

zens have about alcohol sales and health and safety issues. Chairman Leibowitz, the Office of Policy Planning has issued reports and other public documents regarding state regulation of alcohol sales. The FTC has a mission to promote competitive free markets, but alcohol is a drug highly susceptible to abuse (particularly by minors) and is not akin to consumer products or services. Why does the FTC have an interest in using its resources to weigh in on state laws and regulations regarding alcohol sales and distribution?

Answer. The FTC's competition advocacy program responds to requests from state legislators and regulatory authorities for comments on the likely competitive effects of proposed laws and rules. FTC staff with competition expertise explains the nature of any likely competitive effects and why they may occur.

Thus, no advocacy letter is drafted unless there has been a request for comment from a relevant authority. In addition, FTC staff recognizes that the consumer's interests in the benefits of healthy competition—lower prices and greater product variety and convenience, for example—are not the only public interests that may be at stake in any particular context, and this may be particularly true where the distribution and sale of alcohol is concerned. State lawmakers have the responsibility to weigh all of the relevant factors for themselves. FTC staff's analysis simply provides information that may assist lawmakers and regulators in assessing the nature and scope of any tradeoffs between the benefits of competition and other values.

The FTC's competition advocacy program uses a very small share of the agency's resources, and the resources devoted to the alcoholic beverage industry, in particular, are much smaller still. The FTC has not issued any competition reports involving alcohol since its congressionally authorized 2003 Wine Report,<sup>1</sup> which the Supreme Court cited supportively several times in its 2005 decision in *Grainholm v. Heald*.<sup>2</sup>

The FTC continues to enforce the FTC Act's prohibitions of "unfair methods of competition" and "unfair or deceptive acts or practices" in the alcohol industry through law enforcement, promotion of effective alcohol industry self-regulation, and consumer education. The FTC also will continue to respond to congressional requests in this area: for example, our 2003 Report, Alcohol Marketing and Advertising: A Report to Congress,<sup>3</sup> was conducted under the direction of the Conferees of the House and Senate Appropriations Committees. Since that time, the FTC has issued another report dealing with self-regulation by the alcohol industry<sup>4</sup> and is now requesting OMB approval under the Paperwork Reduction Act for a follow-on study in this area.<sup>5</sup> These reports have been designed to monitor and evaluate the effectiveness of industry self-regulation that seeks to curb the marketing of alcohol to underage youth, and include recommendations for improving those industry efforts.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO  
HON. JON D. LIEBOWITZ

*Question 1.* Thanks to the work of a CBS television station in Sacramento, California, we learned earlier this year that Walmart stores in California and other states were short-changing customers returning items using gift receipts. In one instance, the station's producers purchased various items from Walmart totaling \$51.00, but when they later returned the items using gift receipts, they received \$27.00, only 52 percent of the original purchase price. Walmart blamed staff for the errors, but similar results occurred at their stores in Dallas and Philadelphia, and again in Sacramento when producers "re-tested" the stores.

I've written the FTC twice to request an investigation, and I understand you cannot comment on whether there is an open investigation—but we're learning that this problem isn't exclusive to Walmart and it is happening at a number of other national retailers. Producers at a Dallas CBS station were recently shorted at three separate national chains when returning items with gift receipts. Can you tell the Committee whether the FTC believes this is a widespread problem among national retailers? If consumers somehow discover they are not receiving the full price when returning items with gift receipts, what can they do to alert the FTC?

<sup>1</sup>FEDERAL TRADE COMMISSION, POSSIBLE ANTICOMPETITIVE BARRIERS TO E-COMMERCE: WINE (2003), available at <http://www.ftc.gov/os/2003/07/winereport2.pdf>.

<sup>2</sup>544 U.S. 460 (2005).

<sup>3</sup>Alcohol Marketing and Advertising: A Report to Congress (2003), available at <http://www.ftc.gov/os/2003/09/alcohol08report.pdf>.

<sup>4</sup>FTC, Self-Regulation in the Alcohol Industry: Report Commission (2008), available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>.

<sup>5</sup>See <http://www.ftc.gov/opa/2011/11/alcoholstudy.shtm>.

Answer. Thank you for your continuing concern about the gift receipt practices of Walmart and other national retailers. The FTC is aware of reports that Walmart stores in California and other states across the Nation failed to abide by Walmart's own policy by refunding less than the full purchase price of items returned with a gift receipt. The FTC is also aware of media reports concerning similar practices at other national retailers.

As you note in your question, Commission rules prevent me from revealing specifically whether FTC staff has opened an investigation into this or any other matter. Nonetheless, I want to emphasize that I share your concern over retail stores and other businesses that fail to honor their refund policies or engage in other refund-related deceptive practices. Such deceptive practices related to gift receipts are especially troubling because recipients reasonably expect that they will receive in exchange the full value of the price originally paid, yet they do not know the original price paid.

For consumers who believe that they have been victimized by a retailer's gift receipt practice, we strongly encourage them to file a complaint on the FTC's website at [www.ftc.gov](http://www.ftc.gov) or by calling the FTC's toll-free number at 1-877-FTC-HELP (1-877-382-4357). The FTC enters all complaints it receives into Consumer Sentinel, a secure online database that is used by the FTC and thousands of civil and criminal law enforcement authorities worldwide. Consumer complaints can help law enforcement authorities detect patterns of wrongdoing and lead to investigations and prosecutions.

*Question 2.* I would like to bring to your attention a recent study conducted by Professor Kay Cooksey of Clemson University involving concrete vapor barriers. The study tested products that claim to prevent the diffusion of moisture vapor, contaminants, and soil gases through buildings' concrete foundations to protect indoor air quality. The study concluded that several concrete vapor barriers purchased in retail stores actually performed significantly worse than their marketed and advertised levels of effectiveness. There are concerns that this marketing presents consumers with a false sense that the products they are purchasing for use in their home, office, or school buildings will effectively keep out harmful contaminants. It is my understanding that the enforcement division of the FTC's Bureau of Consumer Protection received a copy of this study in June 2011, and that the Secretary of the FTC has acknowledged receipt of a formal complaint arising from the study in response to a recent Congressional inquiry. Have FTC enforcement officials looked into the findings of the Clemson study? Can you provide a status update related to the formal complaint filed with the FTC?

Answer. We are aware of the study by Professor Cooksey involving the performance of vapor barriers, and the formal complaint based on the study. In 2009, at the request of the Commission, the United States Department of Justice filed a complaint and secured an order in Federal District Court against Insulation Solutions, Inc., one of the vapor barrier manufacturers identified in the study. The order resolved allegations that Insulation Solutions and two other defendants violated Section 5 of the FTC Act and the Commission's R-Value Rule in connection with their marketing of insulation. Among other things, the order prohibits the defendants from making false, misleading, or unsubstantiated energy-related representations about a product or service. The order, however, does not apply to the permeance representations regarding vapor barriers at issue here.

In August, staff received additional information from the complainant. As stated above, Commission rules prevent me from revealing specifically whether FTC staff has opened an investigation into this or any other matter. In determining whether to allocate resources to investigating any particular formal complaint, staff must consider a number of factors, including the type of violation alleged, the nature and amount of consumer injury at issue, the number of consumers affected, and the likelihood of preventing future unlawful conduct and securing redress or other relief. FTC staff will give carefully consideration to the information it received to determine whether Commission action is warranted and in the public interest.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. JON D. LEIBOWITZ

*Question 1.* Since 2007, oil prices have jumped from \$90 per barrel in December 2007, to \$147 per barrel in June 2008, to \$31 per barrel in December 2008, to \$115 per barrel in March 2012, to around \$100 per barrel today. During this same period, there has been little change in the world's oil supply and demand balance. What is your explanation for this oil price volatility? To what extent do you believe forces beyond changing global crude prices and supply and demand fundamentals play a

role in this price volatility? To the extent you believe that forced beyond supply and demand fundamentals play a role in this price volatility, how will you use the tools and resources of the Commission to improve the Commission's current protections for consumers and ensure a wholesale petroleum market free from fraud and manipulation?

Answer. There has actually been a significant long-term change in the world's oil supply and demand balance in recent years, and crude oil price volatility since 2004 reflects that change. In September of this year, the Commission's Bureau of Economics published its most recent analysis of the factors most responsible for the fluctuation in gasoline prices.<sup>6</sup> The staff report notes that crude oil continues to be the main driver of gasoline prices, and price changes in gasoline since 2004 largely reflect the volatility of crude prices. Between 2004 and 2007, crude oil prices rose steadily as crude consumption increased. As the recession led to a decrease in worldwide crude consumption in 2008 and 2009, crude prices fell significantly. Since 2009, crude consumption has increased again, well above 2007 levels, and crude prices have returned to those levels. This year there was also a significant supply disruption due to the loss of most Libyan crude oil production, which also put upward pressure on crude prices.<sup>7</sup> Moreover, although crude oil demand has decreased since 2004 in North America, Europe, Japan, and Korea, it has increased substantially in developing countries (particularly China), leading to an overall consumption increase of almost 7 percent between 2004 and 2010. Changes in gasoline prices showed remarkable consistency with changes in crude oil prices over this same period, falling from \$3.50 per gallon in January 2008 to less than \$1.50 in January 2009, while otherwise rising steadily from 2004 to 2011, as demand outpaced supply.<sup>8</sup>

Of course, other forces beyond normal market supply and demand have an impact on crude oil price levels. The main factor is the Organization of the Petroleum Exporting Countries (OPEC), which accounts for over 70 percent of the world's proven oil reserves. OPEC attempts to maintain the price of oil by limiting output and assigning quotas. These actions by OPEC would be a criminal price fixing violation of the U.S. antitrust laws if private firms engaged in them.

As a general matter, any agreement by competing producers to restrict output and increase prices would violate the antitrust laws. The Commission remains vigilant against any form of potential anticompetitive conduct—whether merger or non-merger—and is committed to use all of its tools to attack such conduct when it is found. In April of this year, the Commission signed a Memorandum of Understanding with the Commodity Futures Trading Commission, allowing us to share confidential data when we believe there is the potential for anticompetitive conduct in futures markets that could impact wholesale petroleum prices in violation of the Commission's new Market Manipulation Rule (MMR). In June of this year, the Commission opened a major investigation (described in fuller detail in the answer to Question # 2) into whether anticompetitive activity is occurring in petroleum markets, from exploration to retail gasoline sales. In this ongoing investigation, the Commission is using its authority under both the antitrust laws and the MMR.

*Question 2.* I authored legislation that was included as part of the Energy Independence and Security Act of 2007 that, for the first time, charged the Federal Trade Commission with the responsibility of policing the wholesale petroleum markets for manipulation. I was pleased the Commission completed a Final Petroleum Market Manipulation Rule that did not include a safe harbor for futures markets activities. As the final rule makes clear, oil futures markets are inextricably linked to wholesale oil markets, and policing the wholesale markets for manipulation requires a view into the oil futures markets. Over the last 3 years, oil consumers have ridden a gas-price roller coaster with fluctuating prices that cannot be explained by supply and demand fundamentals. For example, December crude oil prices have varied from \$85 per barrel in 2007, to \$31 in 2008, to \$73 in 2009, to \$86 in 2010, with peaks at \$147 in June 2008 and around \$100 today.

<sup>6</sup>Federal Trade Commission, Bureau of Economics, *Gasoline Price Changes and the Petroleum Industry: An Update* (Sept. 2011), available at <http://www.ftc.gov/os/2011/09/110901gasolinepricereport.pdf>.

<sup>7</sup>Because consumers do not substantially reduce their demand for gasoline in response to either short- or long-run price increases, a relatively small shift in supply can lead to a large change in price. See Federal Trade Commission, *Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition* 8 (2005), available at <http://www.ftc.gov/reports/gasprices05/050705gaspricesrpt.pdf>.

<sup>8</sup>*Gasoline Price Changes and the Petroleum Industry*, *supra* note 1, at 5, Figure 1, Comparison of the Monthly National Average Price of Gasoline (excluding taxes) and the Prices of WTI and Brent Crude, January 2001–May 2011.

Like the Commission, the Federal Energy Regulatory Commission (FERC) was given nearly identical market manipulation authority in the 2005 energy bill, and to date it has aggressively used this authority to conduct 93 investigations resulting in 45 settlements totaling over \$150 million in penalties. Congress intended that the Commission enforce its market manipulation rule with the same proactive aggressiveness that FERC employs, to deter manipulative behavior, prosecute bad actors, and draw a bright line to distinguish legal from prohibited behavior.

I wrote to the Commission on March 25, 2011, asking for an investigation into gas price volatility and asking what specific steps it was taking to proactively enforce its final Petroleum Market Manipulation Rule. I was terribly disappointed with the Commission's response on April 19, 2011, that provided no information on what the Commission was doing to implement aggressively and proactively the Final Petroleum Market Manipulation Rule. The response letter confirmed that the Commission is doing little more than "monitoring daily gasoline and diesel prices" and "evaluating complaints" through "e-mail and telephone hotlines."

You stated that when the Petroleum Market Manipulation Rule was finalized that "This new Rule will allow us to crack down on fraud and manipulation that can drive up prices at the pump. We will police the oil markets—and if we find companies that are manipulating the markets, we will go after them."

- Do you believe the Commission has done everything it could have to use the authority of the Petroleum Market Manipulation Rule aggressively in order to protect consumers from unnecessarily high and volatile gas and diesel prices?
- What is your plan to more aggressively and proactively implement the Petroleum Market Manipulation Rule in order to protect consumers from unnecessarily high and volatile gas and diesel prices?

Answer. The Commission's enforcement of the MMR has been both proactive and consistent with the authority granted by Congress. By design, the FTC and FERC have different regulatory obligations and deal with some different industries, and those unique obligations given to each agency will automatically lead to different enforcement outcomes. FERC's mission is substantially regulatory and is designed to ensure reliable, efficient, and sustainable energy for customers. In furtherance of that mission, FERC uses its anti-manipulation rule to promote its goal of providing efficient energy services at a reasonable cost. Manipulative conduct might involve violations of FERC rules designed to limit market power or to ensure the efficient operation of regulated markets. Moreover, FERC's rule fits within an existing regulatory scheme that regulates individual firm conduct, with ongoing and extensive data-reporting obligations.

Unlike FERC, which is primarily a sectoral regulator, the FTC is essentially a law enforcement agency. The FTC does not have broad regulatory authority over the wholesale petroleum markets that are covered by the MMR. It has not been authorized to determine prices or position limits for wholesale petroleum products. Such authority would be inconsistent with enforcement of the antitrust laws, which are designed to protect the competitive function of markets, not to establish what might be a "fair" price level. The FTC's authority is narrowly focused toward identifying and prosecuting fraudulent behavior that violates the MMR.

Pursuant to its Congressional mandate, the Commission has aggressively enforced the MMR when we have had some reason to believe a violation may have occurred. Earlier this year, Commission staff noticed certain anomalies in petroleum and gasoline prices. After substantial increases in crude oil and refined petroleum products prices and profit margins, the Energy Information Administration reported that U.S. refiners' refining margins had increased substantially between the beginning of 2011 and early May, while those refiners were using only 81.7 percent of their capacity in early May (a 7 percent reduction from the same period in 2010). In June, the Commission announced it had opened an investigation into Petroleum Industry Practices and Pricing, FTC File No. 111 0183. The Commission opened the investigation and authorized the use of compulsory process to determine whether oil producers, refiners, transporters, marketers, or physical or financial traders (1) have engaged or are engaging in practices that have lessened or may lessen competition; (2) have engaged or are engaging in manipulation in the production, refining, transportation, distribution, or wholesale supply of crude oil or petroleum products; or (3) have provided false or misleading information related to the wholesale price of crude oil or petroleum products to a Federal department or agency.<sup>9</sup> Of note, this is the first Commission investigation to combine its antitrust and market manipulation

<sup>9</sup>The Working Group's focus on this last issue stemmed in part from Attorney General Holder's guidance in a May 6, 2011, memorandum to the group that "[i]f wholesale prices continue to decrease, fraud or manipulation must not be allowed to prevent price decreases from being passed on to consumers at the pump."

authority, and will provide a template going forward to determine whether such combined investigations can efficiently maximize scarce enforcement resources. That investigation is ongoing.

Aside from the current investigation, both in the course of our regular law enforcement activities and in our role as a member of the Oil and Gas Price Fraud Working Group, we continue to monitor the situation, and will take action if we detect any anticompetitive or fraudulent practices in these markets.

*Question 3.* In response to increased petroleum market volatility, Attorney General Eric Holder announced on April 21, 2011, the formation of a Financial Fraud Enforcement Task Force Working Group to focus specifically on fraud in the energy markets. Attorney General Holder announced that the Oil and Gas Price Fraud Working Group was to monitor oil and gas markets for potential violations of criminal or civil laws to safeguard against unlawful consumer harm. The Federal Trade Commission is part of this working group. I was pleased the Working Group was established, however I'm concerned that this group has done very little to undertake the necessary investigation into petroleum markets.

- Please describe the specific actions that the Oil and Gas Price Fraud Working Group has undertaken, including meetings of the Working Group, meetings with industry participants, investigations commenced, or any other action specific to the Working Group.
- Please describe the specific actions the Commission has taken as a member of the Working Group, and specific actions the Department of Justice asked the Commission to take as a member of the Working Group.
- Is the Working Group still active? If so, please describe the current and ongoing actions of the Working Group.

*Answer.* The Oil and Gas Price Fraud Working Group—comprising representatives of a number of Federal agencies as well as officials from state attorney general offices—held its initial meeting on May 2, 2011, during last spring's petroleum and gasoline price increases. The meeting, held largely for the purposes of organization and establishing priorities, gave each agency an opportunity to share with the others its experience and expertise in the oil and gas sector. The Working Group met again on May 13 to discuss each member agency's ability to share information with other members, to explore ways in which each agency might inform the others about complaints from the public concerning oil and gas issues, and to review the relationship between crude oil price fluctuations and price developments in the retail market.<sup>10</sup> Smaller sub-groups of agency officials met in ensuing weeks to discuss in greater detail the extent to which agencies can share information and to learn about one another's procedures for handling complaints from the public. On June 28, the overall Working Group met again to discuss investigations and enforcement actions by the member agencies—including the FTC's Petroleum Industry Practices and Pricing Investigation (discussed above in Answer #2)—and to get updates concerning information sharing and complaint handling.

The Commission has been active in the petroleum sector since the Working Group was organized and, to the extent possible, has kept other member agencies apprised of its activities. As discussed above in Answers #1 and #2, the FTC Bureau of Economics released its report on Gasoline Price Changes and the Petroleum Industry: An Update in September 2011, 3 months after the Commission announced the initiation of the Petroleum Industry Practices and Pricing Investigation. FTC staff have discussed those developments with Working Group colleagues. In addition, the Commission is conducting other, nonpublic investigations in the petroleum sector. Although it is not itself an investigative body, the Working Group has enhanced the possibilities for cooperative information-sharing among member agencies, and various agencies' investigations in the petroleum sector—including those by the FTC—may well benefit from information gleaned from the Working Group process.

The Working Group remains active: member agencies are ready to share relevant information to the extent permitted by laws and regulations, and there is ongoing discussion of complaint handling procedures. Following the recent appointment of a new Executive Director, we expect the Working Group to continue meeting periodically. Meanwhile, the FTC continues active pursuit of its Petroleum Industry Practices and Pricing Investigation as well as other discrete investigations.

<sup>10</sup>The Working Group's focus on this last issue stemmed in part from Attorney General Holder's guidance in a May 6, 2011, memorandum to the group that "[i]f wholesale prices continue to decrease, fraud or manipulation must not be allowed to prevent price decreases from being passed on to consumers at the pump."

*Question 4.* Federal Communications Chairman Julius Genachowski recently helped launch a new initiative called jobs4america. The goal is to create 100,000 new broadband-enabled contact center jobs over the next 2 years—many of which are coming back from overseas. What do you see as the FTC’s role in helping to advance predictable policies that enable U.S. based contact centers to grow, thrive, and create more jobs here in America?

Answer. One core mission of the FTC is to promote competitiveness in the marketplace across all industries, including contact centers. We accomplish this goal through targeted law enforcement and balanced regulation, which are complemented by our consumer and business education and outreach. Contact centers, which provide in-bound and out-bound services to consumers using telemarketing, direct and electronic mail, messaging and other media to facilitate commerce, can be positively impacted by a range of the agency’s work. For example, law enforcement action by the FTC challenging unfair or deceptive conduct by bad actors levels the competitive playing field, enabling legitimate actors to prosper and thrive. At the same time, certain types of regulatory initiatives, such as the Do Not Call Registry and other provisions of the Telemarketing Sales Rule, ensure that legitimate actors know how to abide by the law and do so in a way that instills consumer confidence and trust in the marketplace.

*Question 4a.* In order to ensure consumers have the best experience possible when they pick up the phone to seek answers from a contact center, the contact center industry has created and developed an accreditation process for contact centers in cooperation with the FTC. What do you see as the role of these proactive self-regulatory accreditation mechanisms as a tool for advancing better consumer service and remediation?

Answer. We are aware of ongoing efforts by the American Teleservices Association (“ATA”) through its Self-Regulatory Organization (“SRO”) to develop an accreditation process for contact centers to ensure their operations comply with relevant laws and rules. Indeed, we have discussed this SRO initiative with ATA for several years.

We have consistently supported serious self-regulatory initiatives that promote compliance with the law, and we are especially encouraged by the fact that this particular initiative provides for independent certified auditing. While we have not reviewed the current accreditation process in detail, we understand it has been designed to ensure specific compliance with the requirements of the Telemarketing Sales Rule, including Do No Call provisions, and that the ATA is seeking to expand the SRO to reach other legal requirements that affect contact centers more broadly. We will continue to encourage and support the ATA as it seeks ways to assist its members in complying with the law and, in so doing, enhancing consumer welfare.

*Question 5.* Recently, a group of Attorneys General from 36 states and 3 U.S. territories recently sent a letter to the Commission urging you to take action against the unfair competition suffered by U.S. manufacturers and workers when they are forced to compete against companies that use stolen information technology to illegally cut their costs.

The letter included examples of this problem, including a paper mill in Washington State that must compete with a Mexican paper mill using over \$10 million in stolen software.

U.S. manufacturers and workers are among the most efficient in the world, and I have no doubt they can compete with anyone that plays by the rules. But they cannot possibly compete against manufacturers that gain an unfair cost advantage by stealing millions of dollars in U.S. technologies. Is there anything, in your view, that the Commission can do to help protect U.S. manufacturers and workers against this form of unfair competition? Does existing Federal law give you the authority you need, or would you need additional tools or authority from Congress?

Answer. In 1914, the Senate Commerce Committee was instrumental in the assignment to the FTC of authority under the Federal Trade Commission Act to challenge unfair methods of competition. As the Supreme Court has held, Congress intended prohibited “unfair methods of competition” to include conduct that would not violate the antitrust laws. The FTC has and will continue to use this authority judiciously, to protect competition and consumers.

The FTC has received the letter from the Attorneys General about which you speak, and we agree that the theft of intellectual property by rivals of U.S. manufacturers raises significant concerns. The letter is being circulated within the Commission, and is under serious consideration. At the same time, it is important to note that not all harms caused by unethical businesses—for example harm to a competitor, but not to competition itself—will be “unfair methods of competition.” We take all complaints of harm to competition seriously and will certainly do so with this one.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. JON D. LIEBOWITZ

*Question.* Studies show that food marketing has a large effect on what children are willing to eat. While companies have taken steps to self-regulate, several studies funded by the New Jersey-based Robert Wood Johnson Foundation show that companies could use guidance as to how to further reduce the marketing of unhealthy foods to children.

In 2009, with bipartisan support, Congress directed the FTC to work with other Federal agencies to develop voluntary food marketing guidelines. Earlier this year, the Interagency Working Group on Food Marketed to Children (“IWG”) proposed this guidance.

The marketing guidelines were supposed to be sent to Congress in July 2010. Now, the Senate Financial Services Appropriations has proposed giving the FTC until December 15. Will you have the guidelines to us by then?

*Answer.* The four member agencies of the IWG are currently finalizing a report to Congress setting out recommendations for nutrition principles and marketing definitions to guide voluntary industry efforts. The Federal Trade Commission has completed the recommendations with respect to marketing and is making every effort to obtain final approval from the other agencies responsible for the nutrition principles in order to submit the report to Congress by December 15.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK PRYOR TO  
HON. JON D. LIEBOWITZ

*Question.* It is my understanding that earlier this year, the FTC accepted a settlement with Phusion Projects regarding “Four Loko,” a carbonated flavored malt beverage product with a high volume of alcohol, which requires the company to relabel and repackage the product. The relabel will compare the alcohol content of “Four Loko” to that of a regular beer rather than express the percentage of alcohol by volume. The government typically has not utilized comparative strength claims for alcohol. Have any concerns been raised that the comparative disclosure requirement will have the unintended consequence of actually encouraging consumption of “Four Loko” rather than discouraging it? Were other labeling methods considered? What was the rationale behind this particular decision?

*Answer.* Four Loko is a 12 percent alcohol by volume (“alc/vol.”) flavored malt beverage, sold in a 23.5 ounce can. It bears, on its label, the statement “12 percent alc/vol.” The FTC complaint alleges that Phusion’s packaging and marketing made an implied representation that Four Loko has as much alcohol as one or two beers and can be safely consumed on a single occasion. (Copies of these marketing materials may be found at <http://www.ftc.gov/os/caselist/1123084/111003phusionexhibits.pdf>). In fact, a 23.5 ounce, 12 percent alcohol by volume Four Loko has as much alcohol as four or five beers, and drinking just one constitutes unsafe “binge drinking.” See <http://www.ftc.gov/opa/2011/10/fourloko.shtm>.

The Commission’s proposed order would require that any Phusion brand flavored malt beverage containing more alcohol than the amount in 2.5 regular beers must: (1) disclose alcohol content in a specified manner, and (2) be resealable. Under the proposed order, the disclosure on a 23.5 ounce, 12 percent alcohol by volume flavored malt beverage would say: This can has as much alcohol as 4½ regular (12 oz, 5 percent alc/vol) beers.

The goal of the proposed order is to ensure that the Phusion labels contained a readily understandable statement of alcohol content. It does not appear that the current “12 percent alc/vol” statement on the label accomplishes this goal. Accordingly, FTC staff worked closely with staff of the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) to develop the language, location, and appearance of the disclosure.<sup>11</sup> During that process, TTB staff advised FTC staff that: (a) TTB would approve labels containing the disclosure; (b) TTB would permit other vendors of high alcohol, flavored malt beverages to also use these disclosures; and (c) the disclosure does not constitute a prohibited “strength” claim.

We are not aware of any evidence that properly labeled Four Loko will be more attractive to young adults than it is right now. In fact, Four Loko is often referred to as “Blackout in a Can.” The FTC has alleged that the packaging and marketing for the product misrepresented the amount of alcohol it contained. Therefore, the

<sup>11</sup>The TTB has jurisdiction over the legal importation, distribution, and sale of distilled spirits, wine, and malt beverages. It pre-approves labels before alcohol beverages may be sold.

disclosure is important to inform parents and other responsible adults to the alcohol content of the beverage.

The Commission has sought public comment on its proposed complaint and consent agreement. We recently extended the deadline for submitting comments to December 2, 2011, to provide interested parties with a sufficient opportunity to consider the issues and express their views. After reviewing the comments, the Commission will determine whether to make the proposed settlement final.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
HON. JON D. LIEBOWITZ

*Question 1.* I know you have used the term “voluntary” to characterize the principles that the Working Group issued to guide self-regulatory efforts of food and media companies. I also am fully aware that you are preparing the guidelines in response to a directive from Congress.

However, because agencies like the FTC, USDA, FDA and the Centers for Disease Control put their names on the detailed nutrition standards contained in the April 28, 2011 report, could the guidelines run the danger of creating de facto new Federal nutrition standard—a standard that sharply conflicts with the U.S. Dietary Guidelines that these same agencies announced last year, and conflicts with foods approved for the School Lunch program, and for the WIC and SNAP programs?

Answer. The IWG’s recommendations will be clearly presented as recommendations for voluntary principles to guide industry self-regulatory efforts. The IWG will also make it clear that the principles do not have the force or effect of law and cannot be used as a basis for law enforcement action by the agencies. The IWG recommended principles are intended only guidance for the specific purpose of marketing food to children and are not intended to displace nutritional standards for regulatory purposes or to create a legally enforceable standard of care. The issue of how the recommendations relate to other Federal nutrition guidelines and programs is outside of the FTC’s area of expertise, so I would defer to the USDA and FDA on that aspect of your question.

*Question 2.* I know you are planning to issue final guidelines soon that may make some changes to the preliminary guidelines. I am concerned that the preliminary guidelines could restrict marketing of some foods to the point where Tony the Tiger could not be featured in a Frosted Flakes commercial. It is my understanding that the FTC believes that such an ad would not be covered by the suggested principles because it is an ad directed to parents, not children. However, is the issue under the proposed guidelines whether this is “directed” to an adult audience or whether the product, Kellogg’s Frosted Flakes, could be advertised to an audience that included 30 percent of age 2–11 or 20 percent age 12–17?

Answer. The FTC has recommended to the IWG that the revised recommendations address only marketing directed to children ages 2 to 11. We anticipate that our recommendations will not cover children ages 12 to 17, with the narrow exception of certain in-school marketing activities. The FTC has also recommended revising the proposed audience share for children’s programming from 30 percent to 35 percent audience ages 2 to 11, the same threshold currently applied by the Children’s Food and Beverage Advertising Initiative (“CFBAI”) self-regulatory program. In addition, we anticipate that the revised recommendations will exempt the use of characters such as Tony the Tiger on product packaging.

With respect to your specific question about a commercial for Frosted Flakes, the audience composition would be one factor that could be considered in determining whether the ad was targeted to children under 12. In addition to considering whether the program during which the ad ran had 35 percent or more children under 12 in the audience, other factors could include whether the program was rated TV–Y or TV–Y7 (indicating the intended audience is young children), and company intent as indicated in its marketing plan.

Moreover, as already noted, the IWG recommendations are intended only to guide voluntary industry efforts and thus do not restrict companies from advertising any product in any media.

*Question 3.* Why has the Working Group come up with sugar and sodium standards that are much stricter from standards that USDA has recently deemed healthy and appropriate for school lunches? Should the guidelines be developed with the collaboration of the companies that produce these foods, and then taken to OMB for review to assure that the government is not issuing two separate and conflicting standards for healthy foods?

Answer. The proposed nutrition and marketing principles that the IWG put out for public comment in April were only a preliminary draft. The IWG is making sub-

stantial revisions to those principles based on the input it received from the food industry and other stakeholders during the comment period.

The issue of how the revised recommendations on nutrition relate to other Federal nutrition guidelines for school meal programs is outside of the FTC's expertise, so I would defer to the USDA on that specific aspect of your question.

The IWG's final report to Congress will not recommend regulations, but merely set out voluntary principles to guide industry self-regulatory programs. As such, I do not believe OMB review is necessary, nor am I aware of any precedent for OMB review of similar FTC reports to Congress. For example, neither the FTC's 2008 report to Congress on food marketing to children and adolescents nor its 2009 report to Congress on marketing violent entertainment to children, both of which included recommendations for industry self-regulation, were not submitted for OMB review.<sup>1</sup>

*Question 4.* The standards for sodium, fat and sugar content set forth in your April 28 proposal represents a highly detailed prescription for manufacturing of food products that your report even acknowledges that ". . . If the proposed nutrition principles were fully implemented by industry as proposed, a large percentage of food products currently in the marketplace would not meet the principles. . . ."

(a) If the food industry made all of the changes that you recommend, what would be the cost to the industry and to consumers?

(b) Have you conducted the study that Senator Harkin called for in his appropriations report directive to the Working Group and did that provide you with a strong degree of certainty that if you made all of these changes it would have a perceptible impact on rates of childhood obesity in this country? Could you provide us with that evidence?

Answer. (a) The FTC does not have the expertise or data to respond to your question on what percentage of foods currently in the marketplace would meet the IWG's revised recommendations on nutrition, and I would defer to the other IWG agencies on that specific aspect of your question. I want to emphasize, however, that the recommendations only apply to the marketing of food directly to children, not to marketing to a general audience or to the sale of food. Moreover, to the extent the revised IWG nutrition principles (including those related to sodium, fat, and sugar) are much closer to the industry's CFBAI program, they should be achievable for most foods and affordable for industry.

Even assuming the food industry voluntarily implemented the IWG's revised recommendations in full, the cost would vary depending on how the companies chose to implement the recommendations. Companies could use different approaches to implementation, including reformulating foods marketed to children, substituting one product in their portfolio for another in child-directed marketing (for example, advertising orange juice in place of soda), and/or marketing the product to a general audience.

(b) Yes, based on briefing sessions with the staff members from the offices of both Senator Harkin and then-Senator Brownback, we believe that the IWG has fulfilled the directive to conduct a study. The IWG completed a deliberate and thorough study of relevant marketing research, nutrition research, and self-regulatory programs governing food marketed to children. The sources reviewed are detailed in the IWG's April 28, 2011 Request for Comments on the preliminary proposed principles. On marketing issues, key sources included the Institute of Medicine's ("IOM") 2006 report on food marketing to children and youth, the FTC's 2008 study on food marketing expenditures and activities directed to children, and data compiled by the FTC for a follow-up study.<sup>2</sup> On the nutrition side, the IWG relied primarily on the most current nutrition research supporting the 2010 Dietary Guidelines for Americans. In addition, the IWG solicited public comment on its preliminary proposal, including 30 specific questions on marketing, nutrition, and economic impact (costs and benefits). Congress did not direct the IWG to conduct a study on the impact of its recommendations on childhood obesity. As Senator Harkin noted in his July 13, 2011 letter to the IWG agencies, the IOM panel of experts had concluded in the 2006 IOM Report that "food and beverage marketing influences the diets and health

<sup>1</sup>See FTC, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation: A Report to Congress* (July 2008), available at <http://www.ftc.gov/os/2008/07/P064595foodmarketingreport.pdf>; FTC, *Marketing Violent Entertainment to Children: A Sixth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries: A Report to Congress* (Dec. 2009), available at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf>.

<sup>2</sup>Institute of Medicine, *Food Marketing to Children and Youth: Threat or Opportunity?* (National Academies Press 2006) (2006 IOM Report); Federal Trade Commission, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation, A Report to Congress* (July 2008), available at <http://www.ftc.gov/os/2008/07/P064504foodmarketingreport.pdf>.

prospects of children and youth” and that “food and beverage marketing practices geared to children and youth are out of balance with healthful diets and contribute to an environment that puts their health at risk.”<sup>3</sup>

*Question 5.* Have you prepared an economic analysis of the impact of your proposed restrictions, if fully adopted, on the price of food? Have you prepared an economic analysis of the impact of implementing these guidelines on jobs and sales in the U.S. economy?

Answer. The Congressional mandate for the IWG did not include a directive to conduct an economic impact analysis of the IWG’s recommendations for voluntary industry self-regulation. The IWG did solicit information on the impact of its proposal as part of its request for comments.<sup>4</sup> Furthermore, the substantial revisions the IWG is making to its recommendations in response to comments should alleviate any concerns about the economic impact.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
HON. JON D. LIEBOWITZ

*Question 1.* Deceptive advertising that could endanger children’s health Mr. Leibowitz, we hear a lot these days about parents’ concerns about sports concussion. Concussions used to just be dismissed as “dings or “bell ringers.” We now recognize concussions as a form of traumatic brain injury, and we know that multiple concussions or blows to the head can lead to lasting brain damage.

So it is natural that young athletes, coaches, and parents are looking for ways to play sports more safely. Unfortunately, some companies appear to be taking advantage of these safety concerns by using deceptive concussion prevention claims to sell children’s sports equipment.

Earlier this year, I wrote you to ask for an investigation of potential violations of the FTC Act related to selling and reconditioning football helmets. Last month, this committee examined “anti concussion” and “concussion reduction” claims in marketing for soccer headbands, helmets, mouth guards, and even dietary supplements for children’s use.

I know you cannot comment on what the FTC may, or may not, be doing in regards to my request for an investigation.

However, I would like to ask if you share my view that, in general, issues involving serious children’s health concerns should be a high priority for the FTC when it considers potential enforcement actions?

Answer. I cannot think of an issue that is more important than protecting children’s health and safety. And I am proud to say that the Commission has a long history of bringing cases to protect children’s health or safety when those interests are potentially implicated by unfair or deceptive marketing practices.

In the 1970s, the Commission challenged advertising practices that portrayed children engaging in dangerous behavior or exposed to potentially dangerous products. *Uncle Bens, Inc.*, 89 F.T.C. 131 (1977) (consent) (challenging ads that showed children cooking food on stove without close adult supervision); *Philip Morris, Inc.*, 82 F.T.C. 16 (1973) (consent) (challenging distribution of free sample razor blades without protective packaging in home-delivered newspapers).

In 1997, we challenged R.J. Reynolds use of the Joe Camel campaign to market Camel cigarettes, alleging that the campaign induced many youngsters under the age of 18 to smoke Camel cigarettes or increased the risk that they would do so.

In 1999, our concern for teenagers and athletes prompted the Commission to challenge the marketers of purported body-building supplements containing androstenedione and other steroid hormones for making allegedly unsubstantiated claims about the safety or lack of side effects of their products. *FTC v. AST Nutri-*

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<sup>3</sup>Letter from Senator Tom Harkin and Representative Rosa L. DeLauro to FTC Chairman Jon Leibowitz, USDA Secretary Tom Vilsack, CDC Director Thomas Frieden, and FDA Commissioner Margaret Hamburg (July 13, 2011).

<sup>4</sup>The dire economic reports submitted during the comment period, however, appear to be founded on implausible assumptions and do not withstand scrutiny. As an example, one study, issued by IHS Consulting, predicts a loss of 74,000 jobs, but provides no explanation of methodology or supporting analysis. The IHS prediction is based on a particularly implausible assumption that advertising spending would drop by \$1.9 billion in the first year alone. That figure represents an amount larger than the FTC’s own estimates of the entire amount spent annually on all forms of food marketing to both children and adolescents. A second report, prepared by Georgetown Economic Services, predicts dramatic increases in the cost of American diets, but is premised on the assumption that all Americans (both children and adults) would switch from their current diet to a diet only of foods meeting the IWG principles—a highly improbable outcome of voluntary recommendations that relate only to marketing activities directed to children.

*tional Concepts & Research, Inc.*, Civ. No. 99 WY 2197 (D. Colo., May 4, 2000) (permanent injunction); *FTC v. Met RX USA, Inc., et al.*, Civ. No. SACV99 1407 DOC (ANX) (C.D. Cal., Nov. 24, 1999) (stipulated final order for permanent injunction).

In 2004, in a complaint against the marketer of a product called the Skinny Pill for Kids, we alleged, among other things, that the defendants falsely claimed that the Skinny Pill for Kids was proven safe for children ages 6 to 12. *FTC v. Fountain of Youth Group, LLC*, Civ. No. 3:04-CV-47-J-99HTS (M.D. Fla. 2004) (stipulated final order for permanent injunction).

*Question 2.* FTC authority to impose civil penalties in cases where children's health is endangered. Mr. Leibowitz, at a hearing last month this committee examined some of the sports concussion claims used to children's sports equipment and even dietary supplements. One of the medical experts at the hearing, Dr. Jeffrey Kutcher of the University of Michigan, told the Committee that:

"The potential harm that I see being caused by products that claim to prevent concussion, when they do not, is far more than simply the financial harm of paying more for something that isn't likely to work as claimed."

Youth athletes who have already suffered a concussion—as well as their coaches and parents—could be especially susceptible to false claims that a product prevents head injuries. Children could end up putting themselves at greater risk of multiple concussions and lifelong brain damage if they return to play too soon or if they falsely believe in a product's claim of concussion prevention.

I introduced legislation that would allow the FTC to impose civil penalties when companies use false injury prevention claim to sell children's sports equipment. For cases such as these, would having civil penalty authority for violations of Section 5 of the FTC Act help deter would-be violators from endangering children health?

Answer. I certainly agree with Dr. Kutcher that the potential harm to young athletes from false or unsubstantiated concussion protection claims made for sporting goods equipment far exceeds the price of that equipment and, indeed, may not even be calculable.

We all want sporting goods manufacturers to improve the concussion protection provided by products they sell. At the same time, it is critical that they not exaggerate the protective capabilities of those products in their marketing materials.

The prospect of being subject to civil penalties could deter sporting goods sellers from making false or misleading safety claims for their products.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
HON. JON D. LIEBOWITZ

*Question 1.* In August 2011, the FTC and the Department of Justice signed a memorandum of understanding with China, which outlined a framework for antitrust cooperation. Can you outline the Commission's plans going forward with regard to engagement with China?

Answer. The Commission plans to continue and expand upon its robust engagement with China's antimonopoly agencies. The new Memorandum of Understanding provides a framework for enhanced engagement with the three Chinese antitrust agencies. If re-confirmed, I look forward to future exchanges between senior officials and staff on issues of competition policy and practice, including substantive analysis and procedural best practices. To this end, we plan to continue our technical assistance programs and workshops for China's antimonopoly agencies, which have covered a full range of antitrust topics over the past several years, including programs on merger review, the abuse of dominance, and the intersection of antitrust and intellectual property policies. The FTC recently hosted an official from China's Ministry of Commerce (China's merger review agency) in our Bureau of Competition as part of our international fellows program (made possible by the authority granted by Congress under the U.S. SAFE WEB Act) and we look forward to hosting additional fellows from the Chinese agencies over the coming years. We will, as appropriate, provide comments on proposed rules and guidelines issued by China's antimonopoly agencies and share our experience with China's new agencies as they implement the antimonopoly law. Finally, in appropriate instances, we will cooperate with China's agencies on cases under concurrent review.

*Question 2.* How do you plan to address the technical nature and handling of specific cases in which enforcement authorities from both jurisdictions are engaged?

Answer. We will develop our cooperative relations with China's antimonopoly agencies based on our extensive experience cooperating on cases with other countries' competition law enforcers, and subject to all applicable rules regarding confidentiality. Cooperation with sister antitrust enforcers on cases under common in-

investigation enables the agencies to identify issues of common interest, improve our analyses, and avoid inconsistent outcomes on the matter under review, while promoting greater understanding and convergence toward sound antitrust analysis. Cooperation may involve exchanges of non-confidential information, process-related information, such as the timetable for review, and, as appropriate, staff views on market definition, competitive effects, and suitable remedies. Discussion of confidential information submitted by a party or third party occurs only if the entity grants a waiver of confidentiality. As has been the case with other jurisdictions, we expect that cooperation on cases with China will begin modestly and, as we gain experience and mutual trust, may become more robust over time.

*Question 3.* There is a major effort underway by U.S. agencies responsible for trade and investment to address concerns about discrimination in the approach of China and other economies (EU, India, Brazil, Korea) to the standards-setting context. How does the FTC coordinate its approach to IP protection and standards setting with other departments and agencies in the administration that are responsible for international standards and IP policies?

*Answer.* We work together with other U.S. Government agencies to ensure that foreign governments and audiences understand the importance of protecting private property rights, including IP rights, safeguarding a robust competitive process, and ensuring the rule of law.

The FTC participates in several U.S. Government interagency groups that address IP issues, including standard setting. For example, with respect to China the FTC participates in the U.S.-China Joint Committee on Commerce and Trade (JCCT) and its IP Working Group. In October 2011, together with USPTO and DOJ Antitrust Division, the FTC co-founded an inter-agency antitrust-IP coordination group to address issues at the intersection of intellectual property and competition law and policy. We also work and coordinate with NIST on standards policy issues that affect competition.

Through these and other mechanisms, the FTC provides input to and coordinates with relevant U.S. agencies on the competition-related aspects of IP and standard setting policies.

*Question 4.* Where has the FTC identified differences in the approach it is advocating on standards and IP and the approaches of other U.S. Government departments/agencies?

*Answer.* The FTC harmonizes its approach to standards and IP with the approaches of other U.S. Government departments and agencies. This harmonization encourages and protects innovation and the resulting incentives for investment, job growth, and U.S. competitiveness.

To avoid differences in approach, the FTC regularly engages with other departments and agencies to exchange views regarding each group's primary focus and expertise. The FTC brings expertise on competition and a consumer focus to the discussion. Other departments and agencies bring different expertise and focuses, including patent rights assignment, export promotion, and international trade negotiations. By sharing expertise and understanding each other's perspectives, the agencies can avoid differences in approach.

Examples of the FTC's work with other departments and agencies on standards and IP include:

- As described in the response to 1(C) above, the FTC participates in interagency discussions regarding IP issues, including standards, with respect to China.
- The FTC and USTR have recently begun a liaison group that will continue to foster a common understanding of issues related to standards and intellectual property.
- The FTC is an advisory participant in the NTSC Subcommittee on Standards. The FTC also coordinates with the National Academies of Science in connection with the standards research that the NAS conducts on behalf of the USPTO.
- The PTO, DOJ Antitrust Division, and the FTC all recently appointed staff to serve as non-voting members of the American National Standards Institute's Intellectual Property Rights Policy Committee. Non-voting observance of this ANSI committee is one way in which all three agencies maintain a common base of background facts and knowledge of private institutional concerns.
- In March 2011, the FTC released a report, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition*,<sup>11</sup> (2011 IP Report), That report articulated ways in which the law of patent notice and remedies could

<sup>11</sup>This report is available at [www.ftc.gov/os/2011/03/110307patentreport.pdf](http://www.ftc.gov/os/2011/03/110307patentreport.pdf).

be improved to increase innovation and better align the patent system and competition policy.<sup>12</sup>

- The report was based, in part, on a May 26, 2010, joint public workshop held by the FTC, Department of Justice, and the Department of Commerce’s U.S. Patent and Trademark Office on the intersection of patent policy and competition policy and its implications for promoting innovation. Assistant Attorney General for the Antitrust Division Christine Varney, Under Secretary of Commerce for Intellectual Property and Director of the USPTO David J. Kappos, U.S. Chief Technology Officer Aneesh Chopra and FTC Commissioner Edith Ramirez each spoke at the workshop.
- Eight more days of public hearings explored patent notice, patent remedies, innovation, and competition issues with more than 140 participants, including business representatives from large and small firms, start-ups and the independent inventor community, leading patent practitioners, economists, and patent law scholars. The FTC also received nearly 50 written submissions on these issues.
- The report explains that “[t]he patent system plays a critical role in promoting innovation across industries from biotechnology to nanotechnology, and by entities from large corporations to independent inventors.”<sup>13</sup>
- Most of the recommendations in the report are addressed to the courts for their consideration.
- The FTC shared a draft of the report with the USPTO before it was published. The USPTO has expressed agreement with many of the report’s recommendations and has already implemented some of the report’s recommendations for the USPTO. The FTC expects to continue a dialogue with the USPTO about these issues.
- In 2007, the FTC and DOJ jointly issued a report entitled, “Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition.” This report focused on how to incorporate careful consideration of the benefits of patent rights into antitrust analysis, so that antitrust enforcers could avoid challenging efficient, legitimate uses of patent rights, which could undermine innovation incentives and thereby harm consumers.

*Question 5.* How does the FTC estimate the likely costs to the U.S. economy—businesses and workers—of any divergences in policy approaches among departments and agencies of our government?

Answer. An estimate of the costs to the U.S. economy of any divergences in policy approaches among different departments and agencies would inevitably be difficult, if not impossible, and the FTC has not undertaken such a study. Rather, by taking steps of the kind described in response to 1(D), the FTC has sought to minimize divergence in policy approaches to IP and standards setting among the relevant agencies. We believe our harmonization efforts in the IP and standard setting areas have been successful. We will continue to work with other departments and agencies to promote innovation through strong intellectual property rights and vigorous competition, and to minimize any costs to the U.S. economy.

*Question 6.* The FTC has issued reports which say that pay-for-delay arrangements hurt consumers and increase costs for Federal programs such as Medicare and Medicaid; in fact, the FTC has said it costs consumers an estimated \$3.5 billion a year. In a report released October 2011, the FTC pointed to 28 cases that bear the telltale signs of pay-for-delay, including “compensation to the generic manufacturer and a restriction on the generic manufacturer’s ability to market its product.” The 2011 report highlighted many more cases than an earlier report your office released on this issue in 2004. Could you give your opinion as to why these types of arrangements have proliferated in recent years?

Answer. Since 2005, a few appellate courts—notably the Second and Federal Circuits—have taken a permissive approach to these deals, erroneously in my opinion. In essence, they have adopted a legal rule that allows branded pharmaceutical companies to pay potential generic competitors any amount of money to stay off the market until patent expiration, unless the patent was obtained by fraud or the patent litigation is a sham. The approach presumes all patents are ironclad, which conflicts with patent law, sound economic analysis, and established antitrust principles (as well as a prior decision from the Sixth Circuit). Both the brand company and the generic company make more money by entering pay-for-delay deals than com-

<sup>12</sup> See 2011 IP Report at 7.

<sup>13</sup> 2011 IP Report at 1.

peting. Therefore, it is entirely expected that the deals would become commonplace in response to the lenient treatment that pay-for-delay deals have received from some courts. Unfortunately, patent settlements that combine restrictions on generic entry with compensation, according to a FTC staff analysis, delay generic competition roughly seventeen months and cost consumers, on average, \$3.5 billion a year. Congress could lower the cost of prescription drugs for both consumers and the Federal Government by enacting legislation to restrict this practice.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO  
HON. JON D. LIEBOWITZ

*Question 1.* There are a number of companies collecting unprecedented amounts of personal information about consumers and some have better track records of protecting that information than others. Do you feel the FTC has the tools to adequately address data security?

Answer. The Commission has brought more than three dozen actions challenging companies' failure to implement reasonable and appropriate data security—most under Section 5 of the FTC Act. I note that what constitutes reasonable security will depend on the size of the company, the nature of the data, and the potential risks at issue. Still, I support the Commission's recommendation that Congress enact Federal legislation requiring all companies that hold consumer data to take reasonable measures to safeguard it and to notify consumers when the security of their information is breached. Such legislation is important for several reasons. First, it would give the agency a specific statutory mandate for its data security program. Second, Congress could require all companies that hold sensitive consumer data—not just companies within the FTC's jurisdiction—to take reasonable measures to safeguard it. Third, Federal legislation requiring notice to consumers when their sensitive information is compromised in a breach would ensure that consumers, no matter which state they live in, could take steps to protect themselves. Finally, legislation would give the Commission authority to seek civil penalties in data security cases, which would increase the deterrent value of its orders, as the existing equitable remedies such as disgorgement and redress are often inadequate in these types of cases.

*Question 2.* Looking forward with regard to data security, how can the FTC make sure we are prepared for future technologies and not just reacting to the past?

Answer. I believe that legal requirements applicable to data security should be flexible in order to remain current as technology change and as security threats and vulnerabilities change. The Commission has followed this approach in its data security program in applying Section 5 of the FTC Act and in other contexts. In promulgating the Safeguards Rule to implement the Gramm-Leach-Bliley Act's security requirements for financial institutions, for example, the Commission adopted flexible standards based on reasonableness, rather than prescribing the use of specific technologies. This type of technology-neutral approach is critical because data security is a continuously evolving process.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. JON D. LIEBOWITZ

**Pharmacy Benefit Management**

*Question 1.* In the past few years, the FTC has sent a number of letters addressing state legislation that attempts to increase Pharmacy Benefit Management (PBM) transparency. In fact, my own state of South Dakota has passed legislation attempting to improve PBM transparency. In each of the letters I reviewed, the FTC sides with the PBMs. These conclusions seem to be based on 2005 studies that are based on data from 2002 and 2003. Was the underlying data provided by the PBMs only or did it include information from any objective third parties?

Answer. Although transparency can be beneficial to consumers, FTC staff has raised concerns about proposals that would force PBMs to disclose more confidential business information than other businesses must legally disclose. Requiring PBMs to disclose certain sensitive business information could dampen competition and facilitate tacit collusion among drug manufacturers that compete to be on a formulary or pharmacies that compete to be in a PBM's pharmacy network; such tacit collusion could ultimately raise prices to health plans and consumers.

In undertaking any study, the FTC always seeks the most reliable and valid data that are available, and information from objective third parties can be very valu-

able. In this case, the Medicare Modernization Act of 2003<sup>1</sup> directed the FTC to address specific questions, which the FTC answered in its 2005 study, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies*. Because some of the confidential data needed to answer those questions were not available from any objective third party,<sup>2</sup> the FTC subpoenaed data from four groups of respondents: large PBMs, small and insurer-owned PBMs, retail pharmacy-owned PBMs, and retail pharmacy chains. The FTC staff then carefully checked the accuracy of the data provided under subpoena. For example, FTC staff obtained business documents created by these companies in their ordinary course of business, which enabled staff to verify that the data provided to the FTC were consistent with the companies' own internal analyses discussed in these documents. Furthermore, FTC staff checked to ensure that the data PBMs reported on prescriptions filled in retail pharmacies were consistent with data obtained directly from those pharmacies.

Since the release of the FTC's 2005 PBM study, FTC staff has continued to monitor outside empirical studies of pharmacy benefits, PBMs, and mail order pharmacies. These are relatively few in number, and tend to be based on much more limited data sets than those available for the FTC's report, but their findings are broadly consistent with those reported in the FTC's report. For example, a December 2005 study published jointly by the State of Maryland's Health Care Commission and Insurance Administration found that if Maryland insurance law were liberalized to allow greater use of mail order maintenance drugs, Maryland consumers would save 2–6 percent on retail drug purchases, and third-party payers could receive discounts of 5–10 percent.<sup>3</sup>

*Question 2.* Can we trust that the FTC can and will objectively do its job in examining PBM mergers if we know the FTC has a history of advocating on behalf of PBMs in state matters?

Answer. The Commission is a competition advocate; it does not advocate on behalf of private interests. We are an independent, bipartisan, and expert administrative agency with a strong record of diligent and effective enforcement to protect consumers from unfair or deceptive conduct and unfair methods of competition in a great variety of industries. In fulfilling our mission, we thoroughly investigate alleged misconduct and review mergers to determine whether they are likely to injure competition and consumers. We do, and we will continue to, objectively do our jobs, and we always assess all the evidence available to us.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO  
HON. JON D. LEIBOWITZ

**FTC involvement in state alcohol regulation:**

*Question 1.* Are you aware and do you think it appropriate that the FTC and its field offices have coordinated in the past with private interests and professional plaintiffs to assist in undermining state regulatory systems like the one we have in Mississippi?

Answer. The FTC's competition advocacy program, which uses a very small portion of the agency's resources, responds to requests from state legislators and regulatory authorities for comments on the likely competitive effects of proposed laws and rules. FTC staff with competition expertise explains the nature of any likely competitive effects and why they may occur. In gathering relevant information to respond to these requests, FTC staff may consult with a wide variety of stakeholders, including Federal and state lawmakers, consumers, industry experts, and large and small businesses, but FTC staff provides its own analyses in response to requests for comments.

Moreover, FTC staff recognizes that the benefits of healthy competition—lower prices and greater product variety and convenience—may not be the only public interests at stake in certain contexts, and that may be particularly true where the distribution and sale of alcohol is concerned. State lawmakers have the responsibility to weigh all of the relevant factors for themselves. FTC staff's analysis simply provides information that may assist lawmakers and regulators in assessing the na-

<sup>1</sup>Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108–173, tit. I, § 110, 117 Stat. 2066, 2174, 42 U.S.C. § 1395w–101 (2003).

<sup>2</sup>Federal Trade Commission, *PHARMACY BENEFIT MANAGERS: OWNERSHIP OF MAIL-ORDER PHARMACIES* (Aug. 2005) (“PBM STUDY”), available at <http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefitrpt.pdf>. The vote in favor of the report was 5–0.

<sup>3</sup>Md. Health Care Comm. and Md. Ins. Admin., *Mail-Order Purchase of Maintenance Drugs: Impact on Consumers, Payers, and Retail Pharmacies*, 2–3 (Dec. 23, 2005), available at <http://mhcc.maryland.gov/legislative/mailorderrpt.pdf>.

ture and scope of any tradeoffs between the benefits of competition and other values.

*Question 2.* Do you see this being a central focus for either of you moving forward and can you tell me which statutory provisions, if any, authorize the FTC to become involved in issues relating to how a state regulates the marketing and sale of alcoholic beverages under its 21st Amendment authority.

Answer. I do not see this area as a central focus for the FTC moving forward. In terms of statutory authority, Section 5 of the FTC Act prohibits both “unfair methods of competition” and “unfair or deceptive acts or practices” in most areas of the economy not expressly exempted from FTC Act scrutiny. Hence, we have scrutinized proposed mergers in the alcohol industry under the FTC Act and the Clayton Act. In addition, as explained above, the FTC’s competition advocacy program is designed to respond to requests for comments and to provide information and analysis on competition issues that state legislators or other authorities are free to accept or ignore.

*Question 3.* Under those statutes, what do you see as FTC’s proper role in alcoholic beverage marketing and sale issues—particularly as it relates to questions of state law?

Answer. I see the FTC’s proper role in this area as to continue enforcing the FTC Act’s prohibitions of “unfair methods of competition” and “unfair or deceptive acts or practices” through law enforcement, promotion of effective alcohol industry self-regulation, and consumer education, and to continue to respond to requests for comments from state legislators and other regulatory authorities. The FTC also will continue to respond to Congressional requests in this area: for example, our 2003 Report, *Alcohol Marketing and Advertising: A Report to Congress*,<sup>4</sup> was conducted under the direction of the Conferees of the House and Senate Appropriations Committees. Since that time, the FTC has issued another report dealing with self-regulation by the alcohol industry<sup>5</sup> and is now requesting OMB approval under the Paperwork Reduction Act for a follow-on study in this area.<sup>6</sup>

*Question 4.* How should the FTC coordinate with other Federal agencies—particularly those charged with regulating alcoholic beverages—before it adopts a policy position or intervenes in litigation or legislation?

Answer. The Commission seeks to collaborate with other agencies in the Federal Government as appropriate to the matter at hand. For example, the investigation that led to the previously mentioned 2003 Report on Alcohol Marketing and Advertising was conducted in collaboration with the U.S. Treasury’s Alcohol and Tobacco Tax and Trade Bureau (TTB, formerly the Bureau of Alcohol, Tobacco and Firearms). The FTC also coordinated the agency’s “We Don’t Serve Teens” program with the TTB, as well as the U.S. Department of Labor, U.S. Department of Transportation National Highway Traffic Safety Administration, and U.S. Department of Education Office of Safe and Drug Free Schools.

*Question 5.* I understand why the FTC would be concerned about unfair methods of competition and unfair or deceptive acts or practices. But can you tell me what that has to do with state laws affecting alcoholic beverage marketing or sales? Do you believe that a state law can be an unfair business practice?

Answer. A duly enacted state statute itself cannot be an unfair business practice. In particular circumstances, proposed state laws affecting alcoholic beverage marketing or sales may have procompetitive or anticompetitive effects. If and when a state legislator asks for advice on the likely competitive effects of such laws, the FTC staff responds as appropriate.

#### **PBM’s:**

*Question 6.* My constituents have expressed numerous concerns regarding the potential anticompetitive effects of PBM mergers. They have informed me this could potentially harm patients by reducing their choice and access to pharmacy services, resulting in higher drug costs. I am concerned about the impact these mergers could have on my constituents. Under your leadership, how should the FTC evaluate and address these concerns as it reviews ongoing consolidations in this market? Can we trust the FTC can and will objectively do its job in examining these mergers?

Answer. Without referring to any particular matter, the FTC would be concerned about any proposed merger that likely would enable the merged firm to exploit

<sup>4</sup>Alcohol Marketing and Advertising: A Report to Congress (2003), available at <http://www.ftc.gov/os/2003/09/alcohol08report.pdf>.

<sup>5</sup>FTC, *Self-Regulation in the Alcohol Industry: Report Commission* (2008), available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>.

<sup>6</sup>See <http://www.ftc.gov/opa/2011/11/alcoholstudy.shtm>.

marketpower by raising price or reducing output. In addition to these concerns, the Commission also considers the likelihood that the proposed merger would enable the merged firm to exercise market power in ways that harm consumers along non-price dimensions of competition such as product quality, product variety, service, or innovation. The FTC's concern is always on a merger's potential to harm competition and consumers, not the identity of the merging parties. But competition is not just about price; it is about choices, such as the ease of access to stores or retail outlets that might be closed if a merger is consummated.

Medco and Express Scripts have disclosed that the FTC is investigating their proposed merger, but I cannot talk about the details of the matter. I can tell you that the investigation is being conducted by an able team of FTC staff, and it will be conducted objectively, as are all of our investigations.

*Question 7.* In 2007, the FTC allowed the CVS/Caremark merger to proceed. Since then, numerous groups have raised concerns about the conduct of CVS/Caremark. In 2009, the FTC opened an investigation in these alleged abuses, of which there are signs that even today, these practices continue. What types of remedies should the FTC consider to ensure practices like these do not continue to harm consumers?

Answer. It is public knowledge that the FTC is conducting an investigation of CVS Caremark, a combined pharmacy retailer and PBM. While I cannot discuss the details of this non-public investigation, I can tell you that the staffs of the competition, consumer protection, and economics bureaus are actively working together on this matter.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BOOZMAN TO  
HON. JON D. LEIBOWITZ

*Question 1.* Do transparency, consumer protection concerns, and access to pharmacists—the frontline/only source of primary care in parts of rural America—factor into the FTC's investigation of continued PBM market consolidation?

Answer. Without commenting on any particular merger, as indicated in the Horizontal Merger Guidelines, the Commission examines many market facts to determine if a proposed merger is likely to create or enhance market power. Among the things we consider is evidence relating to the likelihood that a proposed merger would enable the merged firm to exercise market power in ways that harm consumers along non-price dimensions of competition such as product quality, product variety, service, or innovation. I can assure you that Commission staff is aware of and will fully consider the concerns of community pharmacists relating to PBMs.

*Question 2.* We've seen numerous groups express concern that PBM consolidation has occurred in conjunction with reduced prescription drug choices, higher prices, and patient privacy violations. What types of remedies should the FTC consider to ensure that further PBM consolidation does not harm consumers?

Answer. The FTC has examined PBMs in various contexts: in merger investigations; as part of broad-based hearings on health care competition; and in a "Conflict of Interest" study regarding PBM practices, which was issued in 2005. Scrutiny of competitive issues relating to PBMs is part of the agency's ongoing efforts to preserve and promote competition in health care markets. It is now public knowledge that the FTC is conducting investigations of CVS Caremark and of the proposed merger of Express Scripts and Medco. While I cannot discuss the details of these non-public investigations, I can assure you that the Commission has broad authority to prevent or remedy harm to competition and consumers wherever found.

*Question 3.* In response to recent PBM disclosure, abuse, and transparency legislation passed by various states, the FTC has sent numerous letters to local officials reiterating PBM-associated cost-savings. What is the purpose of this advocacy work? In addition, many of these communications seem to rely on industry-data to support PBM cost-savings claims. How can one industry's data be used to justify not regulating that very industry?

Answer. The FTC's competition advocacy program is designed to respond to requests from state legislators and other regulatory authorities for an analysis of the likely competitive effects of proposed laws and rules. In response to such requests, FTC staff has addressed proposals that would require PBMs to disclose more confidential business information than other businesses are typically required to disclose. FTC staff has expressed concern that requiring PBMs to disclose certain sensitive business information could dampen competition and facilitate tacit collusion among drug manufacturers that compete to be on a formulary or pharmacies that compete to be in a PBM's pharmacy network; such tacit collusion could ultimately raise prices to health plans and consumers.

Special disclosure requirements might be justified if there was strong evidence that PBMs exploited an information advantage to charge their clients unusually high prices. FTC staff has cited evidence on cost savings as an indication that this is not likely the case. In its 2005 PBM study, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies*,<sup>7</sup> the FTC found the prices for a common basket of prescription drugs dispensed by PBM-owned mail order pharmacies were typically lower than the prices charged by retail pharmacies. Moreover, a 2005 Maryland study found that statutory impediments to the use of mail-order pharmacies for maintenance drugs can be costly for a State and its citizens.<sup>8</sup>

The data on which FTC staff relies are not just one industry's data. The data for the FTC's PBM study were obtained under subpoena from four groups of respondents—large PBMs, small and insurer-owned PBMs, retail pharmacy-owned PBMs, and retail pharmacy chains. FTC staff was able to verify that the data provided to the FTC were consistent with the companies' internal analyses discussed in their business documents, which were created in the ordinary course of business, and that the data PBMs reported on prescriptions filled in retail pharmacies were consistent with the data obtained directly from these retail pharmacies. FTC staff also has continued to monitor outside empirical studies of pharmacy benefits, PBMs, and mail order pharmacies since the release of the FTC's 2005 PBM Study. These studies are few in number, and tend to rely on more limited data sets than those available for our own report, but their findings are broadly consistent with those of the FTC's 2005 PBM study.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY TO  
HON. JON D. LEIBOWITZ

*Question 1.* In the area of consumer protection, the Federal Trade Commission's FY 2012 budget request stated that the FTC is focused on "protecting consumers in the financial services marketplace." Please describe in detail the Commission's enforcement, rulemaking, and other activities over the last 2 years, as well as activities currently underway. Please include information regarding the personnel, budget, and other resources required by these activities.

*Answer.* I appreciate this opportunity to discuss the Commission's authority, resources, and activities during the past 2 years in fulfilling our mission to protect consumers of financial services. The FTC deals with issues that touch the economic life of nearly every American. It is the only Federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. In consumer protection, the Commission's mandate is to protect consumers from unfair and deceptive practices. That broad mandate brings the Commission's work into areas as varied as children's online privacy, false claims for foods, drugs, and dietary supplements, weight-loss advertising, scholarship scams, pyramid schemes, and identity theft, to name just a few. The Commission's actions to protect consumers of financial services are a very important part of its consumer protection work.

The FTC is primarily a law enforcement agency, investigating and prosecuting those who engage in fraud or other unlawful conduct that harms or is likely to harm consumers. In addition to its law enforcement role, the Commission engages in rulemaking, consumer and business education, and research and policy development initiatives to assist consumers in the financial services marketplace. As part of its consumer protection mission, the Commission protects consumers at every stage of the consumer financial services life cycle, from the advertising and marketing of financial products to debt collection to mortgage assistance and debt relief.

**Authority**

The Commission has broad enforcement powers under the Federal Trade Commission Act ("FTC Act") to protect consumers of financial services. The agency can bring law enforcement actions to enforce Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. In addition, the Commission can bring law enforcement actions to enforce a number

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<sup>7</sup>Federal Trade Commission, *PHARMACY BENEFIT MANAGERS: OWNERSHIP OF MAIL-ORDER PHARMACIES* (Aug. 2005) ("PBM STUDY"), available at <http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefitrpt.pdf>.

<sup>8</sup>Md. Health Care Comm. and Md. Ins. Admin., *Mail-Order Purchase of Maintenance Drugs: Impact on Consumers, Payers, and Retail Pharmacies*, 2-3 (Dec. 23, 2005), available at <http://mhcc.maryland.gov/legislative/mailorderrpt.pdf> (noting greater use of mail-order maintenance drugs, as would be enabled by liberalizing Maryland insurance law, would save Maryland consumers 2-6 percent on retail drug purchases, and provide third-party carriers with discounts of 5-10 percent).

of consumer protection statutes that specifically relate to financial services, including the Truth in Lending Act (“TILA”), the Home Ownership and Equity Protection Act (“HOEPA”), the Consumer Leasing Act (“CLA”), the Fair Debt Collection Practices Act (“FDCPA”), the Fair Credit Reporting Act (“FCRA”), the Equal Credit Opportunity Act (“ECOA”), the Credit Repair Organizations Act (“CROA”), the Electronic Funds Transfer Act (“EFTA”), and the privacy provisions of the Gramm-Leach-Bliley Act (“GLB Act”). The Commission also can enforce rules that it has issued, including the Mortgage Assistance Relief Services Rule (“MARS Rule”), the Mortgage Acts and Practices—Advertising Rule (“MAP-Ad Rule”), and the Telemarketing Sales Rule (“TSR”), as well as certain rules that other agencies have issued to implement consumer protection statutes that specifically relate to financial services, including Regulations B, E, M, and Z. Under the Dodd-Frank Act, the Commission retains its law enforcement authority, exercising it concurrently with the Consumer Financial Protection Bureau (“CFPB”).

The Commission also has authority to issue regulations to protect consumers of financial services. Pursuant to Section 18 of the FTC Act, the Commission can issue rules to implement Section 5 of the FTC Act’s prohibition on unfair and deceptive acts and practices relating to financial products and services.<sup>9</sup> Pursuant to the Omnibus Appropriations Act of 2009, the Commission also had authority to issue rules protecting consumers from unfair or deceptive practices in connection with mortgage-related products and services. Otherwise, the Commission generally does not have authority to issue rules to implement consumer protection statutes that specifically relate to financial services. Pursuant to the Dodd-Frank Act, the Commission’s rulemaking authority under the 2009 Omnibus Appropriations Act and much of the Federal banking authority consumer protection rulemaking authority passed to the CFPB as of July 21, 2011. The CFPB also has rulemaking authority to implement the FDCPA.

### Resources

As part of fulfilling its consumer protection mission, the Commission over the past 2 years has allocated significant resources to conducting the law enforcement and other activities discussed in detail below. In Fiscal Year 2010, the Commission allocated 114.6 FTEs (37 percent of its total Consumer Protection resources), including staff in the Bureau of Consumer Protection’s Divisions of Financial Practices, Privacy and Identity Protection, Marketing Practices, and Enforcement, and the agency’s regional offices, and \$16 million to its financial services work. In Fiscal Year 2011, the FTC allocated 101.6 FTEs (33 percent of its total Consumer Protection resources) and \$13.8 million to its financial services work. The Commission will continue to allocate significant resources to engage in law enforcement and other activities to protect consumers of financial services.<sup>10</sup>

### Recent Law Enforcement Activities

Over the last 2 years, as the economic downturn has persisted, fraudulent schemes exploiting consumers in financial distress have proliferated. The Commission’s top consumer protection priority has been and remains using law enforcement to stop scammers who prey on the most vulnerable consumers, trying to pick the last dollars out of their pockets through false promises. In the financial services marketplace, the Commission has targeted these “last dollar frauds” promising assistance in obtaining mortgage loan modifications and foreclosure relief; the elimination or reduction of consumers’ credit card debt; tax relief; and credit repair. The Commission also has been vigilant in engaging in a broad range of activities to protect consumers in connection with debt collection, mortgage finance, automobile finance and extended warranties, payment systems, and credit reporting.<sup>11</sup> Below is a more detailed discussion of the Com-

<sup>9</sup>The Commission has not used that authority to issue rules affecting financial practices in more than two decades due to burdensome procedural requirements required under the Magnuson-Moss Warranty—FTC Improvement Act that often result in proceedings taking ten or more years to complete.

<sup>10</sup>The drop in resources between 2010 and 2011 is not indicative of a change in the Commission’s emphasis on protecting consumers in the financial services marketplace. Rather, the decrease is due to losing eleven staff to the CFPB, and the time necessary to replace those positions, and due to the conclusion of several resource-intensive matters.

<sup>11</sup>The Commission also has brought numerous actions in the past 2 years alleging unfair practices against payment processors assisting frauds and alleging EFTA and Regulation E violations against frauds engaging in unauthorized billing practices using consumers’ debit account

mission's law enforcement activities in the financial marketplace. In response to your question, I have identified all actions the Commission has made public during the specified time-frame of Fiscal Years 2010 and 2011. Although I cannot discuss non-public investigations, I assure you that Commission staff has investigated and developed numerous other matters during Fiscal Years 2010 and 2011 on which the Commission itself has not yet acted, but will result in enforcement actions.

#### **Scams Directed at Consumers in Debt**

- Mortgage Assistance Relief and Foreclosure Rescue Services—In Fiscal Years 2010 and 2011, the Commission has filed 13 law enforcement actions against 76 defendants who offered or provided purported mortgage assistance relief and foreclosure rescue services.<sup>12</sup> All of these cases alleged that the defendants violated Section 5 of the FTC Act. Most recently, the Commission recently brought its first case also alleging violations of the MARS Rule, discussed further below.<sup>13</sup> During the past 2 years, the Commission has partially or fully resolved through litigation or settlement 27 cases against 132 defendants, including some of the cases filed during this time period and some cases previously filed.<sup>14</sup> In the resolved cases, the Commission obtained permanent bans and

information. Although these practices involve financial services, I am not including a discussion of them in this response because the underlying frauds do not involve financial services.

<sup>12</sup>*FTC v. Christopher Mallett*, Case No.1:11-cv-01664-CKK (D.D.C. filed Sep. 14, 2011) (<http://www.ftc.gov/os/caselist/1123105/index.shtml>); *FTC v. Phillip A. Flora*, Case No. SACV11-00299-AG- (JEMx) (C.D. Cal. filed Feb. 22, 2011) (<http://www.ftc.gov/os/caselist/1023005/index.shtml>); *FTC v. U.S. Mortgage Funding, Inc.*, Case No. 11-CV-80155-COHN (S.D. Fla. filed Feb. 7, 2011) (<http://www.ftc.gov/os/caselist/1023146/index.shtml>); *FTC v. Residential Relief Found., Inc.*, JFM 10VC 3214 (D. Md. filed Nov. 15, 2010) (<http://www.ftc.gov/os/caselist/1023234/index.shtml>); *FTC v. U.S. Homeowners Relief, Inc.*, No. SA-CV-10-1452 JST (PjWx) (C.D. Cal. filed Sept. 27, 2010) (<http://www.ftc.gov/os/caselist/1023018/index.shtml>); *FTC v. National Hometeam Solutions, LLC*, No. 4:08-cv-067 (E.D. Tex. filed Aug. 30, 2010) (contempt action) (<http://www.ftc.gov/os/caselist/0823067/index.shtml>); *FTC v. Dominant Leads, LLC*, No. 1:10-cv-00997 (D.D.C. filed June 15, 2010) (<http://www.ftc.gov/os/caselist/1023152/index.shtml>); *FTC v. The Debt Advocacy Ctr., LLC*, No. 1:09-cv-2712 (N.D. Ohio filed Nov. 19, 2009) (<http://www.ftc.gov/os/caselist/0923143/index.shtml>); *FTC v. First Universal Lending, LLC*, No. 09-82322-CIV-ZLOCH (S.D. Fla. filed Nov. 18, 2009) (<http://www.ftc.gov/os/caselist/0923130/index.shtml>); *FTC v. Kirkland Young, LLC*, No. 09-23507-CIV-GOLD/MCALILEY (S.D. Fla. filed Nov. 18, 2009) (<http://www.ftc.gov/os/caselist/0923162/index.shtml>); *FTC v. Truman Foreclosure Assistance, LLC*, No. 09-23543-CV-LEONARD-TURN-OFF (S.D. Fla. filed Nov. 23, 2009) (<http://www.ftc.gov/os/caselist/0923192/index.shtml>); *FTC v. 1st Guaranty Mortgage Corp.*, No. 09-CV-61846 (S.D. Fla. filed Nov.17, 2009) (<http://www.ftc.gov/os/caselist/0923169/index.shtml>); and *FTC v. Washington Data Res., Inc.*, No. 8:09-cv-2309-T-23 TMB (M.D. Fla. filed Nov. 12, 2009) (<http://www.ftc.gov/os/caselist/0923173/index.shtml>).

<sup>13</sup>*FTC v. Christopher Mallett*, Case No.1:11-cv-01664-CKK (D.D.C. filed Sep. 14, 2011) (<http://www.ftc.gov/os/caselist/1123105/index.shtml>).

<sup>14</sup>*FTC v. Phillip A. Flora*, *supra*; *FTC v. U.S. Mortgage Funding, Inc.*, *supra*; *FTC v. Residential Relief Found., Inc.*, *supra*; *FTC v. National Hometeam Solutions, LLC*, *supra*; *FTC v. Dominant Leads, LLC*, *supra*; *FTC v. First Universal Lending, LLC*, *supra*; *FTC v. Kirkland Young, LLC*, *supra*; *FTC v. Truman Foreclosure Assistance*, *supra*; *FTC v. 1st Guaranty Mortgage Corp.*, *supra*; *FTC v. Washington Data Res., Inc.*, *supra*; *FTC v. Federal Housing Modification Dept.*, No. 1:09-cv-01753-RJL (D.D.C.) (<http://www.ftc.gov/os/caselist/0923124/index.shtml>); *FTC v. United Credit Adjusters*, No. 09-cv-00798 (D.N.J.) (<http://www.ftc.gov/os/caselist/0823211/index.shtml>); *FTC v. Infinity Group Servs.*, No. 8:09-cv-00977-DOC-MLG (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0923135/index.shtml>); *FTC v. Lucas Law Ctr.*, No. SA-CV-09-770 DOC (ANx) (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0923127/index.shtml>); *FTC v. Apply2Save, Inc.* (D. Idaho) (<http://www.ftc.gov/os/caselist/0923117/index.shtml>); *FTC v. Loss Mitigation Servs., Inc.*, SA-CV-09-800 DOC (ANx) (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0923073/index.shtml>); *FTC v. U.S. Foreclosure Relief Corp.*, SA-CV-09-768 JVS (MLGx) (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0923120/index.shtml>); *FTC v. Freedom Foreclosure Prevention Serv., LLC*, No. 09-1167 (D. Ariz.) (<http://www.ftc.gov/os/caselist/0923061/index.shtml>); *FTC v. Data Med. Capital, Inc.*, No. SA-CV-99-1266 AHS (EEx) (C.D. Cal.) (<http://www.ftc.gov/os/caselist/x000001.shtml>); *FTC v. Dinamica Financiera LLC*, No. 09-CV-03554 (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0823103/index.shtml>); *FTC v. Sean Cantkier*, Case No. 1:09-cv-00894 (CKK) (D.D.C.) (<http://www.ftc.gov/os/caselist/0923147/index.shtml>); *FTC v. Federal Loan Modification Law Ctr., LLP*, Case No. SA-CV-09-401-CJC (MLGx) (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0923070/index.shtml>); *FTC v. Home Assure LLC*, Case No. 8:09-cv-547-T-23TBM (M.D. Fla.) (<http://www.ftc.gov/os/caselist/0823192/index.shtml>); *FTC v. Thomas Ryan*, No. 1:09-cv-00535-HHK (D.D.C.) (<http://www.ftc.gov/os/caselist/0923116/index.shtml>); *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J.) (<http://www.ftc.gov/os/caselist/0923079/index.shtml>); *FTC v. New Hope Prop., LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J.) (<http://www.ftc.gov/os/caselist/0923068/index.shtml>); *FTC v. National Foreclosure Relief, Inc.*, No. 8:09-cv-00117-DOC-MLG (C.D. Cal.) (<http://www.ftc.gov/os/caselist/0823067/index.shtml>); and *FTC v. Safe Harbour Found. of Florida, Inc.*, No. 1:08-cv-01185 (N.D. Ill.) (<http://www.ftc.gov/os/caselist/0823028/index.shtml>).

final judgments totaling over \$135.8 million in monetary relief (\$56.3 million of which has been suspended based on the defendants' inability to pay more), for consumer redress and disgorgement. In addition to bringing its own cases, the FTC has played a key role in assisting other Federal and state law enforcers in bringing hundreds of additional law enforcement actions against loan modification and other foreclosure relief scams. More cases enforcing the FTC Act and the MARS Rule are in the pipeline.

- *Debt Relief Services*—In Fiscal Years 2010 and 2011, the Commission has filed 15 law enforcement actions against 94 defendants who offered or provided purported debt settlement and other debt relief services.<sup>15</sup>

Eleven of the cases challenged false and unsubstantiated promises made by entities that they could substantially reduce or eliminate consumers' debt in violation of Section 5 of the FTC Act, and, for conduct occurring after the TSR was amended to cover debt relief services in 2010, in violation of the TSR. In three of these cases, the Commission challenged the defendants' practices in connection with the marketing of debt relief services and mortgage assistance relief services, discussed above.<sup>16</sup> Three of the cases charged marketers with using illegal robocalls to consumers whose phone numbers were on the Do Not Call Registry, deceptively claiming they could reduce consumers' credit card interest rates, in violation of Section 5 of the FTC Act and the TSR.<sup>17</sup> During the same time period, the Commission has fully or partially resolved 13 cases, resulting in strong injunctive relief and approximately \$197 million (approximately \$160.8 million of which was suspended based on defendants' inability to pay more) as consumer redress and disgorgement remedies.<sup>18</sup> More cases enforcing the FTC Act and the TSR are in the pipeline.

- *Credit Repair Services*—The FTC has filed 4 law enforcement actions against 14 defendants who offered or provided credit repair services in the past 2 years.<sup>19</sup> Two of these cases have involved alleged violations of the CROA or both the CROA and FTC Act. The other two cases are contempt actions. In one of those contempt actions, the defendant was found in civil contempt of a 2009 Federal court order banning him from engaging in credit repair activities, aris-

<sup>15</sup>*FTC v. Christopher Mallett*, *supra*; *FTC v. Debt Relief USA, Inc.*, No. 3:11-cv-02059-N (N.D. Tex. filed Aug. 17, 2011) (<http://www.ftc.gov/os/caselist/0923052/index.shtm>); *FTC v. Media Innovations, LLC*, No. 8:11-cv-00164-RWT (D. Md. filed Jan. 20, 2011) (<http://www.ftc.gov/os/caselist/0923054/index.shtm>); *FTC v. Debt Consultants of Amer., Inc.*, No. No. 3:10-cv-02447 (N.D. Tex. filed Dec. 2, 2010) (<http://www.ftc.gov/os/caselist/0923152/index.shtm>); *FTC v. Financial Freedom of Amer., Inc.*, No. 3:10-cv-02446 (N.D. Tex. filed Dec. 2, 2010) (<http://www.ftc.gov/os/caselist/0923056/index.shtm>); *FTC v. Debt.com Mktg.*, No. SACV10-01788 DOC (Rzx) (C.D. Cal. filed Nov. 22, 2010) (<http://www.ftc.gov/os/caselist/0923040/index.shtm>); *FTC v. Direct Fin. Mgmt., Inc.*, No. 10 C 7194 (N.D. Ill. filed Nov. 8, 2010) (<http://www.ftc.gov/os/caselist/1023061/index.shtm>); *FTC v. Residential Relief Found., Inc.*; *FTC v. Dominant Leads*; *FTC v. Asia Pacific Telecom, Inc.*, No. 10 C 3168 (N.D. Ill. filed May 24, 2010) (<http://www.ftc.gov/os/caselist/1023060/index.shtm>); *FTC v. Advanced Mgmt. Servs. NW LLC*, No. 10-cv-00148-LR (E.D. Wash. filed May 10, 2010) (<http://www.ftc.gov/os/caselist/0923187/index.shtm>); *FTC v. Credit Restoration Brokers, LLC*, No. 2:10-cv-0030-CEH-SPC (M.D. Fla. filed Jan. 20, 2010) (<http://www.ftc.gov/os/caselist/0823001/index.shtm>); *FTC v. JPM Accelerated Servs., Inc.*, No. 09-CV-2021 (M.D. Fla. filed Nov. 30, 2009) (<http://www.ftc.gov/os/caselist/0923190/index.shtm>); *FTC v. Econ. Relief Techs., LLC*, No. 09-CV-3347 (N.D. Ga. filed Nov. 30, 2009) (<http://www.ftc.gov/os/caselist/0923118/index.shtm>); and *FTC v. 2145183 Ontario Inc.*, No. 09-CV-7423 (N.D. Ill. filed Nov. 30, 2009) (<http://www.ftc.gov/os/caselist/0923183/index.shtm>).

<sup>16</sup>*FTC v. Christopher Mallett*, *supra*; *FTC v. Residential Relief Found., Inc.*, *supra*; and *FTC v. Dominant Leads*, *supra*.

<sup>17</sup>*FTC v. 2145183 Ontario Inc.*, *supra*; *FTC v. Econ. Relief Techs.*, *supra*; and *FTC v. JPM Accelerated Servs., Inc.*, *supra*.

<sup>18</sup>*FTC v. Residential Relief Found., Inc.*, *supra*; *FTC v. Debt Relief USA, Inc.*, *supra*; *FTC v. Dominant Leads, LLC*, *supra*; *FTC v. 2145183 Ontario Inc.*, *supra*; *FTC v. Advanced Mgmt. Serv. NW LLC*, *supra*; *FTC v. Media Innovations, LLC*, *supra*; *FTC v. Debt.com Mktg.*, *supra*; *FTC v. Econ. Relief Techs., LLC*, *supra*; *FTC v. MCS Programs, LLC*, No. 09-CV-5380 (W.D. Wash.) (<http://www.ftc.gov/os/caselist/0823216/index.shtm>); *FTC v. Group One Networks, Inc.*, No. 8:09-CV-00352 (M.D. Fla.) (<http://www.ftc.gov/os/caselist/0723230/index.shtm>); *FTC v. Credit Restoration Brokers, LLC*, *supra*; *FTC v. JPM Accelerated Servs., Inc.*, *supra*; *FTC v. Randall L. Leshin*, No. 06-61851, CIV-Zloch (S.D. Fla.) (contempt action resolved Jan. 2010) (<http://www.ftc.gov/os/caselist/0523146/index.shtm>).

<sup>19</sup>*United States v. RMCN Credit Servs., Inc.*, No. 4:11-cv-00650 (E.D. Tex. filed Oct. 12, 2011) (<http://www.ftc.gov/os/caselist/0823253/index.shtm>); *FTC v. Credit Restoration Brokers, LLC*, No. 2:10-cv-00030-CEH-SPC (M.D. Fla. filed Apr. 12, 2011) (contempt action) (<http://www.ftc.gov/os/caselist/0823001/index.shtm>); *FTC v. RCA Credit Servs., LLC*, No. 8:08-cv-2062-T-27MAP (M.D. Fla. filed June 21, 2011) (contempt action) (<http://www.ftc.gov/os/caselist/0823148/index.shtm>); *FTC v. Credit Restoration Brokers, LLC*, No. 2:10-cv-00030-CEH-SPC (M.D. Fla. filed Jan. 20, 2010) (<http://www.ftc.gov/os/caselist/0823001/index.shtm>).

ing out of a 2008 FTC action alleging violations of the FTC Act and CROA. The remaining contempt action, which is ongoing, alleges violations of a 2010 Federal court order prohibiting the defendants from engaging in deceptive marketing practices and from violating the FTC Act and CROA. During the 2-year period, we have partially or fully resolved through litigation or settlement 7 cases involving 29 defendants.<sup>20</sup> In the resolved cases, the Commission obtained permanent injunctive relief in all of the cases, bans on engaging in credit repair in 2 cases against 11 defendants, and final judgments totaling \$33,886,494 in monetary relief, including consumer redress and disgorgement.

- *Tax Relief Services*—In the past 2 years, the Commission has filed one case against three defendants and two relief defendants who offered tax relief services./21/ This case alleged that the defendants violated Section 5 of the FTC Act. The case currently is in litigation.

#### **Payday Loans**

- In Fiscal Years 2010 and 2011, the FTC has filed four law enforcement actions against 30 defendants who offered or collected on payday loans.<sup>22</sup> In each of these cases, the Commission alleged that the defendants violated Section 5 of the FTC Act. In one case, the Commission also alleged that the defendants violated FDCPA and the FTC's Credit Practices Rule. In another, the Commission alleged that the defendants violated EFTA, and the FTC's Credit Practices Rule. All four of these actions are currently pending, and the Commission has secured preliminary relief in each of them. In one case, the court issued an opinion granting summary judgment in favor of the Commission, but a final order has not yet been issued. The Commission also has resolved an outstanding action against four defendants who deceived payday loan applicants into buying an unwanted product.<sup>23</sup> The Commission alleged that the defendants violated Section 5 of the FTC Act. The Commission obtained permanent injunctive relief as well as a final judgment of \$5,206,872.

#### **Debt Collection**

- In Fiscal Years 2010 and 2011, the FTC filed six law enforcement actions against 30 defendants engaged in debt collection.<sup>24</sup> These actions alleged violations of Section 5 of the FTC Act and the FDCPA. Two of the actions also included allegations in connection with the marketing of payday loans, discussed above.<sup>25</sup> The agency has partially or fully resolved through litigation or settlement four of these cases with regard to eight defendants<sup>26</sup>. In the resolved cases, the Commission obtained \$5.645 million in civil penalties. In addition, in June 2011, the Commission filed an amicus brief opposing the settlement of a private class action because consumers would receive only a minimal payment

<sup>20</sup> *FTC v. Credit Restoration Brokers, LLC, supra*; *FTC v. RCA Credit Servs., LLC, supra*; *FTC v. Advantage Credit Repair LLC*, No. 1:08-cv-05994 (N.D. Ill.) (<http://www.ftc.gov/os/caselist/0823223/index.shtm>); *FTC v. United Credit Adjusters, Inc., supra*; *FTC v. Nationwide Credit Servs., Inc.*, No. 3:08-cv-01000-HLA-TEM (M.D. Fla.) (<http://www.ftc.gov/os/caselist/0823219/index.shtm>); *FTC v. Clean Credit Report Servs., Inc.*, No. 1:08-cv-22922-AJ (S.D. Fla.) (<http://www.ftc.gov/os/caselist/0823220/index.shtm>); *FTC v. Latrese & Kevin Enters. Inc.*, No. 3:08-cv-01001-MMH-JRK (M.D. Fla.) (<http://www.ftc.gov/os/caselist/0823007/index.shtm>).

<sup>21</sup> *FTC v. American Tax Relief, LLC*, No. 11-6397 DSF (PJWx) (C.D. Cal. filed Sept. 24, 2010) (<http://www.ftc.gov/os/caselist/1023083/index.shtm>).

<sup>22</sup> *FTC v. LoanPointe, LLC*, Case No. 2:10 CV-00225 DAK (C.D. Utah filed Mar. 15, 2010) (<http://www.ftc.gov/os/caselist/1023021/index.shtm>); *FTC v. Moneymaker*, 2:11-cv-00461-JCM-RJJ (D. Nev. Filed Apr. 14, 2011) (<http://www.ftc.gov/os/caselist/1023165/index.shtm>); *FTC v. Direct Benefits Group, LLC*, Case No. 6:11-cv-01186-JA-GJK (M.D. Fla. filed Jul. 19, 2011) (<http://www.ftc.gov/os/caselist/1123114/index.shtm>); and *FTC v. Payday Fin., LLC*, Case No. 3:11-cv-03017-RAL (D.S.D. filed Sept. 6, 2011) (<http://www.ftc.gov/os/caselist/1123023/index.shtm>).

<sup>23</sup> *FTC v. Swish Mktg., Inc.*, C09-03814 (N.D. Cal. filed Aug. 20, 2009) (<http://www.ftc.gov/os/caselist/0723241/c0903814.shtm>).

<sup>24</sup> *FTC v. Forensic Case Mgmt. Servs., Inc.*, LACV11-7484 RGK (C.D. Cal. filed Sept. 12, 2011) (<http://www.ftc.gov/opa/2011/09/rumson.shtm>); *U.S. v. West Asset Mgmt., Inc.*, 1:11-cv-00746-ODE-JFK (N.D. Ga. filed March 10, 2011) (<http://www.ftc.gov/opa/2011/03/wam.shtm>); *FTC v. LoanPointe, supra*; *FTC v. Payday Fin., LLC, supra*; *U.S. v. Allied Interstate, Inc.*, 10-cv-04295-PJS-AJB (D. Minn. filed Oct. 21, 2010) (<http://www.ftc.gov/opa/2010/10/alliedinterstate.shtm>); *U.S. v. Credit Bureau Collection Servs.*, 2:10-cv-169 (S.D. Ohio filed Feb. 24, 2010) (<http://www.ftc.gov/opa/2010/03/creditcollect.shtm>).

<sup>25</sup> *FTC v. LoanPointe, LLC, supra*, and *FTC v. Payday Financial, LLC, supra*.

<sup>26</sup> *FTC v. LoanPointe, LLC, supra*; *U.S. v. Allied Interstate, Inc., supra*; *U.S. v. West Asset Mgmt., Inc., supra*; *U.S. v. Credit Bureau Collection Servs., supra*.

to surrender their rights under the FDCPA.<sup>27</sup> More cases enforcing the FTC Act and the FDCPA are in the pipeline.

### **Mortgage Finance**

- *Mortgage Advertising*—Given that there has been relatively less mortgage origination and advertising recently in light of the economic downturn and credit crunch, the Commission has focused its resources on combating “last dollar frauds,” as discussed above. Commission staff, however, continues to actively monitor the mortgage marketplace, including mortgage advertising.
- *Fair Lending/Mortgage Origination*—In the past 2 years, the FTC has brought two law enforcement actions against four defendants who allegedly were violating fair lending laws in connection with offering or providing mortgages to consumers.<sup>28</sup> These cases alleged that the defendants violated the FTC Act, ECOA, and Regulation B. Both of these cases settled, with the court entering judgments against the defendants for \$5.5 million and \$2.9 million, with these judgments being suspended upon payment of \$1.5 million and \$200,000, respectively. In addition the orders bar the defendants from discriminating on the basis of national origin in credit transactions and require them to establish fair lending monitoring programs.

In addition, the Commission has been investigating several companies to determine whether the Commission would have reason to believe that any of the targets have violated Section 5 of the FTC Act, The Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq., or ECOA and Regulation B in connection with the selling of homes and originating mortgages to consumers.

- *Mortgage Servicing*—In June 2010, the Commission settled allegations that Countrywide Home Loans, Inc., in connection with servicing consumers’ mortgages, engaged in unfair and deceptive acts and practices in violation of Section 5 of the FTC Act.<sup>29</sup> In addition to barring Countrywide from engaging in the same or similar acts and practices in the future, the settlement agreement requires that the company must pay \$108 million dollars to injured consumers. To date, more than \$72 million of the \$108 million has been paid to over 288,000 consumers, with the FTC and its redress administrator working diligently to return the remaining redress amounts to injured consumers.

### **Automobile Finance and Warranties**

- *Holder in Due Course Rule*—In May 2011, the Commission announced that it had reviewed the contracts of nearly 50 franchised and independent auto dealers in 45 states, and two large online automobile dealers, and found that these dealers were in compliance with the FTC’s Holder in Due Course Rule.<sup>30</sup> Based on these findings, the FTC staff closed its investigations of these dealers without law enforcement actions.
- *Robocalls Promising Extended Automobile Warranties*—The FTC has filed three law enforcement actions against 13 defendants who violated the Telemarketing Sales Rule and other laws by making pre-recorded robocalls to consumers that deceptively offered to extend their existing automobile warranties.<sup>31</sup> Two of those cases have been fully resolved and one remains pending. During the 2-year period, the FTC also has fully resolved through litigation or settlement three such cases involving 13 defendants.<sup>32</sup> In the resolved cases, the Commission obtained permanent injunctive relief, including bans on any future telemarketing, and final judgments totaling \$77,493,620 in monetary relief, includ-

<sup>27</sup> See Press Release, FTC, *FTC Files Amicus Brief in U.S. District Court Opposing Proposed Class Action Settlement with Debt Buyer Midland Funding LLC*, June 23, 2011, available at <http://www.ftc.gov/opa/2011/06/amicusmidland.shtm>.

<sup>28</sup> *FTC v. Gateway Funding Diversified Mortgage Servs., L.P.*, 08–5805 (E.D. Pa. filed December 15, 2008) (<http://www.ftc.gov/os/caselist/0623063/index.shtm>); *FTC v. Golden Empire Mortgage, Inc.*, CV09–03227 (C.D. Cal. filed May 7, 2009) (<http://www.ftc.gov/os/caselist/0623061/index.shtm>).

<sup>29</sup> *FTC v. Countrywide Home Loans, Inc.*, Case No. CV–10–4193 (C.D. Cal. filed June 7, 2010) <http://www.ftc.gov/os/caselist/0823205/index.shtm>.

<sup>30</sup> See Press Release, FTC, *FTC Finds Broad Compliance Among Auto Dealers with Rule That Protects Consumers With Car Loans*, May 16, 2011, available at <http://www.ftc.gov/opa/2011/05/holderrule.shtm>.

<sup>31</sup> *FTC v. Eeon. Relief Techs., LLC*, *supra*; *FTC v. Asia Pacific Telecom, Inc.*, *supra*; *FTC v. Khalilian*, No. 10–21788 (S.D. Fla. filed June 2, 2010) (<http://www.ftc.gov/os/caselist/1023173/index.shtm>).

<sup>32</sup> *FTC v. Voice Touch, Inc.*, No. 09 CV 2929 (N.D. Ill.) (<http://www.ftc.gov/os/caselist/0823263/index.shtm>); *FTC v. Eeon. Relief Techs., LLC*, *supra*; and *FTC v. Khalilian*, *supra*.

ing consumer redress and disgorgement. More cases targeting these robocallers are in the pipeline.

### **Credit Reporting**

- The Commission continues to enforce the FCRA against consumer reporting agencies and users of consumer reports to ensure that consumer reports are only supplied to those with a permissible purpose. In the past 2 years, the Commission has brought 9 law enforcement actions and obtained over \$2 million in civil penalties.<sup>33</sup> In the Teletrack, Inc. matter for example, the Commission's complaint alleged that Teletrack violated the FCRA by selling consumer reports obtained from its credit reporting business to marketers, who did not have a "permissible purpose." Teletrack sold lists of consumers who previously sought payday loans to third parties that wanted to use the information to target potential customers. In addition, the Commission settled cases with three resellers of consumer reports where the complaints alleged that because of the companies' basic security failures, hackers were able to access sensitive consumer report information.
- In July 2010 the FTC staff sent warning letters to 18 companies offering free credit reports warning them of the need to comply with the Free Credit Report Rule. As a result of this campaign, the entities that received the letter either shut down or changed their practices.

### **Recent Rulemaking Activities**

- **Mortgage Assistance Relief Services Rule**—In November 2010, the Commission issued the Mortgage Assistance Relief Services—or "MARS"—Rule, to prevent loan modification and foreclosure rescue companies from engaging in deceptive and unfair acts and practices.<sup>34</sup> Among other things, it prohibits the mortgage assistance relief providers from making deceptive claims, requires that they disclose key information, and bars them from collecting fees until consumers receive a loan modification or other relief. Administration of the MARS Rule transferred to the CFPB on July 21, 2011, but the Commission retains the authority to enforce the MARS Rule, concurrently with the CFPB.
- **Telemarketing Sales Rule Amendments Regarding Debt Relief Services**—In July 2010, the FTC issued amendments to the Telemarketing Sales Rule designed to curb deception and abuse in debt relief services.<sup>35</sup> In addition to prohibiting deceptive claims for debt relief services and mandating disclosures, this Rule prohibits providers of debt relief services from collecting fees unless and until they have delivered acceptable results to consumers.
- **Mortgage Acts and Practices—Advertising Rule**—In July 2011, the FTC issued its Mortgage Acts and Practices—Advertising Rule ("MAP-Ad Rule"), which bans deceptive claims about consumer mortgages in advertising or other types of commercial communications.<sup>36</sup> The Rule is intended to protect consumers from such claims and to create a level playing field for legitimate businesses to compete in the marketplace. Under the Dodd-Frank Act, administration of the MAP-Ad Rule transferred to the CFPB on July 21, 2011, but the FTC retains the authority to enforce the Rule concurrently with the CFPB.
- **Credit Reporting**—In the past 2 years, the Commission has completed the rulemakings required by the Fair and Accurate Credit Transaction Act ("FACT ACT") amendments to the FCRA. In July 2011, the Commission issued amend-

<sup>33</sup> *U.S. v. Teletrack*, No. 1:11-CV-2060 (N.D. Ga. filed June 24, 2011) (<http://www.ftc.gov/os/caselist/1023075/index.shtm>); *In the Matter of SettlementOne Credit Corporation*, FTC Docket No. C-4330 (Aug. 19, 2011) (<http://www.ftc.gov/os/caselist/0823208/index.shtm>); *In the Matter of ACRAnet, Inc.*, FTC Docket No. C-4331 (Aug. 19, 2011) (<http://www.ftc.gov/os/caselist/0923088/index.shtm>); and *In the Matter of Fajilan and Assocs., Inc.*, FTC Docket No. C-4330 (Aug. 19, 2011) (<http://www.ftc.gov/os/caselist/0923089/index.shtm>); *U.S. v. First Advantage SafeRent, Inc.*, Civ. No. 10-0090 (D. Md. 2010) (<http://www.ftc.gov/os/caselist/0823016/index.shtm>); *U.S. v. Credit Bureau Collection Servs.*, Civ. No. 10-0169 (S.D. Ohio 2010) (<http://www.ftc.gov/os/caselist/0623226/index.shtm>); *U.S. v. Direct Marketing Assocs. Corp.*, Civ. No. 10-0696 (D. Ariz. 2010); *U.S. v. Central Credit, LLC*, Civ. No. 10-0565 (D. Nev. 2010); *FTC v. Navone*, No. 2:08-CV-01842 (D. Nev. filed Dec. 30, 2009) (<http://www.ftc.gov/os/caselist/0723067/index.shtm>).

<sup>34</sup> Mortgage Assistance Relief Services, Final Rule, 75 Fed. Reg. 75092 (Dec. 1, 2010), available at <http://www.ftc.gov/os/fedreg/2010/december/R911003mars.pdf>.

<sup>35</sup> Telemarketing Sales Rule, Final Rule Amendments, 75 Fed. Reg. 48458 (Aug. 10, 2010), available at <http://www.ftc.gov/os/2010/07/100810tsrdebtreliamendments.pdf>.

<sup>36</sup> Mortgage Acts and Practices—Advertising, Final Rule, 76 Fed. Reg. 43826 (July 22, 2011), available at <http://www.ftc.gov/os/fedreg/2011/07/110719mortgagead-finalrule.pdf>.

ments to the Risk-Based Pricing Rule to implement the Dodd-Frank Act.<sup>37</sup> In February 2010, pursuant to the Credit CARD Act of 2009, the Commission amended the Free Credit Report Rule to require disclosures in the advertising of free credit reports and to restrict practices that might confuse consumers as they attempt to obtain their federally mandated free annual credit reports.<sup>38</sup>

#### **Recent Consumer and Business Education Activities**

Although law enforcement is the primary means used by the Commission to combat mortgage lending acts and practices that harm consumers, the Commission also takes an active role in educating American consumers about issues that affect their financial well-being. Accordingly, virtually every law enforcement action has an education component. That helps consumers learn how to recognize, avoid and report a similar experience. The agency empowers consumers by providing practical, objective, actionable, and plain language information in English and Spanish.

In addition, the Commission understands that many businesses seek guidance on how to comply with the laws and regulations enforced by the Commission. To that end, the FTC also engages in extensive business education related to the financial services marketplace, designed using “plain English” to help businesses learn how easy it is to comply with the law.

The FTC communicates to consumers and businesses through print publications; websites that feature video, interactive games, blog posts and audio content; the media; and partnerships with other government agencies, industry associations, and non-profits that help us leverage resources, raise awareness and improve compliance. FTC staff also attend and speak at conferences and workshops.

As detailed below, the Commission issued or updated a significant number of consumer and business education materials over the past 2 years. These items are part of an extensive library of materials at [ftc.gov/consumer](http://ftc.gov/consumer) and [business.ftc.gov](http://business.ftc.gov).

Additionally, the Commission maintains [ftc.gov/MoneyMatters](http://ftc.gov/MoneyMatters), which offers short, practical tips, videos, and links to reliable sources on a variety of topics from credit repair, debt collection, job hunting and job scams to vehicle repossession, managing mortgage payments and avoiding foreclosure rescue scams.

The Commission’s YouTube channel—[YouTube.com/FTCvideos](http://YouTube.com/FTCvideos)—features videos ranging from 15 seconds to 10 minutes on a variety of financial-related subjects, including dramatic stories of people who have avoided mortgage foreclosure rescue scams and an animated production outlining the rights of debtors and the rules for debt collectors.

In Fiscal Year 2011, the agency distributed more than 16 million publications, and logged more than 24 million visits to its consumer and business information on [ftc.gov](http://ftc.gov). The “Credit” consumer information index page is consistently one of the most viewed pages on the FTC website.

- *Mortgage Assistance Relief Services*—For consumers, the Commission issued: *Mortgage Assistance Relief Scams: Another Potential Stress for Homeowners in Distress*, *Forensic Mortgage Loan Audit Scams: A New Twist on Foreclosure Rescue Fraud*, and *For Homeowners*, published in cooperation with the Making Home Affordable program and Hope Now (an alliance of housing counselors, mortgage companies, investors, and other mortgage market participants). The Commission worked with the Treasury Department and the Department of Housing and Urban Development, as well as with loan servicers and non-profit organizations, to create and distribute these educational materials to consumers, including a notice sent to homeowners with their monthly mortgage statement warning them against scams. The Commission also issued business education materials: *Mortgage Assistance Relief Services Rule: A Compliance Guide for Business and Mortgage Assistance Relief Services Rule: A Compliance Guide for Lawyers* to help businesses meet their obligations under the MARS Rule.
- *Debt Relief Services*—For consumers, the Commission issued or updated *Settling Your Credit Card Debts*, *Knee Deep in Debt*, and *Fiscal Fitness: Choosing a Credit Counselor*. For business, the Commission released *Debt Relief Services: Is Your Company Complying with the Rules?*, *Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*, and *Complying with the Telemarketing Sales Rule*.

<sup>37</sup>Fair Credit Reporting Risk-Based Pricing Regulations, Final Rules, 76 Fed. Reg. 41602 (July 15, 2011), available at <http://www.ftc.gov/os/2011/07/110706riskbasedpricingfrn.pdf>.

<sup>38</sup>Free Annual File Disclosures, Final Rule, 75 Fed. Reg. 9726 (Mar. 3, 2010), available at <http://www.ftc.gov/os/2010/02/100223facta.pdf>.

- *Debt Collection*—This past year, the Commission issued the consumer publication, *Paying the Debts of a Deceased Relative: Who is Responsible?*, to explain what to do when a loved one dies and debt collectors are calling, and *Debt Collection Arbitration: The Who, What, Why, and How* to explain how debt collection arbitration works and consumers rights.
- *Mortgage Advertising*—In March 2011, the Commission updated its consumer publication, *Reverse Mortgages: Get the Facts Before Cashing in on Your Home's Equity*.
- *Mortgage Servicing*—In June 2010, the Commission updated *Mortgage Servicing: Making Sure Your Payments Count*.
- *Payment Methods*—In September 2011, the FTC released a new business publication, *New Rules on Electronic Payments Lower Costs for Retailers*, in English and Spanish, informing businesses that accept payment by credit or debit card about rules implemented as part of the Dodd-Frank Act, including interchange fees for debit card transactions, minimum dollar amounts for credit card purchases, and the networks available on a debit card for routing transactions. In the last 2 years, the FTC also updated its publications about gift cards.

#### Recent Research and Policy Development Activities

The financial services marketplace in the United States is dynamic. The Commission therefore engages in public workshops and other research efforts so that it may better understand particular consumer protection issues in the changing marketplace, and advocate for policies that promote protections for consumers. During the past 2 years, the Commission has engaged in such activities in the area of debt collection and automobile financing. In addition, the Commission staff often submits formal staff comments and provides informal feedback on financial services issues to other Federal and state policymakers.

- *Debt Collection*—In July 2011, the Commission issued a final policy statement clarifying when the FTC would take action against collectors who are trying to collect the debts of deceased consumers.<sup>39</sup> In April 2011, the FTC held a public workshop to address the impact of new debt collection technologies and currently staff is working on a report summarizing what the Commission learned from the workshop.<sup>40</sup> In July 2010, the Commission issued a report called “Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration” that discussed the serious problems in the system for resolving debt collection disputes and that recommended significant reforms to improve the efficiency and equity of these systems.<sup>41</sup> In late 2009, the FTC commenced a comprehensive, empirical study of the debt buying industry, and the Commission continues to work on this study. In addition, each March, the Commission has submitted to Congress its FDCPA Annual Report.<sup>42</sup>
- *Mortgage Advertising*—The Commission staff is coordinating with the CFPB staff regarding their possible development of a new mortgage shopping form and streamlined mortgage disclosures under Section 1098 of the Dodd-Frank Act.
- *Fair Lending/Mortgage Origination*—In December 2010, FTC staff submitted comments to the Board of Governors of the Federal Reserve (“Board”) recommending ways the Board could strengthen the rules under the Home Mortgage Disclosure Act (“HMDA”)<sup>43</sup>. HMDA and its implementing Regulation C require some mortgage lenders to collect and report mortgage data that the FTC and other government enforcement agencies use to analyze whether the lenders are complying with ECOA and Regulation B.

<sup>39</sup> Statement of Policy Regarding Communications in Connection With the Collection of Decedents’ Debts, Policy Statement, 76 Fed. Reg. 44915 (July 27, 2011), available at <http://www.ftc.gov/os/2011/07/110720fdcpa.pdf>.

<sup>40</sup> See Press Release, FTC, FTC to Hold Workshop on Ways to Protect Consumers As Debt Collection Technologies Change, Apr. 25, 2011, available at <http://www.ftc.gov/opa/2011/04/debtcollection.shtm>.

<sup>41</sup> FTC, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

<sup>42</sup> FTC, Annual Report 2010: Fair Debt Collection Practices Act, available at <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>; FTC, Annual Report 2011: Fair Debt Collection Practices Act, available at <http://www.ftc.gov/os/2011/03/110321fairdebtcollectreport.pdf>.

<sup>43</sup> FTC Staff Comment Before the Board of Governors of the Federal Reserve Concerning the Home Mortgage Disclosure Act (Dec. 3, 2010), available at <http://www.ftc.gov/os/2010/12/101217Federalreserveregulation.pdf>.

- *Automobile Finance*—Under the Dodd-Frank Act, as of July 21, 2011, the Commission acquired the authority to issue rules prohibiting unfair and deceptive acts and practices in connection with motor vehicle dealers, using the notice and comment rulemaking procedures in Section 553 of the Administrative Procedure Act. To consider whether any new initiatives would be appropriate in this area—such as enforcement actions, business or consumer education, and rule-making—in 2011 the FTC conducted three roundtable events around the country, in Detroit, San Antonio, and Washington, D.C., to gather information on consumer protection issues that may arise in the sale, lease, or financing of motor vehicles<sup>44</sup>. FTC staff is considering what it learned through these roundtables, and it will recommend, if appropriate, measures to the Commission to protect consumers who buy, finance, or lease motor vehicles.
- *Payment Methods*—Title IV of the Credit CARD Act, effective August 2010, amended EFTA to make it applicable to general-use prepaid cards, gift certificates, and store gift cards. It also required the Board, in consultation with the FTC, to issue related rules. The Commission's staff consulted with the Board, in connection with its development of these final rules, which the Board issued in April 2010. Among other things, the rules provide that gift card funds cannot expire for at least 5 years, and inactivity fees can be charged only after a card has not been used for at least 1 year. For all cards sold after January 31, 2011, the expiration date must be clearly disclosed on the card, and fees must be clearly disclosed on the card or its packaging.

In addition, Section 508 of the Credit CARD Act required the FTC to conduct a study regarding the cost-effectiveness of making emergency automated teller machine (ATM) technology available. Such technology is intended to permit ATM users under duress to electronically alert a local law enforcement agency that an incident is taking place at the ATM. The Commission's Bureau of Economics conducted this study and issued its report to Congress in April 2010.<sup>45</sup> The report concluded that the available evidence did not permit definitive conclusions about whether emergency-PIN or alarm button systems reduce ATM crimes. The report also determined that these systems may impose substantial implementation costs, although no formally derived cost estimates of implementing these technologies are currently available.

- *Credit Reporting*—In July 2011, the FTC issued a staff report that compiles and updates the agency's guidance on the FCRA and withdrew the 1990 FCRA Commentary.<sup>46</sup> The staff report, entitled "Forty Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report and Summary of Interpretations," provides a brief overview of the FTC's role in enforcing and interpreting the FCRA and includes a section-by-section summary of the staff's interpretations of the Act. In January 2011, pursuant to the FACT Act amendments to the FCRA, the Commission submitted its fourth interim report to Congress describing progress the agency has made on a national study examining the accuracy of credit reports.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO  
HON. JON D. LEIBOWITZ

*Question 1.* The United States' relationship with China has been in the news a lot lately regarding currency manipulation, trade, protection of Intellectual Property, counterfeit electronic parts in the military supply chain, and a host of other issues. China has even managed to become an issue in the Presidential race. In August, the FTC, along with DOJ, signed an MOU outlining a framework for antitrust cooperation with China. Can you give the Committee a sense of plans going forward with regard to engaging with China? How do you plan to address the technical nature and handling of specific cases that span multiple jurisdictions.

Answer. The Commission plans to continue and expand upon its robust engagement with China's antimonopoly agencies. The new Memorandum of Understanding provides a framework for enhanced engagement with the three Chinese antitrust agencies. If re-confirmed, I look forward to future exchanges between senior officials

<sup>44</sup> See <http://www.ftc.gov/bcp/workshops/motorvehicles>.

<sup>45</sup> FTC, Bureau of Econ. Staff Report, *Credit Card Accountability Responsibility and Disclosure Act of 2009—Report on Emergency Technology for Use with ATMs* (2010), available at <http://www.ftc.gov/opa/2010/05/atm.shtm>.

<sup>46</sup> FTC Staff Report, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations* (July 2011), available at <http://www.ftc.gov/os/2011/07/110720fcrareport.pdf>.

and staff on issues of competition policy and practice, including substantive analysis and procedural best practices. We will continue our technical assistance programs and workshops for China's antimonopoly agencies, which have covered a full range of antitrust topics over the past several years, including programs on merger review, the abuse of dominance, and the intersection of antitrust and intellectual property policies. The FTC recently hosted an official from China's Ministry of Commerce (China's merger review agency) in our Bureau of Competition as part of our international fellows program (made possible by the authority granted by Congress under the U.S. SAFE WEB Act). We look forward to hosting additional fellows from the Chinese agencies over the coming years. We will, as appropriate, provide comments on proposed rules and guidelines issued by China's antimonopoly agencies and share our experience with China's new agencies as they implement the antimonopoly law. Finally, in appropriate instances, we will cooperate with China's agencies on cases under concurrent review.

We are very much looking forward to further developing our cooperative relations with China's antimonopoly agencies based on our extensive experience cooperating on cases with other countries' competition law enforcers and subject to all applicable rules regarding confidentiality. Cooperation with sister antitrust enforcers on cases under common investigation enables the agencies to identify issues of common interest, improve analyses, and avoid inconsistent outcomes on the matter under review, while promoting greater understanding and convergence toward sound antitrust analysis. Cooperation may involve exchanges of non-confidential information, process-related information, such as the timetable for review, and, as appropriate, staff views on market definition, competitive effects, and suitable remedies. Discussion of confidential information submitted by a party or third party occurs only if the entity grants a waiver of confidentiality. As has been the case with other jurisdictions, we expect that cooperation on cases with China will begin modestly and, as we gain experience and mutual trust, may become more robust over time.

*Question 2.* In your response to my question on the use of Section 5 you indicated in your answer that Section 5 was indeed limited in part by the remedies available to the FTC. The fact that remedies are limited does not replace the need to give guidance to the business community on what types of anti-competitive conduct are uniquely enforceable under Section 5 and not enforceable under the antitrust laws. Beyond invitation to collude, what guidance can and should the Federal Trade Commission offer?

Answer. The Commission's decision criterion for bringing a Section 5 "unfair methods of competition" case is whether the practice is likely to harm competition. As the Supreme Court has found, Congress clearly intended the FTC's Section 5 authority to extend beyond the bounds of the antitrust laws. We have used, and will continue to use, this authority judiciously, and when we use the authority, we will thoroughly explain our actions so as to provide guidance for the business community. Recently, the Commission has issued such guidance in the detailed Complaint and the Analysis to Aid Public Comment that accompanied our action against U-Haul for allegedly inviting its rival to collude on price. We also issued such guidance in our Complaint and Analysis to Aid Public Comment in the Intel matter, which described our allegations against Intel and described why we concluded that deceptive conduct by Intel skewed competition in its favor in violation of Section 5. Additionally, we issue guidance through speeches, congressional testimony, workshop materials, and advisory opinions.

*Question 3.* In regard to your remedies point, Section 5 does not provide for fining authority, nor does it provide for follow-on private litigation which can seek treble damages. However, in the Intel case, which you mentioned was settled, the original Federal Trade Commission complaint suggested compulsory licensing of Intel's intellectual property as a potential remedy. Compulsory licensing as a remedy can be far more damaging than a fine or facing treble damages. Further, it has been widely viewed as an inappropriate remedy in single-firm conduct cases, including by the Supreme Court. When is it appropriate to threaten or consider compulsory licensing as a remedy? Is it irresponsible to treat such a problematic remedy so casually given the implications for how such a remedy might expansively be used by foreign antitrust authorities in jurisdictions which have suspect and limited judicial review?

Answer. The Federal Trade Commission is obligated by law to request remedies that restore competition as it would have been but for the anticompetitive conduct of each respondent. When the Commission issues a complaint, it must provide the respondent with notice as to the range of remedies that might be imposed on it if all of the law violations alleged in the Complaint are proven. That notice enables each respondent to understand, and litigate as it thinks appropriate, not only the facts and law relating to the conduct alleged, but the propriety of potential remedies

in the event that it is found to have broken the law. The Commission gives great and careful thought to remedies, seeking to narrowly tailor them to each matter at hand, but, at the beginning of a litigation, the Commission must be clear as to what the broadest possible range of remedies may be supported by the evidence. Decisions are either made by a Federal district court judge or appealed to a Federal circuit court, or both. We are not aware of any principle of Supreme Court (or other) jurisprudence holding that compulsory licensing is always an inappropriate remedy in monopolization cases. In fact, although infrequent, in some instances it is foreseeable that some form of compulsory licensing may be necessary to restore competition to a market in which competition has been stunted by a monopolists' anti-competitive conduct. Where that is a possibility, the respondents must have notice of it. Accordingly, we take the utmost care in considering such remedies, and we make every effort to ensure that this is understood by our foreign partners.

*Question 4.* Mr. Leibowitz, in testimony before the House Energy and Commerce Committee, David Vladeck of the Federal Trade Commission stated that the Interagency Working Group on Food Marketed to Children would not propose that food companies change the trade dress elements of their packaging or remove brand equity characters, like Tony the Tiger, from food products. Please confirm that your final recommendations will not endorse any restrictions on packaging or in-store marketing, including packaging and in-store marketing that features characters not owned or controlled by food companies.

Answer. The Interagency Working Group report is being finalized now and has not yet been formally approved by the four member agencies. However, I support the exclusion of packaging and in-store displays, including characters and trade dress used in such packaging and displays, from the scope of covered marketing activities.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO DR. REBECCA M. BLANK

*Question 1.* Small and rural businesses are the backbone of this country's economy and provide jobs for millions of Americans. Too often they are overlooked and don't have a chance to take advantage of opportunities and assistance provided by the government. What is your experience with small and rural businesses?

Answer. I believe that supporting small and rural businesses is an essential component of the Commerce Department's mission. A number of my cousins run small family farms in rural Missouri and I have watched them deal with the challenges as well as the rewards of self-employment in an uncertain economic climate.

One way to help small and rural businesses take advantage of beneficial services and programs regardless of where a business is located is to ensure they are able to access information and services on-line. CommerceConnect is one example of a customer service initiative that connects American firms with federal, state, and local business assistance resources, including more than 70 Department of Commerce programs.

Additionally, access to broadband is indispensable to ensuring access to information which enables economic growth. I am pleased to report that the Commerce Department has invested approximately \$4 billion in expanding broadband access since 2009. West Virginia was awarded \$130 million from the National Telecommunications and Information Administration's (NTIA) Broadband Technology Opportunities Program (BTOP) for expanding and improving broadband infrastructure in the state with an additional \$4.5 million to promote increased broadband adoption. These projects will directly benefit more than 1,000 community anchor institutions, including hospitals, public safety agencies, libraries and government offices. Every K-to-12 school in the state will be connected to broadband, and one project will bring broadband service to the sparsely populated and terrain-challenged areas of Hardy County, West Virginia.

The Economic Development Administration (EDA) is another bureau within the Commerce Department, with which I have worked, that provides critical economic development support to rural communities and small businesses. EDA's approach is to support bottom-up economic development. EDA recognizes that jobs are not created in Washington, DC, but in regions and communities—and particularly by small businesses—all across the country. EDA's approach to investment empowers rural communities to access the specific assistance needed to support long-term economic development. Historically, slightly more than 50 percent of EDA investments have been made in rural areas.

If confirmed, I will be committed to ensuring the Department's programs and services are accessible to small and rural businesses in West Virginia and across the Nation. These firms are vital to our economy and future job growth.

*Question 2.* What will you do to reach firms that may be reluctant to partner with the government or may not know about the Department's partnership opportunities?

Answer. In recent years, the Commerce Department has taken important steps to enhance its outreach to American businesses through web portals, contact centers and field staff to enable firms to access information and services provided by the Commerce Department regardless of where they are located.

For example, CommerceConnect is a customer service initiative that connects American firms with federal, state, and local business assistance resources, including more than 70 Department of Commerce programs. Demand for CommerceConnect services has increased significantly since it was launched in 2009, which is an indication of the value its services provide to businesses nationwide. In FY 2011, CommerceConnect assisted 875 clients, referring them to over 1,300 programs, products and services to address their business needs.

Building on the success of initiatives like CommerceConnect, in October, President Obama established BusinessUSA, a common, open, web service for small businesses and businesses focused on exporting. This effort intends to connect businesses to resources across Federal government agencies more easily and provide personalized, efficient service. Through BusinessUSA, we aim to reach businesses in every corner of the country. The Department of Commerce and the Small Business Administration are serving as leaders of a growing inter-agency Steering Committee working to advance BusinessUSA. Together, the Committee will design, develop and launch this new service, as well as ensure BusinessUSA becomes a dynamic service that implements ongoing improvements based on customer feedback. The initial website release is scheduled for early 2012.

Other outreach to U.S. firms occurs through public events with senior Department officials. One of the best aspects of my work as a senior Commerce Department official has been the opportunity to travel to cities across the country to talk about the work we are doing at the Department to create jobs through programs such as the National Export Initiative. In addition, newsletters, webinars, and conferences also provide important opportunities to educate business owners about the services available to them through the Department of Commerce that can help grow their business.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
DR. REBECCA M. BLANK

*Question 1. Marine Operations Center—Pacific CMOC-P*—From the beginning, I have been an adamant opponent of relocating the Marine Operations Center-Pacific (MOC-P) from the Puget Sound to Newport, Oregon. For that reason alone, it has been extremely difficult to get information from the Department on the project. As a result, I demanded an Inspector General's report of NOAA's MOC-P acquisition. Have you read the Inspector General's Report? If not, you should carefully read and evaluate the Inspector General's report and compare it with your experience at NOAA. At a minimum, I believe you will be very disappointed with NOAA's process.

I urge you to reach out to MOC-P personnel. As Deputy Secretary, I want you to hold a closed door meeting with NOAA MOC-P employees, without senior management. I want you to hear from NOAA employees themselves about the process of the move, the necessity of maintaining fleet and collaborative science presence in Seattle. Can you commit to meeting with NOAA employees in Seattle to discuss this important issue?

Answer. If confirmed, I look forward to visiting NOAA employees and facilities around the country and I will certainly familiarize myself with MOC-P, and read and evaluate the Inspector General's report.

*Question 2. Ship time, stock assessment surveys and Orcas*—I am very concerned about the impact of drastic cuts to ship time, and the recent decommissioning of the McArthur II. Fishing quotas in the North Pacific are based on stock assessment survey data. Without stock data, regional fishery management councils are forced to lower the total allowable catch due to stock uncertainty. Cutting ship time will decrease stock data, which will decrease catch, net profit, and therefore, could eliminate jobs for Washington state fishermen. As Deputy Secretary of Commerce, how would you direct NOAA to restore ship time and protect commercial and recreational fishing jobs in my state?

Answer. If confirmed, I will work to support the requested resources for ship time and ensure that future budget requests put NOAA in the best position to support

the fishing industry with current, high quality data. I will also continue to work to ensure NOAA continues to plan the most efficient allocation of available resources to meet NOAA's highest priority ship observation needs.

*Question 3.* Endangered southern resident orca research funding was cut, eliminating offshore vessel based surveys and inhibiting NOAA scientists from collecting data critical to the recovery of Orcas. As secretary, how will you work to restore ship time funding for critical programs such as orca research mandated by the Endangered Species Act?

Answer. If confirmed, I will be a strong advocate for NOAA to have the best science on which to base its decisions. As you note, ship time to collect data and information about fisheries, orcas and ocean acidification is vital to ensuring NOAA's decisions are scientifically sound. If confirmed, I would continue to work with the Secretary, Members of Congress, the fisheries community, academia, and others to promote and to continuously strengthen the excellence of NOAA's research and science efforts.

*Question 4. Interagency Coordination on Infectious Salmon Anemia Virus—*Infectious salmon anemia virus was recently detected in wild salmon populations off British Columbia, Canada. This is a huge concern for Washington state industry because the virus virtually wiped out fishing industries in Chile and Norway. Recently I introduced an amendment to H.R. 2112 which calls on the National Aquatic Animal Health Task Force (NOAA is a member) to produce a report to Congress outlining the threat. My amendment was cosponsored by Senators Murkowski, Begich, Boxer, Feinstein, Murray, Wyden and Merkley. As the Deputy Secretary of Commerce, will you evaluate the threat of infectious salmon anemia on our commercial, tribal and recreational fisheries? Can your analysis include potential pathways for transmission—both in the natural environment and in commerce? Furthermore, will you direct NOAA to test the susceptibility of Pacific salmon, steelhead, cod, and herring to the virus? Understanding the species at risk will enable NOAA to maximize tax payer dollars to prioritize surveillance and monitoring regimes.

Answer. NOAA is taking this threat very seriously. Healthy salmon populations are vitally important to the economy, culture, and natural environment of the United States, particularly the Pacific Northwest. NOAA is committed to increasing its testing and surveillance of wild, farmed, and hatchery salmon in sites across the Pacific Northwest to ensure that any potential threat of a virus is detected at the smallest scale. In addition, NOAA is working on emergency response plans should we detect the virus. NOAA's approach will continue to be both collaborative and thorough so we can rely on the best expertise in ensuring that our salmon populations remain healthy and our salmon fisheries remain economically viable.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
DR. REBECCA M. BLANK

*Question 1.* Do you believe public-private partnerships are an effective mechanism to address our country's growing workforce gap and build on successful initiatives such as science parks?

Answer. Yes, public-private partnership can be an important tool in economic development. Public-private partnerships promote dialogue and collaboration between private industry and federal, state, and local officials which can help identify challenges and foster solutions to issues such as industry workforce training needs in a particular region. Strong regional clusters often grow from dynamic public-private partnerships that connect business leaders, universities, non-profit organizations, government officials, and other strategic partners to help regions capitalize on shared strengths to enhance regional economies, create jobs, and compete globally.

Many of the Commerce Department's Economic Development Administration's (EDA) investments are built on successful public-private partnerships, including the recently implemented Jobs and Innovation Accelerator Challenge, which brought together both public and private partners to build upon America's regional innovation clusters with the goal of creating jobs and leveraging key industries for economic growth.

EDA makes strategic investments that foster job creation, particularly in areas of long-term economic hardship or adjustment, by investing in public assets and providing economic supports such as workforce training. Public-private partnerships focused on these types of investments are sometimes necessary to reduce the risk to private sector businesses and increase the overall level of investment in economically distressed regions.

Examples:

*The Delta Center for Economic Development at Arkansas State University in Jonesboro, Arkansas*

The Delta Center is an EDA University Center that provides technical support, strategic planning services, research and analysis, training, and leadership development for local governments, chambers of commerce, and development organizations across Arkansas. Through the Delta Center, University faculty works directly with community leaders to identify assets and leverage them to build local capacity and grow the economy. The Delta Center also operates a business incubator and, with the assistance of Arkansas State's College of Business, supports the development and growth of small businesses. Since the beginning of 2010, the Delta Center has assisted more than 440 firms, helped create 141 jobs, and helped save 286 jobs.

*The Sandia Science and Technology Park in New Mexico* is internationally recognized, master-planned, and strategically located near the U.S. Department of Energy's Sandia National Laboratory. The Science and Technology Park is an entire community dedicated to linking public sector research with private sector business opportunities where companies and startups collaborate on a broad assortment of technologies, products, and services. The Park is home to 33 companies employing over 2,000 people in higher-skill, higher-wage jobs.

Since 2000, EDA has invested \$2.8 million in four projects at the Park. EDA's investments have assisted various stages of the Park's development, from developing the Park's initial strategic plans, to building a fiber optic security network, to installing a state-of-the-art point of presence communication system. The total project costs for these four projects was \$4.9 million.

*The Commonwealth Center for Advanced Manufacturing (CCAM) in Prince George County, Virginia.*

CCAM is a public-private partnership that connects best-in-class manufacturers and many of Virginia's top institutions of higher education, including the University of Virginia, Virginia Tech University, and Virginia State University. CCAM's mission is to transform applied research into business advantages through collaboration and delivery of new "production ready" solutions to factories. In September 2011, EDA invested \$4 million of an \$8.8 million project, to construct office and high-bay manufacturing space at the CCAM facility.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
DR. REBECCA M. BLANK

*Question 1.* In 2010, the President announced a goal of clearing 500 MHz of spectrum over the next decade. NTIA released an initial report in January 2011 which included 115 MHz of spectrum. Unfortunately, only 15 MHz was being cleared by Federal agencies, the rest would have to be shared. It is my understanding that NTIA is working on a follow up report which should be released soon. What is the status of the report?

Answer. The report,—"An Assessment of the Viability of Accommodating Wireless Broadband in the 1755–1850 MHz Band, is currently in the interagency clearance process managed by the Office of Management and Budget. We intend to release this report as soon as it is final in the coming weeks.

*Question 2.* How much closer will we be to the goal of 500 MHz on unencumbered spectrum within 10 years?

Answer. NTIA and the Federal agencies have been working diligently to meet the President's goal as quickly as possible. NTIA's plan identified over 2,200 megahertz of spectrum for evaluation, prioritized spectrum bands for review, and targeted four spectrum bands representing 410 megahertz of spectrum based upon the potential for relocation within five years.

The upcoming report on the 1755–1850 MHz band will provide a recommendation on the repurposing of as much as 95 megahertz of additional spectrum toward the 500 megahertz goal. In January 2012, the Federal agencies will identify the next band(s) to be reviewed, and will begin the process toward making additional reallocation recommendations next fall. In addition to the Federal spectrum being identified by NTIA, the Federal Communications Commission (FCC) identified another approximately 280 MHz of spectrum that could potentially be repurposed for wireless broadband. The reallocation of a significant portion of this spectrum is dependent on Congress enacting legislation to authorize the FCC to conduct incentive auctions.

NTIA's most recent status report, including more information on the spectrum bands for future consideration and upcoming activities, is available at <http://>

[www.ntia.doc.gov/files/ntia/publications/second\\_interim\\_progress\\_report\\_on\\_the\\_ten\\_year\\_plan\\_and\\_timetable.pdf](http://www.ntia.doc.gov/files/ntia/publications/second_interim_progress_report_on_the_ten_year_plan_and_timetable.pdf).

*Question 3.* Will the report any process improvements or other efforts to help Federal agencies better utilize spectrum?

*Answer.* No. The report focuses on assessing the viability of accommodating wireless broadband services in the 1755–1850 MHz band. This involves identifying the systems currently in the band as well as the costs of moving these systems to comparable bands. However, in the American Jobs Act, President Obama put forward proposals to improve the process by which Federal agencies relocate their systems to other spectrum, including providing agencies the necessary up-front financial resources to plan their relocation activities more effectively and accurately (thus increasing certainty in relocation costs and a faster relocation schedule); ensuring that agencies come out of the process with comparable, or where appropriate, updated capabilities; and ensuring that agencies can recover the costs of sharing their spectrum.

*Question 4.* I have been concerned for some time now about the state of spectrum management policy, as you know. Spectrum is a limited resource and licensees and users are typically more comfortable with the status quo than with efficiency measures. As you know, I have been working with Senator Roger Wicker on bipartisan legislation to modernize the Federal spectrum relocation process in an effort to clear underutilized Federal spectrum for other uses by making the process more predictable and transparent for both Federal agencies and potential spectrum auction bidders. I have also actively encouraged public safety licensees and commercial licensees to manage spectrum more efficiently, and I have sought ways to consolidate use of spectrum where possible. S. 522 was reintroduced this Congress and although it passed the Commerce Committee without objection last year, the bill seems to be stalled because of Administration opposition to process improvements which include creating an independent panel comprised of OMB, NTIA, and the FCC to review Federal agency relocation plans and a timeline for transitions. Aside from requests for Congress to authorize the use of the Spectrum Relocation Fund for forward-planning funding for Federal agencies—which was included in the spectrum legislation passed by the Senate Commerce Committee this past summer—I have received no concrete suggestions or ideas from the Administration. I am very concerned about the lack of serious dialogue about this legislation and about a way forward. Will you commit to working with me to improve the Federal spectrum relocation process so that we can clear underutilized Federal spectrum for other useful purposes?

*Answer.* Yes.

*Question 5.* Can you offer any specific recommendations regarding process improvements?

*Answer.* In the American Jobs Act, the President put forward proposals to improve the process by which Federal agencies relocate their systems to other spectrum, including providing agencies the necessary up-front financial resources to plan their relocation activities more effectively and accurately (thus increasing certainty in relocation costs and a faster relocation schedule); ensuring that agencies come out of the process with comparable, or where appropriate, updated capabilities; and ensuring that agencies can recover the costs of sharing their spectrum. I support these proposals and, if confirmed, I look forward to working with Congress to establish the statutory framework necessary to meet the Nation's spectrum needs in the long term.

*Question 6.* I understand the Commerce Department is very focused on implementing patent reform. Can you provide an update on how this process is going?

*Answer.* Under the America Invents Act (AIA), the U.S. Patent and Trademark Office (USPTO) is charged with implementing new rules to modernize the U.S. patent system, conducting studies, and establishing new programs. The agency is on track to implement all the changes in accordance with statutory due dates.

First, there are 20 provisions in the AIA that impact USPTO operations and require the agency to promulgate new rules in a staged manner over a period of 60 days to 18 months from the date of enactment. The USPTO has implemented seven of those provisions to date, including the establishment of a prioritized examination procedure (Track One) option, and is on schedule to issue Notices of Proposed Rule-making (NPRMs) for nine additional ones in mid-January. Thereafter, the USPTO will turn to assembling NPRMs for the remaining provisions.

Second, Congress has mandated the USPTO to conduct seven studies and consult on two additional ones over a period of four months to three years from enactment. The agency is well under way to timely completion of the first two studies, with report due dates in mid-January 2012. For those two studies, on the issues of prior user rights and on options to aid independent inventors and small businesses, the

USPTO has conducted public hearings and collected written comments from the public. The public hearing on prior user rights was conducted on October 25, 2011, at USPTO headquarters. Two hearings on international protection for independent inventors and small business were conducted at USPTO headquarters on October 27, 2011, and at the University of Southern California Law School on November 1, 2011. The agency is currently drafting these reports and soon will begin the third study with a report due date in mid-June 2012.

Lastly, the USPTO must establish four new programs within three years of enactment. The agency has the first program—pro bono legal assistance for under-resourced independent inventors and small businesses—running and is working on launching the other three programs.

*Question 7.* How much of an effect will the changes Congress authorized have on innovation and economic activity?

*Answer.* The America Invents Act will help to spur innovation and the economy in various ways, both in the short term and in the long term.

First, the AIA contains provisions to assist patent holders in obtaining more certain patent property rights. The AIA migrates the United States to a first-inventor-to-file system, which entails a simplified prior art system for judging the novelty and obviousness of a claimed invention. The AIA also contains a provision to streamline the information and process for submitting an inventor's oath/declaration, facilitating the ability of assignees to file patent applications. The AIA further contains a provision to allow a third party to submit prior art to the USPTO during patent examination, thus enabling examiners to weed out unpatentable inventions early in examination. With more certain patent property rights, patent owners will be able to license and sell their patents and inventions faster and easier both nationally and internationally.

Second, the AIA offers ways to remove bad patents from the patent system, thereby clearing patent thickets and opening doors for new technology to advance. In particular, the AIA establishes a post-grant review and inter partes reviews, both of which enable a third party to challenge the patentability of an issued patent if certain conditions are met. The agency in turn is statutorily bound to make a decision within 12 months with a six month good cause extension possible. Post grant review and inter partes review offer an alternative to district court litigation and will be faster and cheaper for the parties.

Third, the AIA requires the USPTO to establish specialized programs to assist independent inventors and small businesses in securing patent protection for their inventions. These provisions are critical to the U.S. economy as two out of three new jobs are created by small businesses. More specifically, the USPTO has already established a pro bono program to assist under-resourced independent inventors and small businesses to file and prosecute patent applications before the USPTO. In the same spirit, the USPTO is required to establish a Patent Ombudsman to further assist independent inventors and small businesses in prosecuting patent applications in the USPTO. And the AIA requires the USPTO to study and report to Congress on ways that the USPTO or other government agencies can financially assist small business in obtaining global patent rights, such as through a loan or grant program.

Finally, the AIA contains financial provisions that are favorable to fully funding the USPTO, such as granting the USPTO fee setting authority and imposing a 15 percent surcharge on current fees. With additional funds, the agency will be able to hire more examiners and administrative patent judges to tackle the backlog of unexamined patent applications and pending appeals, respectively. The agency likewise will be able to modernize its outdated automation systems. Both changes will speed patent examination, enhance the quality of review, and bring forward inventions to market that are presently sitting in the USPTO files.

*Question 8.* Can you provide an overview of the SelectUSA program and how it is progressing?

*Answer.* SelectUSA was established by Executive Order on June 15, 2011 to create jobs, spur economic growth, and promote American competitiveness by facilitating business investment in the United States. SelectUSA resides within the U.S. & Foreign Commercial Service (USFCS) of the International Trade Administration (ITA) at the U.S. Department of Commerce (DOC). SelectUSA serves as a single point of contact for individual companies, U.S. economic development organizations (EDOs), foreign EDOs, and other relevant stakeholders that need assistance or guidance regarding investing in the United States. SelectUSA serves investors primarily through ombudsman, advocacy and information clearinghouse activities. It works with foreign companies who are considering U.S. investment, as well as with ex-

panding domestically based companies who are weighing U.S. versus non-U.S. locations.

*Ombudsman:* SelectUSA provides comprehensive ombudsman support to current or prospective investors encountering obstacles or confusion in the Federal regulatory process, or seeking to identify Federal resources (*e.g.*, programs or existing investment incentives) that will facilitate business investment, retention, or expansion in the United States. The program facilitates this service at the request of a company, or an EDO on behalf of a company.

*Advocacy:* SelectUSA will, at the request of a U.S. EDO engaged in an international business investment location competition, provide U.S. government-level advocacy (*e.g.*, promotion) of the United States as a destination for a company to invest. Individual U.S. state, local, and regional EDOs often compete against one another as well as national level foreign governments in site selection competitions. To level the international playing field, SelectUSA can, when appropriate, promote the U.S. business climate to a potential investor in an ongoing international business investment location competition that may be at risk or in which a decision is imminent, and when a federal-level engagement can convey the appropriate support.

*Information Clearinghouse Activities:* SelectUSA serves as an information clearinghouse for current or prospective business investors, their agents, and the U.S. EDOs that seek to attract, retain, or expand business investments in their respective communities. SelectUSA responds to investor inquiries, disseminating information to companies that need it to investigate the logistical process of making an investment in the United States. SelectUSA leverages media and its own brand to disseminate information to current and prospective investors and U.S. EDOs, driving demand to its suite of services and promoting the United States as a destination for business investment.

*Question 9.* How will SelectUSA encourage more investments from foreign companies?

Answer. SelectUSA encourages foreign direct investment in the United States by providing foreign investors with information and guidance on the process of investing in the United States.

SelectUSA's Ombudsman service is targeted to the needs of foreign investors and helps firms understand and navigate the Federal regulatory process if they encounter confusion or difficulty. The program also helps firms identify Federal resources (*e.g.*, programs or existing investment incentives) that will facilitate business investment, retention, or expansion in the United States. SelectUSA also responds to investor inquiries and disseminates information regarding U.S. market and investment trends, as well as the competitive advantages of investing in the United States.

*Question 10.* How will this program interact with state and local economic development efforts?

Answer. SelectUSA provides U.S. state, regional, and local EDOs with support in their efforts to attract, retain, or expand business investment in their respective communities. This support is provided in a geographically neutral manner—the program never directs a current or prospective investor to one investment destination over another within the United States. SelectUSA's Advocacy service can assist U.S. EDOs as they compete for an investment decision against foreign governments, when appropriate, by coordinating federal-level engagement to encourage investment in the United States (*e.g.*, promoting the United States overall as a destination for investment). This support helps level the international field for U.S. EDOs engaged in international business investment location competitions. Senior leadership in the U.S. Department of Commerce or elsewhere in the U.S. Government may be asked to engage on behalf of a U.S. EDO to promote the United States as the investment destination rather than another country. The ombudsman service (described above) is also leveraged to support U.S. EDOs.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO  
DR. REBECCA M. BLANK

*Question 1.* Alaska recently endured a massive winter storm with hurricane force winds and a strong tide surge. There's no question lives were saved because of advance notice of the timing and severity of this approaching storm. Alaskans took heed and hunkered down, boarded up buildings and got away from the coast, stayed with family and friends or in village schools. Our Polar orbiting weather satellites (JPSS) need replacement to maintain the accuracy of the Nation's forecasts. These are a big ticket item in tough economic times—but absolutely necessary to protect lives and property. This information also necessary for National Defense. What does

the Commerce Department need to strengthen our weather forecasting through modernization of the weather satellite system?

Answer. First, let me say how pleased we were by the JPSS funding level in the FY 2012 final appropriation for the National Oceanic and Atmospheric Administration (NOAA). We very much appreciate the support and recognition of the program's importance. Our National Weather Service's (NWS) Weather Forecast Offices (WFOs) in Anchorage and Fairbanks recognized the storm potential of the recent storm in Alaska almost six days in advance. This was primarily due to predictions provided by numerical weather models prior to the storm. These models were fed, in large part, by data from NOAA polar-orbiting satellites.

Both Geostationary Operational Environmental Satellites (GOES) and Polar Operational Environmental Satellites (POES) were critical to forecast operations: GOES, when the storm was south of 50N latitude and the Western Aleutian Islands; and POES, when the storm crossed into the Central Bering Sea. The Fairbanks WFO and the Alaska Regional Operations Center provided around the clock Impact Decision Support Services to the state and Federal partners throughout the event, and provided staffing at the state Emergency Operations Center 15 hours per day Monday through Thursday. WFOs Fairbanks and Anchorage, the NWS Alaska Aviation Weather Unit, and the NWS Alaska Regional Operations Center continued to provide weather support to the state and Federal partners, and communities as restoration and recovery efforts proceeded following the storm.

Geostationary and polar-orbiting satellites are complementary data sources required to meet NOAA's forecast mission. Between these two systems, the Nation is provided with advance notice of unexpected severe weather, such as hurricanes, winter storms, and even solar storms; however, it is imperative that these programs receive adequate and timely funding over the next several years to ensure mission continuity. The Department of Commerce appreciates the strong bipartisan effort that resulted in \$924 million for JPSS in the FY 2012 CJS conference report. This funding is vital to keeping the program on track and to avoid exacerbating the likely gap in observations that is the result of previous funding challenges. The lack of timely and adequate funds in FY 2011 has led to an almost 100 percent chance of a gap in polar-orbiting satellite coverage in the afternoon orbit between the end of NPP's operational life and the launch of JPSS-1. In order to prevent that gap from increasing, the JPSS program will need adequate and timely funds over the next several years, which is why the current funding level is so important. Similarly, the next-generation GOES-R, scheduled to launch in 2015, will provide continuity of coverage and improvement over our current GOES satellites, but one of the biggest risks to the program's success is budget uncertainty. GOES-R received full funding in the FY 2012 CJS conference bill, but the program will need sustained funds in order to meet the targeted launch date. With sustained adequate funding, the Department of Commerce will be able to maintain and strengthen our weather forecasting through modernization of the weather satellite system.

*Question 2.* These satellite systems are a major portion of the Department's budget and can crowd out other worthy programs. Is there a way to think creatively about how to pay for them, such as through future spectrum sales? Would you be willing to work with this committee on such approaches?

Answer. Our weather satellite systems are important pieces of national infrastructure that support two of the Department of Commerce's Primary Mission Essential Functions. We believe that accurate weather forecasting is a key national security concern, protecting this Nation from the damage of severe storms, supporting large amounts of weather-dependent commerce, and providing vital information to the military. In this tight fiscal environment, it is imperative that we have stable and adequate funding for the weather satellite program, which may require alternative sources of funding. The Department of Commerce and NOAA have examined using spectrum auction proceeds as a potential alternative for programs like the Joint Polar Satellite System; however this would require legislation to achieve. If confirmed, I would look forward to continuing to work with the Secretary to explore these and other potential funding options with the Committee.

*Question 3.* Alaska provides up to 60 percent of the Nation's seafood in any given year. Managing these marine fisheries is a major responsibility of the Commerce Department. I am concerned in these tough economic times there will be a reduction in the basic research and management efforts—like stock assessments. Will the Commerce Department continue to support the basic research needed to maintain this economic engine and the sustainability of our stocks?

Answer. It is important that NOAA carry out its Magnuson-Stevens Act responsibilities to utilize sound science to sustain healthy fish stocks and a healthy and profitable fishing industry. However, NOAA is limited by current budget realities.

If confirmed, I will continue to work with the Secretary to ensure NOAA invests its resources in a manner that fulfills its obligations and sustains our Nation's commercial and recreational fishing businesses to the fullest extent possible during these trying fiscal times.

*Question 4.* Alaska fishermen generally have trust in the science and management under the Magnuson Stevens Act, but fishermen elsewhere tell me they do not. What can we do to bridge this gap in trust between fishermen and managers of this important Federal responsibility?

Answer. The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) shares a goal with the fishing industry of ensuring there is a healthy and sustainable fishing industry in the future. An effective working relationship with the fishing industry is essential to meeting this important goal, and NOAA has made significant efforts over the past two years to improve this relationship. If confirmed, I pledge to continue to work with the Secretary to make sure that NOAA continues its efforts to improve relations with the fishing industry.

*Question 5.* Alaska's economy depends on international exports of seafood, minerals and other resources. What steps can we take to strengthen our Nation's international trade? How can the Commerce Department improve relationships with tribal entities and in rural areas, which sometime feel overlooked, to improve economic stability and foreign trade even in these constrained budget times?

Answer. The Commerce Department is working hard to promote the National Export Initiative (NEI), with a goal of doubling exports of U.S. goods and services by the end of 2014. Since it was announced, the NEI has leveraged government resources and policies to help create conditions that have allowed exports to grow at an annualized rate of 16.3 percent, a pace that puts us ahead of schedule toward the goal. If confirmed, I will continue to work alongside Secretary Bryson, the International Trade Administration and other bureaus within the Department to ensure the Department remains on track to double exports in five years. We must continue to robustly enforce our trade laws to provide a fair and level playing field for U.S. firms and workers as well as maximize opportunities to expand market access abroad through direct advocacy and removing barriers to trade.

Further, the recently adopted free trade agreements with Korea, Panama and Colombia will benefit many industries in Alaska by eliminating and lowering tariffs for U.S. products and increasing market access for U.S. goods and services. Korea is a particularly important market for Alaska's energy, seafood and other products. The Commerce Department stands ready to work with businesses throughout Alaska and the Nation to ensure they are able to take advantage of the benefits these trade agreements provide as the Administration moves forward with implementation of the agreements.

To work effectively with any specific community, government officials need to develop working relationships which enable dialogue and collaboration. This then opens the door to share information about relevant programs and services. As Under Secretary for Economic Affairs, I oversaw the 2010 Decennial Census. I know from my work with the U.S. Census Bureau how important it was for census workers to develop relationships with Native American communities and tribal entities. Engaging community leaders in developing partnerships with Native communities was essential for the Census Bureau to complete the 2010 Census.

If confirmed as Deputy Secretary, I will encourage the same approach to engage tribal entities in Alaska to promote exports and economic growth. Further, I would welcome your suggestions on how the resources of the Commerce Department can best help tribal entities grow their businesses and create jobs.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
DR. REBECCA M. BLANK

*Question 1.* As the Ranking Member of the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, the concerns of Maine's fishermen are my concerns. Given that prior to Secretary Bryson's confirmation you served as Acting Secretary and prior to that, served as Acting Deputy Secretary, I know you are well aware of the concerns of New England fishermen and the marine community, which have been detailed in numerous independent reports by the Inspector General and outside consultants.

Addressing these problems has been a significant focus for both the agency and the Department in recent years—indeed, in 2010, a year when we saw the worst oil spill in our Nation's history, the Department's Inspector General still identified "*Effectively Balancing NOAA's Goals of Protecting the Environment and Supporting*

*the Fishing Industry*” as one of the Department’s top challenges in 2011. While we have moved on to name new—top challenges; for 2012, the fishermen of Maine are still working to address some of the practical and operational concerns that adversely affect their businesses.

Just this morning, I, along with the rest of the New England delegation, received a letter from a group of groundfish fishermen asking for our support in building critical management infrastructure and funding for science so that we can have better fisheries management. They believe, as do I, that we should be promoting stability, profitability and flexibility for the fishing industry in our work here in Washington. If you are confirmed as Deputy Secretary, how will you ensure that NOAA is actively seeking pragmatic solutions to constructive requests for cooperation from the fishing industry, and working aggressively to implement them?

Answer. To promote a healthy and sustainable fishing industry, we must work together with fisheries stakeholders to ensure that the resources on which the fishing industry depends are healthy and used sustainably. The Department and NOAA are dedicated to empowering fishermen to participate as partners in the development of workable solutions to New England fisheries management issues. If confirmed, I look forward to continuing to work with the Secretary and NOAA to ensure the fishing industry has a voice in the ongoing development of fisheries management practices and infrastructure in New England and across the Nation.

*Question 2.* The American manufacturing sector, like the rest of the American economy, was hit hard by the latest recession. But as a result of a confluence of events, U.S. manufacturers have been on an uneven playing field when it comes to competing with the rest of the world since before the recent economic downturn. Specifically, rising health care and energy costs, compliance with myriad regulations, and high tort litigation costs are placing American manufacturers at a strong disadvantage. As an anecdote, the U.S. corporate tax rate remains by-and-large unchanged over the past two decades, while major competitors have lowered theirs. These so called external costs, according to the National Association of Manufacturers (NAM), have resulted in a nearly 18 percent disadvantage for U.S. manufacturing firms when compared with similar costs for nine of America’s major trading partners. It is no wonder, then, that manufacturing in May grew at the slowest pace in 20 months, and it has lost over six million jobs—or roughly one-third of its employment—over the past decade.

Despite these challenges, there can be no doubt that manufacturing is essential to our Nation’s future. In 2008, U.S. manufacturing generated \$1.64 trillion worth of goods, meaning that if it were a country, it would be the eighth largest economy in the world. Furthermore, the United States is the world’s largest manufacturing economy, as it produces 21 percent of all global manufactured products. American manufacturing is responsible for 12 million American jobs directly, and another 6.6 million indirectly, for a total of one in six private sector jobs. And U.S. manufacturing employees have notably higher annual earnings and are recognized as the most productive workers in the world. According to the Manufacturers Association of Maine, workers in my home state’s manufacturing sector earn almost \$1,000 per month more than their counterparts in other sectors, and they have increased output per employee by 66 percent over the past 8 years—from \$60,000 in 2001 to \$89,000 in 2009. If confirmed, what specific steps will you take as Deputy Secretary of Commerce to strengthen the position of American manufacturers in the global economy, so that they can create jobs and opportunity here?

Answer. The American manufacturing sector is critical to our long-term economic strength. Many years ago, I worked with a variety of heavy manufacturing industries as a consultant for an economic forecasting company, a job which taught me a great deal about the realities of business and the value of a strong domestic manufacturing base. U.S. manufacturers are a primary source of exports and provide good paying jobs for hard-working Americans. Secretary of Commerce John Bryson has made it one of his top priorities to help the domestic manufacturing sector succeed and thrive. If confirmed as Deputy Secretary, it will be my privilege to support Secretary Bryson and the Obama Administration in this work by helping U.S. manufacturers become more innovative at home and competitive abroad. Recognizing how critical the manufacturing sector is to the overall U.S. economy, the Obama Administration is committed to building domestic manufacturing capabilities to create the new products, new industries and new jobs of the future.

At the Commerce Department, we are bolstering our efforts to help strengthen and grow manufacturing in the United States. Our National Institute of Standards and Technology (NIST) is particularly well-positioned to support this goal because of its unique mission to work closely with industry. As such, NIST recently created the position of Chief Manufacturing Officer and appointed Michael Molnar to serve in this new role.

Mr. Molnar, a manufacturing industry executive, will be responsible for planning and coordinating NIST's broad array of manufacturing research and services programs. He will serve as NIST's central point of contact with the White House, the Department of Commerce and other agencies on technical and policy issues related to manufacturing. This new position will leverage NIST's strong relationships with industry to accelerate innovation that will create 21st-century manufacturing jobs and enhance our global competitiveness. As part of this effort, he will work to promote and support the Advanced Manufacturing Partnership launched this summer by President Obama that brings industry, universities and the Federal Government together to invest in emerging technologies.

To further help manufacturers succeed, the Department will continue to invest in research and development; work to increase exports of manufactured goods through the National Export Initiative, which is on track to achieve the Administration's goal of doubling U.S. exports over five years; and robustly enforce our trade laws to ensure American firms can compete fairly in the global marketplace. Additionally, the Department will prioritize programs with a record of success in benefiting manufacturers such as the Hollings Manufacturing Extension Partnership. Further, the Department will work aggressively to implement the recently adopted America Invents Act to ensure American manufacturers and their employees are able to realize the full benefit of their ingenuity, innovation and hard work by speeding the delivery of a patentable idea to the marketplace.

If confirmed as Deputy Secretary, I will meet regularly with all bureau chiefs of the Department to measure progress and ensure that these and other top priorities of the Department remain on track. If confirmed, I will also continue to oversee the Department's annual budget planning and will work to prioritize and coordinate program funding across bureaus to ensure programs and initiatives that demonstrate success in helping U.S. manufacturers are adequately funded in a time of reduced overall budgets.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D ROCKEFELLER IV  
TO MAUREEN K. OHLHAUSEN

*Question 1.* I urge the FTC to remain vigilant about children's privacy issues and to use all the tools at its disposal to protect children's privacy. Ms. Ohlhausen, do you agree that the proposed changes are necessary to strengthen COPPA?

Answer. The FTC has sought to protect children's online privacy for many years through the promulgation and enforcement of the COPPA Rule, other enforcement actions under Section 5 of the FTC Act, and consumer and business education and outreach efforts. I strongly support these activities by the FTC to protect children's privacy. In September 2011, the Commission proposed changes to the COPPA Rule to reflect technological changes in the marketplace, such as Internet access through smart phones and gaming platforms and new methods of information collection. I agree that it is necessary to strengthen and update the COPPA Rule to continue to protect children's privacy as they access the Internet through new devices and their personal information is collected in new ways that were not anticipated in the original COPPA Rule promulgated over a decade ago.

*Question 2.* During the debate over the Dodd-Frank Act, I worked hard to preserve FTC's authorities and prevent the transfer of consumer protection authority for financial products and services over to the Consumer Financial Protection Bureau (CFPB.) The result will be that there are two "cops on the beat" in this essential area. How do you anticipate that the FTC and the CFPB will work together? Once the CFPB has a director in place and begins to exercise its full authority, what role do you see for the FTC in consumer financial protection?

Answer. As you acknowledged in your question, the FTC's authority over an array of nonbank financial products and services was essentially preserved in the Dodd-Frank Act. I anticipate that the FTC will successfully coordinate and consult with the CFPB regarding rulemaking and enforcement activities involving consumer financial products and services, as well as with regard to handling financial complaints and promoting financial literacy. The FTC already has a good track record of coordinating oversight and enforcement with other federal agencies, such as the FDA and the FCC, which can provide a template for its work with the CFPB. It is also my understanding that the FTC and CFPB are in the process of negotiating a memorandum of understanding, as required by the Dodd-Frank Act. If confirmed, I would encourage the FTC to maintain an active enforcement agenda and to coordinate with the CFPB to protect consumers effectively, while avoiding undue duplication of efforts or regulatory inconsistency.

*Question 3.* There are some who believed that the FTC should step back and let the CFPB take over all aspects of consumer financial protection. I am pleased to see that the FTC has not taken that approach and has continued aggressive enforcement. In your next term, I urge you to stay vigilant and continue to protect consumers from financial frauds and scams. Ms. Ohlhausen, what are your thoughts on how the FTC should use its authority in conjunction with the CFPB?

Answer. American consumers are facing many challenges in connection with the recent financial downturn, and I believe that one way the FTC should use its enforcement authority to challenge violations that seek to exploit consumers' vulnerabilities, such as in the areas of debt collection, loan modification, and mortgage servicing. For example, after the official launch of the CFPB this summer, the FTC has brought a case against Rincon Management Services for abusive debt collection practices and against payday lender Payday Financial for deceptive practices. I believe the FTC should continue to pursue these kinds of violations.

*Question 4.* Since the repeal of Prohibition, states have been the primary authority when it comes to regulating the distribution and sale of alcohol. States have enacted varied laws that presumably reflect the attitudes and beliefs that their citizens have about alcohol sales and health and safety issues. Ms. Ohlhausen, the Office of Policy Planning has issued reports and other public documents regarding state regulation of alcohol sales. The FTC has a mission to promote competitive free markets, but alcohol is a drug highly susceptible to abuse (particularly by minors) and is not akin to consumer products or services. Why does the FTC have an interest in using its resources to weigh in on state laws and regulations regarding alcohol sales and distribution?

Answer. Alcohol usage, particularly underage drinking, poses many challenges for states and the federal government, and the sale and distribution of alcohol can raise issues that fall under the Commission's FTC Act and Clayton Act authority over competition and consumer protection matters. Thus, the Commission has long engaged in a wide variety of activities involving the alcohol industry, including anti-trust enforcement regarding mergers in the spirits and wine industries and consumer protection enforcement, such as the recent action against Phusion Projects for deceptive advertising of its Four Loko product. The Commission staff has also engaged in policy-oriented work in connection with alcohol for many decades, including monitoring alcohol advertising for compliance with self-regulatory principles, providing views to other federal agencies on alcohol labeling issues, issuing economic studies of the alcohol industry, providing a Congressionally requested report on the advertising of certain alcohol products, and creating public-private education campaigns to discourage serving alcohol to teens. Through these activities carried out over many years, the FTC has gained expertise in competition and consumer protection issues related to the distribution and sale of alcohol.

State officials have for several decades contacted the FTC staff to request advice on the likely impact on consumers and competition of particular proposed state legislation or regulation in a variety of areas in which the FTC has expertise, such as healthcare, gasoline, privacy, and alcohol. In response to these requests, the FTC staff, with the approval of the Commission, routinely issues letters that provide such advice to aid the requesting state officials based on the Commission's experience and expertise in certain industries. These letters only offer advice, however, and the state official must make his or her own decision about what best serves the state's constituents' needs. For alcohol distribution issues in particular, the FTC staff has stated that "clearly, other public interests are at stake besides the consumer interests in low prices, product variety, and convenience, and states must weigh policy choices for themselves." (FTC Staff Wine Report, July 2003, at 2.)

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO  
MAUREEN K. OHLHAUSEN

*Question 1.* As a former state legislator and insurance commissioner, I am a firm believer in our system of federalism. Alcohol regulation, in particular, is an area historically reserved to the states under a three-tiered system of regulation. You have written extensively as a private citizen and a government official about the interstate commerce aspects of alcohol marketing. As an FTC Commissioner, what would be your view on the proper role of the Commission in the regulation and marketing of alcohol? And as an FTC commissioner, do you anticipate pushing for policies that contemplate a larger role for the FTC in promoting direct shipment of wine or alcohol?

Answer. Alcohol usage, particularly underage drinking, poses many challenges for states and the federal government, and the sale and distribution of alcohol can raise

issues that fall under the Commission's FTC Act and Clayton Act authority over competition and consumer protection matters. Thus, the Commission has long engaged in a wide variety of activities involving the alcohol industry, including anti-trust enforcement regarding mergers in the spirits and wine industries and consumer protection enforcement, such as the recent action against Phusion Projects for deceptive advertising of its Four Loko product. The Commission staff has also engaged in policy-oriented work in connection with alcohol for many decades, including monitoring alcohol advertising for compliance with self-regulatory principles, providing views to other federal agencies on alcohol labeling issues, issuing economic studies of the alcohol industry, providing a Congressionally requested report on the advertising of certain alcohol products, and creating public-private education campaigns to discourage serving alcohol to teens. If confirmed, I would support the FTC continuing to exercise its enforcement and study authority in connection with the alcohol industry in the same manner as it has done in the past.

*Question 2.* What express provisions of federal or constitutional law give the Federal Trade Commission authority over alcohol or to promulgate policies affecting the sale or marketing of alcohol?

Answer. The FTC has authority under the FTC Act and the Clayton Act to review mergers and authority under the FTC Act to challenge anticompetitive behavior in many industries, including the alcohol industry, and to exercise consumer protection oversight over marketing and advertising practices in many industries, including alcohol. In addition, Section 6 of the FTC Act gives the FTC authority to conduct studies and issue reports.

*Question 3.* In a 2003 report issued by FTC staff, you wrote "consumers could reap significant benefits if they had the option of purchasing wine online from out-of-state sources and having it shipped directly to them. Consumers could save money, choose from a much greater variety of wines, and enjoy the convenience of home delivery." What analysis, if any, did staff give to the public health and public safety implications of direct shipment of alcohol to consumers?

Answer. The 2003 FTC staff wine report included an economic study of the effects on price and availability of a state prohibition on the direct shipment of wine, as well as an examination of whether direct shipment would allow minors easier access to wine. Recognizing that the states play a vital role in alcohol regulation and the prevention of underage drinking, the report also included the results of a survey of the 24 states that permitted the direct shipment of wine about whether they had experienced problems with minors accessing alcohol through direct wine shipments (most states reported few, if any, problems) and what safeguards they employed to prevent such access. The 2003 wine report also noted, however, for alcohol distribution issues "clearly, other public interests are at stake besides the consumer interests in low prices, product variety, and convenience, and states must weigh policy choices for themselves." (FTC Staff Wine Report, July 2003, at 2.)

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
MAUREEN K. OHLHAUSEN

*Question 1.* Since 2007, oil prices have jumped from \$90 per barrel in December 2007, to \$147 per barrel in June 2008, to \$31 per barrel in December 2008, to \$115 per barrel in March 2012, to around \$100 per barrel today. During this same period, there has been little change in the world's oil supply and demand balance. What is your explanation for this oil price volatility?

Answer. The volatility in oil prices has created many challenges and concerns for American consumers and the U.S. economy. As part of the FTC's extensive oversight of the petroleum industry, which includes enforcement and monitoring, its staff has also undertaken studies and produced extensive reports. A September 2011 report by the staff of the FTC Bureau of Economics found that crude oil prices since 2005 have changed due to shifts in both world-wide demand and supply. The report found that despite the global recession, which affected consumption in some areas, overall consumption increased by almost 7% between 2004 and 2010, which has put upward pressure on crude oil prices, despite increases in world production.

*Question 1a.* To what extent do you believe forces beyond changing global crude prices and supply and demand fundamentals play a role in this price volatility?

Answer. According to the FTC staff's September 2011 report, currently over 70% of the world's proven oil reserves are in OPEC member countries. OPEC's attempts to maintain the price of oil by limiting output and assigning quotas also plays a role in price volatility. In addition, it appears likely that political instability in some oil producing regions may also contribute to price volatility. The FTC should also be

vigilant about detecting any anticompetitive conduct that may affect oil prices and that falls under the FTC's jurisdiction (OPEC's activities do not).

*Question 1b.* To the extent you believe that forced beyond supply and demand fundamentals play a role in this price volatility, how will you use the tools and resources of the Commission to improve the Commission's current protections for consumers and ensure a wholesale petroleum market free from fraud and manipulation?

Answer. I believe it is important for the FTC to be vigilant about whether any anticompetitive conduct that violates the U.S. antitrust laws is contributing to the volatility of oil prices. I support the Commission's use of its many tools to ensure a well-functioning wholesale petroleum market, including enforcement, monitoring, and research.

*Question 2.* I authored legislation that was included as part of the Energy Independence and Security Act of 2007 that, for the first time, charged the Federal Trade Commission with the responsibility of policing the wholesale petroleum markets for manipulation. I was pleased the Commission completed a Final Petroleum Market Manipulation Rule that did not include a safe harbor for futures markets activities. As the final rule makes clear, oil futures markets are inextricably linked to wholesale oil markets, and policing the wholesale markets for manipulation requires a view into the oil futures markets. Over the last three years, oil consumers have ridden a gas-price roller coaster with fluctuating prices that cannot be explained by supply and demand fundamentals. For example, December crude oil prices have varied from \$85 per barrel in 2007, to \$31 in 2008, to \$73 in 2009, to \$86 in 2010, with peaks at \$147 in June 2008 and around \$100 today.

Like the Commission, the Federal Energy Regulatory Commission (FERC) was given nearly identical market manipulation authority in the 2005 energy bill, and to date it has aggressively used this authority to conduct 93 investigations resulting in 45 settlements totaling over \$150 million in penalties. Congress intended that the Commission enforce its market manipulation rule with the same proactive aggressiveness that FERC employs, to deter manipulative behavior, prosecute bad actors, and draw a bright line to distinguish legal from prohibited behavior.

I wrote to the Commission on March 25, 2011, asking for an investigation into gas price volatility and asking what specific steps it was taking to proactively enforce its final Petroleum Market Manipulation Rule. I was terribly disappointed with the Commission's response on April 19, 2011, that provided no information on what the Commission was doing to implement aggressively and proactively the Final Petroleum Market Manipulation Rule. The response letter confirmed that the Commission is doing little more than "monitoring daily gasoline and diesel prices" and "evaluating complaints" through "email and telephone hotlines." Chairman Leibowitz stated that when the Petroleum Market Manipulation Rule was finalized that "This new Rule will allow us to crack down on fraud and manipulation that can drive up prices at the pump. We will police the oil markets—and if we find companies that are manipulating the markets, we will go after them."

Do you believe the Commission has done everything it could have to use the authority of the Petroleum Market Manipulation Rule aggressively in order to protect consumers from unnecessarily high and volatile gas and diesel prices?

Answer. It is my understanding that the FTC is conducting an investigation to determine whether certain oil producers, refiners, transporters, marketers, physical or financial traders, or others have engaged in anticompetitive conduct or provided false or misleading information regarding oil or petroleum products to a federal agency. As a private attorney, I do not at this time know the current state of this investigation. If confirmed, I would consult with agency staff and the Commissioners about how the FTC has conducted the investigation and its progress to date.

*Question 2a.* If confirmed, would you support the Commission being more aggressive and proactive in implementing the Petroleum Market Manipulation Rule in order to protect consumers from unnecessarily high and volatile gas and diesel prices?

Answer. If confirmed, I would consult with agency staff and the Commissioners about the status of the current investigation and whether there is evidence that entities have violated the Petroleum Market Manipulation Rule. If the investigation reveals evidence of illegal conduct, I would support enforcement action by the FTC.

*Question 3.* Recently, a group of Attorneys General from 36 states and 3 U.S. territories recently sent a letter to the Commission urging you to take action against the unfair competition suffered by U.S. manufacturers and workers when they are forced to compete against companies that use stolen information technology to illegally cut their costs. The letter included examples of this problem, including a paper mill in Washington State that must compete with a Mexican paper mill using over

\$10 million in stolen software. U.S. manufacturers and workers are among the most efficient in the world, and I have no doubt they can compete with anyone that plays by the rules. But they cannot possibly compete against manufacturers that gain an unfair cost advantage by stealing millions of dollars in U.S. technologies. Is there anything, in your view, that the Commission can do to help protect U.S. manufacturers and workers against this form of unfair competition?

Answer. The FTC should examine under Section 5 of the FTC Act any “unfair methods of competition” that harm competition, consistent with agency precedent and guiding case law.

*Question 3a.* Do you believe that existing federal law gives the Commission authority it needs to address this type of unfair competition, or would it need additional tools or authority from Congress?

Answer. Whether the activities you describe would constitute unfair methods of competition under Section 5 of the FTC Act as guided by agency precedent and relevant case law is a complex and novel matter. Without an analysis of the likely effects on competition of the conduct at issue, I cannot at this time determine whether the FTC can address such conduct as an “unfair method of competition” under the FTC Act.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
MAUREEN K. OHLHAUSEN

*Question 1.* In August 2011, the FTC and the Department of Justice signed a memorandum of understanding with China, which outlined a framework for antitrust cooperation. Can you outline the Commission’s plans going forward with regard to engagement with China?

Answer. It is my understanding that the FTC will participate in periodic high-level consultations among the FTC, the U.S. Department of Justice, and China’s three antitrust agencies to promote communication and cooperation among the agencies. Specific activities will include exchanges of information and advice; training programs and workshops to enhance agency effectiveness; the provision of comments on proposed laws, regulations, and guidelines; and cooperation on specific cases or investigations, when in the agencies’ common interest.

*Question 1a.* How do you plan to address the technical nature and handling of specific cases in which enforcement authorities from both jurisdictions are engaged?

Answer. The FTC and Chinese antitrust agencies may (but are not required to) work together on antitrust cases and mergers that impact both the U.S. and China. It is my understanding that the FTC may share views and non-confidential information with the Chinese agencies but that it may not share confidential information unless the parties who provided the information agree and grant a waiver. If confirmed, I will consult with FTC staff and the Commissioners about specific cases that involve enforcement authorities from both jurisdictions to ensure that they are handled in a fair and expeditious manner that, where appropriate and consistent with U.S. antitrust law, enhances convergence towards internationally-recognized best practices and avoids conflicting outcomes.

*Question 1b.* There is a major effort underway by U.S. agencies responsible for trade and investment to address concerns about discrimination in the approach of China and other economies (EU, India, Brazil, Korea) to the standards-setting context. How does the FTC coordinate its approach to IP protection and standards setting with other departments and agencies in the administration that are responsible for international standards and IP policies?

Answer. I believe it is important for the U.S. government to strive to speak internationally with one voice on these issues, and it is my understanding that the FTC works with other federal agencies to coordinate the U.S. approach to IP protection and standard setting policy. For example, the FTC participates in U.S. government interagency discussions and processes and works with the State Department and agencies with responsibility for international trade, intellectual property, and other policies. The FTC is part of interagency groups that can include USTR, the Department of Commerce, the Department of State, and other federal agencies on some aspects of implementation of competition laws and policies of other countries, such as China.

*Question 1c.* Where has the FTC identified differences in the approach it is advocating on standards and IP and the approaches of other U.S. government departments/agencies?

Answer. I am not aware of instances in which the FTC has identified differences in its approach on standards and IP and the approaches of other U.S. government

departments or agencies. It is my understanding that the FTC's position has generally been that properly understood, antitrust and intellectual property are not in conflict, that the mere exercise of intellectual property rights does not harm competition, and that the kinds of practices in connection with IP that do harm competition are the same as those regarding other forms of property, such as collusion and improper exclusion. If confirmed, I will consider carefully any differences between the approach the FTC is advocating on standards and IP and the approaches of other parts of the U.S. government.

*Question 1d.* How does the FTC estimate the likely costs to the U.S. economy—businesses and workers—of any divergences in policy approaches among departments and agencies of our government?

Answer. It is my understanding that the FTC works with other federal agencies to coordinate the U.S. approach to a variety of issues, such as IP and privacy law, in an effort to reduce any divergences in policy among departments and agencies. Given these efforts, I believe the FTC understands that any divergence in policy approaches among departments and agencies in the U.S. government may impose costs, but I am not aware of how the FTC estimates what these costs would be.

*Question 2.* The FTC has issued reports which say that pay-for-delay arrangements hurt consumers and increase costs for federal programs such as Medicare and Medicaid; in fact, the FTC has said it costs consumers an estimated \$3.5 billion a year. In a report released October 2011, the FTC pointed to 28 cases that bear the telltale signs of pay-for-delay, including “compensation to the generic manufacturer and a restriction on the generic manufacturer’s ability to market its product.” The 2011 report highlighted many more cases than an earlier report your office released on this issue in 2004. Could you give your opinion as to why these types of arrangements have proliferated in recent years?

Answer. It is important for the FTC to be vigilant about maintaining competition in the pharmaceutical marketplace to protect consumers, and the FTC has challenged as anticompetitive some agreements between branded and generic pharmaceutical companies that would have delayed generic entry into the marketplace. Although a federal circuit court in 2003 found illegal an agreement between a branded and a generic pharmaceutical company to delay entry, several other federal circuit courts subsequently held that similar agreements were not illegal. I believe that these agreements have proliferated in recent years because they benefit the parties to the agreement and the risk that such agreements will be found illegal under the antitrust laws is greatly reduced in light of these subsequent court decisions.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK BEGICH TO  
MAUREEN K. OHLHAUSEN

*Question.* I have heard some concerns about the FTC overstepping its authority and overturning state laws regulating alcohol. Do you believe that the FTC is in a better position to determine which alcohol laws contribute to the “welfare” of a state’s citizens than its own legislators and locally elected officials?

Answer. Alcohol usage, particularly underage drinking, poses many challenges for states and the federal government, and the sale and distribution of alcohol can raise issues that fall under the Commission’s FTC Act and Clayton Act authority over competition and consumer protection matters. Thus, the Commission has long engaged in a wide variety of activities involving the alcohol industry, including antitrust enforcement regarding mergers in the spirits and wine industries and consumer protection enforcement, such as the recent action against Phusion Projects for deceptive advertising of its Four Loko product. The Commission staff has also engaged in policy-oriented work in connection with alcohol for many decades, including monitoring alcohol advertising for compliance with self-regulatory principles, providing views to other federal agencies on alcohol labeling issues, issuing economic studies of the alcohol industry, providing a Congressionally requested report on the advertising of certain alcohol products, and creating public-private education campaigns to discourage serving alcohol to teens. Through these activities over many years, the FTC has gained expertise in competition and consumer protection issues related to the distribution and sale of alcohol.

State officials have for several decades contacted the FTC staff to request advice on the likely impact on consumers and competition of particular proposed state legislation or regulation in a variety of areas in which the FTC has expertise, such as healthcare, gasoline, privacy, and alcohol. In response to these requests, the FTC staff, with the approval of the Commission, routinely issues letters that provide such advice to aid the requesting state officials based on the Commission’s expertise in consumer protection and competition issues in these industries. These letters only

offer advice, however, and the state official must make his or her own decision about what best serves the state's constituents' needs. For alcohol distribution issues in particular, the FTC staff has stated that "clearly, other public interests are at stake besides the consumer interests in low prices, product variety, and convenience, and states must weigh policy choices for themselves." (FTC Staff Wine Report, July 2003, at 2.)

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO  
MAUREEN K. OLHAUSEN

**FTC involvement in state alcohol regulation:**

*Question 1.* Are you aware and do you think it appropriate that the FTC and its field offices have coordinated in the past with private interests and professional plaintiffs to assist in undermining state regulatory systems like the one we have in Mississippi?

Answer. As part of a broad policy inquiry, in 2002, the FTC staff held a workshop to examine possible barriers to e-commerce in ten industries, including online contact lenses, real estate brokerage, and wine. The Commission staff eventually issued a report on online wine sales (2003), a report on online contact lens sales (2004), and a report on real estate brokerage (2007). In connection with the workshop and the subsequent report on online wine sales, the FTC staff consulted with representatives of the wine industry, wholesalers, state attorneys general, state alcohol regulators, state tax collectors, and private delivery companies. The FTC staff also solicited public comment and reviewed materials from the (then) Bureau of Alcohol, Tobacco, Firearms, and Explosives.

The 2003 FTC staff wine report included an economic study of the effects on price and availability of a state prohibition on the direct shipment of wine, as well as an examination of whether direct shipment would allow minors easier access to wine. Recognizing that the states play a vital role in alcohol regulation and the prevention of underage drinking, the report also included the results of a survey of the 24 states that permitted the direct shipment of wine about whether they had experienced problems with minors accessing alcohol through direct wine shipments (most states reported few, if any, problems) and what safeguards they employed to prevent such access. The 2003 wine report also noted, however, for alcohol distribution issues "clearly, other public interests are at stake besides the consumer interests in low prices, product variety, and convenience, and states must weigh policy choices for themselves." (FTC Staff Wine Report, July 2003, at 2.)

In 2005, the Supreme Court in *Granholm v. Heald*, 544 U.S. 460, held unconstitutional New York and Michigan laws that prohibited the direct shipment of wine from out-of-state producers but permitted it for in-state producers in a challenge brought by private parties. In its decision, the Supreme Court referred to the FTC's 2003 staff wine report, which is a publicly available document. The FTC did not participate in the case before the Supreme Court, however.

In connection with its authority under Section 6 the FTC Act to conduct studies and issue reports, I think it is appropriate for the FTC staff to have consulted with a wide array of interests in the workshop and preparation of the 2003 FTC staff wine report. I also believe that, consistent with Constitutional requirements, it is up to the officials of each state to determine what system of alcohol distribution best serves the needs of the state's residents.

*Question 2.* Do you see this being a central focus for either of you moving forward and can you tell me which statutory provisions, if any, authorize the FTC to become involved in issues relating to how a state regulates the marketing and sale of alcoholic beverages under its 21st Amendment authority.

Answer. The FTC has authority under the FTC Act and the Clayton Act to review mergers and authority under the FTC Act to challenge anticompetitive behavior in many industries, including alcohol, and to exercise consumer protection oversight over marketing and advertising practices by many industries, including alcohol. In addition, Section 6 of the FTC Act gives the FTC authority to conduct studies and issue reports and, pursuant to this authority, upon the request of state officials, the FTC staff, with approval by the Commission, provides the requesting official advice on the likely impact on consumers and competition of a proposed law or regulation identified by the official. If confirmed, I would support the FTC continuing to exercise its enforcement and study authority in connection with the alcohol industry in the same manner as it has done in the past but I do not anticipate this issue will be a central focus for me.

*Question 3.* Under those statutes, what do you see as FTC's proper role in alcoholic beverage marketing and sale issues—particularly as it relates to questions of state law?

Answer. Alcohol usage, particularly underage drinking, poses many challenges for states and the Federal Government, and the sale and distribution of alcohol can raise issues that fall under the Commission's FTC Act and Clayton Act authority over competition and consumer protection matters. Thus, the Commission has long engaged in a wide variety of activities involving the alcohol industry, including antitrust enforcement regarding mergers in the spirits and wine industries and consumer protection enforcement, such as the recent action against Phusion Projects for deceptive advertising of its Four Loko product. The Commission staff has also engaged in policy-oriented work in connection with alcohol for many decades, including monitoring alcohol advertising for compliance with self-regulatory principles, providing views to other Federal agencies on alcohol labeling issues, issuing economic studies of the alcohol industry, providing a Congressionally requested report on the advertising of certain alcohol products, and creating public-private education campaigns to discourage serving alcohol to teens. Through these activities carried out over many years, the FTC has gained expertise in competition and consumer protection issues related to the distribution and sale of alcohol.

State officials have for several decades contacted the FTC staff to request advice on the likely impact on consumers and competition of particular proposed state legislation or regulation in a variety of areas in which the FTC has expertise, such as healthcare, gasoline, privacy, and alcohol. In response to these requests, the FTC staff, with the approval of the Commission, routinely issues letters that provide such advice to aid the requesting state officials based on the Commission's experience and expertise in certain industries. These letters only offer advice, however, and the state official must make his or her own decision about what best serves the state's constituents' needs. For alcohol distribution issues in particular, the FTC staff has stated that "clearly, other public interests are at stake besides the consumer interests in low prices, product variety, and convenience, and states must weigh policy choices for themselves." (FTC Staff Wine Report, July 2003, at 2.)

*Question 4.* How should the FTC coordinate with other Federal agencies—particularly those charged with regulating alcoholic beverages—before it adopts a policy position or intervenes in litigation or legislation?

Answer. I believe it is appropriate for the FTC to coordinate and consult with other Federal agencies that regulate alcoholic beverages to inform itself about relevant issues and to share its expertise with those agencies. It is my understanding that the FTC staff has done so on a number of occasions.

*Question 5.* I understand why the FTC would be concerned about unfair methods of competition and unfair or deceptive acts or practices. But can you tell me what that has to do with state laws affecting alcoholic beverage marketing or sales? Do you believe that a state law can be an unfair business practice?

Answer. As noted in my answer above, state officials have for several decades contacted the FTC staff to request advice on the likely impact on consumers and competition of particular proposed state legislation or regulation related to alcohol, and the FTC staff, with the approval of the Commission, has issued letters that provide such advice to aid the requesting state officials based on the Commission's experience and expertise. These letters only offer advice, however, and the state official must make his or her own decision about what best serves the state's constituents' needs. I do not believe that a state legislature's passage of a law can be challenged as an unfair business practice under the Federal antitrust laws pursuant to the state action doctrine articulated by the Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943).

#### **PBM's**

*Question 6.* My constituents have expressed numerous concerns regarding the potential anticompetitive effects of PBM mergers. They have informed me this could potentially harm patients by reducing their choice and access to pharmacy services, resulting in higher drug costs. I am concerned about the impact these mergers could have on my constituents. Under your leadership, how should the FTC evaluate and address these concerns as it reviews ongoing consolidations in this market? Can we trust the FTC can and will objectively do its job in examining these mergers?

Answer. Consumers clearly have concerns about healthcare costs and availability, including for pharmaceuticals and pharmacy services. The FTC engages in extensive oversight of competition and consumer protection matters in healthcare, reviewing mergers, challenging conduct, issuing guidance, and conducting research. If confirmed, I would support the FTC continuing to actively oversee competition and consumer protection concerns in healthcare, including pharmaceuticals and pharmacy

services, to ensure that illegal conduct is detected and challenged. I believe the FTC can and will objectively examine PBM mergers under the laws it enforces.

*Question 7.* In 2007, the FTC allowed the CVS/Caremark merger to proceed. Since then, numerous groups have raised concerns about the conduct of CVS/Caremark. In 2009, the FTC opened an investigation in these alleged abuses, of which there are signs that even today, these practices continue. What types of remedies should the FTC consider to ensure practices like these do not continue to harm consumers?

Answer. If confirmed, I will consult with FTC staff and the Commissioners to determine whether the investigation has found evidence of illegal conduct by CVS/Caremark. If there has been illegal conduct, I believe the FTC should consider remedies that are tailored to the violations and that seek to restore or safeguard competition in the market and to protect consumers' choices and privacy.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BOOZMAN TO  
MAUREEN K. OLHAUSEN

*Question 1.* Do transparency, consumer protection concerns, and access to pharmacists—the frontline/only source of primary care in parts of rural America—factor into the FTC's investigation of continued PBM market consolidation?

Answer. It is my understanding that the FTC's publicly announced investigation of CVS/Caremark will examine the company's practices under both the Commission's competition and consumer protection missions. The impact on consumers of further PBM market consolidation should be part of any antitrust review, including non-price factors, such as quality and access concerns.

*Question 2.* We've seen numerous groups express concern that PBM consolidation has occurred in conjunction with reduced prescription drug choices, higher prices, and patient privacy violations. What types of remedies should the FTC consider to ensure that further PBM consolidation does not harm consumers?

Answer. If an investigation by the FTC reveals there has been illegal conduct by PBMs, I believe the FTC should consider remedies that are tailored to the violations and that seek to restore or safeguard competition in the market and to protect consumers' choices and privacy.

*Question 3.* In response to recent PBM disclosure, abuse, and transparency legislation passed by various states, the FTC has sent numerous letters to local officials reiterating PBM-associated cost-savings. What is the purpose of this advocacy work? In addition, many of these communications seem to rely on industry-data to support PBM cost-savings claims. How can one industry's data be used to justify not regulating that very industry?

Answer. The FTC engages in extensive oversight of competition and consumer protection matters in healthcare, including PBMs, as well as research, such as the FTC's 2005 report about PBMs' ownership of mail order pharmacies done pursuant to a Congressional request. Through this work, the Commission has gained expertise about the PBM industry. State officials have for several decades contacted the FTC staff to request advice on the likely impact on consumers and competition of particular proposed state legislation or regulation in a variety of areas in which the FTC has expertise, such as gasoline, privacy, and healthcare. In response to these requests, the FTC staff, with the approval of the Commission, routinely issues letters that provide such advice to aid the requesting state officials based on the Commission's expertise in consumer protection and competition issues in these industries, including PBMs. These letters only offer advice, however, and the state official must make his or her own decision about what best serves the state's constituents' needs. As for the data cited by such letters involving PBMs, my review of recent such letters indicate that they rely on a wide variety of sources, including the FTC's own PBM study, state studies, and other economic research.