

FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR 2012

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
FIRST SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS

**JO ANN EMERSON, Missouri, *Chair***

RODNEY ALEXANDER, Louisiana  
JO BONNER, Alabama  
MARIO DIAZ-BALART, Florida  
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STEVE WOMACK, Arkansas

JOSÉ E. SERRANO, New York  
BARBARA LEE, California  
PETER J. VISCLOSKY, Indiana  
ED PASTOR, Arizona

NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mr. Dicks, as Ranking  
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

JOHN MARTENS, WINNIE CHANG, KELLY SHEA, and ARIANA SARAR,  
*Subcommittee Staff*

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**PART 5**

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## **FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2012**

FRIDAY, FEBRUARY 11, 2011.

### **U.S. POSTAL SERVICE INSPECTOR GENERAL**

#### **WITNESS**

#### **DAVID C. WILLIAMS, INSPECTOR GENERAL**

Mrs. EMERSON. We will come to order. And I want to thank everybody for being here. Good morning.

Good morning, Inspector General Williams. Thank you so much for being here today. We are happy to have you.

And I want to welcome my colleagues, our ranking member, Joe Serrano, from the Bronx, New York.

And you haven't been here to hear our repartee about the Yankees and the Cardinals. We will refrain from that. We did a little bit yesterday. And, actually, I have a Kansas City Royals fan down here, but I do have another Cardinals fan, so that is pretty nice.

Mr. SERRANO. The Cardinals are still in the league?

Mrs. EMERSON. That is a good one, Joe. We are going to have to have running bets on Pujols, all right?

And Mr. Diaz-Balart.

So, anyway, thank you so much for being here. And you have a tough job, a really tough job. And I know that a lot of my colleagues are not familiar with the way that the Postal Service works and don't know that it is the largest civilian Federal agency, with 599,000 career employees and operating a total of about 37,000 facilities nationwide.

The Postal Service has annual spending expenses of approximately \$75 billion and, in fiscal year 2010, had an \$8.5 billion deficit.

With few exceptions, the Postal Service operations are self-funded and not in our jurisdiction on the Appropriations Committee. We only provide \$75 million for mail for the blind and people with disabilities and for overseas voting. An additional \$29 million is provided in our bill for reimbursement of insufficient appropriations to the Postal Service for fiscal years 1991 through 1993.

While the committee has limited jurisdiction over the Postal Service, it does provide \$244 million for the Office of the Inspector General, of which \$98 million is for audits to improve USPS operations and \$147 million is for investigations into waste, fraud, and abuse.

With one of the largest inspector general budgets in the Federal Government, we do want to understand how you all are using your resources. Additionally, with the Postal Service facing long-term fi-

nancial challenges, we also want to know how you all are using the resources we give you to improve Postal Service operations and identify inefficiencies.

I look forward to your testimony.

And, with that, I would like to recognize the subcommittee's ranking member, Mr. Serrano, for any opening statements you wish to make, Joe.

Mr. SERRANO. Thank you so much.

I would also like to welcome you, Inspector General David C. Williams, to this hearing of the Financial Services and General Government Subcommittee. I am looking forward to hearing your testimony and having the opportunity to ask questions about your ongoing investigations.

The Postal Service plays, as we all know, a very important role in the lives of all of us who are dependent on timely mail delivery. I also understand that, because of declining mail volume, the Postal Service is now facing a significant budgetary shortfall.

In 2010, the postal OIG published a report addressing questions of whether there were possible overpayments made by the Postal Service to the Civil Service Retirement System pension fund. I look forward to discussing the results of this study and other issues with you at today's hearing.

I also want to mention how pleased I was with the 2009 report entitled, "U.S. Postal Service Electrification of Delivery Vehicles," which concluded that the use of electric vehicles would be operationally feasible, but requires a way to address the significant front-end cost issue. I will discuss this issue with you further during our question period.

So we thank you for the testimony you are about to give us. We thank you for your service. We know that the Postal Service is one agency we all want to be supportive of; we just, in all honesty, don't know how to deal with this major problem. But something will have to be done unless we just wrap it up, and I don't see that happening. So it continues to be one of the most dramatic challenges that we have around here.

So, once again, thank you for being before us today.

Mrs. EMERSON. Thank you, Joe.

I also want to recognize Ms. Barbara Lee from Oakland, California.

Now I will recognize you, Inspector General Williams. If you wouldn't mind keeping your statement to 5 minutes so that we have as much time as possible for questions and answers. Thank you.

Mr. WILLIAMS. Thank you, Madam Chairman, Mr. Serrano, and members of the subcommittee.

The Postal Service's situation is serious. Its leadership anticipates running out of money in September. Mail volume has dropped by 20 percent since 2006. And the monopoly no longer finances universal mail service for the Nation.

The situation is the product of an oversized postal networks, crippling payments for benefit funds, the lingering recession, and the disruption of the digital age. Lastly, the Postal Service's mission to bind the Nation together through a common communication infrastructure is evolving faster than the Postal Service can adapt.



Burdensome and flawed benefit payments have contributed to almost 90 percent of the \$20 billion loss in the past 4 years. This has raised the cost of the infrastructure, postage rates, and forced the Postal Service to incur debt. My office has produced a series of reports highlighting the exaggerated estimates, enormous overcharges, and excessive prefunding levels that plague the retiree pension and health-care systems.

To continue contributing to funds that now appear to exceed the 100-percent funding levels is even more egregious when compared against benchmarks in the public and private sector and OPM's levels. I agree with Senator Susan Collins's call in September 2010 for OPM to change, under the current law, its calculation of Postal Service CSRS pension fund payments.

In the near term, the Postal Service and Congress should consider halting further payments to benefit funds until the surplus is used, funds restructured, and mistakes corrected. The Postal Service can use this time to learn how to live below or within the Consumer Price Index, shed its debt, and find its role in the digital age.

The Postal Accountability and Enhancement Act incentivizes the Postal Service to adopt a leaner, volume-driven infrastructure to assure readiness for the 21st century. This will require optimization of the network of post offices and plants; conversion to evaluated letter carrier routes to allow effective management; flexible work rules to match the ebb and flow of mail; a comprehensive delivery point strategy that maximizes curbside delivery and cluster boxes; simplification of mail acceptance and pricing; and evaluating the need for 74 districts, 7 areas, and 2 law enforcement agencies.

I mentioned earlier the disruption of the digital age as contributing to the Postal Service's instability. The digital age and globalization have put America on the cusp of a new age. Technological advances have given America low-cost instant communications, sophisticated data organization, search engines, hyperlinks, impressive mobility, and more.

However, the twin forces of the digital age and globalization grew at an unbridled pace. And as they leave their infancy, we see insecure platforms for financial transactions, a lengthening trail of American digital refugees, lack of confidentiality for communication content, predatory practices in the conversion of digital cash to currency, patterns of invasive digital profiling by infrastructure operators, emerging issues associated with Net neutrality, and a shocking loss of privacy.

These practices and others are unwelcome by many Americans. The Nation has not fully explored the respective roles of the private sector and governmental entities in addressing these issues.

Additionally, substantial elements of the Nation's communications infrastructure have passed from governmental to corporate hands. This transition has important positive aspects, but such sweeping change suggests the need for thoughtful examination to ensure that segments of society are not excluded and America's leading edge continues to advance.

Postal products and technological solutions are imperfect, but joining the two together might address some of the shortcomings

of each and provide a set of solutions and serve as a bridge to the 21st century.

I have outlined the need for substantial change to increase the readiness and recognize the Postal Service's role in positioning America in the communications revolution. The engine for this transformation is innovation, and the Postal Service needs to strengthen its systems for innovation. Innovators collaborate with customers, take risks, make mistakes; stop failures quickly and replicate successes. The Postal Service's success depends on embracing this environment.

Federal financial raids on the Postal Service have to be halted; and the Postal Service should be taken back off-budget as originally designed, and the benefit funds restructured. We will need strong collaborative efforts to enable the Postal Service to serve Americans in the 21st century.

Thank you, Madam Chairman.

[The information follows:]

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**Hearing before the Subcommittee on Financial Services  
and  
General Government,  
Committee on Appropriations  
House of Representatives**



**Oral Statement**

**Postal Service Inspector General Budget Hearing**

**February 11, 2011**

**David C. Williams  
Inspector General  
United States Postal Service**

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Madam Chairwoman and members of the subcommittee, the Postal Service's situation is serious, its leadership anticipates running out of money in September, mail volume has dropped by 20 percent since 2006, and the monopoly no longer finances universal mail service for the nation. This situation is the product of oversized Postal Service networks, crippling payments for benefit funds, the lingering recession, and the disruption of the digital age. Lastly, the Postal Service's mission to bind the nation together through a common communication infrastructure is evolving faster than the Postal Service can adapt.

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### Officer Biography

United States Postal Service  
Office of Inspector General  
1735 North Lynn Street.  
Arlington, VA 22209-2020

### DAVID C. WILLIAMS INSPECTOR GENERAL U.S. POSTAL SERVICE

David C. Williams was sworn in as the second independent Inspector General (IG) for the U.S. Postal Service on August 20, 2003. Williams is responsible for a staff of more than 1,100 employees — located in major offices nationwide — that conducts independent audits and investigations for the largest civilian federal agency that has \$67.1 billion in annual revenues, a workforce of 671,687 employees and contractors and nearly 32,528 facilities.

The office is under the general supervision of the nine Postal Service governors and is not subject to any other Postal Service supervision.

In his last position, Williams served as the Deputy Assistant Administrator for Aviation Operations at the Transportation Security Administration (TSA) from August 2002 until August 2003, where he managed the Aviation Inspection Program at federalized airports.

Williams has served as IG for five federal agencies. He was first appointed by President George Bush to serve as IG for the U.S. Nuclear Regulatory Commission from 1989 to 1996. President William Clinton next appointed him IG for the Social Security Administration from 1996 to 1998, and then as IG for of the Department of the Treasury in 1998. In 1999, President Clinton named him as the first IG for Tax Administration of the Department of Treasury, where he directed a staff of 1,050 to detect fraud, waste and abuse. In 2001 President George W. Bush named Williams the Acting IG for HUD, while he was also serving at the Department of the Treasury.

Williams served in the U.S. Army Military Intelligence and began his civilian federal career as a special agent with the U.S. Secret Service. Moving up the career ladder, he served as Director of Operations in the Office of Labor Racketeering at the Department of Labor; the President's Commission on Organized Crime; and as Director of the Office of Special Investigations at the U.S. General Accounting Office. Williams is the recipient of the U.S. Bronze Star and the Vietnamese Medal of Honor for service in Vietnam.

A native of Illinois, Williams graduated from Southern Illinois University, Edwardsville, Ill., and received his Advanced Degree in Education and a Masters in Education from the University of Illinois in Champaign, Ill. He also attended the U.S. Military Intelligence Academy, the Federal Law Enforcement Training Center and the U.S. Secret Service Training Academy.

**BACKGROUND:** The Office of Inspector General was created by Public Law 104-208 and passed by Congress in the fall of 1996. The Inspector General reports to the Postal Service's nine Presidentially appointed Governors and serves for a maximum term of seven years. To ensure accountability, the Inspector General keeps Congress, the Governors and Postal Service management informed of his office's work and alerted to potential areas where the Postal Service could be more economical and efficient.



Mrs. EMERSON. Thanks so much, Mr. Williams.

There are lots of questions to ask and lots of different areas to cover, but let me start with an easy one, perhaps an easy one, at the beginning.

As you are well aware, we are doing our very, very best to find ways to reduce Federal spending. And we have to, in our Financial Services and General Government Subcommittee, at least try to get our numbers back to 2008 fiscal year levels.

Your Office of Inspector General is the largest civilian IG office and has the largest budget, at \$244 million. So, have you all actually scrubbed your budget to identify savings and efficiencies that we will see in the next round, in the 2012 budget proposal?

Mr. WILLIAMS. We have in the past, and I promise you that we will in the future. And if I may, I will give you a couple of highlights.

Cuts to our office have not begun recently. It is something we have taken seriously from when I stepped on the property. We have never had a budget that matched inflation; it has always been lower than inflation.

In 2006, we took over enormous new jurisdiction from the Inspection Service. Seven hundred people were supposed to travel with that. We left 387 on the table for savings to the Postal Service and tried it with a much smaller number, and it has succeeded so far. We have been able to pick up the slack on that.

In 2008, we cut \$5 million; in 2009, \$10 million. And then last year, we cut 60 more positions, and that had \$8 million associated with it.

Probably the thing that is coming up next, and I alluded to in the testimony, was whether or not the two law enforcement agencies should come together. That would eclipse all of the savings that have occurred in the past.

Mrs. EMERSON. Why don't you describe for my colleagues, some of whom are new to this subcommittee, precisely what those two law enforcement agencies do.

Mr. WILLIAMS. The postal IG is targeted toward internal kinds of problems at the Postal Service. Our largest areas of investigation, for instance, that takes the bulk of the resources, as you pointed out in your opening statement. Embezzlement and financial fraud and health-care fraud, both on the part of claimants but also on the part of providers, which is big business at the Postal Service. Mail theft, unfortunately, is something where we need to have a nationwide presence to combat.

And contract fraud has been—we have delivered some of the largest cases in the Federal Government in the area of contract fraud because of the huge portfolio that the Postal Service has. We do about \$13 billion of new business every year, and the ongoing portfolio is closer to \$50 billion.

The Inspection Service looks outward, and they look more at the victimization of people by fraudsters that are using the mail in order to complete the fraud. And they also look at mail theft not done by postal employees or postal contractors but by criminal groups in the neighborhoods.

So they are more focused outward, we are more focused upon the Postal Service.

Mrs. EMERSON. So, do you think it is possible to merge these and perhaps do more with less?

Mr. WILLIAMS. What I see in terms of—the early experiment, the one where we lost all those hundreds of people and still maintained a level of service, gives me hope. We are trying to migrate more toward automation and data-mining and the kinds of things that make the investigations shorter and richer. So I am hopeful that there is still more out there for that.

I think that having two law enforcement agencies in a department whose mission is not law enforcement is, in my mind, a little unusual. I was also the inspector general at the Treasury Tax Administration. And there, the law enforcement agency, the Inspection Service there, became the IG. So that, I have to say, is in my mind, that it is a possibility for achieving economies and efficiencies.

We do have two sets of offices and of the managers and of mission support functions that could be made more lean. And we could focus a bit more resources on postal-related matters. Some of the mail frauds tend to stray a bit from the mission of the Postal Service. We could curtail those.

Mrs. EMERSON. Okay. I appreciate that. And this is a portfolio that most people wouldn't anticipate that comes underneath you. So that is why I wanted you to explain it. And I really do appreciate it.

So then, as part of your mission, how are you using your resources, to identify waste and fraud and abuse in the Postal Service? And you were very general about the types of crimes and fraud that you all are encountering, but give us a few more examples of that.

So, two separate questions.

Mr. WILLIAMS. Thanks.

One large area for the auditors is the preparation of the financial statement. We work with Ernst & Young to do that. We provide most of the fieldwork, and then they examine that and come up with an opinion. So we end up doing the lion's share of the hours that are expended, which is a good deal for them, the government. We are far less expensive.

It is an unusual financial statement, too. For most departments, it is just the execution of the budget, but we are watching the money come in as well as go out. So it is a large effort.

We have aligned the rest of the audit resources to each of the major enterprises of the Postal Service, whether it is the delivery of the mission and the plants and post offices and delivery, or mission support, such as engineering the new automated tools that are coming in.

So we have those aligned—we have fairly small audit teams aligned to each of those that are normally headed by a postal vice president. And that has been very useful. They undergo the learning curve. And they have it when they walk into the audit; they can begin quickly.

On the investigative side, we have to have a nationwide presence. You mentioned the 37,000 locations. So the auditors can be aligned to the issues, but the investigators have to be geographi-

cally aligned to where the crimes are occurring, the space in which the crimes are occurring.

In the contract area, which has been very large, we have done a number of investigations that have focused on—a particularly vulnerable area is a multitude of transportation contracts with small firms. There has been a lot of dishonesty that we have discerned.

Mrs. EMERSON. These are third-party contractors instead of Postal Service employees who deliver mail from point to point to point?

Mr. WILLIAMS. Yes, ma'am. They move the mail across the country, and then the postal workers largely take over once it arrives for local distribution.

Mrs. EMERSON. And that would either be—well, I guess it could be by rail, by plane, by truck?

Mr. WILLIAMS. Increasingly, it has been migrating more and more to truck. And I think there are some concerns on the homeland-security side with regard to air cargo, including mail. So there has been a fairly substantial migration to trucks.

Also, trains tend not to go to where we have the mail distribution places. So trucking is a very attractive alternative.

Mrs. EMERSON. Don't you share resources with Federal Express, though, in a lot of the delivery? I mean, as a matter of fact, in my district, I have a person who owns, a regional air carrier, I guess you would call it, who works for FedEx, but they actually carry USPS mail.

Mr. WILLIAMS. Much of what remains in the air, we have worked with FedEx and others to transport that. They are in the air cargo business as opposed to passenger, which is much less of a concern for the area of terrorism.

Mrs. EMERSON. Okay. Thanks.

Mr. Serrano.

Mr. SERRANO. Thank you.

Can you take a moment to explain to us in some detail how you reached the conclusion that there was \$75 billion of overpayment by the Postal Service to the Civil Service Retirement System pension fund and your thoughts on how this can best be resolved?

And, secondly, this is clearly a complicated issue with huge budgetary impacts on both sides. In the current economic environment, what is your advice for getting this matter resolved?

Mr. WILLIAMS. Thank you, sir.

We began studying the funds early on after my arrival, and we began to see things that didn't make sense. One of them was the moment in which the Postal Service received its own health funds and own pension funds.

They were shifted over in 1970 and 1971. At that point, the Office of Personnel Management said that, "In the future, you ought to collect these fees. We will pay for everything in the past; you pay for everything in the future."

What we discovered had happened is that, in 1971, when that began, the exact same contribution began to be made. But OPM decided that they would pay—your final pension is a product of the number of years you work and your final salary. They decided that they were going to cut off that salary at the 1970 levels instead of the retirement levels.

Now, they were collecting fees in order to pay at the final salary, so there was a huge windfall from them when they stopped. We began looking at that and realized, for example, if someone worked 15 years for the Postal Service and 15 years for the Federal Government, the Postal Service would pay 70 percent of the retirement and the Federal Government only 30 percent. Obviously, that ought to have been 50-50 given the provisions of the plan.

So we looked at that and issued that report. And we worked with actuarial firms for that expertise.

The Postal Regulatory Commission came in and looked at it a second time, working closely with the committees on the Hill. They came up with a very similar conclusion, that that ought not to have occurred. OPM collected a full contribution and only paid a partial benefit. That, over those years, resulted in a \$75 billion overpayment.

I think it is going to be difficult to know how best to return those funds where they ought to have been. It is commingled Postal money and people's private money. But what I would recommend is that the money be used—until the surplus is gone—and there is a large surplus—they be used to make our annual payments until they are gone. That would result in relief to the Postal Service—

Mr. SERRANO. And the annual payments are how much?

Mr. WILLIAMS. The annual payments, all together, are over \$10 billion. So that would pay that entire amount for some years.

That \$75 billion is the largest of the segments, but there are other segments of overpayments that have occurred. And they—

Mr. SERRANO. By the Postal Service or by other agencies?

Mr. WILLIAMS. By the Postal Service. For instance, our FERS is overpaid by \$6.8 billion. And we really need to stop doing that. It is causing the infrastructure that is intended for businesses and people to be clogged up with extra expenses.

Mr. SERRANO. Mr. Williams, to your knowledge—and I know that you are here to answer questions about the Postal Service, but, to your knowledge, have other agencies overpaid, other departments in the Federal Government?

Mr. WILLIAMS. We took a look in the FERS area, which is the one I mentioned, the new retirement system that we have overpaid in, and it appears as though they collected exactly the right amount of money. And we have been unable to solve the mystery of how it is that we overpaid and others paid about the right amount.

Mr. SERRANO. And yet, if we were to, say, arrange the fair thing, which is return that \$75 billion, or use it at this rate to pay dues, if you will, the premiums for the next 10 years, it would probably then break the system, because other people are living on that, I mean, so to speak.

Mr. WILLIAMS. Both systems were intended to ride separately, primarily because, at the moment that they did it, the administration was fearful that the Postal Service would be using Federal employees' money.

Mr. SERRANO. Right.

Mr. WILLIAMS. It turns out that that is not the case. Actually, the reverse is more the danger today.

They are not supposed to be commingled. They are both supposed to stand alone and be collecting and expending responsible amounts. The Federal side, something is going on there, and I think the IG over there is studying it now. But it ought not to be commingled with this other fund. It was set up so that it not be commingled.

Mr. SERRANO. Right.

I have one more question, Madam Chair, in this round.

Without significant intervention, the Postal Service will hit its statutory borrowing ceiling of \$15 billion and will not be able to borrow or pay this year's contributions to the Retiree Health Benefit Fund.

What is the impact this September 30th of this impending insolvency? I mean, we keep talking about doomsday, but what will doomsday really look like? Do they have to close shop?

Mr. WILLIAMS. We are anxious to see what that looks like ourselves. No one has ever experienced it before.

But come September, when we make those payments to funds that appear to be overfunded, we won't just be at zero, we will be in the hole by \$2.7 billion. And all of the money will have been borrowed. So it becomes very serious at that point.

I think discussions have occurred and probably need to occur with regard to whether to make those payments or not. If they are not made, it will allow time to resolve the issue. If they are made, it gets very serious.

I am sure that the Postal Service will try to pay its people for as long as possible, but payments to vendors—and, predictably, if you look at other companies, payments to vendors begin to get stretched out and all sorts of measures begin to occur once that level of catastrophe occurs.

Mr. SERRANO. Thank you.

Mr. WILLIAMS. Yes, sir.

Mrs. EMERSON. I am sure we are going to have lots more questions about this, Mr. Williams.

I am going to call on Mr. Womack to start the next round.

Mr. WOMACK. Thank you, Madam Chairwoman.

And thank you, Mr. Inspector General, not only for your service to the Postal Service, but the litany of other high-ranking, high-achieving positions that you have held, including service to our country through the United States Army. So thank you very much for your service to our country.

Mr. WILLIAMS. Thank you.

Mr. WOMACK. And I may have some other questions later, but there are a number of things that rush through my mind when we are talking about the fiscal condition that you articulate. And I suppose that, at that 30,000-foot level, I think of the impact of this new technological age on, say, the use of landline telephone service and how it is diminishing over time with cell phone usage. And I look at the impact of the media, the new technology on a lot of other issues. And, certainly, I believe that this technological impact is showing up in your business, as well.

Maybe this question is more appropriate for Mr. Donahoe or another person in the administrative chain of command, but what are we doing to get ahead of change so that—it is almost like we are

fighting old age. You can fight it and you can fight it and you can fight it, but at end of the day it is going to happen.

So what are we doing to get out ahead of change so that we can reverse the trend that not only plagues the U.S. Postal Service but also plagues every other agency in the United States Government?

Mr. WILLIAMS. That is probably the area that I care most about and I am most excited about.

There has been a hesitancy, and it has been a good bias on the part of the government, not to interfere with the technological advance, the march of advance through things. And it has been tremendously disruptive but also tremendously promising and exciting.

I can't answer for all those other enterprises. I know a lot of industries have been devastated and changed and evolved. With regard to the Postal Service, though, as I said, I think there are—we need to understand this. And we need to become part of that. It is not the enemy. The future is not our enemy. But it is misunderstood. And it has been disruptive to date.

I think there are a lot of things we can do to develop a symbiotic relationship between digital technology and physical networks and infrastructure of the Postal Service and of others. We need to explore that, though. And we have been standing back for fear of inflicting harm on—and that is a good bias to have. But, at this point, somebody needs to begin to study, what is the role of the Federal Government in looking out for Americans? We can sort of figure out where it is headed now, and we need to do something about it.

At the Postal Service, we haven't been very good with innovation. Our customers have some great ideas, and people that are in the digital business have some great ideas. We need to sit with them, and we need to make space for innovation. It has been very difficult for someone with an idea to come to the Postal Service. They have been rejected. And if they can somehow get in the system, it has been lost. We need to make space for innovation.

And we need to imagine how best—I can give you a couple of examples—how best to work with the digital age to make—this really isn't about whether the Postal Service survives. It only matters what America needs. And I think they have some needs in the digital age. I mentioned a few of the problems. We can address some of those at the Postal Service, if we will engage with them.

Debt collection would be an easy one. Debt collection is very time-sensitive. If you don't collect it in the first 100 days, you may not collect that debt. Bills are being sent out digitally. It would be a good strategy if someone would understand that the best combination, the most effective, is to send out a bill digitally, and if there was a delay in the payment, to send it out by letter. Because we know that is much, much more effective than digital billing, in terms of causing debt to be paid.

Hybrid mail, where you send it digitally to the point of delivery rather than transport it, with all of the problems associated with that, and have it printed and delivered locally would save so much and be so good for the United States.

This is not quite that, but right now we have—we made a decision a long time ago that every train would not have its own rail-

road tracks in the United States. There would be a set of railroad tracks, and it would do so much good. We probably should consider last-mile delivery as a decision like that, where all of the deliveries go on a single truck. We shouldn't be taking huge trucks into every neighborhood of the United States every day. It is dangerous, it is wasteful, and it serves no end.

So there is a lot that can be done. There is nothing more exciting than what is coming at us. But we haven't been ready for it, and we need to suddenly become ready for it. Our entire organization is set up for physical mail. We need to make some space for the arrival of the digital age. It is late, but it isn't serious if we will do it.

Mr. WOMACK. My other question is related to the people nature of your business. Obviously, with—I think the number is 590,000, almost 600,000 employees, it is an extremely expensive enterprise, from a people perspective.

And this question may, indeed, show my ignorance on the subject, and if that is the case, then so be it. But my experience has been, when an organization that has a lot of people, particularly those that are represented in collective bargaining agreements, begins to hemorrhage, that there are renegotiations or discussions about benefits.

And I have always held the position that, boy, it is best to have a job, as opposed to trying to maintain some level of benefit that you are used to having, and to run the risk on losing that job as a result of some kind of default or fiscal peril.

Are we renegotiating some of our benefit programs, and are we appealing to the people in your organization to help us achieve some of the solutions that go right to the heart of our fiscal gap, if you will?

Mr. WILLIAMS. Currently and next year, the labor contracts are being negotiated. It would be a very unusual role for me to enter into that picture, and I have not done so. But I know that there are some exciting ideas being brought to the table by the unions and by management.

With regard to making the infrastructure smaller, that has been a huge part of the recent past. We have 112,000 fewer employees than we did a couple of years ago. Eleven billion dollars has been cut out of the budget.

And I would say much more of that—we are poised to engage in a lot more of that, where we make sure that the plants are carefully aligned to volume and the post offices are carefully aligned to demand within the post offices. We know that if you do that, we are too large. And I know that there is aggressive planning under way to right-size that, to make that a lighter, leaner infrastructure.

And I know that that is probably going to be the most dramatic, visible sign of Postal Service action on that front. But I know the labor leaders. One of the gentlemen is here today. And I know that they care a lot about this, and they are committed to giving the Postal Service and the American public the very best they can.

Mr. WOMACK. Well, later this month, I will attend a hearing in Fort Smith, Arkansas, regarding the consolidation of mail-sorting operations to another area. And it becomes a major turf battle. And that concerns me, that we should applaud an organization that

looks for efficient ways of doing the same amount of work with perhaps fewer people so long as you do not disrupt the timeliness of delivery or some of the guarantees. And I know the Postal Service has certain guarantees for overnight delivery, this sort of thing.

So I truly appreciate and respect those. But I do worry about the turf battles that we seem to want to fight every time we try to consolidate and become a more efficient organization, which I believe gives government the bad name.

Mr. WILLIAMS. Thanks.

That has been difficult. And that is a very human instinct. This isn't about good people and bad people. I think that those interests need to be expressed and put on the table. But we do need to go forward, and we haven't always done that, with the action that is best for the American people.

I know that people locally feel very strongly, but you are absolutely right, that, to some degree, we have to be resistant to anything other than serving the Americans. And that is going to call for some tough decisions with regard to consolidations and creating the proper structure and the right-sized structure.

Mr. WOMACK. Thank you for your response.

And, Madam Chairwoman, I may have additional questions, but I yield back. Thank you.

Mrs. EMERSON. Thanks, Mr. Womack.

Ms. Lee.

Ms. LEE. Thank you very much, Madam Chair.

Good morning.

Mr. WILLIAMS. Good morning.

Ms. LEE. First, let me just say, my grandfather was the first African American letter carrier in El Paso, Texas. This, of course—I saw pictures of him—this was before my time, I mean, when he was carrying mail by horseback. And he was—

Mrs. EMERSON. The Pony Express days.

Ms. LEE. Pony Express, yeah. And he spoke fluent Spanish.

And I remember—of course, when I was born, he was retired. But I remember his retirement checks coming. And I remember how happy we were, I think it was the first of the month, once a month—I don't know how often they come now—because that retirement check helped take care of our family. And so, I shudder to think of what would happen or what could happen if the health and pension benefits somehow get stuck in this mess, the budget mess.

And so I hope that at the top of your priorities, the top of all of our priorities is to make sure that pensions are preserved, health benefits are preserved, and that people get their due when they retire.

Having said that, let me say a couple of things. One is, tough decisions are going to have to be made, but I certainly hope we don't talk about cutting back hours and cutting back staff. Given the economic crisis and the job crisis we have, we need to keep that really, I think, off of the table.

You know, and as we move into—and I know we are behind in terms of the digital age, but—and I think about grocery stores now. As we move into this new age of technology, you know, they have now the computerized checkouts.



Mr. WILLIAMS. Right.

Ms. LEE. Well, I refuse to do that, because I know that is a job or two or three that is gone. And so, as we talk about computerizing and coming up into the 21st century, I think we have to make sure there is that balance and that we don't get to the point where we are wiping out all of our postal workers and employees because we have so embraced technology that people don't matter anymore.

And so, I know that is a delicate balance, and I know we have to get to where we need to get in terms of technology. But I hope there are other ways to do that than to shortchange, you know, our postal workers and our letter carriers and our employees.

I wanted to ask you about—well, first of all, stamps keep going up, the cost of stamps. I mean, I still go to the post office and I buy stamps, because I want to make sure I support the Postal Service. But I think the public wonders and I am wondering every time I am in the post office, how in the world are we—

Mrs. EMERSON. Would the gentlewoman yield?

You should buy Forever Stamps. Then they stay forever at 44 cents.

Ms. LEE. But I am trying to support the Postal Service, though, so a few more pennies I am willing to pay.

But I think the public is going to get to that point, where they are going to say, we keep paying more and more and more for stamps, and we keep hearing all of these stories about the budget deficit and the budget crisis at the Postal Service. So, somehow you all are going to have to figure out how to let the public know what is really going on as the price of stamps continues to rise.

And so let me ask you about how you see preserving, though, as we move forward, postal services for the most vulnerable populations. There is still a huge digital divide in our country. And we can't forget about these people, because these people who don't have computers, many senior citizens, you know, many low-income individuals, many people in communities of color, they just haven't had the resources yet—schools haven't been able to catch up.

Mr. WILLIAMS. Right.

Ms. LEE. So how does the Postal Service intend to preserve the valuable services for communities based on what we now are witnessing in terms of the digital divide?

And then my second question is, in terms of minority vendors and minority contractors, how are you doing? Do you have a plan? I know Congressman Fattah had requested a diversity plan, in terms of the advertising contracts as it relates to minority subcontracting opportunities. I know you do a lot of that. And I would like to get some information on how you are doing in terms of contracting with companies—African American, Latino, and Asian Pacific American companies.

Mr. WILLIAMS. I am sorry, I just had a senior moment, I think. Can you give me the first question again?

Ms. LEE. Regarding the digital divide.

Mr. WILLIAMS. Thanks.

Ms. LEE. How are you going to preserve services for the most vulnerable populations, who are still stuck with the problems around the digital divide?

Mr. WILLIAMS. Thanks.

I think the Postal Service might be best situated. Today, I do worry about people in small towns and rural areas and also in large cities, in neighborhoods that are underserved by banks and by digital kinds of services. I think the Postal Service might be the best hope for making—well, I am sorry, I worry about them today. Tomorrow I worry about a much larger group of people. We are not sure where this is all headed.

But the Postal Service's primary mission of binding the Nation together and remaining inclusive and making sure nobody is left behind is going to become very, very important. It has always been important, but I think it is going to be crucially important.

Increasingly, I think people in service jobs and at the lower end of the income spectrum are going to be paid with value-stored cards. There is not capacity, particularly in those areas, rural and urban areas, for turning those into cash. I would love to see the Postal Service expand its current money-order enterprise in order to make banking available to people that have no banking.

I also think that it is important that we remain—

Ms. LEE. As long as we don't charge 20 or 30 percent like payday loan scam artists do.

Mr. WILLIAMS. In my statement, I alluded to predatory practices that are seen now. I think those are going to seriously expand if something is not being done. If there was an alternative and we were that alternative, that would serve—efficient market forces would cause that kind of predatory practice to disappear.

With regard to multichannel communications, I think, as the digital age begins to shut down and darken the possibility of receiving your bills in the mail and so forth, it becomes important for the Postal Service to be there to make sure that people have choice, and also, particularly where their choices are limited, that we are there for them.

And so I think we are about—I hope we have always been important, but I think we are about to serve a very important role with that lengthening trail of digital refugees. It is just in its infancy. We don't know where it is going. And I love the leading edge, but I care about the people that are left behind. And that could be something that we are important in helping.

Ms. LEE. And minority contracting?

Mr. WILLIAMS. Minority contracting, I know that the Postal Service is not subject to either small business or minority contracting. I know that voluntarily they have turned to that, they have adopted some of the practices that the departments have with regard to attention on that.

I know that they have a fairly good record, certainly with regard to the other departments, with regard to our hiring and promotion practices. We focus mostly on that. The—

Ms. LEE. But you spend a lot of money in advertising.

Mr. WILLIAMS. Yes, there is. There is a tremendous amount. And it hasn't always been a competitive process. So there is progress that ought to be done there.

If we may, so that we understand better, we would like to come and meet with your staff, and we will engage in a body of work that focuses on your question. I have to admit that it hasn't been

an area where I have gained a lot of knowledge. It is also possible someone in my office knows more about it than I do, and we will send you a note. But I have a feeling that what we really ought to do is a body of work for you. And, if we may, we will contact your staff.

Ms. LEE. Okay. I would love to work with you on that. And thank you very much. Good to meet you.

Mr. WILLIAMS. Yes, ma'am. Good to meet you, too.

Mrs. EMERSON. Thanks.

Mr. Yoder.

Mr. YODER. Thank you, Madam Chairman. I appreciate the opportunity to have a chance to have this conversation with the inspector general.

I do want to note, Madam Chair, that I was just sitting here for a second reminding myself of 1985 and the World Series. If you will recall, the Kansas City Royals and the St. Louis Cardinals played a seven-game series. And I don't quite remember the outcome—

Mrs. EMERSON. I was going to say, how old were you?

Mr. YODER. I don't quite remember the outcome, but I wondered if the chair could remind the committee what the result was.

Mrs. EMERSON. I know. I do have a husband who is from Kansas City, so I hear it all the time. Yes, the Cardinals lost, and barely lost, but that is beside the point.

Mr. YODER. Thanks for reminding us of that, Madam Chair.

Mr. SERRANO. That is one way of making money, if you do a stamp for the Kansas City Royals.

Mr. YODER. There you go. We will do it.

Sir, I appreciate your comments and your testimony today. And I have been listening to the dialogue from the members of the committee. And I take particular note of the debt that the Postal Service is under. And it appears, in 2010, there is a deficit of \$8.5 billion.

I guess I would like a little bit more information on how this deficit—how it works, what the process is, what the accumulation is, is there an overall debt that is accumulated over time, what the procedure is for having that paid back, and who is ultimately liable for that debt—

Mr. WILLIAMS. Yes, sir.

Mr. YODER [continuing]. As we go forward.

Mr. WILLIAMS. In a word, the entire debt was accumulated because of the mischarges made against the Postal Service to its benefit funds. I believe 90 percent of the \$20 billion came directly from having to pay those funds, which were not owed.

Here is how the debt accumulated. It began in earnest in 2008, where we went \$2.8 billion; in 2009, \$3.7 billion under; 2010 was the worst, \$8.5 billion. And we are looking at a shortfall of \$6.4 billion this year. Our payments into that fund are \$10 billion, so I think you can see how I got there.

It is important to try to maintain some sort of a liquidity, as well. The Postal Service's aim is to try to have 30-day liquidity, which is \$7 billion. The leading experts—and J.P. Morgan did a great study on this—is about 50 days. So it is quite modest. We haven't had that for a while, and it is going to get very serious.

We have a lending limit of \$15 billion. We are going to hit that. We are over \$13 billion now, and during the year we are going to hit the max. We can legally borrow no more money.

If somehow you closed your eyes and opened them on a Postal Service that was gone, we would easily be able to pay that back. In fully depreciated property, we have \$20 billion. So the money is not at risk, but it is very, very serious with regard to continuing the operation as a going concern.

Mr. YODER. Well, how does it get paid back going forward? We are not going to liquidate all the property of the Postal Service.

Mr. WILLIAMS. No, no.

Mr. YODER. So, clearly, it is secured by those assets. But how do those last few years actually get paid back? Are you looking for congressional legislation that would fix the overpayment of benefits? Is that what we need to do here?

Mr. WILLIAMS. There are a number of pieces of legislation, some from your committee, that are aiming at correcting this.

The Postal Service needs to be saved from the Federal Government. And I can't imagine anybody except you that is going to do that. We are being victimized. We have to get out from under it. It has now caused the price of stamps to go up, it has caused the system to break down. We can't borrow any more money. And it is all about that.

Mr. YODER. Well, and that is interesting, because we had some dialogue here about the innovation and the efficiencies that need to be gained. And it sounds like, regardless of the \$8.5 billion deficit, there are going to be moments in the future where, regardless of the pension situation, that the Postal Service is going to have to change how it operates. Is that correct?

Mr. WILLIAMS. Yes, I strongly believe that. I talked about some of the measures that need to occur in my testimony. Optimization, right-sizing the organization for the amount of mail coming through and the number of people coming into our Post Offices are important also.

Mr. YODER. But is there a projection, unrelated to if the pension overpayment was fixed, are there projected deficits moving forward?

Mr. WILLIAMS. The new Postmaster General is working on a plan now that will allow the cuts to zero out the losses that are occurring. It can't occur tomorrow, though. I think his efforts are directed at a further horizon. It is very timely, it is very strong action. The early actions he has taken are very decisive. So that is all going to help.

But, really, what we need is for that infrastructure to be as lean as possible. Regardless of whether we are making money or losing money, we need to get that down as lean as possible for the sake of the businesses and the citizens.

Mr. YODER. I guess that is what I am trying to understand. We have the pension deficit, or the deficit that is created by the pension overpayment. But if that matter were to be fixed, what are the projected deficits that require the post office to innovate?

Because my assumption is, if their books are balanced, that there is not going to be a necessity that would create the need or the de-

sire to change how business is done. So is there a projected deficit after this retirement concern was fixed?

Mr. WILLIAMS. If the retirement issue was fixed, there would be no deficit. As a matter of fact, for some time there would be additional funds available to address the debt. And then, beyond that, I think you need to combine it with some other actions, just because we want to be the best that we could possibly be. But correcting the benefit fund overcharges and raids would remove the problem in the near term and allow us to pay back the debt.

We do need to optimize. We need the right number of post offices and plants. We need a delivery point strategy in the United States where, instead of all these historic accidents with regard to how your mail is delivered, if there was a strategy for either delivering mail to the curb or in collected housing areas to a cluster, that would be several billion dollars. There are all kinds of levers we could pull, and are in the process of beginning to pull, that would make this much better.

But we also need that last digital piece. We need to come into the 21st century.

Mr. YODER. Well, as the Postal Service looks to reduce expenditures, you know, there have been closures in our community of postal offices. The chairwoman noted the 37,000 facilities nationwide and the 590,000 employees. What do you see as the optimal amount of facilities and the amount of employees?

And is that 590,000 and are those 37,000 facilities, where do those rank in terms of—you know, how has this gone over time? Are we at a high point, or have we eliminated facilities over time and that is a lower point?

And the same thing with the postal employees. Is 590,000 a high point, or have we been higher than that? And what does the future hold for the amount of Federal employees we need to disseminate the mail service in this country?

Mr. WILLIAMS. It was much higher than that. There was a time in which I believe I am right in saying there were 800,000 employees. So it has come down. I would say, by the time we arrive at the proper number, it will come down further, almost certainly.

With regard to the reduction of the plants for sorting, there has been a fairly vigorous removal of the small facilities that surround our large sorting facilities, which are called P&DCs. There hasn't been much progress in closing P&DCs, but I would say that that is coming. We have done many studies of the throughput of the mail. We know how many that is going to require. And I would say that there is plenty of room for further reduction of those plants, while assuring that the service to the public remains the same or better.

With regard to the post offices, we think probably about a third of those need to be validated with regard to whether they ought to continue or not. Generally, in the smaller areas, it appears that we have too many in certain places. They are stacked a mile away from one another. In the cities, there appears to be about the right number, but they need a few more windows.

So we need to make some adjustments, but, at the end of the day, it is going to be smaller. It ought to be. If you look at other

people in the business—drug stores, grocery stores—it is very instructive, and it is a much more compact infrastructure.

Mr. YODER. And lastly—and I appreciate you, sort of, helping us understand this—there has been some concern or there has been discussion about 6-day delivery. People ask me about this issue a lot, or it comes up from time to time, I guess.

Is that being actively discussed in the Postal Service, moving to a 5-day delivery? What is the prognosis on that? And what would be your recommendation?

Mr. WILLIAMS. They are looking at it right now at the Postal Service, but we stood back from looking at it because it has gone to the Postal Regulatory Commission for examination. The kind of examination that we would normally do is by legislation given to the Postal Regulatory Commission.

They are very close to issuing their report on the issue of 5 days, whether to allow it or recommend against it.

Mr. YODER. And do we know what their report is going to be?

Mr. WILLIAMS. We do not.

Mr. YODER. And who ultimately makes that decision? Is that a decision that Congress has oversight over, or is that a decision that the Postal Service makes?

Mr. WILLIAMS. I am going to have to refresh my memory with regard to whether there is a final congressional approval required. But I know that the Postal Rate Commission—a lot of deferral is being made to the Postal Rate Commission's decision on this. And I would say that a lot of the action is going to surround that.

After that decision—I have a great staff here—after that decision, it will require congressional action.

Mr. YODER. It will require congressional action to change from a 6-day to a 5-day delivery?

Mr. WILLIAMS. And if I may, I will send you kind of a detailed note concerning that and exactly what would be required.

Mr. YODER. I would appreciate that. Thank you, sir.

Thank you, Madam Chair.

Mrs. EMERSON. I might inform our colleague from Kansas that, traditionally, our bill contains a rider preventing the Postal Service from going to a 5-day from a 6-day. And your chairperson is in favor of keeping it 6-day for the moment.

And I am going to interrupt, because I know it is Mr. Bonner's turn. But here is a problem. There are so many ways, in looking at the organizational chart of the Postal Service—and I want to go over this with you—there is so much room for efficiency. Too many high salaries, too many layers of management, that does not impact your customers and should be addressed before any kind of reduction in service, particularly when you think about the fact that there is so much mail-order pharmacy, for example, that if there is a 3-day holiday and you all aren't delivering mail on the Monday for that holiday, and I am a senior citizen and I am waiting to get my 90-day supply of medicine, we got big trouble here because I can't get it if I am going to run out on that Monday.

And so, how do you deal with those types of issues? And, unfortunately, there is no other way other than through the Postal Service.

But, anyway, I want to ask you about those, and I will let Mr. Bonner go. Thanks.

Mr. BONNER. Thank you, Madam Chair.

Mr. Williams, I think we all associate with Mr. Womack's earlier comments, in reading your bio, not only for your distinguished service, Bronze Star in Vietnam, but I think, by my staff's unofficial count, some 10 different Federal agencies and departments that you have worked in, many in senior positions, as you are in today. Thank you. It was incredibly impressive.

Mr. WILLIAMS. Thank you, sir. That is kind of you.

Mr. BONNER. I am going to try to focus on three quick questions that I would just like your experience on.

Having been at these different departments and agencies, and now in the senior position that you are in with the Postal Service, how do the problems and the challenges of the Postal Service differ from some of the other government agencies and departments that you have served in? And are these differences of kind or differences of degree, or are they both?

Mr. WILLIAMS. There were two departments that are very like the Postal Service, in my mind: the Social Security and the Internal Revenue Service.

They both have ranks of senior people that have been with them their entire careers. I think all of them could probably benefit from the introduction of new people into their ranks. Now, true, there is a very difficult learning curve also, particularly at the IRS and at the Postal Service, for newcomers. But the infusion of new ideas, I think, would be something that would help all three of those departments very much.

There is a surrogate for that. You can begin active dialogue with the stakeholders and bring them in and get ideas from the entire world. It has never been easier. And the digital age is part of the reason. You can have blogs and forums; you can have people come in. You can have a very strong, clear way of inviting outsiders in to bring in new ideas and the best ideas.

And I think that probably the Postal Service is in that category of depending too much on "if it is not invented here, it can't be worth anything," and of throwing their arms open to other people in the digital business and among our own customers, in looking at new product lines. It would make things a lot better.

We are not in the business of protecting and defending the existence of the Postal Service. We are in the business of taking care of Americans. And if we forget for even a second, we have missed the entire point of our existence.

Mr. BONNER. Well, that is a great lead-in to my second question. How receptive has the Postal Service been to your and your staff's suggestions and recommendations over the years?

Mr. WILLIAMS. They have been more receptive than any place I have ever been. Usually, there is sort of an arm's length; here I am sort of being dragged behind the rapidly moving vehicle.

When we complete studies of the plants and we look at closures and consolidations on the part of Congress, the Postal Service takes it to the bottom line before we can put it in writing. And they are constantly demanding that we look at important issues. I have never been so close to the heartbeat of an organization.

And I think it is probably because of the crisis. I don't think those other people were bad and these people are angelic or anything, but they do business here. They can't spend any money if they don't make that money. And so, there is a very different feel here with regard to its auditor. They want to cut costs; they want to look for new opportunities.

And I have enjoyed it here, I obviously have. I have stayed for a while, and I never do that.

Mr. BONNER. Well—and I don't mean to cast a blanket critique. That is not fair when people do that of Congress; it is not fair to do it of the Postal Service. I would love, though, for the tone upon which you have responded just to this panel's questions, the assurance you gave Ms. Lee about getting back in touch with her, and other Members, I would love to think that that customer service, that we exist but for the taxpayers of this country, were more readily noticeable.

I will give you a quick example. And, again, this isn't fair. It certainly doesn't fall under your purview. But my wife and I were going to take our children on a trip overseas. I am from Mobile, Alabama, the greatest city in the world, other than the great cities that are also represented at this table.

And so my wife took the passport applications to the Postal Service window at the downtown post office in Mobile. And after waiting in line for 45 minutes, there was only one other person in front of her. The clerk took a break, came back, and said, "Well, where is the father of these children?" And she said, "Well, the father is not here today." And she got into about a 20-minute argument about the fact that I needed to physically be there to sign a piece of paper or to vouch that the children were there. Well, guess what? I was here. I wasn't there.

So the answer that the postal clerk gave to my wife was, "You know what, ma'am, you just need to call the congressman." And she said, "Well, actually, I sleep with him, so I will be happy to." I am not trying to embarrass anyone back in Mobile, I am not trying to embarrass my wife on Valentine's weekend.

But the point is this. I spent a day with one of the other package delivery firms—I won't call their name. As unpopular as Congress is, they might not want us saying that we spent a day with them. But it was fascinating, unloading that cargo, those packages, off the plane at 5:00 in the morning, getting in that truck, putting on the uniform with shorts and brown socks—

Mrs. EMERSON. I did that, too. It was fun.

Mr. BONNER [continuing]. And driving all over. But down to the point of knowing how many right turns they are going to make so that they can more efficiently manage their gas and make sure that their timing is right and that they get back in.

I would love to think that, both from a customer service spirit and also an efficiency, when you have the kind of deep hole that the Postal Service is in financially, that there would be a new *esprit de corps* that would be coming from the top down and from the bottom up that would say, this is a really—as you noted in your testimony and in answers to the questions, the challenges of the digital age and coming into it, the Postal Service can either embrace it and lead on it and become a vibrant part of the fabric of



this country for the next 100 years, or it can go the way of the dinosaurs down at the Smithsonian Institute. I think we all hope that it is the former, not the latter.

But I really do salute you for the example that you have shown today. And I hope that others in this room and others around the country see that this is not an individual, but this is a reflection of an attitude that needs to be adopted at all levels of government, not just the Postal Service—certainly here in Congress, as well.

I promise you one thing. If my staff told a constituent who called, “Well, you need to call the Senator’s office; we can’t help you,” then these 2-year terms would end much sooner for us than they do for—anyway, thank you very much.

Mr. WILLIAMS. Yes, sir.

If I might very quickly, that is a very disturbing story. The new Postmaster General has set out the customer experience—he set out as a goal to substantially improve the customer experience. And it is problematic in places.

And there are many other instances where the opposite is the case. During Katrina, postal workers from their own funds fed and made sure water was supplied to elderly customers and things. It is all over the board.

But he is committed to make that steadfast and much improved.

The other thing is, we have too many post offices. As those come together, we want them to be more full-service. We don’t want postmasters to go to lunch together and close the place down for 2 hours. So that is a goal, too.

With regard to the trucks that—Pat Donahoe has just asked that we begin looking at smart trucks, ones that can be part of the digital age and can operate with unparalleled efficiency. Someday, we hope our competitors come and compare themselves to us in that area.

Mrs. EMERSON. Thank you all. You did do a great job, I must say, on the Christmas commercials with the flat-rate boxes, I must say.

Mr. WILLIAMS. Thanks, I liked those, too.

Mrs. EMERSON. Hopefully the advertising agency did not charge too much, but it really was quite good.

Let me ask you one question and then I want to get back to the whole management structure within the Postal Service. So, on the retirement fund issue, your office says that it is a \$75 billion problem. And the Postal Regulatory Commission says it is a \$50 billion to \$55 billion problem, and that is a fairly significant difference. Are you all basing those on different actuarial bases? Why is there such a discrepancy?

Mr. WILLIAMS. The regulatory commission acknowledged that the way we computed it, they could see how we would get there. I think they were trying to adopt a middle ground and one of moderation. That is—I think that the Postal Service is trying to do that as well. And so a lot of the savings are revolving around the Postal Rate Commission’s more moderate figure of the 55.

I do want to point out, though, that that is not the only problem that exists. FERS, as I mentioned, is overfunded by some \$6 billion. And then the rate of inflation we believe that OPM has set is much more aggressive than the private sector and other govern-

ment entities. The delta is 5 versus 7 percent, which is another \$6 billion. There are a lot of corrections that need to be made.

What I would most like to see is that the Postal Service make a proposal to Congress with regard to its pension and health funds, rather than have it imposed by OPM. When we benchmarked pensions, we discovered that the gold standard was 80 percent, not 100 percent prefunding. And for health, it was 30 percent, not 100 percent. And if you look at OPM's own prefunding, it is only 40 percent. It is far below the gold standard for pension and it is zero for health. I am always suspicious of someone saying I have a fabulous idea for you, but I don't want any part of it. That is basically what we are suffering under.

Mrs. EMERSON. I am going to play the devil's advocate and ask you this question. That is, I believe, that the Congress has passed legislation twice within the last decade—2003 and 2008—to address obligations, health benefits funding and the like, but yet here we are back again. So what promises could be made that hypothetically if we were to—okay, arrive at some figure of overfunding and it was fixed, how can you assure us that is not going to happen again, since we have already dealt with this twice in the last 10 years?

Mr. WILLIAMS. Actually, what we are seeing are a series of errors on the part of OPM that are quite serious and congressional action earlier addressed those errors. We hope they were errors. We hope they were not intentional. But we were seriously overcharged earlier. When I arrived, those had already occurred. But we saw that things still weren't right.

I don't know if there is more there or there is not more there, but no one is asking for—no one is asking for relief or a bailout or a penny to be given to us. The Postal Service is trying to look for a competent way to run its benefit plans, which we care very much about, as does Congresswoman Lee. That has not been the case. I am wondering if it is time for OPM to step away from the plate and let someone come in here that is able to construct a model of a world-class pension and health care fund, because I know it would be much more reasonable than it is today.

Mrs. EMERSON. Do you believe that OPM actually has the authority to recalculate? Because OPM does not think they do. But you all believe that they can do this without legislative action?

Mr. WILLIAMS. I do. I don't know if they ever said they didn't have the authority. They said they didn't want to; that there are lots of ways to do those things and they are doing it one way, and if someone wants them to do it differently, then they should be told. Not to try to do it on their own. They are awaiting instructions from legislation. I believe they do have the authority.

Congress has now, based on this bad information that they had received, the Postal Accountability and Enhancement Act did structure payments, and that would require congressional action to stop those once we realize that an error has been made.

With regard to correcting the error, I think all of us feel that OPM can—I believe OPM does, too. The difference is whether they will and should. They are telling us they would rather be told to do it rather than do it on their own.

Mrs. EMERSON. Okay. That is something we need to explore more fully with the authorizing committee.

Back on the whole management structure, I was pleased to hear in your testimony that the Postal Service was going to reduce the number of regional offices from 74—I don't know how many they plan to have, but I still don't understand why we don't have one per State and one for each of the territories. I just want you to notice that I have begun to use "the territories" every time I mention the States for the last 2 years.

Mr. SERRANO. And I appreciate that, really.

Mrs. EMERSON. You really do get used to it and that, I think, is a very important distinction that we all should make, Joe.

Mr. SERRANO. Yes. And let me say publicly that you were very supportive the last 4 years when it really started. We started pushing that in the last 4 years. We have all of these folks, and when I look at—

Mr. WOMACK. I didn't know the Bronx was a territory.

Mr. SERRANO. And here I was going to praise you. I was going to say that no one more than those who have been in the military understand and respect the folks in the territories, because they served side by side with folks from the territories. So that is one thing, you know, that we always ask around here: How are you treating the territories? Because they seem to be an afterthought.

But I am still praising you. The Bronx is a State all by itself.

Mrs. EMERSON. So anyway, the idea of having 74 offices to me is ridiculous. And somehow I think that there are much more efficient models. For example, we have two in Missouri. I have one in Kansas City and one in St. Louis, and even though my district is closer to St. Louis, Kansas City has jurisdiction over all but one of my counties. It is ridiculous, it is stupid, and it is inefficient.

And just the management structure at the local level, it is crazy as far as too many different people trying to tell people what to do, instead of having just much more defined reporting assignments. I spent a lot of years in the private sector so I am sensitive to that sort of thing.

And then at the D.C. headquarters, I am aware that a lot of the senior management folks who are out in the field have been brought back to management so that senior management at the D.C. headquarters will say, yes, we have reduced the number of people out in the field. And so it just seems to me—I wanted to ask, have you all actually looked at organizational structure?

Mr. WILLIAMS. We did a study of the areas and districts. And also if you looked at this structure, it is going to remind you of the government. And it did go back to a time when we were part of the government, particularly with the area structures.

We did a study and we said that the number of districts ought to be—the districts are the lower level, the areas are the higher level—that the number of districts needed to be looked at, and we recommend that we have sort of a modest and increasingly aggressive reduction in those numbers.

With regard to the areas, those are a bit of a historic artifact, and we recommended that some thought be given to whether those could all be brought back to Washington and joined together for messaging. For one thing, it invites fiefdoms, and everybody does

it in a different way, which is as expensive as it can be. And it is personality based, where based on somebody's code of ethics, they are treated differently than they ought to be.

So the reason for them has been, of course, command and control. It is a huge organization. It is still 600,000. But we see that a lot of the messaging that goes down and that goes up could be automated, and we think that if the data, the performance data were automated, many of the physical things that occur, and the meetings that occur, and the time that it takes from postmasters and from plant managers would be reduced if it was an automated environment.

Mrs. EMERSON. Well, and certainly with the digital age, if you will, and the sophisticated machinery that you use for sorting and the like, certainly I believe those area offices are probably obsolete.

Do you happen to know how many people work in the Government Affairs Department of the Postal Service headquarters here in Washington, D.C.?

Mr. WILLIAMS. I am going to look to the staff and ask them. It is about 50 people.

Mrs. EMERSON. And how many—and what do those 50 people do?

Mr. WILLIAMS. The job of the office is to manage correspondence and then visits to the—

Mrs. EMERSON. And how many pieces of correspondence does the Government Affairs Department average a year?

Mr. WILLIAMS. I don't have that information.

Mrs. EMERSON. Can anybody tell me?

Mr. WILLIAMS. We can't tell you today, but we will do—if we may, we will come and sit with you and look at that. We have not looked at it and we would be happy—

Mrs. EMERSON. I would appreciate it, given the fact, just to give you an example, I think we are pretty lean and mean in our offices and we average 1,500 e-mails or letters a week. And I have three people and a quarter to do that, to answer them within a turn-around time of, I don't know, 3 to 4 weeks, because sometimes we get backed up. And all of those people attend all of my committee meetings.

I guess my point is 50 is outrageous, because I bet you you all don't have as much mail as I have in my office on a monthly base—on a yearly basis. I would bet that. So I would really appreciate you getting back to me on that. It is a little thing, but it is annoying, because to me your face is out there, out in the public in our communities. And I love my post offices, and I love most all of the people who work at them, and the people who deliver the mail, et cetera. But that is where you really need to be. Obviously, you have got—but I think you are real heavy here, and I would certainly like to see much more management efficiency here to start helping to reduce costs there. And go ahead.

Mr. WILLIAMS. We will be happy to undertake and will meet with your staff right away to do that. To be fair, I should say in the early hours of the new postmaster general's time after coming on board, he reduced the number of direct reports that he had. He reduced the layering of Senior Vice Presidents overseeing Vice Presidents. He did away with that. And he also tried to, in addition to making the place more lean, he did try to align the place more to

the mission and to the customers, to make it clear that that alignment was strong. So it has been started.

Mrs. EMERSON. That is good. And he is a very nice man and I know he has got a tough job to do. But there was a job I think advertised—you have a head of Government Affairs, and suddenly somebody was going to get hired above her at \$250,000 a year.

Mr. WILLIAMS. That is true. That is—

Mrs. EMERSON. She was perfectly good at what she did.

Mr. WILLIAMS. That clearly is a piece of the solution to this.

Mrs. EMERSON. That is why a very, very detailed and close examination. And I know at one time PriceWaterhouse or somebody came in and tried to do something to make it more lean and mean, and I thought it was still excessively bulky. But that is from personal experience.

I also recommend, and I know that Steve will be happy if I say that, if you look at the way that Wal-Mart does its distribution system and it moves things around this country. They do it in a very cost-effective way, but a lot of what they do is what you do. And so there are some lessons to be learned that to me would make good sense just for purposes of trying to save money.

Because the easy things are, yeah, we will go to 6-day delivery. Okay. We will close all of these rural post offices that are the heart and soul of a community, when, quite frankly, if it cost \$100,000 a year to run, you got people making 800,000 bucks a year at the Postal Service, and so let them take a pay cut and leave a post office open. I just don't think the decisions—you are picking easy—not you specifically, but easy things are being picked; but the hard decisions are it is way too top-heavy with management, just from what I have seen of your organizational charts.

Mr. WOMACK. If the gentlelady would yield for just a minute. Good point, Ms. Emerson.

A few years ago, while serving as a mayor of a city of about 50,000 people, we had a catastrophic failure on an automation platform system involving our courts. It was a serious issue. And rather than being tempted to throw a lot of money at the problem from my job as a mayor into a major IT fact-finding mission and potential solution, I turned, as the gentlewoman has just recommended, I turned to the private sector. And in this case it was J.B. Hunt Trucking, not because of the heavy computer assets involved in a logistical perspective, but I turned to the J.B. Hunt Corporation, to people in that entity, and asked them if that was their problem, how would they solve it. And I was able to fix a problem a lot faster because the private sector knows how to do this stuff in a much more efficient way than we in government ever hope to be able to do that.

And that is why I think that she is on to something here. That when we are looking for solutions, are we indeed looking into the private sector to people who have these logistical frameworks already established that do some of the same things you do? And are we, shall we say, plagiarizing some of that effort?

Mrs. EMERSON. No need to reinvent the wheel. Stealing good ideas is smart business in my opinion. You know, not intellectual property, but rather if somebody has a good idea, it saves me from having to think about the idea.

I want to ask you one more question. And—oh, I want to know if it is true. Is it true that the Postal Service actually has vehicles made specifically for it, as opposed to buying platforms from General Motors or Chrysler or Ford? Does it actually design and have trucks and/or other vehicles made for it, as opposed to—not anymore? Okay.

Mr. WILLIAMS. The idea is to build the box on top of an—

Mrs. EMERSON. Of an existing platform?

Mr. WILLIAMS. Ford or General Motors.

Mrs. EMERSON. When did they stop actually having them made? Do you all know?

Mr. WILLIAMS. About 20—I arrived after that occurred. As long as I have been there they have used—

Mrs. EMERSON. They have actually used the existing platform. All right. That is good. Mr. Serrano.

Mr. WILLIAMS. If I may, I would like to say that my office—and a lot of it has been at the request of Pat Donohoe, having engaged in benchmarking, and UPS and FedEx have both been great about joining in that. Target department stores have some fabulous inventory techniques along with Wal-Mart. There is a lot to be learned, and they have done great stuff and we are trying to understand it.

Mrs. EMERSON. That is good to know. Seriously, it really is easier, because they will give you advice for free and you don't have to pay an expensive consultant to do it.

Mr. WILLIAMS. They have, and sometimes they are more real world than the consultants are.

Mrs. EMERSON. Consultants just want your money.

Mr. WILLIAMS. Yes, I think you might be on to something there as well.

Mrs. EMERSON. Mr. Serrano.

Mr. SERRANO. The good news is that President Mubarak has stepped down. I don't know whether to believe that or not. He steps down more times than Jack Benny celebrated his 39th birthday.

Mr. WOMACK. He is probably scuba diving in Sharm el-Sheikh.

Mr. SERRANO. Yes, probably. Every so often in these hearings, we say something which brings about another discussion. And so after hearing you and after hearing Mr. Womack comment on the private sector, I guess it is my duty to say, yes, I think we have to always consult with the private sector. I mean, be supportive of it so it grows. And we have to consult with academia and make sure that they are included.

But I think what we have to be careful about, especially in the next couple of years as we get more and more folks who say that the private sector is the way is that while the private sector has played a major role in building the country that we have today, it wasn't the private sector that said that children should not work; it was government who said that there should be a child labor law.

It won't be the private sector that will care at times too much about whether the rivers are clean or who is dumping into them. It was government that stepped in. It was not the private sector, for the most part, who said you shouldn't work more than 40 hours a week and you should have certain pay. It certainly wasn't the

private sector who, on their own, volunteered to treat minorities and women better; it was government.

So I think it is important, perhaps more than ever, to say the private sector and our universities have to play a role. But you know, there is something for government to do. And which invites me to say something I have been rehearsing recently, I want to try it on you. I am sick and tired of hearing TV reporters saying, Go up to a businessman and say if you ran your business the way the government runs theirs, what would you have? And then they would say, We would be bankrupt.

Well, if they ran their business the way we run ours, they would have a business that has been around since 1776, that has been the envy of the world, that played a major role in stopping Hitler and the Nazis from taking over the world, that every so often checks on itself, looks back and corrects past injustices, and whose doors are still being knocked on a daily basis by people who want to come into this place.

So government has problems. But you know, for a couple of hundred years now, we have created a pretty good place that a lot of people want to be a part of. In the process of making it better, let's not throw out government. Because if you let the other guys do it alone, it could be a mess.

Mrs. EMERSON. Will the gentleman yield?

Mr. SERRANO. Sure.

Mrs. EMERSON. Please note that I was not at all talking about changing the governmental function of the Postal Service. I was suggesting that they get free advice from a distribution system that actually works as to how to make themselves more efficient. So it was not replacing the government with the private sector.

Mr. SERRANO. I understand that. And I understand Steve Womack's statement, which I take very seriously, that he had the ability and the vision to say it doesn't have to be government; let me go see how they do it. And he accomplished it. I just know that there is a sense in this country right now, by a small group but a very vocal group, that we don't need a government.

Mrs. EMERSON. Well, I disagree. I agree that there is a group that are—

Mr. SERRANO. There are people that are asking a President to step down because they want a government that looks like ours. Trust me.

Mrs. EMERSON. Joe, I don't disagree with your statement. You did a nice job on that statement. I liked that. You practiced it well.

Mr. SERRANO. I did. I have a Spanish version of it, too.

Mrs. EMERSON. Let's see, we are willing to listen to that too.

Mr. SERRANO. Before I ask my last round of questions here, in defense of the Postal Service, my understanding is as to Mr. Bonner's statement, my understanding is that the Postal Service basically carries out the instructions given out by the State Department on how to handle it. That is my understanding. They set the rules for how you get a passport, and then the Postal Service just does what they are told. That is my understanding.

Anyway let's get to one of my favorite issues. This report that came out about electric trucks. I know again it is a small thing, small in the sense that it may take a while to go to that point of

having a full fleet. And not everybody in this country is sold yet on the idea of moving in that direction. Lastly, that they are not \$10,000 trucks. They are quite expensive.

So what can you tell us about that report? And what can you tell us about the possibility and the feasibility of the Postal Service moving in that direction?

Mr. WILLIAMS. We were very—actually, you asked us to do that. We were very excited at the results though. I am not sure we would have thought of it on our own, which is not good. We should have thought of it. Today—the technology is getting better all the time, but today an electric truck that could carry our load could go 40 miles very, very reliably. That covers all but 3 percent of our routes. Only 3 percent would begin to test the outer limits of that.

So it would seem that we would be a very good candidate for that, in addition to, of course, there not being fuel consumption and there being exhaust in all the neighborhoods of the United States. It seemed to be a very forward-looking, great initiative to undertake.

The Nation is also about to go, as you told us and we verified, to taking the electric grid and reducing it—or expanding it, rather, to allow vehicles to be plugged into it, the batteries of vehicles to be plugged into it. There is a requirement that electric utilities maintain a certain margin of excess in order to assure that we will all receive electricity when we need it.

With vehicle-to-grid, V-to-G, it allows, rather than us to manufacture more of that by burning coal or oil or nuclear solution, it allows them to rely on the dormant batteries of vehicles. We are really well positioned for that because we don't drive our vehicles at night. That could be a huge fleet of vehicles that would take care of a national issue and allow for a national economy. It would also jump-start a new technology and create new jobs and it would allow those—the price of those vehicles to come down, as all technologies do when they are finally embraced.

We were tremendously excited about what you did and what we found.

Mr. SERRANO. Thank you. And just for the record, to remind the chairwoman that this was something that we asked for in the committee, and this report came back. And I understand that part of the problem is you have 146,000 delivery vehicles which average 10 miles per gallon; am I right?

Mr. WILLIAMS. That is correct.

Mr. SERRANO. Is that a huge problem? And we always talk about our dependency on foreign oil and we seem to do little. Although I see more happening, certainly in the last 5 to 10 years. Where is this at? You did your report. Is there any desire on the part of the Postal Service to move in that direction?

Mr. WILLIAMS. It is also a fleet at the end of its life. So to introduce this, whether it is in our trucks now or whether we would do new vehicles—I ought to have added that at the end—I think there was concern on the part of postal management, but I never had a clear statement of how they received this. But there was some concern that the technology was new and they wanted to select a vendor that they were confident would be around, because the vehicles



last a very long time. I think that was the things that concerned them. And I think there was also interest in this.

I think with each year that passes, as you said, sometimes progress is slow. But the arc of the progress seems to suggest that this is a very promising direction and route that you have embarked the Postal Service on. We have a new postmaster general. I will be glad to express to him—remind him of what we have done, and express your desire and interest in the area.

Mr. SERRANO. I have, Madam Chair, just one more question and then we can submit some for the record. Under the heading of innovation, is there anything you think or that has been suggested that the Postal Service could be doing to sort of help themselves acquire more revenue? I am not suggesting that they sell T-shirts in the lobbies of the Postal Service. But you wonder if e-mail—and we are all guilty of it—if e-mail has taken away from the Postal Service—I am not trying to be funny, but should the Postal Service get into the business of being another AOL where it provides e-mail service to the public? I know that sounds crazy, but you know—no, nothing that I say sounds crazy.

Mr. WILLIAMS. No, it does not.

Mr. SERRANO. What could they be doing? Is there, you know, are there five people sitting in a room somewhere at the Postal Service trying to figure out where we could go?

Mr. WILLIAMS. At this point I would say all the near-term efforts are the ones that I outlined. And I think there is an openness to this idea, but we need there to be an excitement about it and we need to run to it.

I think some of the time was lost dreading it and fighting, and some in the past were chagrined over its arrival. There are some wonderful opportunities. There could be a symbiotic relationship between the various communication vehicles, whether they are physical or digital, that could be combined, that would place American businesses and American people in a much stronger position than they have ever been.

And there are all of those difficulties I said that need to be addressed with regard to the digital age, too. The Postal Service could be part of that solution. We need to aggressively engage with the other players in the digital area and our own customers, and also the people who are not our customers but they ought to be. And we begin to need a very vigorous dialogue with regard to that. And we need a very disciplined process with regard to inviting innovation, triaging the ideas and designing them, and then implementation.

I have seen some really great ideas that we stumbled on on implementation of them in the field. But there are wonderful ideas for products out there. I think people would love to see an integration of their digital mail and their physical mail on the same list, for instance. Sort of a reverse hybrid. Hybrid mail is clean, fast, and it is the future. I would love to see us be a part of that.

I think we need to guard against giving middlemen money for nothing. It isn't just hard to the Postal Service. It is picking winners and losers. And that is not something that is a very American idea for an infrastructure. There is a ton to do. We need to create

processes for that. We need to clear out some space to meet the future and to embrace it.

Mr. SERRANO. One quick question. Do we make money, does the Postal Service make money on those commemorative stamps every time we honor someone? And please understand that I am not knocking it. I attended the Frank Sinatra stamp ceremony in New York and it was wonderful and what a great ceremony that was. And there were people from all over the city, stamp collectors and fans. Does it make money? I know that a lot of these things just kind of tap a little bit into the problem.

Mr. WILLIAMS. I think the idea behind the commemorative stamp—there have hardly been any. Of course, the breast cancer stamp was certainly the most dynamic and important of those initiatives. The Postal Service makes the usual amount of money, and the charity receives anything above and beyond the Postal Service's normal income. So it is split.

Mr. SERRANO. It is split?

Mr. WILLIAMS. It is, sir. Yes.

Mr. SERRANO. Okay. All right. Just in closing, let me thank the chairwoman for reiterating our position. And it was our position before, and I am glad it is still going to be our position this year that sometimes it is easy when you look at the Postal Service to take the easy shot. And the easy shot is 5-day delivery, without thinking of what that does for service and, in all honesty, what it does for jobs, even part-time jobs. And this is not the time to be cutting jobs anywhere.

So I think the message that she is sending is the message that I try to send. Let's focus on the hard decisions and not go after the easy one, which is 5-day delivery. I thank you for that. And I thank you for your testimony and your service, and that concludes my questions.

Mrs. EMERSON. Thank you. Mr. Womack?

Mr. WOMACK. I have nothing further, Madam Chair.

Mrs. EMERSON. Are you certain?

Mr. Williams, thank you. I do want to ask you one more question and that has to do with closing and consolidating post offices. I know as part of the Postal Service's action plan, they want to close or consolidate I think about 2,000 retail facilities. You alluded to that in your opening statement.

I understand that the Postal Regulatory Commission is actually investigating whether the Postal Service has been improperly using reasons such as lease expirations to suspend service. And obviously this impacts us, and it would be more in Mr. Womack's and my districts rather than Joe's, just because we have very rural populations. So have you all examined this issue as well?

And then my follow-up question would be, do you think the Postal Service is taking responsible steps in its efforts to restructure those operations?

Mr. WILLIAMS. Actually, early on—I am unfamiliar with the PRC's work in the area. It is actually early on. There haven't been many that, of course, closed that I am aware of. But we are obviously right at the edge of an aggressive initiative in the area of the 2,000. And there are also about 400 that are in process, so it is actually a bit larger than that. I am unaware of those, but I talk and

interact with the PRC all the time. I would be glad to find out what concerns they have. And I will also keep an eye out for it with regard to that.

The process around this is new. They recently developed a way that is far more expedited than in the past. We are about to review on that and the moment we are done with it, we forward it—if we find something disturbing—

Mrs. EMERSON. I would be appreciative. I am sure all of us would.

Mr. WILLIAMS. It is a new process. We will be glad to watch that and report back to you.

Mrs. EMERSON. “New” meaning it just started or “new” meaning it is a different type of process than what you have done?

Mr. WILLIAMS. It is going to be an aggressive effort. I am certainly not against that effort. As I indicated, I think probably the network is too large. But 2,000 is more than we have ever done. And there is also a new process with regard to expediting and putting it in a more automated environment. That is the one that we have embarked on studying, now that it is complete.

Mrs. EMERSON. Any information that you can get to us as soon as possible would be great.

Mr. WILLIAMS. We will.

Mrs. EMERSON. Especially any in conversations with the PRC as well.

Mr. WILLIAMS. I will meet with them before they are out of the room.

Mrs. EMERSON. Terrific. Thank you so very much for being here today and for your patience. You did a great job answering questions and we will look forward to working with you in the future.

Mr. WILLIAMS. I do as well. And thank you so much for having me.

Financial Services and General Government Subcommittee  
FY 2012 Budget Hearing for the Inspector General of the U.S. Postal Service

**Questions for the Record From Chairwoman Jo Ann Emerson**

REDUCING COST/IMPROVING EFFICIENCY AT USPS

Mrs. Emerson: Delivery is the Postal Service's largest cost segment—accounting for about one-third of total costs. Your office has issued several reports about how the Postal Service could improve efficiency and reduce costs in this area.

Has the Postal Service taken action on your recommendations and what more needs to be done to reduce delivery costs and improve efficiency?

Mr. Williams: The Postal Service has taken action on many of our recommendations involving standardization of operations, optimizing and elimination of routes, reduction of office time for carriers, supervision of carriers, and mail address hygiene. In FY 2010, the Postal Service reduced workhours in city delivery by over 16 million hours (nearly 4 percent), and rural delivery workhours by almost 4 million hours (about 2 percent).

The Postal Service needs to continue to reduce delivery costs and improve efficiency in the following areas:

- Pursue workforce flexibility to better match workload with the workforce, including evaluating increased use of flexible and part-time workers to better address declines in mail volume.
- Consider changes to service standards in cases where customer needs could be met at lower costs.
- Centralize delivery modes – develop and implement a strategy to move from door to curbside delivery and, where practical, from curbside to cluster box, which could result in multi-billion dollar savings annually.

Mrs. Emerson: In your view, Mr. Williams, what are the major elements needed by the Postal Service as a solution to their financial problems?

Mr. Williams: I see the critical points of a Postal Service solution as three-fold:

- 1) address the overpayments and punitive prefunding into the retiree benefit funds,
- 2) optimize and simplify current operations, and
- 3) innovate for the digital age.

First, in the near term, the Postal Service and Congress should consider halting further payments to benefit funds until surpluses are used, and mistakes are corrected. The Postal Service can use this time to learn how to live below or within the Consumer Price Index, shed its debt, and find its role in the digital age. The Postal Service should be taken back off-budget as originally designed. Otherwise, scoring makes it impossible to correct errors in retirement funding.

Second, the Postal Accountability and Enhancement Act incentivizes the Postal Service to adopt a leaner, volume-driven infrastructure to assure readiness for the 21<sup>st</sup> century. This will require:

- Optimization of the network of post offices and plants;
- Conversion to evaluated letter carrier routes to promote more effective management;
- Flexible work rules to match the ebb and flow of mail;
- A comprehensive delivery point strategy that maximizes curbside delivery and cluster boxes;
- Simplification of mail acceptance and pricing; and
- Evaluating the need for 74 districts, 7 Areas, and two law enforcement agencies.

Finally, the Postal Service needs to strengthen its systems for innovation. Innovators collaborate with customers, take risks, make mistakes but stop failures quickly, and replicate successes. The Postal Service's success in the new digital age depends on embracing a culture of innovation.

#### WORKER'S COMPENSATION

Mrs. Emerson: Your office recently reported on the Postal Service's workers compensation liability of about \$12 billion at the end of fiscal year 2010 and has issued numerous reports on Postal Service safety and workers' compensation issues.

What more can the Postal Service do to reduce the risks and costs related to workers compensation—and in doing so reduce these major costs?

Mr. Williams: The Federal Employee's Compensation Act (FECA) provides a variety of benefits to employees injured in the performance of duty. As currently structured, FECA provides disincentives for employees to return to work. For example, the base rate for FECA compensation is 66 2/3 percent of the injured employees' salary for employees without dependents or 75 percent for those with dependents. FECA compensation is tax-free and there is no age or time limits on benefits as long as a physician certifies the work related condition or the disability continues.

Between 2003 and 2006, we issued several reports covering workers compensation issues, and reporting thousands of dollars in overpayments and underpayments in the program. The Postal Service, using a database we developed to identify potentially fraudulent billing schemes, identified more than \$3 million in duplicate medical payments. Additionally, in 2005, we issued a whitepaper identifying broader issues that if addressed, could result in significant savings. Subsequent to our issuance of that paper, the Department of Labor notified the OIG that they took exception to the OIG auditing these programs on behalf of the Postal Service, and our access to Postal Service data held by the Department of Labor was restricted.

Significant improvements and savings could be achieved if the Postal Service were permitted to make broader reforms to its workers' compensation program, such as moving from the Department of Labor to a third-party administrator to administer its workers' compensation program, selecting physicians for injured employees, and providing offers of settlement for more permanent cases. All of these solutions would require legislative changes, but would likely result

in significant savings from reduced administrative fees, improved service, better case management, and reduced fraud in the workers' compensation program.

We are currently working on a project to further evaluate issues with the workers' compensation program at the Postal Service and update prior work conducted in this area. We can provide your staff a copy of that report when it is issued.

Mrs. Emerson: Additionally we have heard that employees well past retirement age continue to get worker's compensation benefits. Is this appropriate?

Mr. Williams: Although allowed by the current law, we do not believe this is appropriate. Disabled retirement-eligible employees have a choice between FECA benefits and federal retirement benefits. However, neither the employee nor the Postal Service paid into the retirement system while the employee was on workers' compensation. Consequently, most employees choose to remain on workers' compensation because it results in a higher payment and significant tax incentives, and there are no age or time limitations in the current law.

FECA was never intended to be a retirement program. We issued a report covering this area in 2003, and we are currently working to update the results. We can provide you a copy of this report when it is issued.

#### EXPANDING PRODUCTS AND SERVICES

Mrs. Emerson: In your testimony you mentioned the long-term challenges facing the Postal Service as mail continues to shift to electronic communication in an increasingly digital age. The Postal Service's action plan proposed introducing new products and additional services for customers. The Postal Service is asking Congress to allow them additional flexibility in their ability to introduce new products. Currently, every new potential product requires review by the Board of Governors and the Postal Regulatory Commission.

In your view, should Congress seek to amend the current regulatory framework, broadening the definition of postal products, to give the USPS added flexibility to innovate and incorporate new products and services?

Mr. Williams: The exploration of non-postal products should be considered once the latitude currently allowed under the existing regulatory framework for ancillary products is fully explored. Ancillary products could move the Postal Service into the digital age and allow for an update of the mission within existing legislation. This may provide a great deal of flexibility for innovative products and services to allow the Postal Service to be a product platform for government, postal, and commercial services available to all.

New ancillary products should reflect the evolving universal service obligation to "bind the nation together" in a new world where people are increasingly communicating digitally. For example, the Postal Service could provide digital currency exchange to complement its existing money order business. Another possibility is a digital platform that facilitates communications

and commerce, that could provide a physical address linked to an electronic mail box for every resident and business.

Both the digital and physical worlds are imperfect; they each have their own shortcomings. A digital platform provided by the Postal Service could bridge the physical-digital divide and help address some of the privacy, security, and confidentiality issues associated with the current digital age.

Mrs. Emerson: Should USPS be allowed to offer new nonpostal products and services that compete with private-sector firms?

Mr. Williams: Certain non-postal products could prove useful in providing additional sources of revenue to keep unprofitable post offices open for universal service. These products could also serve the underserved segments of society that the private sector may not be currently interested in serving. These products could be limited to rural areas, thus reducing the likelihood of competition with businesses and providing welcome and needed products for more remote populations.

Mrs. Emerson: How would the Postal Service finance such initiatives?

Mr. Williams: If the retirement fund overpayments are solved, a portion of the no longer needed annual retirement benefit fund payments could be used to finance initiatives. Otherwise, the Postal Service would have to cut off old investments to fuel new investments and redirect less profitable investments to more profitable investments. To the extent possible, these initiatives should be self-financing, so that the return on investment will cover the costs. In many cases, funding already being expended to pay for the current workforce could be leveraged to provide these additional services.

#### FLEET MAINTENANCE

Mrs. Emerson: The Bowles Simpson Fiscal Commission recommended large reductions to funds budgeted for travel, vehicles and printing. I am aware that the Postal Service must maintain a large delivery fleet as part of its day-to-day operations.

In your view, are there steps the Postal Service can take to reduce costs spent on its delivery fleet?

Mr. Williams: The most effective way to minimize fuel costs for postal owned trucks and contract carriers is to optimize volume capacity per trip and reduce the number of transportation trips. Additionally, providing the correct incentives (such as cost and risk sharing arrangements) to its large fleet of contracted carriers also creates the potential for significant savings. Finally, the Postal Service can reduce fuel costs through development of, and compliance with, national acquisition and consumption strategies aimed at reducing the cost and use of fuel, such as an expansion of mobile fueling for city and rural delivery units.

When considering the acquisition of trailers, cargo vans, and other transportation vehicles, the Postal Service should perform a comprehensive lease versus buy analysis, to compare the total cost of leasing to the total cost of ownership. The Postal Service should also establish schedules for its internal drivers that match employee work hours with workload and increase overall utilization and combine or eliminate unnecessary trips. Additionally, once facilities are optimized for mail volume there could be savings from reduced inter-facility transportation routes. Finally, the adoption of alternative fuel vehicles, such as electric vehicles, should help reduce delivery costs for fuel and maintenance.

Mrs. Emerson: What is the Postal Service doing to make its delivery fleet more green and efficient, and improve the longevity of its fleet?

Mr. Williams: The Postal Service has the world's largest fleet of alternative-fuel vehicles with over 44,000 alternative fuel vehicles, including compressed Natural Gas, Propane, E-85, Hybrid, Electric and Fuel Cell vehicles.

- The Postal Service is testing differing models of hybrid vehicles to include sport utility, mini-vans and step-van vehicles. Test results indicate that until hybrids become more competitively priced and replacement batteries are more affordable, it is not recommended as an option for carrier vehicle replacement
- Engineering is working with potential suppliers on prototypes to convert five existing carrier vehicles to run on electricity. Data is currently being collected on range, maintenance costs, and other general diagnostics. These vehicles will be tested for one year and the results of the tests will be published.
- The testing on two hydrogen fuel cell delivery vehicles ended in February. Fuel cells present several challenges such as:
  - Hydrogen production
  - Hydrogen storage
  - Infrastructure, and
  - Fuel Costs

In 2009, at the request of Representative Jose E. Serrano, Chairman, Subcommittee on Financial Services and General Government, Committee on Appropriations, we conducted a study of the potential for electric vehicles within the Postal Service. Our report suggested that the Postal Service could offer a unique test-bed for a broad implementation of electric vehicles in the delivery environment. Significant fuel cost savings could be achieved through such a program, but initial investments would have to be made to support such a strategy.

Regarding fleet longevity, the Postal Service has maintained their carrier vehicles in safe working condition for over 20 years. This is attributed to a robust preventive maintenance program. Vehicles are serviced and repaired at USPS vehicle maintenance facilities and in many commercial garages throughout the country. Vehicles are kept in a safe and operable condition, while meeting established standards and requirements. However, we have found instances in which the cost to maintain a subset of the vehicle fleet is more than it would cost to replace them.



**Questions for the Record From Representative Barbara Lee**

Ms. Lee: Mr. Inspector General, it has been reported that mail volume is rising slightly from the lows caused by the recession.

Would any disruptions or abrupt price hikes at the USPS caused by a failure to solve financial shortfalls at the Postal Service interrupt this recovery in mail volume?

Mr. Williams: A natural disaster such as a hurricane or terrorism event could have a significant impact on mail volume recovery. In addition, the financial shortfall could limit capital expenditures that if made, might have decreased future costs or provided for revenue generating opportunities or additional services in high-growth areas.

REPORTING ON DIVERSITY

Ms. Lee: Are you able to provide the Subcommittee with information regarding the diversity of professional full time employees at the Office of the Inspector General, broken down by job title or GS level?

Mr. Williams: The chart below shows the diversity of professional full time employees at the Office of the Inspector General.

- Column 1 identifies the job title and the GS equivalent level.
- Columns 2 and 3 break down the total workforce by gender.
- Columns 4 through 14 break down the total workforce by Race, and each of these categories is broken down by gender.

The totals and percentages for each workforce category are shown at the bottom of the report.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
USPS OIG Title - Identified in Terms of "Pay Band"	Total By Gender		Native American		Asian		Black		Hispanic		White		Total
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
Inspector General Executive Service (SES Level)	57%	43%	0%	0%	0%	4%	7%	18%	11%	0%	39%	21%	100%
	16	12	0	0	0	1	2	5	3	0	11	6	28
Director & Senior Specialist (GS-15 Equivalent)	58%	42%	2%	0%	4%	0%	6%	13%	4%	2%	42%	27%	100%
	30	22	1	0	2	0	3	7	2	1	22	14	52
Manager (GS-14 Equivalent)	73%	27%	0%	0%	5%	1%	6%	8%	8%	3%	53%	15%	100%
	95	36	0	0	7	1	8	11	10	4	70	20	131
Specialist (GS-14 Equivalent)	62%	38%	1%	2%	3%	3%	5%	8%	3%	2%	51%	24%	100%
	73	45	1	2	3	3	6	10	3	2	60	28	118
Journey (GS- 09 thru GS-13 Equivalent)	60%	40%	0%	0%	5%	2%	8%	14%	5%	4%	42%	20%	100%
	446	295	1	0	39	16	57	105	38	29	311	145	741
Administrative (GS-05 thru 12 Equivalent)	7%	93%	2%	2%	0%	0%	2%	35%	0%	7%	2%	49%	100%
	3	40	1	1	0	0	1	15	0	3	1	21	43
% of OIG Labor Force	60%	40%	0.36%	0.27%	4.58%	1.89%	6.92%	13.75%	5.03%	3.50%	42.68%	21.02%	100%
<b>Total OIG Count</b>	<b>663</b>	<b>450</b>	<b>4</b>	<b>3</b>	<b>51</b>	<b>21</b>	<b>77</b>	<b>153</b>	<b>56</b>	<b>39</b>	<b>475</b>	<b>234</b>	<b>1113</b>

#### RECRUITMENT AND HIRING

Ms. Lee: What is your office doing to ensure that it is recruiting and hiring a diverse staff? Does your office recruit or have an internship program at any Historically Black College/s and University/ies?

Mr. Williams: To ensure that the OIG recruits and hires a diverse staff, the agency currently advertises positions through the following sources:

- Historically Black Colleges and Universities
- Historically Asian Colleges and Universities
- Colleges for the Hearing Impaired.

The OIG routinely recruits at Women in Federal Law Enforcement conferences, and participates in local and national job fairs for the National Society of Hispanic Professionals.

We also support the following law enforcement organizations through individual memberships and attendance at sponsored events.

- Federal Hispanic Law Enforcement Officers Association
- Hispanic American Police Command Officers Association
- National Organization of Black Law Enforcement Executives
- Women in Federal Law Enforcement

Further, the OIG ensures that a dedicated telephone line is available for applicants requiring handicap accommodations.

#### PROCUREMENT AND CONTRACTING

Ms. Lee: Are you able to provide us with information regarding the amount and percent of contracts with small, disadvantaged businesses that are female or minority-owned?

Mr. Williams: The Postal Service, as an agency that does not operate on appropriated funds, does not have to set and report on goals for contracting with small and disadvantaged businesses. However, the Postal Service has a program supporting small, minority owned, and women owned businesses (SMWOB) that has won awards. These awards include America's Top Government Agency for Multicultural Business Opportunities in 2006 – 2009, 2011, and in 2010 they were rated second.

The Postal Service has a supplier outreach program that participates in over 25 outreach events annually. The Postal Service also has memberships and/or partnerships with advocacy groups and councils.

The Postal Service Supplier Diversity Program established goals for providing contracting opportunities to SMWOB in 2006. The goals currently set are comparable to those set in the Federal sector. The Postal Services achievements against its goals are noted in the chart below.

<b>SMWOB Category</b>	<b>Goal</b>	<b>Goal Achievement</b>	<b>% of Change</b>	<b>Value \$(M)</b>
FY 10 Small	36.3%	40.64%	↑4.34%	2,991.7
FY 09 Small	35.0%	39.05%	↑4.05%	3,016.8
FY 08 Small	35.8%	31.39%	▼4.41%	2,798.2
FY 07 Small	31.2%	34.30%	↑3.10%	3,464.3
FY 10 Minority-Owned	4.1%	4.87%	↑0.77%	358.2
FY 09 Minority-Owned	3.5%	4.80%	↑1.30%	370.8
FY 08 Minority-Owned	3.6%	3.49%	▼0.11%	304.6
FY 07 Minority-Owned	3.1%	3.50%	↑0.40%	349.7
FY 10 Women-Owned	7.5%	7.63%	↑0.13%	561.4
FY 09 Women-Owned	7.1%	9.02%	↑1.92%	696.5
FY 08 Women-Owned	5.8%	5.97%	↑0.17%	520.9
FY 07 Women-Owned	4.6%	5.60%	↑1.00%	565.0

WEDNESDAY, MARCH 2, 2011.

**U.S. ELECTION ASSISTANCE COMMISSION**

**WITNESS**

**CURTIS W. CRIDER, INSPECTOR GENERAL, U.S. ELECTION ASSISTANCE COMMISSION**

Mrs. EMERSON. Thank you so much for being here, Inspector General Crider. We look forward to hearing your testimony. As you may know, this committee is committed to reducing nonsecurity discretionary spending to fiscal year 2008 levels, and so we have asked several Inspectors General to meet with us so that you all can help us identify savings where we can, in fact, achieve it.

Your oversight is valuable, not only to ensure that taxpayer dollars are used in the most cost-effective manner possible, but also to determine whether the Commission is contributing to the integrity of our Federal elections. While the Election Assistance Commission has taken on a number of roles, it was specifically established to help States meet new voting standards and the overall enhancement of election administration called for under the Help America Vote Act.

In order for our democracy to thrive, people must be able to place complete confidence in the integrity of our Federal voting system. In general, I am interested in hearing your perspective on the Commission's operating expenses, the necessity of having so many high-level administrative staff, as well as the Commission's overall management practices. While it appears that the Commission has matured since it was first set up, my observation of some of its decisions and activities suggests that the EAC still has a lot of work to do.

In addition, I continue to find it interesting that so many of the States that received grant funding under HAVA have yet to spend significant amounts of the funding provided to them in spite of the fact that it has been available for a number of years. I would like to hear your views on the Commission's management of those funds.

I look forward to your testimony and to gaining a better understanding of your efforts to hold the Election Assistance Commission accountable.

I would now like to recognize my good friend, Ranking Member Jose Serrano.

Mr. SERRANO. Thank you so much.

I would also like to welcome Inspector General Crider to this hearing today. The Inspector General's Office has the important job of reducing waste, fraud, and abuse not just at the Election Assistance Commission but also among the States and territories that have received and used Help America Vote Act funds.

As you know the Help America Vote Act was passed in the wake of the 2000 elections. The goal of the act was to help States to upgrade their voting equipment and election administration, to help develop an ongoing series of testing standards and best practices in these areas, and to create a clearinghouse of information for States to use. I am looking forward to hearing more about how well the EAC has done this job and what they can do to improve their efforts. In addition, I am interested in learning more about how States have used their Help America Vote Act funds to improve their voting systems and election administration.

From your testimony, I understand that you are concerned about the amount of money the Election Assistance Commission spends on management activities. While I think this should be an area of concern, I would like to point out that many of these activities, in particular, the public meetings and advisory board activities, are mandated by law. These are activities that improve the EAC's transparency and accountability to the States it provides assistance to and to the public as a whole. As we move forward with the fiscal year 2012 budget request and as we continue to work on the continuing resolution for 2011, I would hope that we remember that.

I always like to say that the Election Assistance Commission is a small agency with a big job: to help ensure that our elections are open, accessible, and secure. The IG's Office plays an important role in ensuring that the EAC performs its work to the best of its ability. I look forward to your testimony.

Thank you.

Mrs. EMERSON. Thank you, Joe.

Mrs. EMERSON. Mr. Crider, we will now recognize you for your opening statement. If you would be so kind as to try to keep it to 5 minutes, that will give us more time to ask questions. Thank you.

Mr. CRIDER. Good morning, Chairwoman Emerson, Ranking Member Serrano, and members of the subcommittee. Thank you for inviting me to come today to talk to you about the U.S. Election Assistance Commission and our operations in the Office of Inspector General.

My office is an independent office in the EAC. Our role is to review EAC programs and operations with an eye toward helping the agency be more efficient and more effective. We also audit the funds distributed by the EAC to ensure the money is spent for the right purposes and in keeping with Federal rules.

A large portion of our resources have been dedicated to auditing the Help America Vote Act grants that have been given to the States. The EAC has distributed \$3.3 billion in funding to the States for election equipment and procedures. To date, we have completed 31 audits of 28 States covering \$1.3 billion. We examined State expenditures to determine if they were made for appropriate purposes, were properly charged to HAVA grants, and were supported by appropriate and sufficient records.

Our audits have shown that, by and large, States use HAVA funds for appropriate purposes and that they have the needed documentation to support those charges. We have identified \$31.3 million in questioned costs and additional program income in our 31 audits.

The EAC has also distributed \$50.9 million in discretionary grants in the six smaller programs. We have only audited a few of these smaller grants. However, those audits have raised some concerns about these funds and the manner in which they were used.

In 2009, we received a congressional request to audit two small grants under the Help America Vote College Program. We began what we believed would be a very simple, straightforward audit of \$33,000. What we found was that the grantee did not have records to support his charges to the grant. We questioned all of the costs charged to the grant, and the grantee is in the process of repaying those funds now.

The second major focus of our work was on EAC operations. We oversee the annual audit of the EAC's financial statements and fiscal compliance reviews which is done by outside contractors. In addition, we have issued seven reports covering six reviews and one investigation of EAC operations.

Our reports have revealed the good and the bad about EAC operations. Not all of our reports are negative. We conducted reviews of the EAC's Internet usage and the use of appropriate funds for settlement. We determined the EAC had proper controls to prevent access to adult content, gambling, and shopping sites. That is what our report says. We also found that the EAC followed the laws in using its funds to settle a prohibited personnel practices claim.

Our reports have also identified areas where EAC can improve its operations. For example, in 2008, we issued a major report on the assessment of EAC's financial and program operations. We found that the EAC did not have internal controls or policies and procedures in place to guide its programs and operations. We made 29 recommendations related to needed policies and procedures. The EAC has implemented the vast majority of these recommendations and adopted policies and procedures in most of its programs.

We also found a situation where EAC did not violate law or regulation, but where better choices could have been made in the use of Federal funds. One such example was our review of the EAC purchase of T-shirts. While this was only a \$7,000 purchase, the EAC bought 5 shirts for each of its employees as an employee incentive award, and they still had about 200 shirts in inventory. While this purchase was not illegal, it was just not a good use of taxpayers' funds.

Our investigation in the EAC's operating environment also showed no violation of Federal antidiscrimination laws or whistleblower laws but did reveal employees fear retaliation for making complaints or identifying wrongdoing. It also showed that employees believe that it was an "us versus them" atmosphere at the EAC.

In the failure of the EAC's employee service in 2007, 2008, and 2009, they showed that an information divide exists between management and staff. The 2010 survey results are now in, and the EAC is in the process of evaluating those. Those results should be available the middle of March, and we are hoping that there is significant improvement in the results of the survey.

The EAC's fiscal year 2012 budget request seeks \$13.7 million, with \$3.25 million being transferred to the National Institute of Standards and Technology. The EAC proposes the operating budget

of \$10.45 million. This is a 27.7 percent reduction from its operating budget in 2010. The OIG takes its fair share of that cut. Our portion of the EAC budget will be \$1.56 million. While this is a sizeable reduction from our previous budgets, we will continue to conduct audits and investigations, albeit just a few less than we have done in previous years.

We know that members of this committee have previously raised concerns about EAC's overhead and management costs. This budget would appear to verify those concerns. More than 51 percent of the EAC's fiscal year 2012 budget is dedicated to overhead and management charges. The EAC should take a hard look at its management and overhead costs to determine if savings could be achieved to bring management costs more in line with program costs.

The EAC has committed to doing this analysis. In their transmittal with the budget justification that was provided to Congress, they have indicated they are willing to do a study and make the necessary changes to bring the costs in line. We think this committee should hold the EAC accountable to its word, make sure this analysis is conducted and whatever changes that need to be made are made by the EAC.

Our role is to make recommendations that improve the EAC and to protect the taxpayers' investment in our Nation's election process. We will continue to work with the EAC and this committee to make the EAC's programs and operations economical, effective, and efficient.

It is my pleasure to be here today, and I will be more than happy to answer any questions you have.

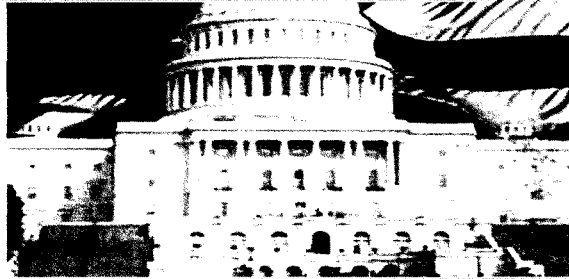
Mrs. EMERSON. Thank you so much, Mr. Crider.

[The information follows:]



March 2, 2011

Testimony of Curtis W. Crider, Inspector  
General, before the U.S. House Appropriations  
Committee, Subcommittee on Financial  
Services and General Government



Curtis W. Crider, Inspector General  
U.S. Election Assistance Commission



TESTIMONY OF THE U. S. ELECTION ASSISTANCE COMMISSION OFFICE OF INSPECTOR GENERAL  
BEFORE THE HOUSE APPROPRIATIONS COMMITTEE,  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
MARCH 2, 2011

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Chairwoman Emerson, Ranking Member Serrano, and Members of the Subcommittee, thank you for inviting me to testify today. I am pleased to be here this morning to discuss the activities of the Office of Inspector General (OIG) and to provide insight into the economy and efficiency of the programs and operations of the U.S. Election Assistance Commission (EAC).

## INTRODUCTION

The EAC is a bipartisan Commission created and authorized by the Help America Vote Act of 2002 (HAVA). The OIG is an independent division of the EAC required by HAVA and the Inspector General Act of 1978 (IG Act) and created by the EAC in 2005. Our office is comprised of three full-time staff: the Inspector General, the Assistant Inspector General for Audits, and Counsel to the Inspector General. We also contract with two independent accounting firms for audit support and use the investigative services of other Federal agencies, when necessary.

The OIG's mission is to promote economy, efficiency and effectiveness in the EAC programs. To accomplish this goal, the OIG conducts regular audits of recipients of grant funds distributed by the EAC, annual financial audits of EAC's operations, and periodic reviews and audits of EAC program operations. In addition, the OIG helps to identify waste, fraud, abuse and mismanagement in EAC programs and operations by conducting investigations of complaints against the EAC, its grant recipients, or third parties involved in EAC programs.

## GRANT AUDITS

The EAC administers several formula and discretionary grant programs. The EAC has distributed \$3.2 billion in funding under the formula grants established in titles I and II of the HAVA. In FYs 2003, 2004, 2007, 2008 and 2009, the Congress appropriated funding to these programs totaling \$3.3 billion. Approximately \$56 million is left to be distributed. In addition to these grants, the EAC has distributed \$14.9 million in discretionary grants under the following grant programs: Help America Vote College program, Parent Student Mock Election program, Election Data Collection grant program, and Military Heroes Initiative. Last, the EAC has \$11 million in funding yet to be distributed under two discretionary grant programs: the Pre-election Logic and Accuracy Testing and Post-election Audit Initiative and Accessible Voting Technology Initiative.<sup>1</sup>

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<sup>1</sup> HR 1 would rescind \$5 million from the funding available for these programs.



TESTIMONY OF THE U. S. ELECTION ASSISTANCE COMMISSION OFFICE OF INSPECTOR GENERAL  
BEFORE THE HOUSE APPROPRIATIONS COMMITTEE,  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
MARCH 2, 2011

Over the past five years, the OIG has focused on auditing the large sums of money distributed to and spent by the states to improve the election infrastructure and procedure. These grants were available for limited uses. The uses of these funds include:

HAVA Section	Approved Uses
101	Comply with title III of HAVA; improve the administration of elections for Federal office; Voter education regarding voting procedures, voting rights, and voting technology; training election officials, poll workers, and election volunteers; develop the state plan required in title II of HAVA; improving, acquiring, leasing, modifying or replacing voting systems; improving accessibility of polling places; and establishing a hotline for voters to use to report voting fraud and voting rights violations, obtaining election information and information about the voter's status, polling place location and other relevant information.
102	Replace punch card and lever voting systems that were in use during the November 2000 election
251	Purchase or lease voting equipment that meet standards established in Section 301 of HAVA; implement a program of provisional voting; provide specified information to voters at the polling place; develop and implement a single, statewide list of registered voters; and identify first-time voters in keeping with the requirements of HAVA.

Section 102 funds were available for a limited period of time.<sup>2</sup> At the end of the period of availability, states must return any unspent funds or funds associated with precincts that still use punch card or lever voting systems. Section 251 funds required states to submit a state plan and to appropriate matching funds equal to five percent of the combined state and Federal shares. All funds must be deposited into an interest bearing account ("election fund") wherein earned interest could be used for the types of activities allowed under Section 251.

We audit the HAVA funds expended by the states. Our audits examine whether the funds were spent for approved purposes, whether expenses were made in keeping with HAVA and Federal guidelines for the use of grant funds, whether expenses were properly documented, whether the state met its matching requirement, and whether state and Federal funds were timely deposited into the election fund. We have completed audits of 28 states. These audits covered \$1.3 billion and resulted in \$31.3 million in questioned costs or additional program costs. Some common audit findings were:

<sup>2</sup> The deadline was originally the November 2004 election. However, states were permitted to request a waiver until January 1, 2006. This deadline was subsequently extended. The most recent change made the deadline November 2010.



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- Failure to maintain adequate time records for persons whose wages/salaries are paid from grant funds;
- Failure to maintain property control/inventory records for equipment purchased with Federal funds;
- Failure to appropriate sufficient matching funds;
- Failure to timely deposit matching funds or interest earned on HAVA funds; and
- Errors in reports filed with the EAC.

There have been state and/or Federal investigations in three states regarding the use of HAVA funds. In one instance, former state officials and contractors have been indicted on charges of money laundering, kickbacks and tax evasion.

We have ten state audits in progress.<sup>3</sup> Those audits cover \$800 million in HAVA expenses. Final reports on these audits will be available by the end of the current fiscal year. Approximately \$1.3 billion of the \$3.2 billion distributed by the EAC under the HAVA grant programs is yet to be audited.

Below is a chart detailing the HAVA funds that have been subject to audit by the OIG. The chart aggregates the amounts received and audited under the three HAVA grant programs. The amount audited also includes interest earned on HAVA funds as of the date of the respective audit.

State	HAVA Funds Received	Required State Match on HAVA Funds Received	Total HAVA Funds Available Excluding Interest	Total HAVA Funds Audited	Unaudited HAVA Fund Balance
Alabama	\$40,907,194	\$1,887,711	\$42,794,905	\$30,330,539	\$12,464,366
Alaska	\$18,021,803	\$685,358	\$18,707,161	\$0	\$18,707,161
American Samoa	\$3,319,361	\$0	\$3,319,361	\$0	\$3,319,361
Arizona	\$52,532,244	\$2,395,615	\$54,927,859	\$0	\$54,927,859
Arkansas	\$30,396,569	\$1,275,456	\$31,672,025	\$28,205,912	\$3,466,113
California	\$380,356,043	\$15,562,763	\$395,918,806	\$213,941,386	\$181,977,420
Colorado	\$45,784,267	\$2,039,309	\$47,823,576	\$0	\$47,823,576

<sup>3</sup> These audits cover some states that have previously been audited. The OIG selected these states for re-audit due to the large amount of money that had been spent since the states' prior audits.



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State	HAVA Funds Received	Required State Match on HAVA Funds Received	Total HAVA Funds Available Excluding Interest	Total HAVA Funds Audited	Unaudited HAVA Fund Balance
Connecticut	\$34,081,608	\$1,530,611	\$35,612,219	\$34,168,003	\$1,444,216
Delaware	\$16,596,803	\$610,358	\$17,207,161	\$0	\$17,207,161
District of Columbia	\$16,596,803	\$610,358	\$17,207,161	\$0	\$17,207,161
Florida	\$170,641,293	\$7,611,176	\$178,252,469	\$110,187,888	\$68,064,581
Georgia	\$83,231,168	\$3,719,705	\$86,950,873	\$63,562,054	\$23,388,819
Guam	\$3,319,361	\$0	\$3,319,361	\$0	\$3,319,361
Hawaii*	\$16,596,803	\$610,358	\$17,207,161	\$11,331,064	\$5,876,097
Idaho^	\$18,021,803	\$685,358	\$18,707,161	\$0	\$18,707,161
Illinois†	\$155,480,687	\$5,818,213	\$161,298,900	\$148,093,384	\$13,205,516
Indiana	\$70,193,158	\$2,865,278	\$73,058,436	\$61,430,159	\$11,628,277
Iowa	\$31,633,492	\$1,401,763	\$33,035,255	\$28,834,907	\$4,200,348
Kansas	\$29,022,045	\$1,264,318	\$30,286,363	\$24,666,652	\$5,619,711
Kentucky	\$42,070,094	\$1,942,192	\$44,012,286	\$20,349,296	\$23,662,990
Louisiana	\$49,051,620	\$1,936,238	\$50,987,858	\$50,673,813	\$314,045
Maine	\$16,596,803	\$610,358	\$17,207,161	\$0	\$17,207,161
Maryland	\$53,646,392	\$2,440,634	\$56,087,026	\$27,683,205	\$28,403,821
Massachusetts	\$65,115,060	\$3,000,273	\$68,115,333	\$0	\$68,115,333
Michigan	\$104,274,292	\$4,659,773	\$108,934,065	\$69,309,457	\$39,624,608
Minnesota	\$49,254,670	\$2,312,678	\$51,567,348	\$42,303,899	\$9,263,449
Mississippi	\$30,603,916	\$1,323,814	\$31,927,730	\$0	\$31,927,730
Missouri	\$62,262,661	\$2,363,929	\$64,626,590	\$52,632,344	\$11,994,246
Montana	\$18,021,803	\$685,358	\$18,707,161	\$15,380,563	\$3,326,598
Nebraska	\$20,021,034	\$790,581	\$20,811,615	\$0	\$20,811,615
Nevada^	\$23,144,727	\$954,986	\$24,099,713	\$19,631,090	\$4,468,623
New Hampshire	\$16,596,803	\$610,358	\$17,207,161	\$0	\$17,207,161
New Jersey†	\$84,904,403	\$3,582,505	\$88,486,908	\$45,136,106	\$43,350,802
New Mexico	\$20,599,671	\$821,035	\$21,420,706	\$14,123,471	\$7,297,235
New York	\$238,095,934	\$9,052,510	\$247,148,444	\$140,722,926	\$106,425,518
North Carolina	\$82,203,337	\$3,864,304	\$86,067,641	\$59,042,030	\$27,025,611

*This information is property of the U.S. Election Assistance Commission Office of Inspector General  
1225 New York Avenue, NW, Suite 1100, Washington, DC 20005  
(202) 566-3125 (p), (202) 566-0957 (f), [www.eac.gov](http://www.eac.gov)  
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State	HAVA Funds Received	Required State Match on HAVA Funds Received	Total HAVA Funds Available Excluding Interest	Total HAVA Funds Audited	Unaudited HAVA Fund Balance
North Dakota	\$18,021,803	\$685,358	\$18,707,161	\$0	\$18,707,161
Ohio	\$143,076,059	\$5,369,656	\$148,445,715	\$114,741,683	\$33,704,032
Oklahoma	\$35,200,723	\$1,589,512	\$36,790,235	\$0	\$36,790,235
Oregon	\$36,421,250	\$1,599,722	\$38,020,972	\$19,937,966	\$18,083,006
Pennsylvania†	\$147,009,727	\$5,935,242	\$152,944,969	\$159,099,053	\$0
Puerto Rico	\$9,004,545	\$308,074	\$9,312,619	\$0	\$9,312,619
Rhode Island	\$18,021,803	\$685,358	\$18,707,161	\$17,078,956	\$1,628,205
South Carolina	\$43,185,727	\$1,913,989	\$45,099,716	\$35,165,678	\$9,934,038
South Dakota	\$18,021,803	\$685,358	\$18,707,161	\$0	\$18,707,161
Tennessee	\$54,714,608	\$2,433,481	\$57,148,089	\$27,601,101	\$29,546,988
Texas†	\$203,631,823	\$9,481,879	\$213,113,702	\$168,206,340	\$44,907,362
Utah	\$26,804,496	\$946,669	\$27,751,165	\$28,076,877	\$0
Vermont	\$16,596,803	\$610,358	\$17,207,161	\$0	\$17,207,161
Virginia	\$69,121,820	\$3,025,756	\$72,147,576	\$33,270,545	\$38,877,031
Virgin Islands	\$3,319,361	\$0	\$3,319,361	\$0	\$3,319,361
Washington	\$65,825,930	\$2,785,687	\$68,611,617	\$42,474,187	\$26,137,430
West Virginia	\$22,043,424	\$879,836	\$22,923,260	\$21,340,794	\$1,582,466
Wisconsin*	\$54,013,843	\$2,474,263	\$56,488,106	\$44,043,079	\$12,445,027
Wyoming	\$18,021,803	\$685,358	\$18,707,161	\$7,967,787	\$10,739,374
<b>Total</b>	<b>\$3,195,253,076</b>	<b>\$133,620,789</b>	<b>\$3,328,873,865</b>	<b>\$2,030,744,194</b>	<b>\$1,304,609,467</b>
* Audit in progress					
†Second audit in progress					
^Audit planned for FY 2011					

The OIG has completed an audit of two of the Help America Vote College Program grants. Both grants were given to a single grantee and totaled \$33,750. Due to a lack of supporting records, we questioned all costs and the grantee is in the process of repaying all \$33,750. The OIG also has an ongoing audit of one of the five grants distributed under the Election Data Collection grant program. That grant is in the amount of \$2 million. The audit is expected to be completed in 2010.



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## AUDITS, EVALUATIONS, AND INVESTIGATIONS OF EAC

The OIG oversees annual audits of the EAC's financial statements and compliance with the Federal Information Security Management Act (FISMA). These audits are conducted by an independent public accounting firm. The EAC received an unqualified opinion on its FY 2010 financial statements. The EAC has shown dramatic improvement in its financial management processes since its first financial statement audit in FY 2008, which resulted in a disclaimer. The FY 2010 audit of EAC's FISMA compliance also demonstrated vast improvement and substantial compliance with FISMA. Prior audits had noted significant deficiencies in meeting FISMA requirements.

In addition to these annual reviews, the OIG has conducted six reviews of EAC programs and operations and one investigation into the working environment at EAC. Two of those reports found favorable conditions at the EAC and resulted in no recommendations. In each of the other reports, we made recommendations to improve the efficiency and effectiveness of the EAC programs.

These reports form the basis of our annual report on the EAC's top management challenges. For FY 2010, the OIG reported on five management challenges facing the EAC: performance management and accountability, financial management and performance, information technology and security, human capital management and records management. We resolved the financial management and performance challenge as the EAC had taken steps to implement all of the recommendations that had been made in the past financial statement audits and obtained an unqualified opinion on its current audit. The other four challenges remain open as EAC has yet to implement all recommendations made in various reports to improve its internal control structure, information technology and privacy act information security, working environment issues, and records management.

We consider the performance management and accountability and human capital management challenges to be the most significant. In 2008, the OIG issued its Assessment of the U.S. Election Assistance Commission's Programs and Financial Operations. In that report, the OIG issued numerous findings related to the need for documented policies and procedures. These recommendations touched nearly every division then existing at EAC, including communications, research, testing and certification, finance and administration, and programs and services (grants). While the EAC has made significant progress in developing policies and procedures, work remains to be done to complete policies and procedures for all of EAC's operations.



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The absence of documented policies and procedures has created and exacerbated other problems at the EAC. One example is the disclaimer that EAC received in its first financial statement audit. Also, failure to implement policies and procedures has left an information gap and a lack of understanding of expectations on the part of EAC employees. This information divide is evidenced in EAC's employee surveys. In 2007, 2008, and 2009, the employees reported a lack of understanding of the goals and priorities of the organization as well as the expectations on them as individual employees. Based on the 2009 survey, less than half of respondents believed that:

- Managers communicate the goals and priorities of the organization (45%);
- Leaders generate high levels of motivation and commitment in the workforce (42%);
- Employees have a feeling of personal empowerment with respect to work processes (34%);
- Promotions are based on merit (34%);
- Employees understood what they had to do to achieve a certain performance rating (41%); and
- Pay raises are dependent on how well a job is performed (28%).

Employee Survey 2009, questions 15, 18, 20, 26, 29, and 31.

These employee concerns were echoed in our 2010 investigation into the EAC's working environment. The investigation was spurred by 15 complaints from confidential and anonymous sources alleging infractions from cronyism to retaliation. The investigation was conducted by another Federal Office of Inspector General on our behalf. It revealed that the EAC did not have a hostile working environment as defined by Federal statute and no actual retaliation occurred. However, it did open a window in to the fears and concerns of EAC employees, the existences of an "us/them" environment, and potentially inappropriate activities at EAC events.

We referred the investigative report to EAC management for follow up under our human capital management challenge. As a part of that challenge, we admonished the EAC to address expressed concerns with performance measurement. Employees who are performing should be rewarded, and those that are not should be disciplined. In addition, we noted that EAC must ensure that people with appropriate skill sets are tasked to perform critical functions. The EAC has hired a number of competent and trained personnel to assist with its financial and other administrative needs. The EAC has significantly increased the total number of employees and its corresponding administrative costs. In these tight economic times, the EAC must take a hard look at its workforce and resources to ensure that needed skills are retained.

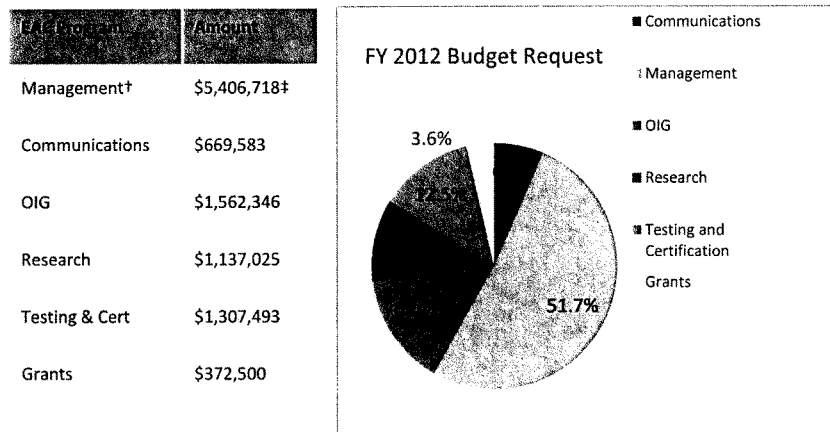




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## EAC'S OPERATING BUDGET

The EAC's FY 2012 budget request totals \$13,715,665, which includes a transfer of \$3.25 million to the Department of Commerce National Institute of Standards and Technology. EAC is left with an operating budget of \$10,465,665. This is a significant reduction over its FY 2010 and FY 2011 continuing resolution operating budget of \$14,459,000. In its submission accompanying the President's budget request, the EAC disburses the \$10,465,665 as follows:



†Management includes expenses for the following offices and activities: Commissioners, advisory boards, Executive Director, public meetings, General Counsel, Chief Operating Officer, and Chief Financial Officer. We believe that the management allocation also includes infrastructure costs such as rent that could be allocated to the programs.

‡The \$5,406,718 proposed by the EAC for its management expenses is understated by \$10,000. The sum of the line items in the management section total \$5,416,718. For purposes of this testimony, we will use the numbers as presented by EAC despite their errors.

The OIG's portion of the FY 2012 budget is proposed at \$1,562,346. With these funds, the OIG expects to continue to audit states and EAC programs, albeit at a reduced level. We will continue to work with three full-time staff and contract auditors.



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The FY 2012 allocations result in reductions to all programs but at different levels. Below is a chart showing the amounts allocated to the EAC programs in FY 2010 and the percentage reduction to the programs in the FY 2012 proposed budget.

EAC Program	FY 2010 Allocation	FY 2012 Request	% Reduction in FY 2012
Management	\$6,520,094	\$5,406,718	17.1%
Testing and Certification	\$1,861,008	\$1,307,493	29.7%
Research	\$1,544,817	\$1,137,025	26.4%
Communications	\$848,752	\$669,583	21.1%
Grants	\$1,914,069	\$372,500	80.5%
Office of Inspector General	\$1,770,259 <sup>4</sup>	\$1,562,346	11.7%
<b>Total</b>	<b>\$14,458,999</b>	<b>\$10,455,655</b>	<b>27.7%</b>

We believe that the EAC's FY 2012 budget request demonstrates a continuing concern that this Committee has voiced regarding EAC's operation: that the EAC's overhead is too high. EAC uses \$5,406,718 to manage programs totaling \$3,486,601.<sup>5</sup> In its FY 2012 budget submission, the EAC stated a commitment to developing structural reorganization scenarios that would allow the agency to meet its statutory obligations with fewer resources. We would urge the EAC to take a hard look at its overhead and infrastructure in comparison to its program costs. We believe that there are cuts to be made and efficiencies to be accomplished in its administrative operations, winnowing away at what has become a bloated bureaucracy. We also would urge this Committee to hold the EAC to its word. The EAC must be accountable to this Committee and thereby the taxpayers of the United States as to their use of Federal funds.

However, we must caution that change may come slowly at the EAC. The EAC is operating with only two of the four Commissioner positions filled. With only two Commissioners, the EAC lacks a quorum and cannot vote or act to make policy and strategic changes. We hope that the Administration and Congress will act swiftly to fill these vacancies.

## CONCLUSION

As you are aware, some of your colleagues would propose to do away with the EAC. Representative Harper has filed a bill to abolish the EAC. While the Office of Inspector General functions as a part of the EAC, it is neither our job nor our prerogative to urge the abolishment

<sup>4</sup> The FY 2010 President's budget request for the EAC included \$1,888,960 for the OIG, while the EAC allocated \$1,770,259. The \$1,562,346 requested in the FY 2012 President's budget is actually a 17.3% reduction from the FY 2010 President's request.

<sup>5</sup> The program total excludes the funding for the OIG as the EAC provides no management function over the OIG.



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or the salvation of the EAC. Rather, it is ours to work with EAC and this Committee to make EAC operations more effective and efficient and to ensure that the money dedicated by Congress for election reform is spent for its intended purpose.

I appreciate the opportunity to come before the Committee today and share with you our work and our thoughts on how to improve EAC programs and operations. I would be pleased to address any questions that you may have.

**Curtis Crider**  
**Inspector General**  
**U.S. Election Assistance Commission**

Curtis Crider was appointed as the Inspector General for the U.S. Election Assistance Commission in August of 2006. Mr. Crider has 35 years of auditing experience in the Federal government. Mr. Crider is a 1975 graduate of Clemson University. He is a certified public accountant and a certified internal auditor.

Mrs. EMERSON. As you are well aware, our country's debt is about \$14 trillion, and we in Congress are soon going to have to face the hard decision of whether or not to raise the debt limit. Our committee has a responsibility to address the unsustainable debt by reducing spending, and certainly I intend to do my best to make sure that the reductions we make in our budget are reasonable and sustainable. We are looking for any cost savings we possibly can find.

While I am pleased to note that the EAC requested \$4 million less for fiscal year 2012, which is a 24 percent reduction—and it would be good if all agencies could reduce their request by that much—I wonder if you believe that they could reduce costs by operating more efficiently; and, if so, what specific areas of their operations would you highlight?

Mr. CRIDER. The management administrative costs in particular are something that need to be looked at. It is that they have a very large management staff at EAC, and that is an area where I think that some savings could be generated. As I stated earlier, the EAC is committed to doing that type of an analysis, but I would think this committee should hold them accountable for that, to make sure that it does in fact get done.

There are opportunities to contract certain activities out to other Federal agencies such as human resources, accounting; procurement to other Federal agencies, such as the Bureau of Public Debt. Now, there will need to be resources on the EAC side to manage those functions or to make sure those functions are performed properly. But there are agencies that do this for other Federal agencies; like I said, the Bureau of Public Debt. That might be an area where we could take a look at in terms of okay, what do we need to do in-house and what can we let somebody else do for us?

When we have a contract in the IG's Office that needs to be let, we use the National Business Center to do our contracting because I don't have a contracting officer. We used the EAC to do one contract for us, but for all intents and purposes, we contract that function out to another Federal agency.

When we need an investigation done—I don't have an investigator on staff, and for a small agency like EAC, that may not be practical—I contract with another Federal agency to perform those services for us. So there may be areas like that that they could take a look at in terms how we can conserve some funds there.

Mrs. EMERSON. I appreciate that. The Bowles-Simpson Commission Report—I don't know whether you have read the whole thing or not—recommended significant reductions in government travel, printing, and other administrative costs. I believe the EAC should be able to achieve reductions or savings in those areas.

There have been some reports that the EAC has sent numerous representatives to conferences around the country, where simply a few staffers or perhaps one might have sufficed. Do you believe that the EAC could further reduce its costs in areas recommended by Bowles-Simpson?

Mr. CRIDER. It is my understanding the EAC is taking a very hard look at that. In terms of the printing costs, there was a proposal put forward in terms of not printing the State plans in the Federal Register, which would save a fairly significant amount of

money in terms of the EAC. And it is my understanding from talking to staff at the EAC, that they are taking a very hard look at the number of people that are going on this travel and trying to see whether they can reduce it. But I do think those are areas that need to be looked at. Like we don't travel. We do everything by conference call that we possibly can in order to cut our travel costs, and I think that is something the EAC should be looking at also, and I believe that they are looking at that.

Mrs. EMERSON. I appreciate that, and I also appreciate the fact that you are finding significant savings within your own office by using other parts of the government who have expertise in those areas.

It is my understanding that the EAC actually determines how much funding your office should request in the annual budget process, and I find that troubling given the fact that you are an independent office, given your oversight of the Commission. Do you find that that arrangement limits your ability to seek the level of resources you all need to accomplish your mission?

Mr. CRIDER. I put my budget in separately in terms—I submit a separate budget package to the EAC detailing how much money that we need. The cut that we are taking this year is at the direction of OMB. The cash drawer is empty, and we all have to conserve money. We all have to understand that there is not near as much money as we would like to have necessary for operations.

We are not a line item in the budget. The budget is then allocated back by the EAC, back to my office. We have not had any major problems in the past in terms of getting those funds back, but it is an area that could—it is just a matter of time before I irritate the agency again because that is just the nature of my work. They could take that out and say, okay, we are not going to give you any finding, or we are going to cut your funding. And my only recourse at that point in time would be to go to OMB and then to appeal to our oversight committee saying, they are doing this to us. But if nobody stepped up and said, okay, you can't do this, then they could, in fact, do that.

So we are concerned about it. We would like to be a line item in the budget to protect that funding, and I think that would give us—that would help our independence. It is just something we would like.

Mrs. EMERSON. Are there any other agencies whose IG budget is not a separate line item?

Mr. CRIDER. Yes, there are a number of them, okay. We are small. We are considered a DFE, a Designated Federal Entity IG, and a number of us are very small. And like I said, we are not necessarily line items. We would like to be a line item.

Mrs. EMERSON. Okay. I appreciate that. Mr. Serrano.

Mr. SERRANO. Thank you.

Before I ask you a couple of questions, something comes to mind that I just think we need to remember. You know, if we are thinking only about cutting budgets—and that is what we are doing now—this statement could be true for every agency that we face on any subcommittee, which is that we have to try to balance what we do with the services that are rendered by those agencies.

One of the characteristics of human beings is that we tend to forget—and we are looking now at the EAC—it is a small agency that may have problems and that a lot of people are not ready to stand up and support during difficult budget times, and it may disappear in the future. The law may be one of those that also doesn't get fully implemented, unfortunately.

We forget HAVA came about because in 2000 we had a very, very, very difficult election result; and when I say difficult, that count that went on and the uncertainty and the pain, and the gentleman's State went through a very difficult time, and it doesn't matter what side of the equation you are on, Bush or Gore. It was painful for our country, and HAVA came about because of that, to try to remedy that.

And I think as we move forward we have to remember that. We shouldn't forget that that was the reason the EAC was created, to hope that in the future we never have a situation like the one we had. Because when you see folks all over the world clamoring for systems that look a lot like ours, then you have to make sure you keep reinforcing ours and give everyone a chance. It is not enough to say we have the greatest system on Earth of any kind. The question is, is everyone participating equally? Is everyone getting the opportunity to participate? And that is what HAVA is supposed to accomplish.

Inspector General, the last page of your testimony sums up what I believe is one of the biggest challenges facing the EAC today. Only two of the four commissioner positions are filled. Without a full Commission, the EAC cannot vote or act to make policy and strategic changes. Understanding that these vacancies are not the most pressing issue before Congress right now, what can the EAC do to address your concerns right now? Without the other two commissioners, what is realistic?

Mr. CRIDER. The agency can function, according to the General Counsel's Office. They can perform a lot of their duties and responsibilities. While they cannot set policy, they can undertake some of the other actions that might be warranted at this point. We agree we would like to see the commissioners appointed. I think that would be a very beneficial thing for EAC to stabilize the organization, get the new commissioners in, and let the agency move forward if it is to continue to exist.

But we do agree with you, we would like to see the two commissioners appointed, but they can still do a lot of stuff. They can award grants. They can conduct oversight. They can continue with their testing and certification programs. Their research projects can continue. So the EAC can continue to function on an operational level.

Mr. SERRANO. And you don't feel that not having the commissioners fully in place may leave open challenges where people say, well, the Commission was not fully put together when it made that decision?

Mr. CRIDER. I would—there is that possibility. Like I said, we would like to see the two commissioners appointed, because I think that would be best for the organization, and it would forestall anything like that. There was another small commission that had only 2 commissioners. They continued to operate, and the Supreme

Court basically set aside a lot of the work that they had done because they did not have a quorum. And like I said, we obviously want to make sure that doesn't happen at the EAC.

Mr. SERRANO. Okay. We all want our tax dollars to be used efficiently and effectively. That is not an issue of disagreement, and we all want open, fair, and accessible elections. With that established, what are the most important steps that you believe the EAC should take to increase efficiency?

Mr. CRIDER. We would like to see them not only to take a look at the administrative and management side to see, okay, can we streamline this, can we move some of the money back into the program side to help the programs perform their mission and objective? That is the issue in the human capital management at the EAC, or areas where we would like to see aggressive—things being addressed aggressively so that the EAC can move forward.

The EAC is a very good organization. I think it has a mission to perform, but it needs to be managing itself efficiently and effectively.

Mr. SERRANO. Now, how does that balance with my comments in my opening statement that some of these decisions, if not all, are mandated by law?

Mr. CRIDER. There are only a few positions mandated by law.

Mr. SERRANO. Okay. And the rest you think are just fat that could be removed in some cases?

Mr. CRIDER. I don't want to use the term "fat". This is where they need to do their analysis to determine what resources level they need and what skill-sets they need. We are not necessarily talking here about numbers of bodies, we are talking about skill-sets. What skill-sets are needed by the agency and do we have those skill-sets, and can we then trim in terms of anything that we don't feel is a success at this point?

I realize we are talking about human beings and their jobs, but in the tight budgetary times that we have, we have to be efficient and effective.

Mr. SERRANO. But your suggestion is, trim it and then use it for programmatic—

Mr. CRIDER. If there are ways we can trim it, and can we move the funds now to the program side?

Mr. SERRANO. One last question for this round. The President's budget for the EAC for fiscal year 2012 is \$13.7 million, of which 3.25 million will be transferred to the National Institute of Standards and Technology. This leaves EAC with \$10.5 million for fiscal year 2012, which is \$4.2 million below the fiscal year 2010 level in terms of operating expenses. Isn't the reduction in budget for the EAC proof that this agency has, in fact, found efficiencies already? Are you advocating for further reductions in the budget?

Mr. CRIDER. The budget reductions have not—are just now starting to occur, and the EAC has got to look at its operations in terms of how much money we are going to have and how we are then going to get the work done. And this is where we think they need to look at the administrative side, because they are still operating at \$17.9 million in terms of the continuing resolution. So this is going to be a very drastic reduction in 2012, and we think that



they need to start planning for that now, looking at their administrative side and determining what resources they do need.

Mr. SERRANO. Thank you.

Mrs. EMERSON. Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you very much, Madam Chairwoman. How are you, sir? Thanks for being here.

Do you know approximately how many States that have HAVA grants, how many of them are yet to be audited?

Mr. CRIDER. There are 55 jurisdictions, and we have completed audits of 28 States.

Mr. DIAZ-BALART. Any idea what the timetable is of the completion of those that have not been completed?

Mr. CRIDER. There is still a fairly significant amount of money out in the States that has not been spent; in excess of \$800 million. So a lot will depend upon, in terms of how fast the States spend those funds. I mean, they control how fast they spend it. So a lot will depend on how fast they spend it.

We are able to do—this year, we have 10 audits underway right now and covering another \$800 million in costs, which will bring our total audit up to about \$2 billion, and that will leave about 1.3, \$1.4 billion still out there to be audited at that point.

Mr. DIAZ-BALART. Eight hundred million dollars that still has not been spent. That is quite a substantial amount of money. Do we know why is it—

Mr. CRIDER. I don't know the answer to that, sir. The EAC may have a better understanding of that. When we go out, we just look at how much they have spent.

Mr. DIAZ-BALART. Great. It is my understanding that your office did an audit of two EAC project vote grants—

Mr. CRIDER. Yes, we did.

Mr. DIAZ-BALART [continuing]. Which funds subsequently went to ACORN?

Mr. CRIDER. Yes, sir.

Mr. DIAZ-BALART. And it is also my understanding they provided no records of where the money went. Is that correct? Is my understanding correct?

Mr. CRIDER. Yes. Yes, it is.

Mr. DIAZ-BALART. Any ideas of how to prevent similar situations like that one from happening in the future?

Mr. CRIDER. Well, audit is one. By going out and doing audits is how we find this stuff, so I think audits are very important. But I also think oversight—is that when we looked at the records at the EAC, is that we found they should have had some additional records that they did not have, and I think that would have helped them. But you know, when you go out and grantees do what they do, and usually you find out after the fact in terms of whether or not the records are adequate or not. Like I said, that is where audit comes into play.

Mr. DIAZ-BALART. Absolutely. That is why it is crucial you are there to do your job. Is that an unusual situation, where no records are found to follow the money?

Mr. CRIDER. Unusual. Like I said, we thought we would be in and out in a couple of weeks. It is not that much money involved. So we were a little bit dismayed when we found that they had no

records. I hope I don't find we are in that situation again. Now, we run into problems with States periodically where their records are inadequate, but usually we work through the issue with the State. But in this particular case, like I said, there were just no records.

Mr. DIAZ-BALART. Who is responsible so that that doesn't happen? You know, are the States the ones who are responsible for that? Who is supposed to be tracking that at the time? Obviously you go back and you do audits afterwards, but at the time, who is responsible? And the reason for my question is: Is there any accountability for those who are responsible; or is there a clear, you know, chain of responsibility in a case like that?

Mr. CRIDER. The grantees are required to maintain their records. So that is where that responsibility lies. As the grantor, the agency has limited ability at times to go—because that is what audit is all about.

Mr. DIAZ-BALART. True. I think I know the answer to the next one, but I have to ask it. In the fiscal year 2012 budget request for your office, I believe it shows 50 percent of your proposed funding will go to management expenses compared to 10.9 for research and 12.5 for testing and certification. You know, in a vacuum, one would say, wow, that is a lot of money for management. I think you have kind of addressed that, but I think it is important that we hear it from you as to why those numbers look like that, because obviously if you looked at it in a vacuum, it wouldn't look that good.

Mr. CRIDER. There is no doubt we are concerned about the amount of overhead at the EAC, and as Ranking Minority Member Serrano indicated, it is a small agency and there are certain functions the EAC has to perform. They need to look at ways to be more efficient and more effective, and that is what we are asking them to do. Like I said, as a part of their budget package, they have indicated their willingness to do that. I talked to the person doing the analysis this morning. They are doing the analysis, and hopefully we will have some results here shortly in terms of what the analysis shows.

But I think it is important for this committee to also monitor that to make sure, in fact, it does get done; and if reductions are identified, that those reductions, in fact, do occur.

Mr. DIAZ-BALART. Right. Because, again, in a vacuum, if you looked at an agency where it is 50 percent management and then, what, 12.5 and 11 for testing and certification and research, it gets to the point where you think, again, they are small—I understand that—but it gets to the point if they are that small and they are spending this little on research and testing, and then are they really even doing what they are charged to do? It may not be their fault because they don't have enough budget, but the fact may be the same that they are basically spending all their money, in essence, on management and not doing much else.

Mr. CRIDER. And that is what our concern is, okay, and that is why we think it needs to be looked at.

Mr. DIAZ-BALART. Thank you, Madam Chairman.

Mrs. EMERSON. This is interesting because when we had the Commission members, or at least the Chair, before us last year, and we brought up the management issue, we were told that they

needed all the management staff. Of course, now we know that other agencies, whether it is GSA or the Debt Commission or whomever, can perform those functions for the smaller agencies, and it is an interesting contrast.

Mr. CRIDER. What happened was they were over here and then they got over here. The answer is somewhere in the spectrum here in terms of where they need to be, and I think they are starting to recognize that themselves and they are willing to look at it. And I think it is a very positive step on their part that they are willing to look at it. We just need to make sure they do it.

Mrs. EMERSON. I appreciate that. Ms. Lee.

Ms. LEE. Thank you, Madam Chair. Good morning. Thank you for being here.

Let me ask you how the EAC carries out its core mission of ensuring the voting systems are in place and are accessible for everyone; also, to count both quickly and accurately and to ensure that any contested elections can be resolved so that we don't face the uncertainty of the 2000 elections again.

I don't believe, and correct me if I am wrong, that you asked detailed questions about the specific failure of electronic machines. And so if you don't do that, how do you measure the performance of voting systems that you certify if you don't ask States how the voting systems are performing or failing to perform in actual elections? I think all of us know the difficulties and some of the problems with voting machines in the past, and so we thought that probably the EAC would be able now to assess their performance and know what the States are doing as it relates to these machines.

Mr. CRIDER. Congresswoman, I am going to have to punt back to the agency. The EAC is the best one to be able to answer that question for you. I am not in a position to provide that information. So I think you need to go to the EAC for that.

We have put an audit in our work plan for 2011 to go out and try to do an operational review of the testing and certification program. We will have to contract that audit out because we do not have the wherewithal internally to do it. The IG's Office is only three people, and it is a fairly technical review. We have actually had some conversations with GAO about the review and actually tried to get GAO to do it because they have already done—they did two policy reviews of the EAC testing and certification program. We are not going to be able to do that audit in 2011. Due to budgetary situations, we can't award a contract. Like I say, we have to contract the review out. We won't get it done this year, but we do agree that the program should be looked at. So if you guys would like to request GAO do that, we would be more than happy to help GAO on that.

Ms. LEE. So you think it should be looked at?

Mr. CRIDER. It should be looked at, okay. The program is moving now into actually testing equipment, certifying equipment. Now is the time to do operational review and say, okay, is it working properly? In order for us to get the voting public confidence in this equipment, we have to make sure the certification program is working properly, and I think that will help people get some confidence in our voting process, and like I said, we just don't have

the wherewithal to do it right now, but we do think it needs to be done.

Ms. LEE. Well, have you requested that it be done or requested us to ask for it to be done?

Mr. CRIDER. Well, this is our first opportunity to testify before this committee. So, like I said, you know, we have talked to GAO and they have indicated that they don't have—they have got a lot of requests, too, and we did talk to House Admin last year about maybe trying to get them to get it done, but it hasn't been done yet. Like I said, it is something that needs to be done, and if you would like to get a letter from us indicating—

Ms. LEE. I would like to do that because we have been asking for quite a while. There seem to be roadblocks and we would like to get a letter.

Mr. CRIDER. Okay.

Ms. LEE. And then I would definitely pursue how we can get that done.

Mr. CRIDER. Okay. Thank you very much. We appreciate the help.

Ms. LEE. Thank you again. Can I ask one more question? When you do these audits, do you do them—when you contract out with minority women-owned audit companies and accounting companies—or how do you make sure that the audit functions are inclusive of diversity in the industry?

Mr. CRIDER. The first contract we awarded for our grant audits was a straight competitive procurement, and we tried to make sure that the solicitation was sent to some minority firms. The firm that was selected to do the financial audit is a minority firm. We targeted small businesses, minority firms for that particular award, because it is perfect. And so like I say, we had it split.

But we are very cognizant of those goals and we try to make sure that we do make sure that when we do have a solicitation it goes to all appropriate problems.

Ms. LEE. Do you use the 8A program through SBA?

Mr. CRIDER. No, we do not. We have not used it in the past. We use the GSA schedules, and like I said, we did target this one for a—

Ms. LEE. Well, if you have a breakdown of the money that you use, the money that is spent on audit services and the breakdown of the contracts or the companies, I would like to see that.

Mr. CRIDER. Sure. We can provide that to you.

Ms. LEE. Thank you very much. Thank you, Madam Chair.

[The information follows:]



U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF THE INSPECTOR GENERAL  
1201 NEW YORK AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20005  
(202) 566-3100

March 9, 2011

The Honorable Barbara Lee  
Congresswoman  
United States House of Representatives  
2267 Rayburn House Office Building  
Washington, DC 20515

Via U.S. Mail and Electronic Mail

RE: Contracts awarded by the U.S. Election  
Assistance Commission Office of Inspector General

Dear Congresswoman Lee:

During a recent hearing before the House Appropriations Subcommittee on Financial Services and General Government, you requested additional information regarding contracts awarded by the U.S. Election Assistance Commission (EAC) Office of Inspector General (OIG). Specifically, you requested information concerning OIG contracts awarded to minority firms.

The OIG has two major contracts in place. One is for contract auditors to perform audits of states. That contract was begun in 2006, was for one year with four option years, and will expire in July of 2011. That contract was awarded to Clifton Gunderson, LLP, a large, regional audit firm. To our knowledge, Clifton Gunderson, LLP is not minority owned or a small business. The annual value of that contract averages approximately \$642,000. The second contract is for contract auditors to perform annual audits of the EAC's financial statements and compliance with the Federal Information Security Management Act (FISMA). That contract was begun in 2009, was for one year with four option years, and will expire in 2013. The financial statement and FISMA audit contract was awarded to Leon Snead and Company, a small, minority-owned business. The annual value of that contract averages approximately \$163,000. Both of these contracts were competed using the General Services Administration's Federal Supply Schedule (GSA schedule) of prequalified vendors. In both instances, we were able to negotiate rates below those set on the GSA schedule.

If you have any further questions related to procurements by the OIG or wish to discuss either of the contracts in more detail, please contact me at 202-566-3125.

Sincerely,

A handwritten signature in cursive script, appearing to read "Curtis W. Crider".

Curtis W. Crider  
Inspector General

Mrs. EMERSON. Mr. Womack.

Mr. WOMACK. Thank you, Madam Chairwoman, and I apologize for my late arrival.

You are a CPA?

Mr. CRIDER. Yes, sir.

Mr. WOMACK. So numbers mean something to you. When I look on the management side—and I know in response to Mr. Balart's question a minute ago, you talked about that—I want to drill down just a little bit further on it—\$5.4 million to manage programs totaling \$3.4 million; is that correct?

Mr. CRIDER. Yes, sir.

Mr. WOMACK. How do you justify that?

Mr. CRIDER. That is something you need to talk to the EAC about, okay, in terms of what their justification for that is. We share your concerns.

Mr. WOMACK. Now, I heard you use the “hope” word just a minute ago in response. I think it was to some audits or accountability. I was taught a long time ago in my military service that “hope” is not a method. And I think from hearing colleagues here talk about these very problems, that we are looking for solutions, real solutions, and more importantly than that, we are looking for some benchmarks and for some timelines, suspense dates, when certain things are going to be fixed or this can get kicked down the road. And so I am hopeful, hopeful, that the words actually mean something and they are not just an appeasement to us at the committee level. So, your response.

Mr. CRIDER. I agree with you. That is why I would think this committee's oversight in terms of making sure the EAC does what it needs to do is very, very important. One of the reasons is that—we got the recommendations implemented from our assessment report that we issued in 2008—was that Congresswoman Zoe Lofgren, when she was the chair of the Subcommittee on Elections as part of House Admin, required that the EAC report to her on a monthly basis in terms of where they were at in implementing those recommendations. That congressional oversight I think was extraordinarily valuable and critical in terms of getting those recommendations implemented. And I think that is a very valid approach for this subcommittee is to request that type of information from the EAC to make sure they do what they are supposed to do.

Mr. WOMACK. What would happen if there is a bill pending that you reference in your testimony from Representative Harper about abolishment of the EAC. And I realize, you know, you can't speak to do that, but what would be the net effect in America if the EAC and its programs went away?

Mr. CRIDER. I can't speak necessarily to the EAC side of the house in terms of their programs and operations. But I can speak to my operation in terms of what it would mean for us, or what it would mean, is that those funds would not be audited that are sitting out there unless the audit function was to move to another Federal entity, which is possible. That is doable, okay. It happens. So we would like to make sure that those type things and make sure that there is an opportunity for States to draw down their money. The States need to know where to file their financial reports. And the audit function, whether or not that should continue,

whether or not it is moved to another Federal agency or stays in the EAC is somebody else's decision.

But in terms of the implication on the rest of the Nation, they are talking about moving the testing and certification program to another Federal entity. I think the EAC would be in the best position to address your concerns, sir, in terms of what impact that would have.

Mr. WOMACK. That is fair. Thank you for your testimony.

Mrs. EMERSON. I want to go back to the grants just a little bit, if you don't mind. While I understand the funding has left the Federal Government coffers and is being held by the States, is there any realistic way that you can see for us to return some of that money to the U.S. Treasury since the States aren't using it?

Mr. CRIDER. No, ma'am. I don't think so. Chairwoman Emerson, GAO issued an opinion on this matter last year or the year before. These are considered formula grants, and that the money is obligated based on law, and that the States have a legal right to those funds at that particular point. So getting the money back does not seem to be a legal, viable option, in my view.

Mrs. EMERSON. Okay. So, in light of that, what is your assessment of the EAC's management of that funding?

Mr. CRIDER. They really don't—they send the funds out. The funds go out up front. The States have to put up their match and they have to file their certifications, and then the States are able to draw down their funds. They then file annual financial reports to the agency in terms of what they spent the money on. The States then are allowed to—the States do come in and request periodic guidance and things of that nature, but we have never really looked at their management and administration of those funds. Like I said, we have been focusing on the States at this point.

The EAC has just now developed policies and procedures for most of its operations as of September 2010. So we have somewhat held off on issuing the same report over and over again until they got their structure in place. And we couldn't see making the same recommendation multiple times: You need policies and procedures.

Mrs. EMERSON. Okay. So to what degree have you examined the manner in which the States are spending this funding? Have you uncovered any instances where the funding has been spent in a manner inconsistent with the intent under HAVA?

Mr. CRIDER. We have questioned \$31 million in costs that we have audited, which is not a huge percentage of the amount of money we audited.

Now, we have had a situation down in New Mexico where the Attorney General's Office of the State of New Mexico is actually prosecuting four individuals related to a contract that was awarded by the State for educational training and advertisements of the public media campaign, and the Attorney General's Office is prosecuting, like I said, four individuals, and two of the individuals have been indicted for Federal income tax evasion charges.

So, I mean, we do have situations, like I said, and we have had two inquiries from the FBI on two grants in two localities. With the FBI, they get information from you and they don't always tell you what they do. But like I said, we have a couple cases where things have happened.

Mrs. EMERSON. Have you actually found fraud in looking at the grants yourself, or has the FBI found out separately. How has that worked?

Mr. CRIDER. The New Mexico situation came out of one of our audits, okay. We had been requested by the new Secretary of State to come down several years ago and take a look at that program. And based on the results of the audit is that the State then picked it up from where we finished and followed the money all the way through. We went to the contractor. They took the money from the contractor after that point, and that is where it seems to be most of the activity occurred according to the indictment. That could have come out of one of our audits.

We have actually been very impressed with the States. I mean, they want to do the job right. They want to make sure the money is spent properly. They want to make sure they have adequate documentation. So, I mean, we are very impressed with the States. They have a very—they are very dedicated to the program. Like I say, they want to make sure they do it right, and we have had I think a fairly good working relationship with most of the States.

Now, one of the things they do do is sort of an interesting—is that when we publish a report, they all read that report and say, okay, do we have this problem? So a lot of times when we go out there, they have already fixed things that they had done that might have been questioned, and we welcome that. We think that is a wonderful mechanism in terms of trying to make sure the program is run properly.

We also publish a semiannual newsletter where we try to put out results so people are aware of what is going on. So, you know, if they have a problem in their program, they can fix it.

Mrs. EMERSON. That is good. Let me shift gears for just a minute to some contracting issues.

Chairman Lungren of the House Administration Committee and I have both raised concerns in the past with regard to the Commission's contracting practices and, specifically, we raised some questions concerning the EAC's practice of awarding contracts non-competitively or in instances where they received only one bid. Additionally, we questioned the degree to which EAC contracted out positions that contain inherently governmental roles. Have you looked into their contracting practices; and if so, what recommendations have you issued in response?

Mr. CRIDER. We have had that particular view in our work plan for 2 years running now, but because of resource limitations, we have not been able to get to it. But we do think it is a review that needs to be done, but we just haven't had an opportunity to get to it. We looked at, well, should we contract the review out in order to get it done? That is something we are looking at this year in terms of possibly contracting it out, but due to budgetary situations we have not been able to get there yet.

Mrs. EMERSON. I guess that begs the bigger question, then: do you think it is more cost effective for EAC to hire contractors for many of the missions it is responsible for, including you?

Mr. CRIDER. You have to look at each situation specifically in terms of what is being done and what is inherently governmental and what the results—what their accomplishments are. There is no



blanket answer to that one because there are certain things that are inherently governmental that you can't contract out.

Mrs. EMERSON. All right. I appreciate that. Mr. Serrano.

Mr. SERRANO. Thank you so much. You know, we talk about budget cuts and budget cuts, but I see from the proposed budget that you are asked to take an 11.7 decrease, your own office, from fiscal year 2010 to 2012. How will this affect you? What are you planning to do? Will you reduce the number of contractors that you use?

Mr. CRIDER. Yes, that is exactly it. We won't do a couple of audits, possibly. That is how we will do it. We will absorb it through our contracting.

Mr. SERRANO. You still feel confident that you can do the job, accomplish your mission?

Mr. CRIDER. Well, we contract our grant audits out, and that is where we will take the cut. We just won't do a couple grant audits. Will it extend the audit cycle? Yes, it will, but I have to live within the parameters of the budget that we are given because, like I said, the money is tight.

Mr. SERRANO. Now, in your testimony, you point to the fact that the EAC has made strides in several areas. They showed improvement in financial management processes and in compliance with the Federal Information Security Management Act. Can you tell us about these improvements?

Mr. CRIDER. Yes, sir. Whenever we did the first financial in 2008, the EAC received a disclaimer which is not unusual for a first-year audit, but they were not able to produce the records that the auditors needed to conduct their audit. There were a lot of internal control issues identified. There were a lot of problems in terms of their financial reports. They actually had to hire somebody, a contractor, to come in and help them figure out how much money they had left to spend. So there were a lot of issues involved.

They have subsequently gotten an unqualified opinion. They received an unqualified opinion on their financial statements last year, which is extremely good. So they made a tremendous amount of steps and improvements in that area, and I do want to give them compliments for that. They went from being in total disarray to having an auditable financial system.

In terms of the FISMA, they actually had no FISMA—they had no IT security program at all when I first got there, and we were issuing reports on an annual basis: You have no IT security program. They now have an IT security program. They are starting to address the PII data in terms of security. So they have made a lot of steps in that area, also. Like I say, they should be very pleased and very proud of what they have accomplished.

Mr. SERRANO. Let me ask you a quick question. Our chairwoman was asking you whether those dollars that went to the States and are not being used, can they be returned, and you said no.

Mr. CRIDER. Right.

Mr. SERRANO. I don't know if you answered this part or if she asked. Why would the States not be using the money or what is the problem locally?

Mr. CRIDER. I don't know the answer—

Mr. SERRANO. And you are hearing this from a person who represents a State that we almost had to drag into submission at one point. Probably will not go well back home that I said that. But you know, folks, there is money here, can we get it going, you know; and I think we were the last ones to use the scanning machine and so on, which I thought was kind of cool because you could see the whole ballot.

You know, I don't know how it is in your State, but in New York, you are placed on the ballot based on the size of your district. So if you represent the whole borough of the Bronx at a local level, you will appear on top of a Member of Congress because that is a smaller district. So on election day when you look at our numbers and you see lower numbers than the other parts of the country, some of the reasons are I have one of the youngest districts in the Nation, I have a lot of, as you know, a lot of immigrants, poor folks at times, but it is line number 24 to find Serrano. I mean, it is very—

Mrs. EMERSON. So, small physically. Is that what they are talking about?

Mr. SERRANO. Yes. So, for instance, we have a position called Bronx borough president—I am not mocking that. It is like county executive, except it really isn't. So that person represents the whole county of the Bronx. If we got on the ballot the same year, that person would be higher than the Member of Congress. Yet the Senator goes on top. So you see Schumer and Gillibrand, and then you have to go through a thousand judges and everybody else to get to your local Congressman. You know, very painful and very difficult for your ego, you know. Don't you know I am a Federal official, Federales, you know?

I don't know, I don't know what the question was, but if you can answer it.

Mr. CRIDER. Well, Ranking Member Serrano, I think you have a valid question, but I don't have an answer for you in terms of why the States are not spending their money. Maybe the EAC would be able to give you some perspective on that, but I don't know. But it is a good question, and I wish I had an answer for you.

Mr. SERRANO. Thank you. Incidentally, nothing—a great sense of pride in the Balart family who would understand this, but my son is a State senator. So, in addition, try in a primary Jose Serrano for Congress and then you have underneath Jose M. Serrano for State senate. You have a heart attack until they count the votes.

Mrs. EMERSON. You ought to try running twice in the same election like I did the first time in two different parties. That was even more interesting.

Mr. SERRANO. Thank you.

Mrs. EMERSON. Mario.

Mr. DIAZ-BALART. I am fine.

Ms. LEE. Well, I do have to follow up on this whole issue of unexpended funds in the States. I am just looking at my State, for example. What is it, \$181 million California has not—

Mr. CRIDER. Right.

Ms. LEE. What precludes States with budget deficits from using this money? And I know there are Federal strings attached that

have to do with, you know, HAVA; but what precludes them from back-filling, using this to backfill budget deficits?

And then, secondly, if they are not using the money, why don't we give them a waiver to use it for other efforts? If they don't use it for—if everything has been completed as it relates to HAVA, then what is the problem?

Mr. CRIDER. Well, what prevents them from using the money for other purposes is me.

Ms. LEE. Is what?

Mr. CRIDER. Is me. When I go out and do the audits, that is what we look for: Are you using the money for its designated purposes; are you using it for HAVA purposes, and of course with the law? That is what we do, and so that is where the benefit of audit comes into play.

Now, there are always activities related to some improvement of Federal elections in terms of there are always things that probably can be done. Now, if the Congress wanted to give them waivers to allow them to use the money for other purposes, that would be up to the Congress. That is a legislative thing but that is a congressional initiative.

Ms. LEE. But if they are not using it for HAVA, are they given suggestions on—maybe they haven't completed the work. Is that a possibility why these funds haven't been expended? Are they holding it for the next election, or what could be some of the reasons? I know you haven't had—goodness, if we cut your budget, how are you ever going to find out?

Mr. CRIDER. Like I said, that is something you try to direct to the EAC and see if they have any knowledge as to why these States are not expending their funds, but they are facing, as you pointed out, tough budgetary times, too, and some of this equipment at some point in time will have to be replaced. This is electronic equipment, and we are seeing some States are now having to replace some of the equipment.

I think Florida did it, and they were allowed to use the Federal funds for that. So, I mean, there will be a point in time where this equipment has to be replaced. It is electronic. So there are future expenditures that may be required.

Ms. LEE. So they could be holding them for future kinds of efforts?

Mr. CRIDER. The money is in an interest-bearing account, and the interest can be used by the State for program purposes. Now, that is a unique aspect of the HAVA law is that most States, when we have Federal funds in an interest-bearing account, the interest goes back to the Federal Government. HAVA was unique. It allowed the States to use those funds.

Ms. LEE. Only for program purposes relating to HAVA, though.

Mr. CRIDER. Yes.

Ms. LEE. That is good. So the States that haven't expended their funds, we don't need to assume they are using it for other purposes.

Mr. CRIDER. Right.

Ms. LEE. Also that they don't need it; they probably do need it for future expenditures.

Mr. CRIDER. Like I say, maybe the EAC will have a better perspective on that than I do. Okay, I am sorry I am not really able to address that for you.

Ms. LEE. Well, is there a way we can find out?

Mrs. EMERSON. We can have a meeting with the EAC commissioners if you would like. We could do a hearing, but we might get more out of a meeting.

Ms. LEE. I think that would be a good idea.

Mrs. EMERSON. Okay. I am happy to do that.

Let me ask you, Mr. Crider, you have investigated a number of questionable management practices within the EAC. Would you do me a favor and elaborate on some of the issues and the recommendations that you have offered to address them?

Mr. CRIDER. When you go back and read our assessment report in 2008, like I say, it contained 29 recommendations about policies and procedures and changes and strengthening internal controls. And that was a very significant report.

In the financial audit in 2008, we issued a number of recommendations there in terms of how to tighten the financial management system, how to improve the internal controls over the financial management.

The investigative report, we did not make any recommendations in the investigative report that was done by the Department of the Interior for us on the hostile work environment, because that was something that I think I should be held responsible for. We should have made recommendations in that report, and I did not. There are a number of issues in that report I think the EAC needed to address in terms of how its employees felt about managers, the employee appraisal system, things of that nature, that we should have made recommendations to them that we did not.

We just did a little review on an incident that happened at the Christmas party. We made recommendations in that report for additional EEO training for all of its employees, make sure supervisors were aware of their responsibilities regarding EEO, and if they see something that happens, how they needed to address it.

Mrs. EMERSON. Have you seen any cultural or management changes in the past several months that have been made there at the EAC?

Mr. CRIDER. They have a new general counsel on staff, and I think that he brings a perspective to the organization that will be very beneficial to the organization. He is the one that is doing the analysis of the administrative workload at the EAC, and I think that he recognizes that certain things need to be done at the EAC in terms of EEO training and EEO processes. And I am very hopeful that his leadership will be very beneficial to the EAC in helping them move forward in some of these areas.

Mrs. EMERSON. Will you be able to report back to us in about 3 months and let us know how that is going?

Mr. CRIDER. We will do that, yes, ma'am.

Mrs. EMERSON. All right. I would appreciate that very much. Mr. Serrano.

Mr. SERRANO. See, here is the concern that I have. Again, I think the EAC is an easy target for people who want to cut budgets, and when I say "people," everybody wants to cut budgets, some people

want to cut more than others. And at what point do we know if the States are set up to conduct elections with less or perhaps none of the concerns that we had in 2000 that brought us to create the EAC to begin with?

Mr. SERRANO. As I said before, these discussions go across the government. You know, I just came from a hearing of the Interior Subcommittee with the EPA. And you know, the discussion by one side, or 1½ sides of both aisles, will be when you cut, you know, how much do you cut EPA's ability to look after our water and our air and so on? What is the future going to be?

So, what is within your mechanism, within your setup, to tell Congress, you or someone else in the future, you know, States are doing what you wanted them to do or what you hoped would be accomplished by these grants and by this kind of oversight and this involvement? Because, you know, we—and again, this is just a statement for the record; everyone in this room can make the same statement.

We speak about the budget. We speak about the system. We speak about the future of the country. But at the center of all of that is this great ability we have to go to the polls in November and pick the people who will lead us at the local level or at the Federal level. So, to me, this agency is small but extremely important. Is there a setup, an ability to tell the Congress, to tell the American people we have reached a point where things are going well at the local level?

Mr. CRIDER. It is a changing target. A lot of these officials at the local level are elected. Most secretaries of state are elected. So there is turnover there. There is change. So I am not sure how you will ever get to that point where you are saying, yeah, everything is going to work perfectly, because it probably won't. Elections are a very complicated, very difficult process. There are going to be problems periodically. And whether or not those problems rise to the level of a national crisis, I don't know the answer to that. I don't have a good answer for you, Ranking Member Serrano. I don't.

Part of it is a political decision on the part of the United States Congress: Do they feel like we have gone far enough or not gone far enough or whatever they think needs to be done? I don't have a good answer for you.

Mr. SERRANO. Just for the record, the reason I asked you, because I don't have an answer at all. So don't feel bad.

Madam Chair, I have a couple more questions that I would like to submit for the record.

Mrs. EMERSON. Absolutely.

Mrs. EMERSON. Mr. Diaz-Balart, do you have any questions?

Mr. DIAZ-BALART. No, Madam Chairman. I am looking forward, though, to getting some answers on the other issue of the unspent funds.

Mrs. EMERSON. I think it is a great idea for us to have a meeting with the Commission members.

Mr. Crider, just to follow up with what Joe asked you, are you in a position to tell us whether or not the EAC actually provides States with useful information on voting technology and on administration?

Mr. CRIDER. Not at this point. We have not looked at those particular programmatic areas. And like I said, we would like to take a look at the testing and certification program because I think that is the linchpin program of EAC. That is their flagship.

Mrs. EMERSON. Well, I certainly think this does warrant us to have a meeting.

You touched on this in your testimony and this is my last question, and I have a couple to submit for the record as well. We didn't pursue it, but you said the secretaries of state and State election officials are, they are calling for the dissolution of the EAC, and it confounds me. Do you have some thoughts on this?

Mr. CRIDER. We have talked about it. We don't have an answer as to why they want to have EAC abolished. You know, it would be nice to know if there was an inherent problem or an issue that we need to address internally at the EAC or whether or not it is just a political decision or what it is. I don't have an answer for you. EAC may have a better feel for that than I do.

Mrs. EMERSON. All right. Well, certainly we have given the Commission these funds, and perhaps it is just "you have given us the money and now let us do our job" attitude. Who knows? But it certainly is something that we need to pursue. It is just puzzling to me, if nothing else.

With that, we will submit the rest of our questions for the record.

Mrs. EMERSON. And we thank you so very much for being here today.

[The information follows:]



U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF THE INSPECTOR GENERAL  
1201 NEW YORK AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20005  
(202) 566-3100

March 9, 2011

The Honorable Jo Ann Emerson Via U.S. Mail and Electronic Mail  
Chairwoman  
House Committee on Appropriations,  
Subcommittee on Financial Services and  
General Government  
8300 Rayburn House Office Building  
Washington, DC 20515

RE: Review of U.S. Election Assistance Commission's  
Procurement Process

Dear Chairwoman Emerson:

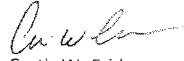
In a March 2, 2011 hearing before the U.S. House Committee on Appropriations, Subcommittee on Financial Services and General Government, you requested some information related to a future review of the U.S. Election Assistance Commission's (EAC) procurement process. This is a review that the Office of Inspector General (OIG) has been interested in conducting for some time. It has been listed on several of our work plans. However, due to budgetary constraints we have not been able to conduct this review.

We believe that the best use of resources would be for the OIG to contract with an independent auditing firm to conduct this audit. The audit should encompass a review of EAC credit card purchases, purchase orders, and contracts. The audit should examine the extent to which the EAC has used sole source and other than full and open competition. The audit should further examine the contract awards, administration, modification, and any subsequent work or contracts awarded to a prior vendor. The audit should also consider whether the EAC is using contractors to perform work that should be done by Federal employees. Last, the contract should examine the EAC's goals for contracting with small, disadvantaged firms and whether the EAC is meeting those goals.

We have not conducted an initial survey to identify the number and types of procurements that would be involved in the audit. We would anticipate that a sampling of the total procurements conducted by the EAC. Without a full understanding of the possible scope of the audit, it is impossible to provide an exact or tailored cost estimate for the audit. However, based upon the information discussed above, the OIG believes that it could obtain a contract with an outside firm to conduct this audit for somewhere between \$90,000 and \$110,000. The administration and oversight of the contracted audit would be included in the OIG's then-current salaries and expenses allocation.

We appreciate the opportunity to provide you with additional information concerning our plans to review the EAC's procurement process. If you have any questions or we can provide any additional information, please contact me at 202-566-3125.

Sincerely,

A handwritten signature in black ink, appearing to read "C. W. Crider".

Curtis W. Crider  
Inspector General



TUESDAY, MARCH 8, 2011.

**SMALL BUSINESS ADMINISTRATION**

**WITNESS**

**KAREN G. MILLS, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION**

Mrs. EMERSON. The subcommittee will come to order. Good afternoon to my colleagues, especially good afternoon to you, Administrator Mills, and welcome to our subcommittee. We appreciate your being here and greatly appreciate all the work you do on behalf of our small businesses around the country. We all know because of our districts—whether Joe’s or Rodney’s or mine—that small businesses are critical to improving the health of our economy. And with unemployment a wee bit better but still almost at 9 percent, job creation is the most important goal that we have.

America’s small businesses account for half of the country’s Gross Domestic Product, and we are responsible for creating 65 percent of net new jobs between 1993 and 2009. And I believe very strongly that the Federal government must find innovative ways to assist small business development and expansion. And I think you all are doing a good job.

And because of the critical role you play in assisting small businesses through capital—giving them opportunities to compete for government contracts and for all the work that you do with regard to technical assistance, I know that without SBA, an awful lot of businesses in my district would probably not even be there, so we are grateful to you.

The President’s fiscal year 2012 budget request for the Small Business Administration totals \$985 million, \$161 million, or an approximately 20 percent increase over fiscal year 2010. This includes a \$132 million increase in the 7(a) lending subsidy, and a \$90 million increase in administration for the disaster loans account. And I am worried about flooding. Heaven knows we are going to have some real challenges with regard to the whole disaster loan account.

I do understand that carryover from prior year supplementals previously supported costs associated with administering the disaster loan account and that this funding has run out.

I would like to see the administration find better ways to use the SBA to provide small business assistance instead of burdening entrepreneurs with additional tax and regulatory hurdles. And I am also concerned that in implementing massive new regulations on the health care and financial industry, the administration is over-regulating our small businesses and slowing their ability to expand operations and create new jobs.

With that being said, I am very interested and I know my colleagues are too in really listening to your ideas on how to stimulate job growth. I look forward to your testimony. I know you all are working tirelessly to help all American small businesses and we are grateful for your efforts.

Let me recognize our ranking member, Mr. Serrano, for his remarks and then we will go to you. Joe.

Mr. SERRANO. Could you do me a favor? Could you bang that gavel once?

No, no, no. Bang it. Elections have consequences for the chairwoman, and I want you to use that gavel with all your strength.

Mrs. EMERSON. I have been using it on the House floor quite a bit.

Mr. SERRANO. Yes, you have. If you have analyzed what I just said, in some weird way, it is a compliment.

Mrs. EMERSON. Well, I appreciate that. And it helps get rid of my frustrations, because I actually was thinking about who I was smashing.

Mr. SERRANO. Once I got the gavel I used it well.

Mrs. EMERSON. You did indeed, I agree.

Mr. SERRANO. If it comes back again, I will use it very hard.

Mrs. EMERSON. We will do our best to make sure that doesn't happen.

Mr. SERRANO. I am sure.

Mrs. EMERSON. As much as I love you.

Mr. SERRANO. You and a lot of other folks. Thank you and we welcome you, Ms. Mills, to this hearing today. Because of the crucial part that small businesses play in job creation in our continued economic recovery, the SBA has a very important role in promoting job growth. SBA facilitates small business development, training, technical assistance and company programs, government contracting programs and advocacy. The agency also helps businesses and homeowners affected by disasters through its disaster loan programs.

The agency's budget request for fiscal year 2012 is \$985 million in new budget authority. And I look forward to discussing this request with you during our questions. I am disappointed, however, that once again, this budget request underfunds some small business assistance programs that specifically help low income populations.

For example, Microloan Technical Assistance, a program that assists our smallest business owners, would be cut by \$9.2 million from fiscal year 2010.

Zero funding was requested for the Program for Investment on Micro Entrepreneurs, or PRIME. This program provides grants to help with training and technical assistance for disadvantaged business owners, particularly those in very low income areas. Particularly during difficult economic times these are not the programs we should be targeting for cuts.

I look forward to talking to you today about these programs and learning more about the progress you are making in some of your newer efforts. Again, we welcome you and we thank you for your service to this agency and to our country, thank you.

Mrs. EMERSON. Administrator Mills, please go ahead.

Ms. MILLS. Well, thank you very much, Chairwoman Emerson and Ranking Member Serrano and members of the committee. I am pleased to testify before you. Small businesses, as the chairwoman said, are the backbone of the economy, they create two out of every three jobs. And more than half of working Americans own or work for a small business. The SBA is a small agency, but we have a big mission. We put the maximum possible resources directly into the hands of small businesses, focusing on the 3 Cs, capital, counseling, contracting.

Last year we helped over 50,000 small businesses get the capital to grow and hire. We helped put about \$100 billion in Federal contracts in the hands of small businesses, and we counseled more than a million small businesses across your districts and throughout the country.

We put these resources in their hands while providing taxpayers a big bang for their buck. For example after credit froze in 2008, the Recovery Act and the Small Business Jobs Act supported more than \$42 billion in SBA loans at a subsidy cost of \$1.2 billion. Many small businesses suffered greatly from the recession. Our job is to support them as they grow and create jobs, and this job is not done.

The President's proposed fiscal year 2012 budget for the SBA of \$985 million, will support up to \$27 billion in loan guarantees, as well as many other tools and resources to help our small businesses across the country.

At the same time, this budget reflects a commitment to tighten our belts, to streamline our processes, and to eliminate duplication. This includes some of your ideas. For example, we looked hard at our technical assistance programs, and as a result, we do propose eliminating the PRIME program that the ranking member referenced.

With the work of our microlenders and some new efforts to recruit community-based lenders, we can continue to provide technical assistance just in a more cost effective way. In addition to the process reengineering, our disaster loan operations are now much more efficient. We can preserve our level of preparedness, with steady state core staff levels of 850, instead of 1,000, along with our 2,000 reservists.

The largest increase in our budget reflects the fact that we have reached the statutory limit of fees that we can assess. We request additional subsidy because losses, including those from loans approved when collateral such as real estate was inflated, have pushed up subsidy costs. We also request a legislative fix to return to near zero subsidy. We also request incremental increases for our new women's contracting program, and continued efforts to remove fraud, waste and abuse in contracting.

Overall, our priorities are twofold. We placed a focus on SBA programs that put money and support directly into the hands of small business owners in the places where they live. And we will continue to invest in oversight, to preserve the integrity of these programs, and to protect the interests of taxpayers.

I look forward to working with all of you, to continue to insure that small businesses are succeeding, because as you know, when they succeed, America succeeds.

Thank you very much, I would be happy to take your questions.  
[The information follows:]



**U.S. SMALL BUSINESS ADMINISTRATION**  
WASHINGTON, D.C. 20416

**TESTIMONY OF KAREN G. MILLS**  
**ADMINISTRATOR**  
**U.S. SMALL BUSINESS ADMINISTRATION**  
**BEFORE THE**  
**SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT**  
**HOUSE COMMITTEE ON APPROPRIATIONS**  
**MARCH 8, 2011**

Chairwoman Emerson, Ranking Member Serrano, and members of the Committee. I'm pleased to testify before you.

Small businesses are the backbone of our economy. They create nearly 2 of every 3 new private sector jobs. And more than half of working Americans either own or work for a small business.

The SBA is a small agency but we have a big mission. We put the maximum possible resources directly into the hands of small business, focusing on the three "Cs" of capital, contracts and counseling.

Last year, we helped over 50,000 small businesses get the capital to grow and hire; we helped put about \$100 billion in federal contracts in the hands of small businesses; and, we counseled more than a million small businesses across your districts and throughout the country.

Over the past two years, we provided taxpayers with a big bang for their buck. One example: Since credit markets froze in 2008, we supported more than \$42 billion in small business lending.<sup>1</sup> We still have work to do to help small businesses create the jobs we need, and the President's proposed FY12 budget for SBA is \$985 million.

Many small businesses suffered greatly from the Recession. Our job to support them as they grow and create jobs is not done.

The President's proposed FY12 budget for SBA of \$985 million will support up to \$27 billion in loan guarantees as well as many other tools and resources to help them do just that.

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<sup>1</sup> For more information about SBA's credit programs, see the 2012 Budget's Credit Supplement.

At the same time, this budget reflects a commitment to tighten our belts, streamline our processes, and eliminate duplication. This includes some of your ideas. For example, we looked hard at our technical assistance programs. As a result, we propose eliminating the PRIME program. With the work of our Microlenders and new efforts to recruit community-based lenders, we can continue to provide technical assistance in a more cost-effective way.

Also, we reduced the request to support Small Business Development Centers by \$10 million. This was a tough choice, but we believe it is reasonable due to additional funding in the Small Business Jobs Act.

In addition, due to process reengineering, our disaster loan operations are now much more efficient. We can preserve our level of preparedness with a steady-state core staff level of 850 instead of 1,000, along with our 2,000 reservists.

The largest increase in this budget reflects that we have reached the statutory limit for fees that we can assess. We request additional subsidy because losses – including those from loans approved when collateral such as real estate was inflated – have pushed up subsidy costs. We will also request a legislative fix to reduce or eliminate the need for credit subsidy.

We also request a sustainable level of support for administrative costs in our disaster loan program, as well as incremental increases for the new women's contracting program and continued efforts to remove waste, fraud and abuse in contracting.

Overall, our priorities are twofold. We have placed a focus on SBA programs that put money and support directly into the hands of small business owners where they live. And, we will continue to invest in oversight to preserve the integrity of these programs and to protect the interest of taxpayers.

I look forward to working with all of you to continue to ensure that small businesses are succeeding. Because as you know, when they succeed, America succeeds.



## SMALL BUSINESS ADMINISTRATION

### Funding Highlights:

- Provides \$985 million, a 45 percent decline from 2010 enacted funding, which included \$962 million in supplemental appropriations. Excluding supplemental funding, the 2012 request is \$161 million higher primarily due to increased estimated credit subsidy costs. Funding for administrative costs and Small Business Development Centers will go down as a result of fiscal restraints.
- Supports \$27 billion in loan guarantees for small businesses to enable them to invest, expand, and create jobs.
- Promotes impact investment in economically distressed regions.
- Helps innovative small businesses obtain early-stage financing.
- Encourages business development and economic growth through funding for technical assistance, including competitive grants to develop business leaders in underserved markets and to help businesses benefit from regional economic strategies.
- Continues implementation of Small Business Jobs Act initiatives, promoting technical assistance and small business exporting.
- Provides long-term disaster recovery loans for homeowners, renters, and businesses of all sizes.
- Strengthens lender and procurement program oversight to protect taxpayer dollars.
- Upgrades the Agency's financial management systems to improve the financial integrity and efficiency of SBA credit programs.

Small businesses play a vital role in job creation, economic recovery, global competitiveness, and the long-term strength of the Nation. The Small Business Administration's (SBA) mission is to help Americans start, build, and grow businesses. To deliver on this promise, the Administration proposes \$985 million, a substantial decline from 2010 enacted funding, which included significant supplemental appropriations for fee reductions and credit programs. Small business loan guarantees are funded in 2012 at historical fee and guarantee levels, but reflect higher estimated loss rates. As part of the Government-wide effort to reduce spending, funding for administrative costs and Small Business Development Centers will decrease.

***Invests in America's Businesses to Foster Economic Growth and Competitiveness***

**Spurs Job Creation by Enhancing Small Business Access to Credit.** Small businesses are the engine of economic growth and job creation. That is why the Administration is taking a series of steps to improve the access to capital for small businesses. First, the Administration supports \$16.5 billion in 7(a) loan guarantees, which will help small businesses operate and expand. This includes an estimated \$14.5 billion in term loans and \$2 billion in revolving lines of credit; the latter are expected to support \$48 billion in total economic activity through draws and repayments over the life of the guarantee. The Administration also supports \$7.5 billion in guaranteed lending for commercial real estate development and heavy machinery purchases; \$3 billion in Small Business Investment Company (SBIC) debentures to support new businesses and new jobs through early-stage and mezzanine small business financing; and \$25 million in direct Microloans, for intermediaries to provide small loans to emerging entrepreneurs and other borrowers unable to receive credit elsewhere.

**Promotes Impact Investment in Economically Distressed Regions, for Disadvantaged Groups, and in Sections of National Significance.** Beginning in 2012, SBA will be leveraging the SBIC debenture program to support \$200 million annually over the next five years in impact investments that are "place-based" (located in or employing residents of economically distressed regions); "people-based" (owned or managed by women, veterans, or a member of a socially or economically disadvantaged group); or "sector-based" (sectors that have been identified as national priorities). Two other initiatives—the Small Loan Advantage and Community Advantage programs—will increase the number of SBA 7(a) loans going to small businesses and entrepreneurs in underserved communities.

**Helps Innovative Small Businesses Obtain Early-Stage Financing.** SBA will also create within the SBIC debenture program a new vehicle—the Innovation Fund—to address the capital

gap many start-ups face between "angel investor" financing and later-stage venture capital financing. Over each of the next five years, up to \$200 million in guarantees for matching funds will be available to investors aiming to support innovative companies seeking to ramp up their operations and create new jobs.

**Helps Small Businesses Grow Smarter.** Entrepreneurs can be found in every part of the Nation. However, some need assistance to develop their idea fully into a growing business and start hiring new employees. That is why the Administration includes \$15 million for competitive technical assistance grants to support SBA's Emerging Leaders initiative and to enhance small business participation in regional economic clusters. The Emerging Leaders initiative provides intensive technical assistance to companies that have high growth potential and are located in distressed economic areas, such as inner cities and Native American communities, and connects them to regional business networks to accelerate economic and job growth. SBA will also promote small business participation in regional economic clusters by awarding competitive grants to facilitate greater coordination of resources such as business counseling, training, and mentor-protégé partnerships.

**Fully Funds and Reforms Long-Term Disaster Recovery.** The Administration supports \$1.1 billion in direct loans, the normalized 10-year average, for homeowners and businesses whose property is damaged by natural disasters. The Administration also proposes \$167 million for disaster-loan administrative expenses. SBA will streamline staffing and operations to use administrative funds in the most effective and cost-efficient manner, which is expected to provide savings relative to operating levels in recent years.

***Improves Cost-Effectiveness***

**Prioritizes Resources by Reducing Overlapping Funding and Extending Tax Breaks.** In 2012, small businesses will continue to benefit



from technical assistance funded by the Small Business Jobs Act, which for the 2011 and 2012 period provided \$50 million to Small Business Development Centers (SBDCs) and \$60 million for grants to States and localities to help small businesses export. Given the availability of these funds and fiscal constraints, the Budget proposes modest reductions in the level of additional SBDC funding requested for 2012. The Act also provided a variety of other credit program expansions and tax changes that are significantly benefiting small businesses, and the Administration proposes to permanently extend the Act's provision eliminating all capital gains taxes on investments in small business stock in order to enhance the flow of capital to small businesses.

**Helps Make the Guaranteed Loan Program Self-Sufficient.** Due to the economic downturn and higher defaults on prior loans, SBA's guaranteed loan programs are recording in

2011 a \$3.7 billion increase in losses and subsidy costs on their outstanding loan portfolios, excluding interest, particularly on guarantees made between 2004 and 2008. To strengthen these programs' long-term economic foundation, the Administration will submit a legislative package to provide SBA the flexibility to adjust fees in these programs to enable them to be self-sustaining over time. These changes in the program's fee structure would become effective for loans originated in 2013.

**Strengthens Core Agency Capabilities.** The Administration provides the resources needed to upgrade the agency's financial management systems in order to improve the financial integrity and efficiency of its loan operations. SBA is also modifying its procurement strategy for the Loan Management and Accounting System to better ensure the system delivers results.

**Small Business Administration**  
(In millions of dollars)

	Actual 2010	Estimate	
		2011	2012
<b>Spending</b>			
Discretionary Budget Authority:			
Salaries and Expenses .....	434		427
Business Loans:			
Loan Subsidy .....	83		215
Loan Administration .....	153		148
Subtotal, Business Loans .....	236		363
Disaster Loans:			
Loan Subsidy .....	2		—
Loan Administration .....	76		167
Subtotal, Disaster Loans .....	78		167
Office of the Inspector General .....	16		18
Office of Advocacy .....	—		9
Surety Bond Revolving Fund .....	1		—
Unrequested Projects .....	59		—
Total, Discretionary budget authority .....	824	993	985

**Small Business Administration—Continued**  
(In millions of dollars)

	Actual 2010	Estimate	
		2011	2012
<i>Memorandum:</i>			
Budget authority from supplementals .....	962	—	—
Total, Discretionary outlays .....	1,453	1,504	1,212
Mandatory Outlays:			
Business Loan Subsidy Reestimates .....	4,472	4,530	—
Disaster Loan Subsidy Reestimates .....	211	192	—
Liquidating Credit Accounts .....	—8	—8	—7
Total, Mandatory outlays .....	4,675	4,714	—7
Total, Outlays .....	6,128	6,218	1,205
<b>Credit activity</b>			
Direct Loan Disbursements:			
Direct Disaster Loans .....	388	1,100	1,100
Direct Business Loans .....	32	37	33
Total, Direct loan disbursements .....	420	1,137	1,133
Guaranteed Loan Commitments:			
Guaranteed Business Loans .....	14,156	23,900	23,900
Guaranteed Disaster Loans .....	—	19	63
Total, Guaranteed loan commitments .....	14,156	23,919	23,963

**Karen G. Mills, Administrator**  
**U.S. Small Business Administration**

Karen Gordon Mills was sworn in April 6, 2009, as the 23rd Administrator of the U.S. Small Business Administration. She leads a team of more than 2,000 employees whose mission is to help entrepreneurs and small business owners grow and create jobs by providing greater access to capital, counseling, and federal contracting opportunities. The SBA also provides loans to business owners, homeowners and renters affected by disaster.

Mills earned an A.B. in economics from Harvard University and an M.B.A. from Harvard Business School where she was a Baker Scholar. Since then, her career has involved counseling, managing, mentoring, and investing in businesses of all sizes across a number of U.S. states.

During the recession of the early 1990s, Mills helped several small manufacturers increase efficiency in order to improve their competitiveness and ultimately survive the downturn. This included producers of hardwood flooring, refrigerator motor manufacturers, plastic injection molding companies, and more. More recently, she worked in management consulting for businesses in sectors such as consumer products, food, textiles, and industrial components.

In 2007, she was appointed by Maine Gov. John Baldacci as chair of the state's Council on Competitiveness and the Economy, where she focused on attracting investment in rural and regional development initiatives. She also served on the Governor's Council for the Redevelopment of the Brunswick Naval Air Station.

She is a leading voice for American competitiveness and an expert on new approaches to business growth such as "regional innovation clusters." Before becoming Administrator, she worked to form a cluster of boatbuilders in Maine, helping them compete around the world by leveraging composite technologies at a local university.

Already, at the SBA, Mills' has helped strengthen SBA lending, increase small business' share of federal contracts, and reinvigorate the SBA's network of about 14,000 affiliated counselors.

She has also served as a member of the Council on Foreign Relations and has been vice chairman of the Harvard Overseers.

Mills and her husband, Barry Mills, president of Bowdoin College, live in Brunswick, Maine. They have three sons.

Mrs. EMERSON. Thank you, very, very, much. I will go ahead and start the questions, and welcome to Mr. Womack too.

As you have heard, as you have seen, at least with the continuing resolution that was passed a couple of weeks ago, the House majority is committed to reducing non-security discretionary spending to fiscal year 2008 levels. And for this subcommittee, that represents a 17 percent reduction. Though I will readily admit I am not sure that a reduction to 2008 levels is good for the SBA with employment at 8.9 percent, we are still asking agencies to tell us what it would look like to live at that 2008 level. So hypothetically, hopefully hypothetically, what is the impact of a 17 percent reduction to your agency's operations?

Ms. MILLS. Well, that would be a tremendous impact if we went back to 2008 levels. As you know, we are a small agency, and as I described, we have a big mission, and it is a most difficult time to this day because small businesses have not recovered completely from the recession.

So it would have an enormous impact. For instance, we would run out of money in our loan program. Because of the subsidy issues that I described, we would not be able to make loans after the money ran out, and that would curtail what has been a very, very effective program to provide access and opportunity to small businesses as the capital markets froze.

In addition, we would curtail the tremendous progress that we have been making, or reduce the level of the progress we have been making in curtailing fraud, waste and abuse. And finally, of great concern, is our preparedness would go back to Hurricane Katrina levels which is unacceptable for the level of preparedness that we need to support our small businesses and homeowners in times of distress and disaster.

Mrs. EMERSON. So—

Ms. MILLS. From the point of view of small business, it would be a real setback.

Mrs. EMERSON. And if you couldn't reduce the budget or we didn't feel that it was appropriate to reduce the budget by the 17 percent to go back to 2008 levels, the cuts that you all have self directed, do you think that you have gotten to the bare bones at this point in time, in order to fulfill your mission? We talk about the subsidy levels and that is why you have asked for an increase, et cetera. I mean, because if we can actually come up with a figure that works, I mean, we can sell it on our sides of the aisle. Joe has the luxury of—isn't that the luxury of supporting increases from 2011 levels?

Mr. SERRANO. I have the responsibility of not destroying government.

Mrs. EMERSON. Well, in this case we are leveraging for the private sector so this is kind of one of those in between agencies as far as I am concerned. I think 17 percent impacts your mission, I will readily admit that. My other colleagues may not agree, I think it does.

You know, I was at—on Friday, at a small business that is owned by a 23-year-old woman who started this clothing store in a place where there were no sort of fashions for the 25- to 40-year olds. She had this dream, 21 years old, she saved a lot of money,

then she was able to get some help through an SBA loan and co-signing. I think the grandparents may have cosigned.

However, she is making a lot of money, she is 23 years old, and a half, I think. And were it not for that SBA loan—I mean, it is remarkable, and I can't imagine being and being willing to take the risk, especially because she kind of started in a down economy, but by God, she has got it figured out. So I am obviously a huge fan. Nonetheless, we really have to be realistic. I am not going to make you answer that question.

But Bowles Simpson recommended lots of reductions for things like travel, and vehicles, and printing. Do you all think that you can make savings, at least in those types of categories? Does that impact your mission very much?

Ms. MILLS. Well, as you know we are a small agency and much of our activity happens on the ground helping small businesses one by one. You have described, I think, the great joy of this job, which is supporting entrepreneurs because it is the entrepreneurs and the small businesses that actually create the jobs.

When we have looked through our budget, we have submitted a budget that has difficult cuts in it for us, that streamlines operations, that eliminates duplication and that really tightens our belts. And we are trying to do that while preserving the two priorities. The priority is to get the money into the hands of the small businesses, through our system out where it is helping them, either as a loan or counseling or a government contract or disaster assistance. When we do spend money, we want to make sure that it is to oversee taxpayers interest in terms of oversight and eliminating fraud, waste and abuse.

Mrs. EMERSON. When your staff travels to visit with small businesses around, people who are trying to either expand their business and perhaps need an SBA loan guaranteed, for example, or something to just make the bank feel a little bit more comfortable and others. I mean, I have to believe that your staff gets faced with the same questions that we get faced with with regard to regulations and more and more government, not necessarily regulations through the SBA, but rather other types of policies, whether it is greenhouse gas emissions, financial regulatory reform, health care. And how does your Office of Advocacy help them, or does it, because I think that is what their mission is to navigate through endless regulations. How exactly does it work?

Ms. MILLS. Well, we share a goal, I think, that is very much a bipartisan goal, which is to reduce the regulatory burdens on small businesses. And that is part of the agency's goals and activities across the board and through our ombudsman activity, and also part of the Office of Advocacy which is our independent operation that is highly focused on that.

As you know, the President has issued a memorandum in January on regulatory flexibility, small business and job creation where he says that reinforcing the need for Federal agencies to consider ways to reduce, to reduce regulatory burdens on small business. And talks about requiring agencies to provide justifications when those flexibilities are not included in the proposed regulations.

So across the administration, the President has led the charge that we have long been fully committed to, which is to reduce the

unintended consequences of regulation on small business. We are active in a day-to-day manner, both through advocacy and our own internal ombudsman on that front.

Mrs. EMERSON. So how does that information get fed into like the Domestic Policy Council or people at the White House? Do you feed through OMB, for example? You have your SBA regional person for region 7, which I think is me. Anyway, that person is out among lots of different businesses, and they are talking and they are hearing, 75 percent of the people say this isn't going to work and this isn't going to work, or this really is going to make doing business far too expensive. So they feed that into you, somehow I am sure. But then how does that get fed into the White House decision-makers? Is it through OMB? I mean, I am just curious more than anything.

Ms. MILLS. Yes, it is through the OIRA function of OMB, and we have a series of ongoing roundtables conducted by our ombudsman and our regional network where we invite small businesses and talk about these regulatory issues on an ongoing basis. And we have just announced, an eight-city tour, I believe it is, on regulatory issues and barriers to entrepreneurs and high-growth businesses. And we kicked off the first one of those in Durham last week on Thursday.

Mrs. EMERSON. Well, hopefully I think you all have the appropriate sensitivity to all of this. I hope that it is appreciated and/or understood by the folks at the top who are making decisions like at OMB. I mean, because even when we were in charge of the White House, we were driven crazy by OMB.

Ms. MILLS. There is a top-level commitment behind this.

Mrs. EMERSON. Okay. I appreciate that. Joe.

Mr. SERRANO. Thank you so much. And you are right the minority party gives you—the status gives you the ability to say let's do this and let's do that, and you have to come up with the final decisions. But it is a joint thing, joint decision.

My concern is exactly as you said that there's a contradiction when you set out to cut, cut, cut, cut without analyzing. Maybe there isn't enough time to analyze as much as I want. Two things come to mind, when you say to the Small Business Administration, we are going to cut you 17 percent perhaps, if we do everything across the board, you devastate an agency which is then a contradiction to the majority party's and the minority party's claims that we want to help small business.

If they are overregulating, that is one issue. But to cut them where they can't help people help set up a small business and create jobs, that is a contradiction. There is something else that is happening in this Congress and has been happening for the last 10, 12 years, which is a dangerous thing for me to say. I hope it doesn't affect anybody on this panel, but there seems to be a movement in the country of electing people, and you take great pride in electing Members of Congress who have never held public office before, that is a great thing. I think that is a terrible thing.

I believe you were a mayor, right? We may not agree, Mr. Womack, on cuts exactly where they go. But when you tell me the Federal Government treats mayors this way or the Federal Government treats localities this way, I have to listen because you were

there. I was in the State legislature for 16 years, you were a mayor. We understand each other before we got here. Some folks who got here, with all due respect to them, in the last couple of months, have never served before and that is why we are different, and we are going to cut everything. Well, you just can't cut everything, you have to think, stop for a second. We are not going to cut everything. There are some places that we are just never going to touch.

I want to say something, I speak for myself, I don't speak for my party. I am a believer that if you get into a little debt because you are saving the people after Katrina and trying to put them back on their feet, so be it. If you have to get into a little debt to build the best school system in the world again, so be it. Do you have to get into debt looking for weapons of mass destruction that never existed? I am not sure. But certainly in supporting the troops, you get into debt, and so what? Some things you have to do.

So the word "debt" sounds horrible, but not all debt is bad. After all, we have to behave like the American people who balance their checkbook every month. Not true. They all have a mortgage or they have a car payment that they are going to pay for a long time. They are borrowing too. I am not suggesting that we continue to get into debt the way we have been, but I am suggesting that we can't just cut, cut, cut. And we certainly can't contradict ourselves. If we are going to create jobs, then you have to be supportive, your agency has to be supportive.

If it is about overregulating, I am open for discussion, but just cutting across the board and enjoying this statement that I never served in public office before, therefore I am the greatest. No, he is a better Congressman because he was a mayor, you know. And when you used to come here without public service before, you didn't brag about it, you just kind of kept that to yourself. Now it seems to be like a badge of honor. Well, I did 16 years of budgets in New York State and I think that helps me on this committee. That is my speech for the day. Now a question.

What are you seeing in terms of lending to small businesses? Has the Recovery Act and the extensions of its funding been effective in unfreezing the credit market for small businesses? And what do you think has been more helpful, the fee reductions or the guarantee increases?

Ms. MILLS. Well, thank you to this Congress and to this committee for its support in the timeframe where really all credit had frozen, October 2008. We were able to step up, thanks to the Recovery Act and the multiple extensions that you granted with \$42 billion in money that went into the hands of small business. The subsidy cost on that was \$1.2 billion. So a pretty good, as I said earlier, bang for the taxpayer's buck.

We were able to raise our guarantee to 90 percent and reduce or eliminate our fees. I spent a lot of time traveling all over the country and I asked that question many times, and I got both answers. To some, it was a 90-percent guarantee that allowed the bank to step up and take the risk because they only had to put up 10 percent of the capital and this was a business they wanted to fund. And other times it really was that people saw, well, there is an incentive here, and maybe I will invest in that next piece of equip-

ment and hire that next person, and maybe this is enough incentive to get that economy rolling. So both were very, very critical.

We had the largest quarter in SBA lending in the quarter ending in December. We did \$11 billion in loans, and those were just critical in filling the capital gap. We now know that there is some recovery, but that there are still holes, there are still gaps that exist. One is in underserved areas, and the other is in smaller loans, and that is why we introduced our Small Loan Advantage program and our Community Advantage program, two things that operate within, without incremental funding, but they are targeted to fill the continued gaps, particularly in underserved markets where the access and opportunity is the last to return.

Mr. SERRANO. Now you said this was your largest quarter ever, or in the last year or so?

Ms. MILLS. Largest quarter ever.

Mr. SERRANO. Now we get unemployment numbers, we get economic recovery numbers, we get all those numbers. What do those numbers tell you if it was the best quarter that people feel free to set up a business to invest? What does it mean?

Ms. MILLS. We are seeing the rate of business formation and entrepreneurship go up. We know that some of the best businesses were actually started in recessions looking back. We see encouraging signs from our small businesses in that they are taking advantage of things like accelerated depreciation to buy that piece of equipment and hire someone, but they are not out of the woods yet. The economy is still fragile. Small businesses took a tremendous hit, and they still very much need to be supported with access to capital, which the capital markets are not fully functioning and not fully back beyond the SBA, the traditional capital banking markets.

And they need the opportunities to provide access to government contracting, and they very much need our counseling and advice because that shows that there are greater success rates when you have a long-term counselor and you hire more people.

Mr. SERRANO. May I ask one more question?

Mrs. EMERSON. Sure.

Mr. SERRANO. You are requesting a \$161 million increase over the fiscal year 2010 level for the SBA and of this amount, \$131.6 million, to a 7(a) loan program to cover subsidies which has not been the case in the past. Now in the past, as you know, it was zeroed out and then we would kind of force you guys to take the money in a way. What does this funding cover and why is it needed now? What is the difference this time? And how much of the regular 7(a) appropriation for fiscal year 2010, which was \$80 million has been spent thus far?

Ms. MILLS. The request, the largest increases as I said in our budget, go to subsidy. And the reason is that we have fully used our fees and brought them to the fee caps. The subsidy rates are up because of losses that we are seeing from the 2005 to 2008 cohorts. In that time period, as you know, small business owners used their real estate as collateral, and their house or their building had inflated values in that time period, 2005 to 2008.

So as we look now, we see that those values are not there, and they are creating loss rates that have gone up as have rates for tra-



ditional lenders, our subsidy rates and our loss rates have gone up. Those subsidy rates calculations, when applied to the 2012 budget, require incremental funding that we cannot cover with our fees because we have maxed out to our statutory fee limits. We have asked for the ability to adjust fees and have flexibility in 2013, because we believe that if we can, we should move our loans to zero subsidy.

Mr. SERRANO. Thank you.

Mrs. EMERSON. Thank you, Joe. Mr. Alexander.

Mr. ALEXANDER. Thank you, Madam Chairman. Ms. Mills, it is good to see you. You mentioned something about preparedness program, and you mentioned something about Hurricane Katrina. Can you tell us what that means?

Ms. MILLS. I am sorry, I didn't quite hear the last part.

Mr. ALEXANDER. Preparedness program, you said something about it in relation to Hurricane Katrina, and you were hoping to do better than we were prepared during Hurricane Katrina.

Ms. MILLS. As you know, we have completely revamped our disaster loan program in the post-Katrina era to significantly elevate our state of readiness, and our commitment has been significant. In Hurricane Katrina era, we had 366 seats at our processing centers. And it took us 70 days to process loans.

Right now, we have 1,750 seats, and it takes us 7 to 10 days to process loans. We operate a new technology system that allows us to have 10,000 concurrent users on it versus 800 in the Katrina level. And we have 2,000 ready reservists, they are not on payroll, but they are on call. So actually, when we call them up, following a disaster, they will go from the ice storms in Maine, and then they will travel to the wildfires in California, and then the flooding in the Midwest, and then the tornados, and then the hurricane, and then they do it again. So our staffing levels fluctuate up and down depending on the need.

Our commitment is to maintain that level of preparedness. And what we have done is look for cost savings. In this budget, we deliver to you \$8 million of cost savings by taking our steady state of readiness down to 850 permanent staffing or steady state staffing versus 1,000. And we have done that by process engineering and streamlining our centers, not by reducing our level of readiness.

Mr. ALEXANDER. Okay. In your opening statement, you said over the past 2 years we have provided taxpayers with a big bang for their buck. The Transportation Department argues that for every dollar spent, we benefit by \$3. Can you compare what you mean by big bangs for their bucks compared to the Transportation Department?

Ms. MILLS. In the one example I gave there, the subsidy costs of our SBA loans was \$1.2 billion, and the amount of money that actually went into people's hands, because we provide guarantees, was \$42 billion. But this is true across our various programs. We have partnered with the private sector and others in our Small Business Development Centers, in our SBIC programs, so that we really try to give a lot of activity off of a smaller budget number.

Mr. ALEXANDER. Okay, out there in the public when some of the banks that we hear about who are denying loans, there is an ap-

peals process that one can go through. Do you all have a similar process? If a loan is denied, is there an appeals process?

Ms. MILLS. Yes, and we do review loans, multiple times. We have lots of ways that small businesses can get help. I will give you one statistic which is in our North Carolina center. We were able to take those who were denied loans, and we got 60 percent of them funding by working with them in counseling and on their business plan and then bringing them back and introducing them to banks who, you know, were interested in making loans in their particular area.

Mr. ALEXANDER. Thank you, Madam Chairman.

Mrs. EMERSON. Are you finished for this round?

Mr. ALEXANDER. I am.

Mrs. EMERSON. Mr. Womack.

Mr. WOMACK. Thank you, Madam Chairwoman. It is good to see you, Ms. Mills. I appreciate the work that your agency does and continues to do for small business and job creation. I just have a couple of questions, and then I have to step out; I have got to go to the floor here in just a minute.

But one of the things that the gentleman from across the way, Mr. Serrano, has indicated that I am a former mayor and a former small business man. So I think my background is pretty unique in terms that I have seen it from virtually every side.

I think I would look at it this way; one of the things that I have always been in favor of is the capacity to leverage public dollars, that too often we get caught up in the notion that we are going use someone else's money in total, and to try to accomplish some desired outcomes in small business or whatever the case is. I am huge on the leveraging piece of it.

In other words, I like to see more than one person, i.e. Our Federal Government, have skin in the game when we are talking about making major investments in small business. I certainly agree the facts speak for themselves, that our way out of this economic mess is through the creation of jobs in the private sector.

So what are you doing to encourage the leveraging of the support that comes through your agency in the public-private arena to ensure that the Federal Government's not absorbing all of its cost? Instead, that we have our stakeholders in the game? That is a big question, that is a broad subject area, so you can probably go a lot of different directions with it, but I am curious about your response.

Ms. MILLS. We share your objective of using public-private partnerships to get more leverage for the small businesses that are out there. And let me just give you a couple of examples. In our SBIC program, small business investment companies, they actually run at a zero subsidy level because we provide the debenture guarantees for other partners, and we are able to put billions of dollars out into small and growing businesses, all across the country and with zero subsidy cost.

We also have a program we call SCORE, and there we use private sector individuals, 12,000 of them, who are volunteer small business people who have had the experience of growing their own business. And they counsel, for free, small businesses that we put into their network.

A third quick example, we have just announced something called Startup America, which is going to be led in the public-private partnership by Steve Case, a fabulous entrepreneur who started AOL. And a number of companies have joined this public-private partnership to help in Entrepreneurial Mentor Corps and other activities which are going to grow our small high-growth businesses that are really one of the most important job creators for the country.

Mr. WOMACK. How active is your agency, say, in some of the business-directed institutions on campuses of higher education? How do you interact with different schools of business?

Ms. MILLS. We have multiple interactions with different schools of businesses. I was just informed this morning that we have a joint partnership with one of the top, top-tier business schools who is helping us establish an entrepreneurial center in partnership with our small business development center. So we do everything from work with them in our emerging leaders, entrepreneurship education program to our local guidance and counseling and advice.

Mr. WOMACK. It goes back to my question of leveraging, because I really think that all the major stakeholders—health care, education, higher education, government, business industry, I think, there are unlimited opportunities for us to work through a lot of those stakeholders in bringing formations of capital and expertise, counseling, et cetera, to the table. And I would like to see a lot more of that.

The last thing I want to ask, and this is as close to editorializing as the gentleman a few minutes ago was doing and issuing some opinions. You have an impressive background in consulting and management and helping small business. What are you hearing right now about what I believe is one of the single biggest barriers to the growth of jobs, particularly in the private sector, the overreach of our government into areas that just cause the potential entrepreneur to throw his hands up and say, it is just not worth it, it is just not cost effective.

It will cost me a lot more to do this than it is worth. What wonderful opportunities are we throwing away because we just live in such a terrible and inefficient, burdensome regulatory environment?

Ms. MILLS. Well, I thank you for the question and the kind comments. I did grow up in the world of small business, and we travel around the country and listen to small businesses all the time, talk about this issue of the unintended consequences of regulation. I will say I am very, very happy that across the administration in OMB and OIRA, and the President himself have made very strong statements in support of small business and making sure that they don't have unintended consequences from this excess regulation.

We have been proactive. We have our day-to-day operations and our ombudsmen and our advocacy. But we have been even more proactive in recent months by initiating an effort to go around the country and listening to small businesses in the high-growth entrepreneur area, talk about specific barriers that they have.

And it might be regulatory barriers, it might be can they get paid on time. But whatever those barriers are, this forum, which is under the Startup America Initiative, is explicitly designed to lis-

ten and then take action on those kinds of barriers and concerns. The goal is to help entrepreneurs, put some wind at their back, and let them do what they do best, which is grow their companies and create jobs.

Mr. WOMACK. I represent the third district of Arkansas, and once upon time back in the 1960s, there was a very small business, it started ironically enough, the first—and you know where I am going with this probably—the first store happened to be, Mr. Serrano, in Rogers, Arkansas. That is where the very first Wal-Mart store happened to be located. I can take you to the site just around the block from my city hall.

Mr. Walton is not here to confirm or deny this opinion that I will give, but it is in my strong opinion that that small business, which later would become one of America's most famous companies and certainly one the largest in the world, may not have ever survived a regulatory environment quite like we have right now. And if small business people are ever going to be able to live that American dream, I don't know how they survive. A lot of the things that the unfunded mandates and the demands that we are placing on small businesses.

And so with that said, my question for you would be when you make your travels and when you hear back from these organizations—these entrepreneurs—that your agency tries to help. And you hear, I am sure, of many horror stories about the problems associated with developing small business, up-start businesses undercapitalized in a regulatory environment like we are, do you have direct access to the President's ear? Do you—I know you have quoted the President as saying he wants to solve this regulatory burden that we have right now—but do you have direct access? Do you have his ear on these important matters?

Ms. MILLS. Well, first, I have to say that I appreciate your comments about the small businesses born in Arkansas. And I actually have traveled there quite a bit. I have been in Arkadelphia recently with all the loggers, I have been in Bald Knob, I have been in Heber Springs, and I have been in Searay, and really appreciate that we have fabulous small businesses throughout the State.

Mr. WOMACK. Well, if the gentlelady would yield, let me just say, since I mentioned Wal-Mart, let me just throw Tyson and J.B. Hunt Trucking, there are three major ones in my district, three big ones that I don't think would have survived the regulatory environment we are in today.

Ms. MILLS. But the answer to your question about the President is yes, I have had discussions about this with the President. I know he is committed. The memorandum that he issued on small business and regulation is a very strong statement to all agencies on exactly the issue that you described in support of making sure that they produce more flexibility for the smaller business who doesn't have the staff and the time and the money to really deal with those regulatory burdens. And while preserving the health and safety issues to make sure small businesses can also operate.

Mr. WOMACK. Did the Health Care Patient Protection Affordable Care—I never get that right.

Mrs. EMERSON. Patient Protection and Affordable Care Act.

Mr. WOMACK. Patient Protection, yes, thank you. Has that come up in your discussions with small business entrepreneurs?

Ms. MILLS. Yes, and I will say we have supported a very important amendment that I know is under discussion. We are very much in support of the repeal of the 1099 provision which does place an undue burden on small business.

Mr. WOMACK. But stop there?

Ms. MILLS. The other aspects actually provide great benefit to small businesses particularly in the tax credits that are available as we speak. The 2010 tax credits are available to potentially 4 million of the 6 million small businesses. And as I travel, I am seeing small businesses coming to us now for information because they are getting dollars back in their pocket and there is nothing a small business likes better than dollars in their pocket.

Mr. WOMACK. Thank you for your testimony. Madam Chairwoman, I yield back.

Mrs. EMERSON. Mr. Yoder.

Mr. YODER. Thank you, Madam Chair. I appreciate the opportunity to be here. And I, too, have to head to the floor shortly. So I will ask just a couple brief questions. I appreciate your service and appreciate your work here today. And I want to maybe follow up on the questions from my colleague from Arkansas.

Everyone, including yourself, spent a lot of time talking to small business owners. Our focus, I think, my focus and many of my colleagues, is to try to figure out how we get innovators and entrepreneurs back home, creating jobs and expending and growing. I mean, that is the key. We know that no matter how many dollars and trillions of stimulus dollars are spent in Washington or how many rules and regulations or how many new bureaucrats we hire, it is not going to help that American somewhere that has a dream to start a small business if they can't get off the ground and get moving.

So I hear a lot of same things probably my colleagues do. And I guess wanted to trail backward.

Mr. Womack was going here, and related to a word I didn't see, at least in your report, you might kind of discuss your feelings on this, and that is related to uncertainty. Almost every meeting I have been in with the small business, they have brought up the uncertainty in Federal policy uncertainty in tax policy, uncertainty in rules and regulations, inability to borrow money. So many things that are related to, what I believe are poor government policies that the instability and uncertainty that many of them either can't expand, or feel they shouldn't expand because of the risks that are involved.

And so I have been heading down the pathway, along with many others, trying to figure out how we create that stability and certainty for small business owners. And I note the discussion about regulations, and I note that your comments regarding the President's positions of trying to review some of those, but there is a mountain of rules and regulations heading to small business owners. I meet with community banks, and I meet with small business owners; they feel inundated.

And I don't know if this is what you are hearing when you go out and talk to them, but the third district of Kansas they feel

overwhelmed and inundated with so many new things coming their way. They are completely overwhelmed by what the health care bill may mean to their bottom line. I can't tell you the amount of small business owners I have talked to that have said, because of that bill, I am not going to hire anybody until I see what the impact is on our bottom line.

So I see a real bottle neck coming, not from a statement the President might make that we should go review these rules and regulations, but from all the rules and regulations coming from the health care bill, all the rules and regulations coming from the Dodd-Frank Act, all the rules and regulations that are still coming from EPA and OSHA and so many different organizations, that I can't tell you the amount of times I talked to a small business that feels overwhelmed. And they don't say, well, if you could give a little bit more money to the SBA, we would be back at it. They say stop, change the rules of the game. Stop sending so many rules and regulations our way. Let us create jobs.

And so I guess I really want to get at what the SBA is doing or how you are advocating, what is your position on that? Do you agree or do you think the rules and regulations are helpful to those innovators and entrepreneurs who are trying to get their businesses moving?

Ms. MILLS. Well, as you know, we do a tremendous amount of traveling around the country listening to small businesses as well in these roundtables. And explicitly in the roundtables that we have just announced, we are going to be asking entrepreneurs to come and talk about those specific regulations on which they have concerns. So when they talk about specific regulations, they mention 1099, which we have come out to ask for repeal. And when they talk about specific regulations, we have the ability with our ombudsman to go back to those issuing agencies and help work with those small business through them.

Overall, when small businesses talk about uncertainty, which they don't do in a generalized sense, they are referring to the uncertainty they see in the economic environment. Small businesses do feel that the recession is not over. They do feel that they want now to fulfill that next order. They do come to us for counseling and advice on what is available to them. And one of the things I would hope that we might be able to do to help your small businesses is to bring them into our counseling operations.

We have 900 small business development centers, we have 12,000 SCORE volunteers, and they have access to bring a small business owner to those things that will benefit them, whether it is a tax credit. We have 17 tax credits that have been enacted for small business. Now it is tax time, we need to make sure that those small businesses know what is possible for them. And then, I just wanted to mention that those services are free.

Mr. YODER. I appreciate you highlighting that. How many small businesses are there in the United States, do you have an idea?

Ms. MILLS. Yes, just under 30 million small businesses in the United States, of which 6 million have employees.

Mr. YODER. And how many small businesses have received services from the SBA in the last year?

Ms. MILLS. We have many, many ways that we deliver services, but some of the highlights are that we had 50,000 businesses that we gave capital to, and loan guarantees. There are about \$100 billion of contracts that we put into their hands. I don't have the exact number of small businesses, and we counseled more than a million.

Mr. YODER. So 30 million small businesses, and you have counseled a million. How many do you think you could reasonably touch? So of all of our districts and all the small businesses that we have talked to who share with us maybe a little different perspective that you are sharing today, that the health care bill is making it difficult for them to feel like they should risk capital right now until they see how that all plays out.

The impact of the Dodd-Frank bill and its regulation of the small community banks and their impact and their ability to borrow money, that those things from the EPA and other organizations or other entities in Washington that are unpredictable that don't go through the democratic process, that are coming through the executive branch, those things, how many small businesses can you sit down with to allay those concerns so that all those things that are coming their way, and all that uncertainty that they talk to me about, how many of those folks can the SBA effectively resolve so they don't have the uncertainty anymore? And what do we do about the other 29 million?

Ms. MILLS. Well, we hope more and more of them will be able to. But I think if you want to help them with some of these issues, we can. And I would just put in a small plug for our redesigned Web site, [sba.gov](http://sba.gov). And we have millions and millions of visitors to that Web site. We are helping everyday provide access and opportunity to things that small businesses need, and what we call the 3 Cs, capital, counseling, contracts, those we help in our disaster operations as well.

Mr. YODER. And then one small question and I have got to move here. But regarding trade, what do you do to help a small business owner in my district that might want to figure out if there are international partners they could trade with? Anything the SBA does or where would I direct a business that brings a question like that to me?

Ms. MILLS. I am sorry you have to go, because this could be a very long answer. We have an intensive program. One of the most important things we can do now is achieve the mission of the National Export Initiative, which is to double our exports over the next 5 years. Small businesses are 30 percent of exports, but they are the fastest growing element. And there are only 250,000 of those millions of small businesses that I described that actually export. And most of them, 60 percent of them, only export to 1 country.

So we are working on two things: We are working on bringing more into the funnel, and this is where there are lots of rules and learning curves on exports. So we have a whole set of how can you become an exporter tools on our Web site and in our district offices.

And if you bring them into us, have them registered at [export.gov](http://export.gov), and we will send them what the available online and in-person contact possibilities are, because it is our mission to help

them find a way to connect them to all the resources that might be available because that is how we are going to create jobs here at home.

Mr. YODER. Great. Thank you, Madam Chair. I yield back.

Mrs. EMERSON. Thank you, Mr. Yoder. Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Madam Chairwoman. Madam Administrator, it is good to see you. By the way, I think of some those small business that export probably a lot of them are in south Florida I would imagine. A big chunk of those have to be in south Florida, because I run into them all the time. And I also must tell you that I have been involved a couple of times when people from your outfit have been out there, and you have got some good people that do a good job explaining some of the programs.

The questions that I have are a little bit more limited. And that is that a recent investigation by the GAO identified 14 companies that received, I believe it was \$324 million in set-aside contracts through the 8(a) program for small and disadvantaged businesses.

The GAO director of Forensic Audit Investigative Services testified that officials of 13 of those firms, "Misrepresented their eligibility for the program to finally acquire or maintain set-aside status and obtain Federal contracts awarded with limited or no competition."

Now, GAO's investigation showed that the SBA staff allegedly responsible for assessing annually the firm eligibility allegedly allowed three firms to remain in the 8(a) program and receive contracts despite evidence—and they say clear evidence—provided by the company officials during that review period that show that they were no longer qualified. Here are the questions, if that is the case, why were those three firms allowed to remain in the program, first question?

Ms. MILLS. So I am glad that you brought up this issue, because we have a very terrific program. Probably the largest program for small business across government, is our government contracting program. And our goal is to make the goal, which is over \$100 billion into the hands of small business. But in order to do that, the program must have integrity. And therefore, we went after fraud, waste and abuse in these programs. This is an issue that the GAO report and other reports had brought up. I believe the report you were referring was issued approximately a year ago.

We took this issue face on and we instituted a three-pronged strategy for getting rid of fraud, waste and abuse in these programs, making sure they had integrity. The first part of it is effective certification, making sure that the program benefits are getting to the intended recipients. And this, I think, was one of the issues, flagged in that report. We have done a whole series of things across all programs, not just 8(a), to tighten certifications and to ensure that we are screening those potential program entrants.

The second is continued surveillance and monitoring, which is conducting increased exams. And the third is robust and timely enforcement.

To your question on enforcement, we have now quite a substantial record on prompt and proactive enforcement. Every single case



that has been in an IG report or a GAO report we can show you the follow-on activity and documentation.

We will respect due process. There is a due process activity that happens for each of these small businesses. But we will go after the bad actors, and we have now a very strong track record in this front.

Mr. DIAZ-BALART. Good. Now, let me ask you, obviously you have got the bad actors who, you know, who did a fraudulent application. Now, the GAO, I guess claimed that some on staff knew that there were some bad actors potentially that didn't qualify. Is there any disciplinary action to those, the people inside your organization who may have—I am not saying, you know, obviously willingly, that missed seeing this? I mean, you know, because disciplinary actions have to not only be for those that apply, which is a problem, but if there were those who saw it and either missed it or whatever. I mean, what action can be taken or has been taken internally about those individuals?

Ms. MILLS. I am not aware of any staff issues to this regard. In each of those cases, in every GAO report, there were follow-on activities. In addition, there is a new suspension and debarment task force throughout our agency, which has made even more robust activities around the suspensions. We have had over 100 suspensions, debarments and activities throughout our programs, and this is a great acceleration. We are serious about this. All of the staff has come forward and put tremendous effort into the more intensified certification activities, the continued surveillance activities and monitoring and the enforcement.

Mr. DIAZ-BALART. And I understand that. And I appreciate that. And I think it is important. And I commend you for, obviously, your passion on that, which is important, because as you said, without that integrity, obviously we are in serious deep trouble.

However, I just want to make sure that my point is clear, that obviously there is always two sides of this issue. There are two culprits. There is the one who applied and then there are those who may have not caught it when maybe they should have. And I am not saying that is the case. My understanding is that the GAO—and I may be wrong, talked about staff allowed three firms to remain in the program and received contract, despite, I guess, what they claim are clear evidence provided by company officials during the review that show they were not eligible. So I just want to make sure that it is—I commend you for your efforts, I do. And I just want to make sure though that one of the things that people get frustrated about, whether it is true or not by the way, is a lot of people claim or think, well, there are no consequences for those in government who may have either made the wrong choice or just didn't do an adequate job and that is really what I am going to as well, because you clearly answered one very well, but—

Ms. MILLS. Well, in this particular circumstance I would look to, also, the due process activity. And in terms of our personnel, our performance management standards have been augmented to be very clear about what is expected.

Mr. DIAZ-BALART. Good. And if you can keep us informed on just what those actions are and how you are doing that, because I understand that, I guess, are you asking for increased funding for 8(a)

program? I believe you were, or you are. And again, as you were stating before, and I agree with that, we have got to make sure that that integrity is there, particularly if you are going to be asking for any more money.

Ms. MILLS. Yes, we are asking for 24 more positions, largely around, 18 of them, around fraud, waste and abuse and enforcement in our contracting area; 10 for the implementation of the women's business rule.

Mr. DIAZ-BALART. What is that? I am sorry, the last one?

Ms. MILLS. The women business rule.

Mr. DIAZ-BALART. Okay.

Ms. MILLS. Which we just brought forth on February 4.

Mr. DIAZ-BALART. Okay. And lastly, I guess there was a little bit of conversation about the health care bill a little while ago, about, I am not going to ask you to—I am not going to put you on the spot on this. But you must have heard from some small businesses that have some concerns, right, about the health care bill and how it affects them. I mean, because you mentioned that obviously if you hear about specific regulations, and commend you for your support of the 1099 changes. But have you not heard any concerns about the health care bill, about particularly, for example, businesses because I get it all the time from a number of businesses.

I am just wondering if we just live in totally different worlds. Particularly those that are maybe 46 employees, about what happens when they reach 50. And have you, do you not get a lot of concerns about—you explained the positive things. But do you not get concerns from small businesses about the effect of the health care bill on their bottom line or on their future availability to grow, particularly if they are not at 50?

Ms. MILLS. Here is what I hear from small businesses. The number one concern of small business is access to affordable health care. It has been that in the NFIB survey since 1986, number one concern. And small businesses want to provide health care. The first thing that I have heard from them is that they are benefiting from this tax credit. Probably there are 6 million small businesses that have employees. We estimate that up to 4 million may potentially be eligible for this tax credit, which kicked in in the 2010 year.

So that is the first thing that they want to know is, can I get some, you know, money back on my health care, or might this make it affordable, because small businesses want to provide health care. They just can't get a quote. And that is where the second piece comes in. The second piece they ask about are the exchanges. Right now when small businesses want to get a rate quote, they have to call two or three or four brokers before they can get even someone to bid on their business. Small businesses pay 18 percent more for health care, just because they are small and they have a smaller pool. And if somebody gets sick their rates go up. These exchanges will pool those risks and they know that. And the next thing they said is when are they coming? How do I get more access to an affordable quote?

There is no mandate for small businesses who are over 50 to provide health care. There is no mandate in this. So they have not—when they look at the facts of what is in there and what their con-

cerns would be, they have not expressed concerns about those because there is no mandate.

Mr. DIAZ-BALART. So you are not hearing a lot of concern. I just want to make sure that I get this right. You are not hearing—I am sure you are hearing a lot of concerns about a lot of different things. You are not hearing a lot of concerns about the health care bill.

Ms. MILLS. I am hearing—and this is from, you know, small businesses that we go out to talk to about other things, credit. One of them said, you know, when I was able to now provide health care for my employees, that was the day that I considered my business a success.

Mr. DIAZ-BALART. I appreciate that and thank you for being here. Again, I am just wondering, because I do also meet with small businesses, maybe not as many as you meet with, but there seems to be a lot of concern about, as one of my colleagues said, about the uncertainty, if nothing else about the health care. But I am just surprised because I hear it all the time, unsolicited. I recently had meetings with, about, I don't know, 25 manufacturers, Madam Chairman, in my district, by the way, which I was even surprised existed that many in South Florida. And one of the issues that always comes up is concerns about that bill.

So I am just interested that I guess you haven't heard that. But that is interesting. Maybe it is just that they are talking to you and they are talking to me and they will say different things. But I clearly hear it a lot. Thank you so much for being here. Thank you, Madam Chairman.

Mrs. EMERSON. Of course, Mr. Diaz-Balart, she is the lender and they don't want to tell them too much, I mean, I am convinced of that because I hear it all the time too. It is just absolutely nonstop, nonstop.

Let me ask you a question. How does the SBA define a small business? Because we are always having all these arguments about what is a small business. And so, define a small business for me, number of employees.

Ms. MILLS. In the numbers that I quote when I say there are you know, so many small businesses, the general break-off is 500 employees or more. And that is done in the Office of Advocacy data. We actually have different definitions for every industry category because a manufacturer who has 100 people may be small, but an accounting firm that has 100 people might be big.

Mrs. EMERSON. And so, but it is generally employee-driven, number of employees driven as opposed to profit margin or anything like that?

Ms. MILLS. There are actually a number of complicated pieces to it. It can be also some things to do with revenues and net worth as well.

Mrs. EMERSON. It just occurs to me that since we are always fighting among ourselves, whether it is the House, the Senate, the executive branch, whomever, or even the private sector, and I used to work in small businesses myself and larger business, so I have kind of been all the way around. There was never a definite example. The number, you could pick any number to suit your purposes. And to me, that is kind of duplicitous.

I wish we could just arrive at a number, you know, whether it is more specific as you go down through categories or not. But that way, it is not always gotcha. But that is just a pet peeve of mine. Just a second on the business loans because we talked about why are the subsidy costs increasing, should fees be increased, et cetera. Tell me, what is the process that you use to monitor risk to make sure that your loans are going to creditworthy businesses?

Ms. MILLS. Well, we have a complicated and robust, you know, credit process driven largely through our private sector partners, the banks. And banks use their credit processes, and then we provide credit guarantee over them. But the first screen is the banks credit process. There are a number of factors that occur in that underwriting, and it is different by loan product. But I do know that we pay quite a bit of attention to loans and that the loans at issue, as I described earlier, are really coming from the 2005, 2006, 2007, even 2008 cohort where the market was very hot and banks were making lots and lots of loans. And now we see that our credit scores on our new loans since 2009 are actually higher. They are actually higher.

Mrs. EMERSON. Interesting. I am just really curious about that. But then again, the whole drop in real estate prices just had a huge impact on everything. All right. Now that I am very, very concerned about floods, and I live, my whole eastern border is the Mississippi River, so everything that flows from North Dakota, Minnesota on down goes right by our area. And I know that you have asked for \$167 million for administrative costs, which is \$90 million more than 2010. But you haven't requested a subsidy appropriation for fiscal year 2012. So I know that the administrative increase looks very large, but this is because—if I understand correctly, it is because the fiscal year 2010 appropriation was partially offset by carry-over funds appropriated for prior disasters.

And now there is no more carryover. We are done. So for fiscal year 2011, most of your disaster administration funds, or expenses rather, were funded through reprogramming of \$126 million in disaster subsidy. So, what assumptions do you all use to arrive at the requested level of disaster loan administrative expenses? I mean, how do you determine what those are going to be?

Ms. MILLS. In 2012, our request reflects an \$8 million savings in disaster loan administration, and this is the result of the re-engineering in our disaster loan centers that I described. So instead of operating at a steady state level, remember, our disasters staffing actually goes up and down, up and down. But on average, the steady state funding that we have been using is 1,000 people. And we are able to provide, by 2012, the same at this time of readiness with a steady state staffing of 850 people. And that is, you know, some efforts that we have done to streamline and re-engineer and improve our processing operation, that is a continuous process that we feel is our responsibility to pursue aggressively and to provide those savings in these tough fiscal times. We believe that we need to be at that level of readiness. We also have 2,000 ready reserve on top of that. So if something happens, we do have those staff that we can bring into the system. But the cost level that we are asking for is that. For subsidy level, we have no year money reserves that we are using.

Mrs. EMERSON. So what do the ready reserve people do on a day-to-day basis? Do they work in banks, or are they small business people, or who are these people?

Ms. MILLS. Well, they are all kinds of people actually. And I have met a number of them. I have been out in our disaster centers when we had the flooding in Nashville. I met a number of them. And when we went to the Gulf in the BP oil spill, a number of them came in. And they are from all walks of life, from all kinds of operations. And we have a system by which, you know, we ping them and say, are you ready, are you available. And they come back. So we try to keep a full complement available.

Mrs. EMERSON. That is interesting, and very nice to have those people who want to help. So what happens if we have a large disaster, say, another Nashville or heaven forbid, a Katrina-like episode? Do you have enough subsidy carryover to support the program level that you need to be able to respond to such a thing?

Ms. MILLS. We have built a substantial capability in the post Katrina era, in our physical activity. So as I said before, we went from 366 seats in the processing center. We have the people. We need someplace to put them. Now we can seat 1,750. We couldn't put them all on the computer system. We could only get 800 concurrent users. Now we can put 10,000 concurrent users in so we could even staff up more aggressively. And we maintain our ready reserve.

We have made an electronic loan application now so that 30 percent of our loans actually come in electronically. We were able, last year, to operate in over 40 regions concurrently because we stay for a bit of time so as we're finishing up, you know, the flooding, we are deploying down in the Gulf. And we can stay for up to 9 months. So we can service numbers of locations concurrently and/or a large location.

The other thing that we have done to prepare for a very, very serious disaster, besides simulating it, is we have engaged our full-time district staff members who do not operate on the disaster operations to be linked on the ground in cases such as Nashville or BP oil spill or any other large-scale disaster so that we have not only our disaster operating people, but we have our core SBA district office people coming to the assistance and lending their support, our SBDCs, our SCORE people, everybody is on the ground.

Mrs. EMERSON. So from the money standpoint, how much in disaster subsidy do you have in reserve?

Ms. MILLS. We can get you an answer to that. But we have a number of years of disaster subsidy in reserve.

Mrs. EMERSON. So presumably then, if, let's just say, you can get us the numbers and it amounts to 5 years or so, then could we possibly look to disaster loan subsidy funds to pay for the 2012 disaster administrative expenses if necessary?

Ms. MILLS. Well, the issue there is the level of preparedness and the level of risk that we want to take on. Our commitment has been to be prepared for intensive disasters, and that was the commitment we made after Hurricane Katrina. Nobody really knows what the future will bring in terms of hurricanes and earthquakes and other issues. And we have seen around the world that they do come. So we have a level of preparedness now that we think we

can handle it, and we want to make sure when we go into the field, that we also have the loan subsidy so that we can execute the loans.

Mrs. EMERSON. I would thank you and appreciate and thank you in advance for getting us those numbers if you could. One quick question, then I will turn it over to Mr. Serrano. Our current continuing resolution is set to expire, I guess, week after this. What day is today, the 8th? Okay. So 10 days. I don't think a shut down will occur, in spite of the hype.

I mean, hopefully we will be able to work out our differences and keep the government running. But do you all have a plan for operating during any kind of government shutdown? And if so, then, can you tell us just generally speaking what kind of activities and which personnel would be considered essential?

Ms. MILLS. Well, everyone is working very hard, I know, on averting a shutdown. The President has said, and we agree, that a shutdown would hurt the economy and would hurt small businesses. Since 1980, every agency has been required to have a plan that would go into effect in case of a shutdown. We are on an ongoing basis updating that plan. We are committed, I know across the bipartisan effort, to work on making sure there is funding for 2011. The activities that would or would not be shut down are actually governed by law. There are rules around it. There is one thing I can tell you, which is that our disaster operation will not be shut down. That is considered an essential operation and it would not be part of an appropriation.

Mrs. EMERSON. I appreciate that. I don't know that it is presumptuous for me to ask, but would it be possible to get a copy of your plan?

Ms. MILLS. Well, we are updating the plans on an ongoing basis, and at this moment, I know that things are so fluid that, you know, we are sort of in the continuous update mode.

Mrs. EMERSON. So would it be possible to get last week's plan?

Ms. MILLS. Well, we know—

Mrs. EMERSON. Just to give us a sense. I mean, it is not to give to the press. It is really for our own, for our own sense. All right. We can have further discussion on this. I will pass it to Mr. Serrano.

Mr. SERRANO. Thank you. Boy, you really want that plan, don't you?

Mrs. EMERSON. Yeah. I do.

Mr. SERRANO. So do I. Wouldn't it be nice if a government shutdown meant a real government shutdown like the war ended, like the troops would have to come home immediately.

Mrs. EMERSON. But you would be stuck here in Washington.

Mr. SERRANO. No. No. I could go for that. I could be supportive of a shutdown if all the troops just had to pack up and leave, the war is over. But something tells me that would continue. We would find money.

Let me ask you a question. The fiscal year 2012 budget calls for a reduction in the small business development centers, \$10 million, and proposes to eliminate the prime technical assistance program. For micro loans, the budget proposes a cut citing the funding received in the recovery act. Can you explain your rationale for cut-

ting technical assistance to small businesses, both through micro loans, the prime program and the small business development centers, and how do you intend to serve small disadvantaged businesses without these resources?

Ms. MILLS. Well, as you know—

Mr. SERRANO. I mean, I must tell you that, anticipating what I think you knew, the cuts that would be proposed, why any agency is on their own cutting is beyond me. I know that sounds irresponsible, but if you knew what was coming, why would you propose any cuts?

Ms. MILLS. Well, as a part of being part of this fiscally responsible process, we all are tightening our belts. We are all streamlining our operations. And that really makes us make some really difficult choices, as you just pointed out. We have a program, as you described, prime, which gives technical assistance in communities that are involved with our micro loans. What we have done is try to look at places where we can streamline without losing the value of that technical assistance. So we have initiated a very strong overall activity around underserved markets. In it, we have made some changes to our loan programs and opened our 7(a) program to our micro lenders and CDFIs, (Community Development Financial Institutions that meet certain qualifications that will be responsible to our program). They provide technical assistance for those loans at their own cost.

What they want from us really is the availability of the loan subsidy, the loan guarantees. So we are looking at ways we can do what we do best, open more access and opportunity to the loan guarantees, and encourage our partners to provide the technical assistance which they do best. That set of activities, I think, will give a robust set of help to the small business because technical assistance is a critical part. And we are looking forward to working with our partners to boost their capability to give loans and then also to give that technical assistance from their capability.

The SBDCs you asked about are also very important partners to us. I just wanted to point out one piece, which is that half of the reduction in the SBDC funding does not relate to their base level. We have been able to reduce prior special purpose counseling grants, which takes account of about just over half of the proposed reduction.

Mr. SERRANO. Well, let me just, for the record, tell you that you mentioned the CDFIs. That is part of this subcommittee, and they are being devastated too, so you may not have the partner you think. But the part that confuses me, even after your explanation, is in answer to one of the early questions, you said that if there were a couple of shortcomings in the Agency, it was the inability to do more in low income communities.

So why would you voluntarily cut those programs that affect those communities? I know that I mix my questioning with an attempt at humor at times. I really think that Members of Congress sound too serious. We should be serious, but we don't have to sound serious all the time. But I am very serious when I tell you that all agencies should be aware that the plan here is to cut to the bone. So yes, it is important to be fiscally responsible, but don't give up the house before half the house is taken away from you.

Ms. MILLS. If I might clarify, I think what I was referring to is that the gaps in the market are in the area of underserved communities. The market has not come back to provide access and opportunity to those underserved communities. At the SBA we have actually intensified our efforts around the underserved market. We just actually announced a council that is going to be led by Cathy Hughes, a fabulous entrepreneur who founded Radio One. And we are working, across all of our programs to increase access and opportunity in the underserved markets because that is a really important role that we play and that the markets don't. So as we go forward, we have developed this program called community advantage. And this is going to bring the CDFIs into our activity as lenders in our traditional 7(a) product. This is something that they have been eager to do and asking for for quite a bit of time, and I think will help us get what we want, which is more points of access in these underserved communities with lenders who understand those small businesses.

I don't need to tell you that these are the people who hire in these communities. Across the board, our government contracting programs, our 8(a), our Hub Zone and other programs, our counseling operations also are going to be part of this underserved council and underserved effort that we have. Because the role of government, I think, is to provide access and opportunity. We at the SBA are three to five times more likely to make a loan to a minority-owned business or a woman-owned business than a conventional lender. So this is the place where we see our participation to be critical.

Mr. SERRANO. As an extension of that, how are we doing at meeting the contracting targets for women-owned businesses?

Ms. MILLS. Well, as I say to everybody, the goal is to make the goal. And we had a very good experience in the Recovery Act where we were able to exceed not only our 23 percent goal, we were over 30, but we made every single sub goal. In the past, we have not made our women's contracting goal and we have fallen short. And every percentage point you fall short in government contract is \$4 billion that is not in the hands of that constituency. We have been able to implement, this year, the women's contracting rule. This was a rule that was passed in the year 2000, but was never implemented until we came on board and made it a priority.

And finally, through the efforts, fabulous efforts, of a whole set of committed people across the agency and outside and across government, that rule went live on February 4. There are, I can get you the number. It is more than 1,000 small businesses that have uploaded their data, certification data into our certification data bank, and we are hopeful and determined to make sure that this new tool allows us to make the goal.

Mr. SERRANO. Let me ask you something about these regional clusters. I know you received 173 applications and you funded 10. Can you tell us a little about the winning proposals and how you see this program evolving in the years ahead, especially this year?

Ms. MILLS. Well, as you said, this was a very highly competitive process. We had very high demand, huge demand from the small business community. And we were able to fund some really extraordinary initiatives. The closest example to where you are is the



Connecticut Hydrogen Fuel Cell Coalition, which includes New York, Connecticut, Massachusetts, Maine and others. In the Gulf Coast, for instance, a geospatial solutions innovation cluster. I was just in Northwest Ohio, in Cleveland, where Nortech won, which does flexible electronics. That is electronics that you can put on a piece of flexible material, so it has circuits, but it bends and you can put it anywhere, on a helmet, on anything.

We have a Carolina nuclear cluster. We have an agricultural cluster in California for agricultural innovation. We have a defense cluster. What these clusters do is they allow small businesses, who don't have the power individually, to access the resources that big business do. When they cluster together they can access university research, community college curriculum and that gives small businesses in these high growth sectors the ability to transform the region. They are what I call the link, to leverage and align money on a regional basis that create new economies, and therefore transform those economies, create jobs at a pretty good bang for the taxpayer buck.

Mr. SERRANO. I have one last question and then I will submit a couple for the record. How has the emerging leaders program been implemented so far? And again, sounding like a big spender, with \$3 million requested, what is it that you do that would have an impact?

Ms. MILLS. Well, this program has an extraordinary impact. This is specialized training for entrepreneurs, largely in the inner city and underserved communities. We have expanded it to the Native American community with great success. And just a couple of statistics. We track and measure the metrics very heavily on this. Half of the participating businesses, after they went through this program, had an increase in revenues. They secured nearly \$10 million in financing. They also secured nearly 500 Federal state and local contracts, which were over \$100 million. And 60 percent of them have hired new workers.

So we know that this program creates the intended effect, which is to help entrepreneurs learn how to grow their businesses. And that we have an expanded list of cities where we are able to bring this program; it is proven, we have actually been running it for quite a bit of time. And we know that in each of these communities we can really build a new core of successful entrepreneurs.

Mr. SERRANO. Thank you. And actually, I stand corrected here. Myself. There is only one question I am submitting for the record.

Mrs. EMERSON. Perfect. So how would I become an emerging leader if I had a small business? How would I become part of that program? Just because it is fascinating to me so I would like to know how.

Ms. MILLS. Yes. I believe it is a competitive process. We run a curriculum-based program, so you come into a class with a cohort and that cohort is designed to work so there is thought placed on the different kinds of businesses to have together in that cohort. And the trainings are pretty intensive. I will say that we have had some good success also expanding this in the Native American community where there has been significant unemployment and we are doing it in Albuquerque. We are doing it in Phoenix, we are doing

it in Portland, Oregon, in California and Seattle and Oklahoma and Ohio and St. Louis actually.

Mrs. EMERSON. So if you are a small business person, or you own a small business, then you would actually make application.

Ms. MILLS. You would make application in one of the cities. We put out a call for applications.

Mrs. EMERSON. I see. Okay. So would that be advertised in the newspaper or does it go to local Chambers of Commerce? How do you put out a call? I mean, I am just curious since I don't have a small business myself.

Ms. MILLS. I will find out for you, but I would imagine it is all of those, yes.

Mrs. EMERSON. I would love to know because I certainly know a few people who could take advantage of that. But that is why I want you to come to the district so we can tell people about these good programs that you have.

So I recently read a rather scary report, and I am sure that Joe, if you read it too, you would think it was pretty scary, that the GAO did duplicative government programs. As a matter of fact, I was anticipating being, at least having several people yell at me about those sorts of things over the weekend, which surprisingly they didn't. So I was pleased about that on the one hand. But I did know that in economic development, in the economic development category, there are about 80 different programs at four agencies being investigated, with y'all included, I guess, to assess the potential overlap and to the extent to which agencies collaborate to achieve a common goal. And so since you mentioned in your testimony about your efforts to streamline processes and eliminate duplication, tell us how you actually coordinate the SBA's efforts with other economic development agencies to make sure that, number one, everybody knows the opportunities available from the SBA and perhaps other areas or other programs in the government to do economic development. And then, after you tell us that, tell me how do you actually ensure that Federal agencies aren't duplicating one another?

Ms. MILLS. As you know, we operate on the ground. And I will say, I think we have done a really extensive job at collaborating across agencies. The President said, no silos, and we have worked, particularly at the SBA, across numerous agencies to make sure that we are linked, leveraged and aligned and not duplicating effort. Let me just give you two examples, and I could actually give you many. But one is the Veterans Administration.

Early on, we did a collaboration with the Veterans Administration to make sure that every veteran service operation was also telling the veterans about our loan programs. We have special veterans loan programs and counseling operations and we wanted to make sure that they knew about the access to our programs. And we, on the other hand, became more educated as to what was available to veterans through traditional, avenues or at least how to integrate them back, and we have worked to make sure our Web sites are linked, that we have cross links. If you come on our Web site as a veteran you can get back to other VA programs. A second place that we have actually formalized an MOU, as well, is with Tom Vilsack and the Department of Agriculture.

We operate in rural areas and we operate in very close collaboration at our district office levels with the USDA operations, so that we can find out which loan program is right for a particular borrower. And we are always referring back and forth between our programs and their programs to make sure that we guide the small business to that which is right for them. We collaborate extensively across multiple agencies on exports. We coordinate with the Export Import bank. We have joint programs with them. We coordinate with Commerce on a daily basis, on all of these activities. And we coordinate as well in an interagency effort in clusters.

And as I said, I could go on. We are fortunate to represent small businesses and to be, I think, a powerful force now in making sure that those small businesses find their way to the resources that they need.

Mrs. EMERSON. So you had a very successful professional career in small businesses and sort of bringing innovation and the like. So taking off your SBA hat just for a second, and thinking about it from the perspective of an entrepreneur or someone who is helping entrepreneurs, what recommendation do you have to us as Members of Congress, how do we sort of figure out what is duplicative and what is not, and how do we best streamline it? I mean, obviously, y'all should be doing that at SBA, or SBA, you are not working there anymore, just temporarily here, while we're talking about this, so SBA, you know, has the expertise to do small business, anything with regard to small business. And you know, I don't know what other agency, if there are any, who do it. But I do know there are about, at least eight agencies that do renewable energy, including the USDA, I might add. How do we take this program and leverage off each other and streamline it, as opposed to having eight different sets of rules and regulations and therefore, we get nothing done.

So what do you recommend, how can you help us do our job better, having been in the arena yourself?

Ms. MILLS. Well, as you know, there are lots of different kinds of small businesses. And they have different kinds of needs. So Main Street small businesses, they need capital, contracting, counseling, but it is a different kind of capital perhaps than a high impact small business. So I think the first thing that we have thought about, I think quite effectively now, across the Federal Government is what are the needs for the high-growth, high-impact small business. And that is Startup America, the interagency effort around both removing barriers and providing the tools that a small business needs.

So I think the best place to see strong examples of effective elimination of duplication and even more than that, coordination of all the assets that are available, are in some of these interagency efforts, and in some of the electronic information one stops that we have been able to do. If you look on SBA.gov and business.gov, you will see that we leverage other agencies' activities in order to make sure that the small business gets an opportunity to navigate to what is right for them. And we can continue, we plan to continue to do that to make those pathways even more easy to find for small businesses.

Mrs. EMERSON. Are there other agencies that horn in on any of the work that you are doing?

Ms. MILLS. Well, we invite them in.

Mrs. EMERSON. That is different. That is not what I asked. I said, are their agencies who somehow try to get in and do your, do what do you? Because if there is, that is what we need to know because obviously, y'all have the expertise and perhaps other agencies, well, rural development may well actually be one that would horn in, or as you were saying, you should work actually more collaboratively I would think.

Ms. MILLS. We do not find extensive duplication in the respect that we operate on the ground and we tend to be the agency that lives on the ground, helping small businesses one by one by one. And I think we are able to bring a tremendous set of assets in the interagency activity, and our role is generally that we do a lot of the groundwork. We do the heavy lift in direct contact with the small business day by day, one by one. And I really have to just take the moment to commend our staff that does that on the ground. They have a real love of small business and that is how we help them.

Mrs. EMERSON. And I would attest to that, working, you know, my staff works extensively with your folks on the ground. But hopefully the other agencies with whom you collaborate will jump as fast as you do so that if there is a whole package and you are only doing part of it, they are doing their piece simultaneous to yours. And that would be my frustration.

Actually having worked in an administration many, many years ago, that was my frustration. It was because there was a lot of interagency work that had to be done and we did our part and the others didn't. I am not asking you to make a comment. But that is a very frustrating reality sometimes of unwieldy government. I have got a bunch of questions that I want to actually, and I also have one from Mr. Walden of Oregon who has asked me to submit a question for him, which I am happy to do. There are things that I want to, questions about 504 loan refinancing, particularly since you all are not actually asking for any subsidy costs, but is there something that we ought to know about in case something happens?

Might there be a cost associated with those 504 loan refinancings? These are the types of questions that we are going to submit. And if we could get an answer back. Some of these are pretty critical. If we could get an answer back within 10 days I would be very grateful. We will rank them many. And Joe, you want an answer back quickly too?

Mr. SERRANO. Yes, to my one solitary question. I do have a question for you. Do you think the Senate is a duplication of the House? Because that would solve a lot of our problems.

Mrs. EMERSON. Well, on the one hand it could solve some problems. On the other hand, sometimes the Senate is able to act—well, they frustrate me a great deal because it takes so long to do things. Sometimes they can, perhaps, bring a little balance.

Mr. SERRANO. Madam Chair. I am joking. I expect them to save us from H.R. 1.

Mrs. EMERSON. I guess that is what I was trying to say in a more diplomatic way, given the fact that this is all on record.

Mr. SERRANO. Listen we have been doing stand up here at times and it is all on TV too.

Mrs. EMERSON. All right. We won't keep you any longer. Thank you. Thanks so very much for all you do.

Mr. SERRANO. Thank you for your service.

Mrs. EMERSON. Thank you for all you do and all that your staff does. You all really are the front lines and we need to keep you in the business of doing just that.

Mr. SERRANO. And you know my mantra, don't forget the territories.

[The information follows:]

**The Small Business Administration's Answers to  
QFRs submitted by  
Financial Services and General Government Subcommittee  
Regarding  
Hearing on the Small Business Administration FY 2012 Budget**

**Questions for the Record Submitted by Chairwoman Jo Ann Emerson**

DISASTER LOAN PROGRAM

*The fiscal year 2012 budget request for the Disaster program includes \$167 million for administrative costs which is an increase of \$90 million over fiscal year 2010. You haven't requested a subsidy appropriation for fiscal year 2012. While the administrative increase looks very large, I understand this is because the fiscal year 2010 appropriation was partially offset by carryover funds appropriated for prior disasters and that all of this carryover has been expended. For fiscal year 2011, much of your Disaster administration expenses were funded through a reprogramming of \$126 million in Disaster subsidy.*

*Do you have enough subsidy carry-over to support the program level that SBA needs to be able to respond to a large disaster?*

It is estimated that SBA will carry over \$539 million in disaster subsidy from FY 2011 into FY 2012. This amount of carryover is more than sufficient to cover the estimated subsidy usage of \$135 million in FY 2012 which is based on an estimated ten year average program of \$1.1 billion based upon "normalized" activity adjusted for inflation.

*How much in Disaster subsidy do you have in reserve and how many years of reserve does that equate to?*

It is estimated that the disaster subsidy carry over into FY 2012 from FY 2011 will total \$414 million. This amount of subsidy equates to a reserve of 3 years assuming an estimated ten year average program of \$1.1 billion based upon "normalized" activity adjusted for inflation.

*What are your thoughts on looking to the Disaster loan subsidy funds to pay for fiscal year 2012 Disaster admin expenses?*

The President's FY 2012 Congressional request does not propose a reprogramming of disaster loan subsidy funds to pay for FY 2012 disaster administrative expenses.

## LOAN MANAGEMENT AND ACCOUNTING SYSTEMS

*SBA launched a multi-year, \$250 million project to create a loan management and accounting system in 2006 to upgrade your outdated IT systems that track tens of billions of dollars in outstanding loans. After much time and cost overrun, I understand that you have halted that plan and have taken a much more incremental approach to addressing these critical IT upgrades. The President's budget requests \$14.2 million for this purpose in fiscal year 2012.*

*What assurance can you give that the project is being properly managed moving forward, is on time, within budget and meeting stakeholder expectations?*

There have not been any cost overruns on the SBA's planned projects to upgrade the Loan Management and Accounting Systems (LMAS). The SBA modified its LMAS strategy in order to address its business needs faster and at lower cost with less risk than a traditional long-term, high-cost IT system replacement. Specifically, this strategy achieves more than \$113 million in cost-savings and an estimated delivery timeframe of 30 months rather than the nine years initially scheduled.

SBA is confident that this approach will keep the project on time and within budget. Instead of treating LMAS as a single large project whose success or failure depends on a final delivery that is far in the future, the SBA divided the LMAS program into smaller, separately funded projects intended to provide meaningful deliverables and decision points. This approach enables the SBA to adjust project plans in "real-time" and to identify and implement corrective actions, as needed. Additionally, this strategy provides flexibility to incorporate lessons learned, changing circumstances, and funding levels.

Stakeholders have been engaged in defining the incremental improvement projects, which have been prioritized to deliver necessary improvements earlier than had been anticipated under the original LMAS project. A comprehensive communications plan that keeps stakeholders informed and involved in the projects improves accountability for project delivery times and product quality

*What activities and upgrades will these resources be used for?*

The FY 2012 funding request includes the following projects:

- Accelerate the migration of user interfaces from the legacy platform (Unisys) to the Agency's current application infrastructure (i.e. ColdFusion / Java / Oracle), including additional electronic loan application capability
- Port the batch COBOL systems from the legacy platform (Unisys) to a more up-to-date and platform independent COBOL environment
- Migrate the Agency's legacy Sybase systems to the Agency's current database infrastructure (i.e. Oracle)
- Analyze remaining issues and develop plans to prioritize additional projects to address the Agency's most important business needs.



## NEW PROGRAMS SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM

*You've proposed funding for a number of new initiatives, while at the same time decrease funding for programs that have a proven track record of helping disadvantaged small businesses (like Small Business Development Centers) and keep many others at flat funding.*

*Under the proposed Small Business Intermediary Lending Pilot Program 20 intermediaries will be loaned \$1 million each to make loans of up to \$200 thousand to small businesses. The intermediaries will not have to repay these loans for a period of two years and then the interest payment is one percent. Basically, this program could wind up making loans to exactly 100 businesses (with each intermediary making \$200 thousand loans to five businesses) and my understanding is that the purpose of this program is to alleviate the lack of credit availability to small businesses? With some 28 million small businesses, is this a good use of resources?*

The Intermediary Lending Pilot (ILP) Program was authorized by the Small Business Jobs Act of 2010 ("Jobs Act"), which was signed by President Obama on September 27, 2010. The Jobs Act directs SBA to establish a program that will provide direct loans of up to \$1 million to eligible intermediaries that will use those funds to make loans of up to \$200,000 to startup, newly established and growing small businesses.

The SBA will make ILP loans to no more than 20 non-profit lending intermediaries per year. In order to maximize the impact of this program, however, SBA has proposed draft regulations that will require intermediaries to re-lend their SBA funding rather than allow it to lie dormant. Based on similar programs at other federal agencies, as well as discussions with potential participants, we expect that each dollar will be loaned out approximately 2.5 times; therefore, we expect that the program will support significantly more than 100 loans.

The Jobs Act also provided direct appropriations for the program in FY 2011 and FY 2012. SBA believes the program offers an additional point of access to capital for small businesses and entrepreneurs, but will monitor program performance before deciding whether to request appropriations for the program in FY 2013.

*The budget proposes to reduce the Small Business Development Center program from \$112 million to \$103 million and eliminate the Drug Free Workplace program. Why are these reductions proposed and how will they impact small businesses?*

Considering the current budgetary environment, SBA has had to take a serious look at our budget and make some tough decisions. The Agency has reviewed all of the agency's non-credit programs in order to ensure that budget reductions are implemented in an appropriate and equitable manner.

It is important to stress that the SBDC program is a fundamental part of the Agency's portfolio as it is on the front line of small business counseling.

Furthermore, SBA is mitigating the effects of reductions in the SBDC program by using the \$50M in additional grant funding provided by the Small Business Jobs Act.

The Drug Free Workplace program had uncertain impact and we believe is duplicative of programs carried out by other federal agencies and private sector organizations. SBA is still working with ONDCP to provide support for its efforts/website.

REGIONAL INNOVATION CLUSTERS

*In fiscal year 2010, SBA received \$10 million to develop regional innovation clusters and the fiscal year 2012 request includes \$12 million to expand the existing cluster program. I understand the idea behind a cluster is to establish partnerships between entrepreneurial education programs, industry and training programs to all work collaboratively on a common roadmap to improve a region's economy.*

*How many jobs have been created to date as a result of this program?*

Results from cluster work are typically viewed over long-term periods. We are tracking certain metrics in the short-term and others in the long-term. We will have data on the number of jobs created at the end of the fiscal year. Once the data has been collected the Agency will be able to brief the committee.

*Looking at the budget request, it's difficult to say whether those clusters would have formed without any assistance or whether the clusters will continue to exist with or without assistance.*

*Do communities really need the Federal government to give them money in order to collaborate?*

One of the criteria of our clusters initiative was that applicants already be existing clusters. SBA funds are used to augment the small business capacity of these existing clusters.

## 504 LOAN REFINANCING

*I understand that the economic downturn and the subsequent decline in the value of real estate has had a significant, negative impact on many small businesses with mortgages maturing in the next few years. Even small businesses that are doing well and making their payments on time could face foreclosure because of the difficulties in refinancing and restructuring their mortgage debt. You just launched a new initiative last month which will allow small businesses to use a version of SBA's 504 loan program, which traditionally serves small businesses requiring brick and mortar financing, to refinance their mortgage debt.*

*Can you tell me a little more about this program and how you expect it to work?*

The Small Business Jobs Act authorized SBA to approve up to \$15 billion in loans for refinancing projects under the 504 loan program over the next two years: \$7.5 billion in each 2011 and 2012. The program will require no subsidy as it will be funded through additional fees to borrowers. SBA estimates the new program could help as many as 20,000 businesses.

Debt refinanced under the 504 loan program will be structured as a standard 504 loan: typically 50 percent of the loan is provided by a commercial lender, up to 40 percent is provided by an SBA-approved Certified Development Company (CDC) with funds provided by an SBA-guaranteed debenture, and the remaining 10 percent or more is contributed by the borrower in equity.

*Is this program only eligible for small businesses with existing 504 loans or are other small businesses also able to take advantage of this program?*

Government-backed loans or 504 third-party loans are not eligible for refinancing under this program.

*How has the response been so far to this new program?*

SBA began accepting applications on February 28, 2011. It traditionally takes several weeks for new loan programs to see significant lending volume. Industry interest in the program has been high. The trade association for SBA CDC lenders, NADCO, held a web-based seminar in early March that attracted over 2,500 participants—by far the largest training ever held by the organization.

SMALL BUSINESS INVESTMENT COMPANY

*To become licensed as a SBIC, an applicant must go through a two phase licensing process. Currently it is taking almost 6 months for SBA to begin the review of the application. Is a 6-month delay reasonable?*

Our goal is to complete the initial review within 8 weeks of receipt of an accurately completed Management Assessment Questionnaire (MAQ). With the increased interest in the program, a large number of MAQ's were received within a short period of time, thus creating an instant backlog. We are addressing this backlog by reassigning resources from other areas.

*What is the SBA doing to increase the efficiency of the licensing process to address the many new investment funds which are currently interested in the program and applying for a license?*

We are now offering a weekly "pre-screening" call for potential applicants that would like an opportunity to speak with our Program Development staff about their qualifications prior to filing a MAQ. In addition, we are using the time after a green light letter has been issued, and prior to receipt of the application to conduct further analysis on the prospective fund.

*On January 31<sup>st</sup> the Administration announced as part of the Startup America Initiative that the SBA will create within the SBIC debenture program a new vehicle – the Innovation Fund – to address the capital gap in the market for early stage investing. How will the Innovation Fund be paid for?*

Using existing authority, with no new cost to the taxpayers, the SBA will commit \$1B over five years to early-stage funds.

*Will it operate at zero subsidy?*

Yes, it will operate at zero subsidy.

*Will the licensing standards be lower?*

No. Licensing standards will not be lower.

*What safeguards does SBA have in place to ensure that the Impact Investment Fund will not lower the standard for existing SBIC funds?*

Impact fund managers will apply for an SBIC license and up to two tiers of SBA leverage according to the standard requirements of the SBIC program.

## SMALL BUSINESS SET-ASIDE

*The SBA administers the small business set aside program which ensures that small business lumber mills will be able to buy a fair proportion of the timber sold by federal agencies – mainly the forest service and the Bureau of Land Management (BLM). This program has enabled small business mills to survive in small rural communities.*

*Recently this program has seen its already small staff reduced further. The program is down to only three field representatives to cover the entire country. There is no longer any field representative in Portland, Oregon, even though Oregon has the largest concentration of federal timber sale programs. The SBA has eliminated the central director for the program in the national office. We are told that these staff cuts have hurt communication between the SBA and small business mills it is obligated to help.*

*How is the SBA coordinating with the forest service and BLM?*

*What are the SBA's plans for communications with small business mills to ensure that they will be able to buy a fair proportion of the timber sold by federal agencies?*

*How does the SBA plan to address staffing of field representatives and headquarter positions for this program?*

The program has had staff reductions due to employee retirements. The Industrial Specialist (Forestry) position in Atlanta (which was vacant before the Portland position) was filled last fiscal year. While we have not filled the position in Portland, we are providing coverage and support using the Industrial Specialist (Forestry) in Seattle.

Recently the SBA HQ Senior Timber Program representative briefed the Under Secretary (Forestry) at the USDA on several issues impacting timber sales, the "Stewardship Timber Sales Program", and "Appraising set-aside sales to the nearest small business mill".

Part of the normal SBA Industrial Specialist (Forestry) duties is to review Forest Service timbers sales, and when small business set-aside sale are warranted, the SBA representative consults with the small business timber community prior to the offering of the sale. Recently the SBA provided consultation to the small business industry on the recent re-computation of small business timber purchase shares (percentages) that will be in effect for the next 5 years. With the current SBA Timber Program staff, we are providing coverage for all of the 148 Market Areas (Forest Service and Bureau of Land Management), and we coordinate our efforts with each of the Forest Service Regions through their Regional Timber Staff Officers.

SBA has established a headquarters Senior Representative for the Timber Program who is responsible for the day-to-day operations of this National Program and the point-of-contact to the Department of Agriculture, U. S. Forest Service, Bureau of Land Management, Department of the Interior, and the Fish and Wildlife Service (and any other Federal agencies who sell timber on Federal lands) on all issues involving this Program.. The current timber staff is providing coverage for all areas of the program.

**Questions for the Record Submitted by Ranking Member Serrano**

COMMUNITY ADVANTAGE PROGRAM

*The budget proposes that the Community Express program transform into the new Community Advantage Program, which opens up funding to CDFIs and CDCs.*

**Q.** *Please explain how you are changing the old Community Express program and when you expect to be reaching out to CDFIs to make the transition.*

The Community Advantage pilot program makes SBA's traditional 7(a) loan program available to 'mission-based' financial institutions it was not previously open to, including Community Development Financial Institutions (CDFIs). These organizations have a strong track record of lending in underserved communities. Community Advantage will increase the number of places small business owners can go to get an SBA loan, while also ensuring that those borrowers who need it have access to technical assistance and counseling to help better ensure their success.

SBA began accepting applications from organizations interested in participating in Community Advantage on February 15, 2011, and a number of CDFIs have already applied. (The first Community Advantage lender, a CDFI, was admitted to the program on March 16.) In addition, SBA has conducted a number of working sessions with CDFI leadership to discuss the transition, and plans to continue its outreach efforts.



**Questions for the Record Submitted by Congresswoman Lee**

7(a) COMMUNITY ADVANTAGE

*Many Members are committed to maximizing the impact of SBA programs in their local communities.*

*How is the new Community Advantage program different from Community Express?*

Community Advantage was designed around several elements that will allow SBA to avoid the performance issues exhibited in Community Express. First, the Advantage processing method requires documentation and underwriting that, while streamlined from our typical 7(a) loan process, is more detailed than that typically used by Community Express lenders.

Second, the mission-focused lenders participating in Community Advantage have a proven track record of success in underserved communities, including providing quality technical assistance and counseling that borrowers sometimes need to help better ensure that they succeed.

*How can the SBA help Members of Congress and community groups in their local Districts inform their local small businesses about new opportunities that the Community Advantage program might provide?*

SBA is always interested in working with Members of Congress to promote SBA programs, including Community Advantage. The agency has District Offices in every state that regularly conduct outreach events to encourage lenders to participate in SBA lending; these offices welcome the support of Members or their staffs.

## 8(a) PROGRAM

*I believe that it provides critical business development assistance, management and technical assistance, access to capital and other forms of financial assistance and provides disadvantaged small businesses access to sole source and limited competition Federal contract opportunities.*

*Given how critical a role that the 8(a) program plays I am concerned about exactly how the new regulations will be implemented and carried forward in the coming years.*

The new 8(a) Business Development (BD) program regulations became effective on March 14, 2011. These regulations are now the governing guidance followed by SBA Field and headquarters personnel in the administration of the program. To ensure effective implementation of the changes reflected in these new regulations and improved program administration, SBA will provide training to its 8(a) BD workforce in April and June of 2011. Additionally, to compliment this training and to ensure ongoing consistent application of the regulations, SBA will revise its internal operating procedures manual which will provide the necessary guidance and direction to assist its 8(a) BD workforce in carrying out their day-to-day program administration responsibilities.

*What plans does the SBA have in place to ensure the rapid and fair adoption of the new regulations?*

As noted above, the new 8(a) Business Development program regulations became effective on March 14, 2011 and are the current governing guidance for the administration of the program. Also as previously noted, SBA will train its 8(a) BD workforce in April and June, 2011, and will revise its internal operating procedures manual, as appropriate.

*Is it possible for you to give the subcommittee a sense of the impact of the regulatory changes on the small businesses that qualify for the program?*

These regulations are intended to ensure that the benefits of the 8(a) BD program flow to the intended individuals. The impact of these changes on eligible small businesses is varied. While strengthening some program participation requirements, the regulations also enhance business development opportunities. Notable impacts include closing loopholes that have had the unintended consequence of allowing large businesses to inappropriately receive program benefit; ensuring that 8(a) firms that enter into joint venture agreements or Mentor-Protégé Agreements receive the intended benefits of these relationships; and, recognizing the growth in the size of Federal contracts by increasing the levels required for competition in the program and the need for greater personal capital to help sustain business operations.

*Has the SBA improved or enhanced data collection around the 8(a) program in the last year?*

We have made enhancements to our internal data collections systems as this as an ongoing priority for the SBA as it continues to identify continuous improvement opportunities.

*How can members work with the SBA to ensure that businesses in their home Districts are informed and have access to the necessary technical assistance that may be available surrounding the changes to the 8(a) program?*

The SBA delivers its programs through its 68 District Offices (at least one in each State) and its extensive network of resources partners (e.g., Small Business Development Centers, SCORE, and Women Business Centers). The SBA District Offices serve as a conduit for the services provided by our resource partners and are the key point of contact for member constituents to learn more about SBA programs and the many training and management and technical assistance opportunities that are available.

*Will there be any training or technical assistance available for local small businesses?*

As noted before, training and management and technical assistance will be available for all local small businesses through SBA's District Offices and its network of resource partners.

#### INTERACTION WITH THE NEW OFFICES OF MINORITY AND WOMEN INCLUSION

*As the new Offices of Minority and Women Inclusion begin their work across the financial services agencies, will the SBA support their work and share their expertise on how to maximize the impact of Minority and Women Inclusion?*

SBA is committed to fostering the development of all small businesses. Minority and women owned companies continue to be some of the fastest growing components of our economy. The Agency is committed to helping those companies succeed.

*Will the SBA have a role in establishing best practices for how regulated financial services sector companies do more to ensure fair and equal opportunities for Minorities and women?*

SBA is a vocal advocate of minority and women owned small businesses. Expanding opportunities for these companies is fundamental to SBA's mission.

## DIVERSITY GOALS IN PRIME CONTRACTS / IMPACT ON SMALL BUSINESS GOALS

*Currently diversity and inclusiveness goals in subcontracting that are included in contracting proposals tie any included bonus structure or threat of liquidated damages only to an overall goal of meeting a small business sub contracting opportunity target.*

*Setting goals that fail to tie financial consequences to meeting minority owned, veteran owned, women owned, or historically disadvantaged businesses in separate and discreet categories allows true diversity targets to go unnoticed and unfulfilled with little or no consequence on the prime contractors.*

*What can the SBA do to promulgate more effective diversity goals in contracts and apply more refined and disaggregated small business goals in future contracting proposals?*

SBA is committed to implementing and running the small business contracting programs designed and put into statute by Congress. This includes providing increased contracting opportunities to small businesses, including those owned by underserved communities. Additionally, this includes working towards achieving the statutorily mandated goals of 23% of eligible federal contracting dollars being awarded to small businesses, as well as the following socio-economic goals for prime and subcontractors:

- 5% for small disadvantaged businesses
- 5% for women-owned small businesses
- 3% for Historically Underutilized Business Zone businesses
- 3% for service-disabled veteran-owned small businesses

**Questions for the Record Submitted by Congressman Bonner**

## INDEFINITE DELIVERY, INDEFINITE QUANTITY

*Many experienced acquisition managers question the adverse impact Indefinite Delivery, Indefinite Quantity (IDIQ) contracts have on small businesses -- as the smaller specialized businesses cannot compete with larger firms to be awarded IDIQs and are thus forced to partner with a larger firm to deliver their goods and services when the agency elects to procure using an IDIQ. How does the SBA assess the 'value added' of IDIQ contracts and the impact of IDIQs on small businesses?*

IDIQ contracts, also referred to as task and delivery order contracts, allow agencies to award an umbrella contract for a range of products and services and place orders for work as needs arise. They are used when a federal agency cannot predetermine the precise quantities of products or services that will be required over a fixed period of time. Agencies often make multiple awards under the umbrella contract and conduct streamlined competitions among the contract holders before placing orders. Multiple award IDIQ contracts have become increasingly popular over the past 15 years, as have the Federal Supply Schedule contracts managed by the General Services Administration (GSA) (which is a form of a multiple award contract) because all of these vehicles allow agencies to use competition simply and quickly to keep pace with mission demands.

With proper agency leadership, management attention, and guidance, agencies can use IDIQ contracts both to tap into the creativity, innovation and technical expertise that small businesses offer and save resources. There are many examples of agencies combining the benefits of streamlined order competition under multiple award IDIQ contracts with access to a cadre of prequalified small businesses to support ongoing needs for goods and services. The Small Business Alliant contracts managed by GSA are just one example. That said, opportunities for small businesses are being lost because policies and practices regarding the application of set-asides to placing orders under multiple award IDIQ contracts has been unclear.

The President's Interagency Task Force on Small Business Contracting (created in April 2010) recommended that government-wide acquisition policies and regulations be updated to provide clear guidance on when and how set-asides and related tools can be used on multiple award IDIQ contracts to increase opportunities for small businesses. On September 17, 2010, the President signed into law the Small Business Jobs Act. Section 1331 of that Act, when it is implemented in regulation, will give contracting officers the ability to use set asides on multiple award contracts. SBA is working closely with the Office of Federal Procurement Policy and the acquisition community to ensure regulations and policies related to IDIQ contracts appropriately balance the need for efficiency with the need to maximize opportunities for small businesses.

*What is the estimated 'pass through' cost of customized & specialized products and services delivered by small businesses through IDIQs and subcontracts that could be directly contracted with the small businesses?*

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) revised the Federal Acquisition Regulation (FAR) to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, to minimize excessive pass-through charges by contractors from subcontractors, or from lower tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (i.e., pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value.

The data required to estimate the 'pass through' cost is not collected or maintained by the Government in the contract award data repository, FPDS-NG. In addition, this type of data is not reported by large businesses as part of their subcontracting reporting requirements for their prime federal contracts in eSRS.

*What percentage of business would go to small businesses if the government acquisition agents were to directly contract work which is now a 'pass through' to larger firms?*

It is not possible to "extract" data relative to what small businesses can supply if those products/services were broken out from a large business prime contractor since that data is not readily available from either federal contract reporting systems or from large business federal prime contractors. Further, FPDS-NG, the repository for federal contract awards does not capture whether a small or large business is the manufacturer or non-manufacturer of the items furnished to the Government. However, the Small Business Administration continues to work in collaboration with the Office of Federal Procurement Policy to ensure there are increased opportunities for small business contracting and to remove barriers to entry for small businesses.

*In the professional sports, construction, film and several other complex industries, producers contract directly with specialized firms to deliver specialized sub-systems and services -- and hire an expert small management firm to direct and coordinate the joint efforts of these firms working in concert toward delivering a common complex system. Does the SBA see value in this 'professional team consortium' approach -- and how would the SBA propose establishing 'pilot' programs to prototype and assess the value of this approach across government acquisition programs in the other departments and agencies?*

This type of approach described in the question is already in use within the Government, where a prime contractor (large or small) coordinates the delivery of supplies or the performance of services for multiple vendors.

The recommendations that came out of the President's Small Business Task Force as well as the passage of the Small Business Jobs Act has certainly brought to bear the need to focus efforts on maximizing opportunities for small businesses in the federal marketplace. Once regulations are in-place, our continued oversight of agencies achievements in reaching and achieving their small business goals will continue to allow small businesses to increase their footprint in the federal arena.

Two significant events took place in 2010 to increase the number and amount of federal contracts awarded to small businesses. The first was on April 10, 2010 when the President issued his Memorandum on the Interagency Task Force on Federal Contracting Opportunities for Small Business (Task Force). The purpose of the Task Force was to ensure that small businesses, including women-owned, minorities, socially and economically disadvantaged individuals, and service-disabled veterans, have fair access to Federal Government contracting. The Task Force was co-chaired the Secretary of Commerce, the Director of the Office of management and Budget and the Administrator of the Small Business Administration. With the help of our major buying agencies, who were represented by officials from both the acquisition and small business offices in those agencies, the Task Force developed a set of recommendations to clarify small business contracting policies, enhance training of the acquisition workforce on small business issues, and improve the use of technology. Several of the Task Force's recommendations dovetail with ongoing efforts to increase interest in federal marketplace and the potential for competition. For example, all agencies are working to improve their outreach efforts and increase small business awareness and interest in agency contracts that may fit their capabilities. As an additional step, the Administration recently launched the Small Business Central Event Listing on FedBizOpps, where small businesses can search for information on upcoming agency matchmaking, business development and training events. This tool will help small businesses more easily navigate the federal marketplace and participate in more agency competitions.

The second event was on Sept. 27, 2010 when President Obama signed into law the Small Business Jobs Act, the most significant piece of small business legislation in over a

decade. The Small Business Jobs Act contained 19 provisions that will help small businesses compete more effectively for federal contracts and subcontracts. Highlights of the contracting-related provisions of the Act include:

**1) Equal treatment across federal contracting programs.** The law reaffirmed “parity” among federal small-business contracting programs. When awarding contracts that are set-aside for small businesses, contracting officers are free to choose among businesses owned by women and service-disabled veterans, as well as businesses participating in HUBZone and 8(a) programs;

**2) More opportunities for small businesses.** The law eliminates the “Competitiveness Demonstration” program, which limited opportunities for small contractors in 11 industries where they excel, such as construction, landscaping and pest control. This will build on the \$24 billion small businesses won in these industries in Fiscal Year 2009 (effective January 31, 2011)

**3) Focus on unbundling contracts.** The law makes it harder for agencies to “bundle” contracts, a practice that makes it more difficult for small businesses to compete

**4) Combating fraud, waste and abuse.** The law establishes a legal standing of “presumption of loss” when a business misrepresents its ownership status or size in winning a government contract. This allows a federal agency to claim a loss on the purchase, enabling those agencies, including the Department of Justice, to vigorously pursue fraudulent firms

**5) Subcontracting accountability.** The law holds large prime contractors more accountable to their own subcontracting plans by requiring written justification when plans aren’t met and when small business subcontractors aren’t paid on time. This helps eliminate “bait-and-switch” tactics that occur when large primes – after winning the prime contract – don’t follow through with their own plans to give subcontracts to small businesses.

SBA is in the process of working with the Office of Federal Procurement Policy and its agency colleagues to implement both the recommendations of the Task Force and the provisions of the Small Business Jobs Act of 2010.



*Are the quotas for small-business set-asides realistic? If not -- why not?*

We believe the goals set forth in the Small Business Act to build the capacity of our nation's small business contractors (which Congress appropriately labeled as goals, and not quotas) are attainable and this Administration is taking significant steps to help the government meet the goal of awarding 23% of federal contracting dollars to small businesses, including:

- 5% for small disadvantaged businesses
- 5% for women-owned small businesses
- 3% for Historically Underutilized Business Zone businesses
- 3% for service-disabled veteran-owned small businesses

An indicator of whether this is an appropriate goal is the historical small business utilization that agencies report into the Federal Procurement Data System. In fiscal year 2008, 21.5% of eligible federal contracting dollars was awarded to small businesses and in fiscal year 2009, that number grew to 21.9%. The fiscal year 2010 numbers are in the process of being finalized and are expected to be over 22%.

*What additional support does the Congress need to give the SBA to expand the scope and amount of government program work being done by small businesses?*

SBA continues to work collaboratively with Congress to provide updates on changes and improvements to our programs, as well as share ways to increase federal contracting opportunities for small businesses. Additionally, SBA's budget proposal outlines and provides rationale for the resources, funding and support required to provide small businesses opportunities to participate in the federal procurement process, including additional funding to combat fraud, waste and abuse and to effectively run the new Women-Owned Small Business Federal Contract program.

*Can you detail the administration's position regarding ensuring adequate funding for all HUB Zones?*

SBA has outlined the necessary funding and resources, as well as the rationale, to operate the HUBZone program in its Congressional Budget Justification.

*Most contracting officers seem to have their own list of 8 (a) eligible companies and many small businesses have difficulty making inroads to utilize these set asides. What recommendations do you have for new small business owners, who are 8 (a) eligible, for getting a consideration by contracting officers?*

SBA is committed to ensuring the benefits of the 8(a) Business Development program flow to eligible recipients. The 8(a) program offers participants many benefits including federal contracting opportunities and technical assistance. To successfully leverage the benefits of the program, participants should work closely with their local SBA District Office. Through the local District Office, participants can gain access to the many resources available to assist them in their efforts to successfully compete in the federal marketplace, such as gaining introduction to federal contracting officials and Agency program managers; receiving assistance through Procurement Technical Assistance Centers (PTACs); participating in Federal Contract Fairs; receiving direct assistance from SBA's Procurement Center Representatives; and receiving training and assistance through SBA's 7(j) Management and Technical Assistance program.

THURSDAY, MARCH 31, 2011.

**CONSUMER PRODUCT SAFETY COMMISSION**

**WITNESSES**

**INEZ MOORE TENENBAUM, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION**

**ANNE NORTHUP, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION**

Mrs. EMERSON. This hearing will come to order. I want to wish everybody happy opening day of baseball. Go Cards. Joe.

Mr. SERRANO. It is opening day because the Yankees are playing.

Mrs. EMERSON. And who are the Yankees playing today?

Mr. SERRANO. The Yankees are playing the Tigers. And we are going for number 28. That is arrogance, is it not? If I was not a Yankee fan I would be upset that they can buy every player in the world.

Ms. EMERSON. So now we are trying to find out if I have a Cardinals cap here, and we are going to decorate the dais, do you have one in your office, Steve? Not yet.

Mr. WOMACK. All my Cardinals caps are soiled with sweat and grease.

Mr. SERRANO. You realize the Tea Party is outside listening to all of this, right?

Mrs. EMERSON. All right, anyway, I guess we will get serious. I am hoping that the Yankees and the Cardinals win today, in fairness. And I want to welcome our witnesses, Chairman Tenenbaum and Commissioner Northup. Thanks for being here and testifying on the Consumer Product Safety Commission's fiscal 2012 budget request. You all at the CPSC have the daunting task of overseeing tens of thousands of consumer products. These products are used by all of us daily. It is important that the CPSC lives up to its mission of protecting consumers from unsafe products while at the same time not promulgating rules that are unnecessarily onerous for American businesses and manufacturers.

Of particular interest to me is the Commission's effective and efficient use of its resources. As you know very well, the current spending levels are unsustainable. There has been much interest, and there has been concern expressed to me by many people, about your product complaint database, so I am interested in hearing both of our witnesses' thoughts on that, and particularly because I tried using it myself yesterday, just to see how easy it was to work. But then I realized I did not have a complaint, and I could not submit things that were not true. I have concerns with its tangible impact on dangerous products, and perhaps some of the unintended consequences. I do want to get into that because I did go on it and saw how it worked, and I looked through and saw some

of the complaints that had been made, most of which seemed quite legitimate to me.

But on the other hand I do want to explore further problems that could arise. It just worries me about over-regulating business in a very fragile economy. Certainly we do not want higher prices for consumers, but nor do we want American businesses to close or not even try to grow due to regulations that make it too hard for them to comply. In addition, I do have concerns about the amount of taxpayer money that is going into this database. Hopefully we will discuss this, because as you remember, during the debate on HR-1, there was an overwhelming vote to not fund the consumer complaint database. I suspect that this is not going to be the last we hear about it from colleagues, and perhaps we can work together on trying to figure out how to best make people feel comfortable about it, or changes that need to be made. I want to thank you all so very much, and look forward to your testimony. I want to recognize my very good friend and Yankees patron, Mr. Serrano.

Mr. SERRANO. I wish I was a Yankees patron. I cannot even afford the tickets now.

Ms. EMERSON. How much are the tickets?

Mr. SERRANO. Top ticket to Yankees Stadium is \$1,250.

Mrs. EMERSON. To go to a game? Who would spend that kind of money?

Mr. SERRANO. It was built with Wall Street in mind, but that is another story. That was before the crash. Do not get me going. Thank you, Madam Chair, I too would like to welcome Inez Tenenbaum, the Chairwoman of the Consumer Product Safety Commission, and Commissioner Anne Northup, a colleague is always a colleague, to this hearing of the Financial Services and General Government Subcommittee. This agency has a vital role to play in all of our lives, as it is responsible for making sure that the products we use every day are safe. For fiscal year 2012, the budget request for the Consumer Product Safety Commission is \$122 million. Your agency has important and ongoing responsibilities in making sure that hazardous products are recalled, imported products are safe, and that our children are protected from dangerous toys and other baby products.

I am particularly interested in learning more about your ongoing efforts to implement the Consumer Product Safety Improvement Act of 2008. I am also pleased that you have launched your new Consumer Products Safety Information Database, which will give consumers an important tool as they use or purchase new products. Finally, I look forward to discussing your efforts to address safety issues with respect to imported products. We must make sure that we continue to provide for a strong Consumer Products Safety Commission, and I am hopeful that today's hearing will give us an opportunity to learn more about your ongoing programs and the progress that you are making in some of your newer initiatives.

Again, we welcome you. And we have a delicate balance, here. And that is that it is obvious that there will be some serious cuts across the board in this year's budget, and in future budgets. That is the mood in many places, and that is certainly the mood in the House. Our challenge is to make sure that as we apply these cuts, especially in this agency, that they are done in a way where we do

not hurt the effort that we should be making on behalf of the American people. Our Chairwoman said we have to be careful that we do not over-regulate. I agree with that. But my statement is we have to be careful that we do not under-protect the American consumer. And there is the balance. Do not over-regulate, do not under-protect. If we can strike that balance, the American people will be well-served. Thank you.

Mrs. EMERSON. Thanks, Mr. Serrano. Chairman Tenenbaum, we will recognize you for your opening statement. If you would not mind keeping it to five minutes, it gives us more time for questions. Thanks.

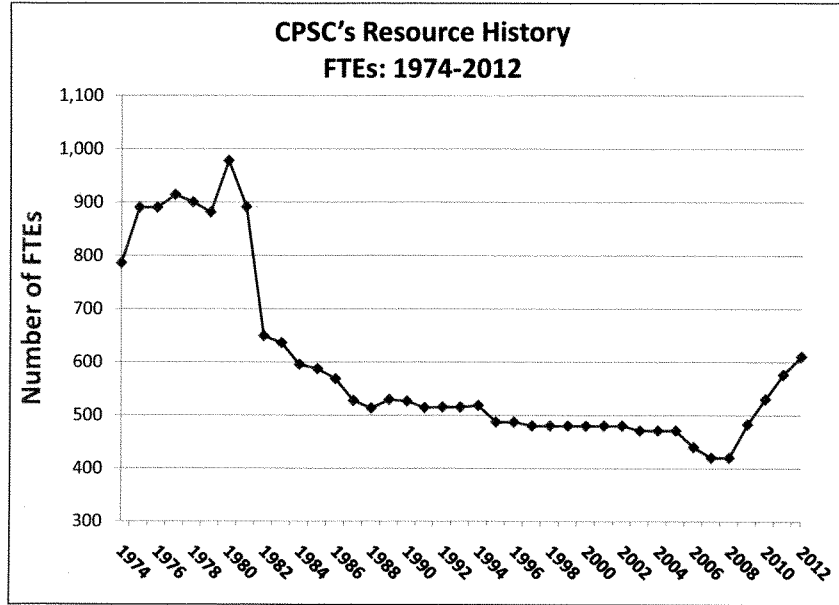
Ms. TENENBAUM. Good morning, Chairwoman Emerson, Ranking Member Serrano, and members of the committee. I am pleased to be here today to update the subcommittee on the positive changes we have made at the agency. Since my last appearance before the subcommittee a year ago, I have focused on three key objectives. First, I have worked diligently to implement the Consumer Product Safety Improvement Act, the CPSIA, and used that Act's new authorities in a manner that is both highly protective of consumers, and fair to industry stakeholders. On March 11, we officially launched our new publicly available Consumer Product Safety Information Database. The database, now available at [saferproducts.gov](http://saferproducts.gov), will empower consumers with information, allowing them to quickly determine which products they already own, or are considering purchasing, are associated with safety hazards or recalls. Second, I have focused on changing the CPSC's internal processes, so that the agency is more proactive and more capable of addressing safety challenges presented by thousands of types of consumer products imported from around the world.

In the last year, the Commission has unanimously adopted a five-year strategic plan that establishes a plan to move CPSC closer to becoming the global leader in consumer products safety. We have established a new office of education, global outreach, and small business ombudsman that has already begun to provide outreach to small businesses and crafters. And we have embarked on a substantial upgrade of our information-technology system, which has formed the backbone of our database, and our new [cpsc.gov](http://cpsc.gov) homepage. Third, I have focused on proactive prevention of consumer harms, identifying emerging hazards and keeping those products out of the stream of commerce. We have taken a number of steps to increase our surveillance of potentially harmful consumer goods by signing several information-sharing agreements with customs and border protection, and increasing our physical presence at the ports-of-entry. The Commission's Safe Sleep team has also made great strides to rid the marketplace of dangerous cribs, usher in a new generation of safer cribs, and educate parents about the importance of maintaining a safe sleep environment for infants and toddlers. A key component of this was the mandatory crib safety standards, which was unanimously adopted by the Commission. In addition, the Commission's staff has already worked very hard to address new hazards, such as the potential use of toxic metals in children's products, and the Commission's continuing efforts to provide information and outreach to homeowners impacted by problem-drywall.

Overall, I am extremely proud of the Commission's talented staff, and the work they do every day to create a safer consumer product marketplace for all Americans. Our proposed fiscal year 2012 budget reflects these priorities, and will give the Commission the staffing and resources it needs to respond to new hazards and keep consumers safe. In fiscal year 1980, the commission had about 100 full-time employees, and an inflation-adjusted budget of over 150 million. By 2007, the commission had fallen to 385 full-time employees and was barely able to fulfill its core mission. Full-time staff now stands at approximately 550 employees. As noted earlier, these resources allow us to staff several ports-of-entry, and leverage cooperation and information sharing with CBP to keep dangerous products out of the country, staff our new lab facility, scheduled to open in May, and test potentially dangerous products, and allow us to respond more rapidly to emerging hazards like toxic metals and problem-drywall. I am highly cognizant of the desire for fiscal restraint that has been expressed by the administration, the Congress, and the American people. Yet I believe that CPSC is, dollar-for-dollar, a great investment to the taxpaying public. There are, however, several areas of critical need that the Commission must address in fiscal year 2012 to maintain our forward progress. Accordingly, the fiscal year 2012 CPSC budget requests \$122 million; a slight increase from the \$118.2 million funding level the Commission is currently operating under the continuing resolution, and the \$118.6 million request for fiscal year 2011.

If enacted, this level would allow the agency to hire an additional 34 full-time employees to fill areas of critical need, such as rapid review of incident reports, and increased defect investigations. These resources will allow us to continue our rebuilding efforts, improve outreach to consumers, and most importantly, prevent injuries and save lives. Madam Chairman, Ranking Member Serrano, Mr. Womack, thank you for inviting me today to provide testimony before the Subcommittee, and for your support of the CPSC. And I would like to share with you a reflection of the statement, a chart that reflects the CPSC resource history from 1974 to 2012.

[The information follows:]



As you can see, in the 80s, we were almost to 1,000 employees, and adjusting our budget to inflation, we had about 150 million. And as the cuts were made in the Clinton Administration and the Reagan Administration, we went down, and this right here is when the year of the recall occurred, when Congress directed us to hire 500 people by October 1, 2010. That was in the CPSIA. And that is when we started climbing, when we got that direction from Congress in the CPSIA. It said, The Commission shall increase the number of full-time professionals employed by the Commission to at least 500 by October 1, 2010, subject to the availability of appropriations. So, thank you, Thank you for letting us use the charts.  
[The information follows:]





**Statement of  
Inez Tenenbaum  
Chairman  
U.S. Consumer Product Safety Commission**

**Before the**

**House Committee on Appropriations**

**Subcommittee on Financial Services and General  
Government**

**March 31, 2011**

Good morning, Chairwoman Emerson, Ranking Member Serrano, and Members of the Subcommittee on Financial Services and General Government. I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's (CPSC) significant activities over the past year, as well as the Commission's fiscal year (FY) 2012 budget request.

Since my last appearance before the Subcommittee almost 12 months ago, I have focused on three key objectives at the Commission: fair and effective implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA); reinvigoration of the Commission's business processes; and expanding our program of early interdiction of dangerous products and prevention.

**Fair and Effective Implementation of the CPSIA:**

**Children's Product Safety Provisions:** In the last two years, Commission staff has worked diligently and successfully to implement almost all major provisions of the CPSIA, with particular emphasis on infant and children's safety provisions. As part of this process, the Commission has sought to implement certain sections of the law in a manner that recognizes and is responsive to the concerns expressed by some segments of the regulated community. One example of this is the Commission's recent decision to extend the current stay of enforcement for third-party testing and certification for lead substrate in children's products until December 31, 2011.

It is important to note, however, that the majority of CPSIA rules and requirements have been adopted unanimously by the Commission and widely accepted by industry, consumers groups, and families across the country. These provisions include:

- new durable infant and toddler product standards, so that we never again have to hear of an infant who drowned in a baby bath seat or a toddler who is paralyzed by a poorly designed baby walker that tumbles down a flight of stairs;
- product registration cards that now accompany many juvenile products, so parents who register can receive direct notification and respond to recalls; and
- the inclusion of tracking labels, to the extent practicable, on children's products so that parents can identify who made them—even long after the packaging is thrown away.

**The Public Searchable Database:** On March 11, 2011, we officially launched our new publicly available consumer product safety information database, which was mandated by section 212 of the CPSIA. This database, available online at [www.SaferProducts.gov](http://www.SaferProducts.gov) and through the Commission's homepage at

www.CPSC.gov, is a powerful source of information for consumers, allowing them to determine whether products they already own, or are considering purchasing, are associated with safety hazards or recalls. The SaferProducts.gov site also has an enhanced reporting tool, so that consumers can tell CPSC about a consumer product that caused harm or has the potential to cause harm. CPSC has used the launch of the database to encourage more reporting to CPSC. Increased reporting will help our agency respond faster to product dangers and will, for the first time, empower consumers with online access to vital safety information.

I recognize that the rollout of this database has caused concern among some in the manufacturing community. Several incorrect claims have been made about the database, including assertions that the database rules allow anonymous unverifiable reports and that manufacturers do not have adequate time to respond to reports containing “materially inaccurate” information. Let me respond to those claims upfront.

First, the database does not and will not include reports of harm submitted anonymously. Each submitter is required to provide eight pieces of information, including a description of the product; identity of the manufacturer, private labeler or importer; description of the harm; incident date or approximation; category of submitter; submitter’s contact information; consent to include the report in the database; and a verification that the information provided in the report is “true and accurate” to the best of the submitter’s “knowledge, information, and belief.” Any reports filed that do not include the minimum required information—including the submitter’s contact information—are not eligible for posting on SaferProducts.gov.

Second, the database rules were designed to provide manufacturers with the ability to challenge any potentially inaccurate information in a report and to post a comment about the consumer’s report. For a qualifying report that contains the minimum required information, the Commission has five business days, where practicable, to send it to the manufacturer. For manufacturers registered with the Commission, the reports are sent by e-mail and are received almost immediately by the manufacturer. Once a report is sent to the manufacturer, it has 10 business days to provide, if it wishes, comments on the report, or to make claims of materially inaccurate or confidential information prior to the posting of the report. For those businesses registered with the Commission, they can provide comments or make claims through the SaferProducts.gov Business Portal.

If a manufacturer provides comment within the 10 business day period, the comment most likely will be posted with the incident report when the report first appears on the database. A manufacturer is also allowed to provide an unlimited number of additional comments on a report at any time. If a manufacturer submits a claim of materially inaccurate information, the Commission will endeavor to determine the claim before the report publishes. For example, if a business makes a claim of material inaccuracy stating that it has been incorrectly

identified as the manufacturer, the CPSC will quickly determine the merits of the claim and, if accepted, will remove the business's name from the report. Information identified by a company as confidential within the 10 business day period will never be posted publicly. Overall, I believe this strikes an appropriate balance between due process for manufacturers and consumers' right to know about potentially dangerous products that could cause harm or injury.

Furthermore, I believe it is important to provide a reminder of just how powerful a resource this database will be for consumers. Rather than use my words, I would like to repeat the words of Lisa Olney, whose daughter died in a defective portable crib just after her first birthday in 2002. Ms. Olney posted the following on the *Kids in Danger* web blog:

*On December 19, 2002, my daughter Elizabeth, just 13 months old, died in a poorly designed play yard. I live my life often looking back through "what ifs" and "should haves," but I've learned to give most of that up in order to save myself from being a horribly miserable individual. Instead, I realize the importance of focusing on efforts to protect our children so that no parent has to suffer what I have, along with too many other victims of unsafe children's products. The CPSC database is going to protect millions of children, because it provides a place to go when considering the choices parents make when purchasing products, especially those products intended to be beneficial to our children's safety.*

This database will prevent injuries and save lives. Congress recognized this when it added section 212 to the CPSIA, and I hope you will continue to support this very powerful, and potentially lifesaving, open source of consumer information.

#### **A Reinigorated Commission:**

**New CPSC Strategic Plan:** Last year, the CPSC launched a comprehensive strategic planning initiative to update the Commission's outdated 2003 Strategic Plan. As a result of this effort, the Commission unanimously approved the agency's new 2011-2016 Strategic Plan, which lays out five key goals and also details programmatic objectives that will allow the CPSC to move closer to becoming the global leader in consumer product safety.

**New Office of Education, Global Outreach, and Small Business Ombudsman:** On September 22, 2010, the Commission voted to create a new office to coordinate and provide outreach to various domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, and foreign governments. Within this office, we have a full-time Small Business Ombudsman who is dedicated to serving the nation's many smaller businesses in the area of product safety. In particular, special attention will be given to developing "plain English" information tailored to small businesses and small

batch manufacturers so that they can understand and comply with new and existing safety standards.

**New CPSC Website:** As part of the Commission's overall Information Technology improvement project, the Commission also launched a new updated CPSC.gov home page last December, and currently is in the process of upgrading the entire website. As of now, the rest of the revised content on the new website is scheduled to go live in September.

These improvements will allow consumers to more easily search for safety information and view videos on keeping their families safe from product hazards. In addition, the new website will provide industry, and particularly small businesses, with increased access to resources on how to produce safe products that comply with applicable safety standards.

#### **An Increased Commitment to Early Interdiction and Prevention:**

**Import Surveillance:** Traditionally the Commission has spent the bulk of its resources investigating harmful products in the marketplace. This will always form a substantial part of the CPSC's activities, but I believe the more effective approach is ensuring that harmful products never even enter the country. To that end, I have taken a number of steps to add additional technological resources and personnel to the Commission's Import Surveillance Division. This Division works directly with the Department of Homeland Security (DHS) and Customs and Border Protection (CBP) to keep dangerous products out of the United States.

On the technological side, the CPSC recently executed two interagency Memorandums of Understanding (MOUs) with CBP that allow us to access more "real time" importer information and target the most dangerous incoming shipments. The first of these MOUs, signed in April 2010, allows CPSC personnel to work at CBP's Commercial Targeting and Analysis Center (CTAC) in Washington, DC, and access real time manifest entry data collected by CBP. This, in turn, allows Import Surveillance Division personnel at the ports to target high-risk shipments prior to their entry into the domestic stream of commerce.

The second MOU, signed with CBP in August 2010, gives the CPSC access to information in the Treasury Enforcement Communications System (TECS). This will assist CPSC Import Surveillance staff at the ports by providing them with additional information to improve local targeting and interdiction of dangerous products.

The CPSC is also actively involved in supporting the Importer Self Assessment – Product Safety (ISA-PS) initiative that is currently being piloted by CBP. The ISA-PS is intended as a partnership among CBP, CPSC, and importers to ensure product safety compliance. It is based on a voluntary approach that provides

meaningful benefits to importers who demonstrate readiness to assume additional responsibility for managing and monitoring their own product safety compliance.

We have also taken steps to increase CPSC's physical presence at ports of entry. In FY 2008, the Import Surveillance Division had only five full-time employees (FTEs), and of those only three FTEs were actually stationed at ports of entry. Through FY 2010, we expanded staffing in the Division to 18 FTEs, with 14 FTEs actually stationed at ports of entry. I am very pleased to note that, as of March 28, 2011, the Division now has 25 FTEs, with 19 FTEs collocated at 15 different ports of entry.

Putting more "cops on the beat" has already yielded substantial positive results. In FY 2010, we performed 6,953 screenings at ports, collected 1,776 samples for testing, and of those found 987 that violated CPSC standards. At the same time, we have also seen the number of recalls start to drop—from 563 in FY 2008 to 428 in FY 2010. Maintaining those positive trends is a key goal for the upcoming year.

**The Safe Sleep Team:** The overall safety of cribs and the infant and toddler sleep environment is a critical concern of the CPSC and a personal priority of mine. Parents across the country expect cribs to be a sanctuary for their children, regardless of price or size. Unfortunately, that is not always the case. In the past nine years, there have been at least 32 deaths attributed to drop-side crib failures. This number is tragic. The majority of crib deaths, however, are still directly linked to the use of soft bedding and pillows in the crib.

To address this, I directed Commission staff to embark on a two-prong strategy. The first prong was to recall old, dangerous drop-side cribs in the marketplace and promulgate new mandatory crib safety rules that will prohibit dangerous drop-side cribs from ever being sold again in the United States. I am pleased to report to the Members of this Subcommittee that the new mandatory crib safety rule was approved by the Commission in a unanimous vote on December 15, 2010.

The second prong of this initiative is education: teaching parents and caregivers how to keep the inside of cribs free from suffocation risks like stuffed animals, comforters, and pillows. In partnership with the American Academy of Pediatrics and a child advocacy group called Keeping Babies Safe, we have a wonderful new Safe Sleep video that is being shown in maternity wards and pediatricians' offices around the country. This video is currently available on the CPSC's website, and I urge Members of the Subcommittee to view the video and see its powerful message.

#### **Rapid Response to New Hazards:**

**Toxic Metals in Children's Products:** The Commission has increased its efforts to provide a rapid response to new and emerging hazards. One

example of this response is the CPSC's efforts to stop the use of toxic metals in children's products. Earlier this year, it came to our attention that some foreign manufacturers might be using cadmium or other toxic metals as a substitute for lead due to the Commission's lead limits for children's products.

I sent a strong message to Asian manufacturers and regulators that this was unacceptable and that we would not allow there to be an influx of products with cadmium like we saw a few years ago with lead. We have also asked several standards setting bodies – including the committee that oversees the ASTM F963 toy safety standard— to improve safety standards in this area. In addition, Commission staff is closely examining the use of other toxic metals in children's products, such as barium and antimony, and the CPSC will not hesitate to take further action in this area if necessary.

**Problem Drywall:** I have personally visited several homes and met with a number of homeowners impacted by problem drywall. I am keenly aware of the pain and frustration many families have faced in dealing with this issue, and the CPSC has devoted more resources—over \$5 million in the past two years – to investigate this issue than for any other product investigation in the Commission's history. As a key strategy of the investigation, we have worked collaboratively with several other agencies, including the U.S. Department of Housing and Urban Development (HUD) to formulate guidance that potentially impacted homeowners can use to identify whether a home contains problem drywall and, if so, a remediation protocol for repairing the impacted dwelling.

On January 28, 2010, CPSC and HUD issued preliminary guidance on how to identify the presence of metal corrosion as well as other indicators of problem drywall in homes. This was followed on April 2, 2010, by preliminary remediation guidance, which detailed steps that homeowners could take to address potential safety hazards in homes with problem drywall. When the remediation protocol was released, CPSC and HUD staff noted that the protocols would be updated based on further scientific studies conducted by Sandia National Laboratories (Sandia) and the National Institute of Standards and Technology (NIST) to analyze the long-term impact of electrical component, electric wiring, and fire alarm exposure to the gases emitted by problem drywall.

On March 18, 2011, CPSC and HUD released a new remediation protocol based on an in-depth study at Sandia that simulated the long-term exposure of wiring and other electrical components to hydrogen sulfide gas, which is associated with problem drywall. In the study, Sandia staff simulated 40 years of corrosive conditions that could exist in problem

drywall homes, and did not observe any acute or long-term electrical safety events, such as smoking or fire.

The new guidance should prove helpful to many homeowners who wish to remediate their homes. In addition, I also hope that the guidance will continue to provide actionable criteria for other federal, state, and private entities considering possible financial relief for homeowners, as has been the case with earlier versions of the guidance.

**CPSC's Proposed FY 2012 Budget:**

The past three years have been a period of rebuilding for the Commission, after decades of reduced funding and staff reductions that decimated the agency's ability to carry out its critical public safety mission. In FY 1980, the Commission had almost 1,000 full-time employees and an inflation-adjusted budget of over \$150 million. By 2007, the Commission had fallen to 385 full-time employees—and was barely able to carry out its core functions.

As a result of the increased resources provided by Congress over the past three years, we have been able to rebuild. Full-time staff now stands at approximately 550. As noted above, these resources have allowed us to staff several ports of entry and increase cooperation with CBP to keep dangerous products out of the country. They will allow us to increase staff at our new laboratory facility, scheduled to open in May, to test potentially dangerous products that could injure or kill consumers, including infants and young children. And they will allow us to stay on top of emerging hazards, like problem drywall and toxic metals in toys.

The increased funding also allows us to conduct outreach directly to consumers. It ensures that we can get the message out to families after a hurricane or ice storm that the use of a portable generator in a home can result in carbon monoxide poisoning and tragedy. It also allows us to reach out to new mothers—so that they do not place their newborns into an unsafe sleep environment that could result in tragedy.

I am highly cognizant of the desire for fiscal constraint that has been expressed by the Administration, the Congress, and the American people. Yet, I believe the CPSC is a great return on investment to the taxpaying public. In allocating funds, we have attempted to maximize existing resources to the greatest extent possible. There are, however, several areas of critical need that the Commission must address in FY 2012.

The proposed FY 2012 budget requests \$122 million – a slight increase from the \$118.2 million funding level the Commission is currently operating under, and the \$118.6 million request for FY 2011. If enacted, this level would allow the agency to hire an additional 34 FTEs to fill areas of critical need. In addition, it will allow us to shift resources from expenses associated with IT modernization and CPSIA rulemaking to increased investigation and enforcement activities.



Some highlights of these proposed changes include:

**IT Modernization Cost Savings:** Section 212 of the CPSIA contained two major components: 1) modernization of the Commission's IT systems; and 2) implementation of the searchable consumer product safety information database. Over the past two years, much of the IT spending has focused on infrastructure and staff to support the overall IT modernization. By the end of FY 2011, the bulk of the capital upgrade will be complete, and the Commission's needs shift mainly to maintenance costs.

Accordingly, the FY 2012 budget request includes a decrease of \$3.104 million for costs associated with IT capital and development. This decrease is partially offset by an increase of \$1.44 million to hire four new FTEs and three contractors to maintain the new IT systems. This results in a net decrease in this area from the FY 2011 proposal of \$1.64 million.

**Increased Incident Review and Investigation:** In recent years, the CPSC has experienced a substantial increase in the number of product incident reports filed by consumers. In 2003, for instance, the Commission received slightly more than 22,000 reports. By 2009, that number had jumped to almost 50,000. At the same time, however, the number of investigations conducted as a percent of total reports received dropped from approximately 20 percent in 2003 to less than 10 percent in 2009.

This is a trend that we must reverse. To address this challenge, the FY 2012 budget proposes an increase of approximately \$3.08 million to hire four new FTEs and four contractors to assist with data intake activities, 14 new FTEs to assist with rapid incident review, and six new FTEs to investigate the increasing number of incident reports received. Without this new staff, the agency will see a further reduction in the percentage of incident reports investigated – and this will reduce our ability to respond to emerging hazards.

**IT Capital Replacement Funds:** Currently, CPSC allocates approximately \$1 million each year for capital replacement of equipment and software. However, recent growth in agency personnel and increased reliance on technology has increased the agency's requirements in this area. Accordingly, the FY 2012 budget requests an additional \$500,000 (for a total with baseline funding of \$1.5 million) for capital IT replacement.

**Office of Education, Global Outreach, and Small Business Ombudsman:** As detailed earlier in my testimony, the Commission recently voted to create an Office of Education, Global Outreach, and Small Business Ombudsman. Most of the staff in the office will come from existing FTEs transferred from other offices. However, the FY 2012 budget proposes an additional \$400,000 to support the addition of two FTEs: a director to develop the office and a senior small business

ombudsman dedicated to assisting small business entities in the area of consumer product safety.

**Financial Management, Oversight and IG Support:** The FY 2012 budget requests \$665,000 for three FTEs (an accountant, a budget analyst, and a senior internal controls officer) to support enhanced financial management oversight and support. The budget also requests \$204,000 for the Inspector General's office to hire an independent legal counsel, consistent with the Inspector General Reform Act.

\* \* \* \* \*

Madame Chairwoman, thank you again for the opportunity to testify on the proposed FY 2012 budget for the U.S. Consumer Product Safety Commission.

I look forward to working with you and other members of the Subcommittee on the budget request, and would be happy to now answer any questions you may have.

**Inez Moore Tenenbaum, Chairman  
U.S. Consumer Product Safety Commission**



Inez Moore Tenenbaum was nominated by President Barack Obama on June 9, 2009 to serve as the ninth Chairman of the U.S. Consumer Product Safety Commission. Ms. Tenenbaum was confirmed by the Senate on June 19, 2009 and sworn into office on June 23, 2009 to a term that expires in October 2013.

Ms. Tenenbaum was elected South Carolina's State Superintendent of Education in 1998 and completed her second term in 2007. Throughout her career, Ms. Tenenbaum has been an energetic and determined advocate for children and families and has extensive experience in administrative and regulatory matters.

During her tenure as South Carolina's State Superintendent of Education, student achievement in South Carolina improved at the fastest rate in the nation, with scores increasing on every state, national, and international tests administered. At the end of Ms. Tenenbaum's tenure, the prestigious journal Education Week ranked South Carolina number one in the country for the quality of its academic standards, assessment, and accountability systems.

She previously practiced health, environmental, and public interest law with the firm Sinkler & Boyd, P.A. Before attending law school, Ms. Tenenbaum served as the director of research for the Medical, Military, Public and Municipal Affairs Committee of the South Carolina House of Representatives. She carried out the Committee's responsibilities for all legislation relating to public health, the environment, child welfare, social services, adult and juvenile corrections, state military affairs, and local government.

Ms. Tenenbaum served as special counsel to the McNair Law Firm in the area of public school finance prior to being nominated by the President.

She has also served on numerous task forces that provide oversight on children and family services in the state.

Ms. Tenenbaum received her Bachelor of Science in 1972 and Master of Education degrees in 1974 from the University of Georgia and her law degree in 1986 from the University of South Carolina. She is the recipient of numerous honorary degrees and has been recognized by several state and community organizations for her civic work on behalf of children and families.

Ms. Tenenbaum is married to Samuel J. Tenenbaum.

Mrs. EMERSON. Thank you so much, Chairman Tenenbaum. I would now like to recognize Commissioner Northup. Try to keep it please to five minutes.

Ms. NORTHUP. Yes, thank you. Is it on? Yes. I am delighted to be here. Congratulations, Madam Chair, for your position as Chairman of this committee, and Mr. Serrano, I am delighted to see you again as you said, Once a colleague, always a colleague. This is an opportunity to come before you and share some of the perspectives that I have since being a Commissioner at the Consumer Products Safety Commission since August of 2009. I appreciate the challenge of this committee to fund essential services, and the trade-offs that occur even in the best of years there were trade-offs that always had to be made. And it is with that in mind that I come before you today. As our Chair said, we have grown from 80 million to 118 million since 2008. We have gone from 385 employees to 549. And if we complete our hiring for this year, our targets, and we get the increase that we are requesting, we will be at 600 by the end of the 2012 fiscal year.

With that in mind, I wish I could tell you that all of this money that has been spent has been a good investment. Certainly, our Chair has done a wonderful job at reaching out and looking for better ways, and new ways, to accomplish what the CPSC is required to do. However, the overwhelming amount of time, energy, and money, is being spent on implementing the CPSIA. And while the CPSIA had important, new, good safety requirements that it put in place, some of what we spend our time on, and much of what businesses have been required to do, have absolutely nothing to do with risk. There was never an assessment made that what we were preventing was risky to children in the first place, nor is a lot of the requirements in order to comply with the law based on risk.

However, we get weekly, sometimes daily, information from associations, from individual businesses, from people all across this country that tell us about the fact that they have closed their business, or they have left the child products area of their business. The number of small businesses that we put out of business has to be in the 100s. It was estimated by our agency back in 2009 that the cost to businesses is in the billions of dollars. And when you hear these stories individually, people that come and talk about businesses that they have grown, where they have hired people, the ideas they had, and they are simply unable to comply with this law, and so they are leaving, many of them, trying to sell to a larger company because they just simply cannot absorb the cost and the overhead that it has added. It has really been very sad.

I hope we will have a chance to talk about some of the challenges that they have, but I can tell you on the market that besides the loss of jobs, the loss of businesses, particularly in this country, because small businesses are the ones that have the biggest problems, the biggest companies that make toys do not make any of them here in this country. They make them in China. They make such a large number that they are at least more able to spread the cost of complying with this law over many more products. But it is also the cost in the marketplace, the number of toys and products that are no longer being sold in this country. We used to have the most vibrant market. Now there are Websites to which you can

go, where they say, Not sold in the United States. Whole companies, a Swedish company, a German company that are no longer selling any of their toys in our market; ones that were very popular with parents. There are also people that sell to small markets, to our schools, small number of products that say they simply cannot abide by all the responsibilities of this Act. If it were related to risk, of course, I would strongly endorse these regulations. But in many cases, risk is not even something that we are allowed to consider.

I am here to ask you to do two things as the Appropriations Committee where I think you can make a big difference. The first is simply do not let third party testing and certification go into effect. To the Chairman's credit, she endorsed delaying the implementation of that until December. But businesses tell us that that is a staggering cost to them. Not only the cost to do third-party testing, but also to certify and to track every single component of every single good and the certification number, and label every single product, so that that cohort of information is available is a staggering price. And it is unnecessary.

The Chairman, in my opinion, has been so creative in establishing much better border procedures that ways to intercept violative products, ways to test in a more efficient way. We have companies it is not the same world as 2007. The companies that were violative have all come in and told us about the new production oversight companies that have responded to us, have all talked about their ISO labs that are inside their production facilities all over the world today. And so, they themselves because of the cost of the penalties that increase, the chance of a class-action lawsuit, Mattel settled the class-action lawsuit because of their toys for \$14 million, and so the need to avoid those sort of costs, the ability to intercept violative products here, we do not need the old-style command and control formula that was in that bill that is going to stagger the products that fall into under this regime.

And finally, I know we will talk about this more, I beg you to stop the funding of our database. It is a database right now. There are 12 of our top people in our agency. Everybody from the General Counsel, her top assistant, the person in charge of compliance, their top people meet every day Tuesday, Wednesday, and Thursday at 8 a.m. in the morning to incident by incident go over every single one of these, and it is those multi-group teams that you will be funding in the additional request that is just counterproductive, both in terms of fairness to our businesses, fairness to the public, and giving accurate information to the public, which is the only reason Congress stated for the database. So those two things defunding would, I think, not only create a better agency but also be a better expenditure for money. Thank you.

[The information follows:]



**Testimony of Anne M. Northup  
Commissioner  
United States Consumer Product Safety Commission**

**Hearing on the 2012 Performance Budget Request of the CPSC**

**Before the**

**U.S. House of Representatives  
Committee on Appropriations**

**Subcommittee on Financial Services  
and General Government**

**March 31, 2011**

Commissioner Anne M. Northup 1

Chairman Emerson and Ranking Member Serrano, thank you for the opportunity to provide testimony to this Subcommittee regarding the Consumer Product Safety Commission's 2012 Performance Budget Request. This Commission has a proud history of assessing risk and providing leadership in consumer product safety issues across a variety of industries.

As a Commissioner since August 2009, I now have a tremendous appreciation for the work that goes on in an agency, including the time and effort that agencies expend implementing the laws Congress passes. It is not a simple task, and my colleague, Chairman Tenenbaum, has put in countless hours to ensure that the Commission meets its deadlines and fulfills the difficult tasks it has been given.

As you know, I did not support the Commission's overall 2012 budget request of \$122 million, because it calls for an increase in \$3.8 million over current funding levels. I believe we can be doing much more with less. Given the imperatives of reducing the national deficit and controlling federal spending, we as Commissioners have a responsibility to cut programs or advocate for reforms that will ensure that we are using our resources efficiently and not straying from our core mission of safety.

In that regard, my testimony today focuses upon the ways in which Commission resources have been wisely spent to improve safety outcomes for Americans, and areas where I believe there could be vast improvement. In particular, my testimony will focus on the Consumer Product Safety Improvement Act (CPSIA), a law that largely is not based on risk and whose implementation has overwhelmed the time and resources of this agency since August 2008. Because the CPSIA's lead, phthalates, and testing and certification standards are not risk-based, the enforcement of such standards diverts the Commission from focusing on real risk. The law has strained the Commission's resources and has had a devastating impact on American business growth and competitiveness, all with little or no offsetting improvement in product safety.

**Effective Uses of Commission Resources:**

**Improved Enforcement Tools**

Today, the Commission has enforcement tools vastly improved over those available even a few short years ago. Since the advent of our agency's Import Surveillance Division in 2008, we have continued to grow our full-time presence of CPSC investigators at key U.S. ports. We have also expanded cooperation with Customs and Border Patrol to maximize our ability to screen for products at all U.S. ports. Today, the Commission intercepts non-compliant toys through more extensive border control efforts, application of x-ray technology to identify violative lead content, and computer databases that flag previous offenders for greater scrutiny. The CPSIA also increased the incentive for compliance through the threat of confiscated and destroyed violative products at the border, by authorizing the Commission to impose higher penalties of up to fifteen million dollars, and by streamlining its authority to seek criminal penalties.



I support the agency's investments in expanding these emerging enforcement methods because I believe they can grow to become a more sophisticated and technologically advanced method of deterring the entry of hazardous products into commerce. Notably, even prior to the Commission's improved enforcement tools, the Chinese manufactured toys containing lead paint that were the impetus for the CPSIA were themselves identified and intercepted using the Commission's traditional methods. The companies responsible faced a class action lawsuit and a massive fine. Today, retailers, private labelers, importers and manufacturers are collaborating to prevent violative products from entering commerce, in order to protect themselves from lawsuits, damage to their reputations, the cost of recalls and the loss of inventories.

#### **Consumer Education and Outreach**

Providing safety information to American families is a top priority of the Commission. I have urged the Commission to do more to educate the public on broad-based safety hazards in concert with any new mandatory standards we are required to issue under the CPSIA. Additionally, I have long advocated for broadening the Commission's messaging through non-English language posters, and by working with non-traditional groups, like churches, to increase our outreach to minorities and harder-to-reach populations.

The Chairman's staff has done an excellent job using social media (e.g., online videos, text messaging, Twitter) and other creative ways to broadcast the Commission's many safety messages. In fact, as of last fall, there is now a downloadable "app" available for the Android phone that allows consumers to monitor and search recalls from the CPSC and other agencies: <http://apps.usa.gov/product-recalls2/> I continue to support these efforts.

#### **Ineffective Use of Agency Resources: CPSIA**

##### **The law's non-risk based requirements**

In both 2009 and 2010, the CPSC focused its time and resources principally on implementing the CPSIA. Although the Commission is a relatively small agency (FY 2010 funding of \$118.2 million), its budget has grown by nearly 48 percent since the law's passage in 2008, with both old and new resources shifted away from risk-based priorities to implement the arbitrary, non risk-based mandates of the CPSIA, including the lead content and phthalates bans, the Public Database, and the third-party testing, certification and labeling requirements. Over the past two and one-half years, the Commission has issued an estimated 3,500 pages of regulations and guidance documents as a result of the CPSIA—a large portion of which must be read and understood by every affected company in order for them to grasp the law's complex requirements.

The diversion of the Commission's resources to CPSIA implementation reduces our focus on genuine safety hazards. Our agency is charged with "protecting the public from unreasonable risks of serious injury or death" from consumer products—but we cannot

fulfill this mission if our time is spent primarily enforcing the CPSIA, including its non-risk-based lead content and testing requirements.

Indeed, since 2008, there has been a significant delay in progress on actions to address many genuine safety hazards, such as promulgating standards to reduce the risk of death and injuries caused by cigarette lighters, table saw blades and portable generators. These issues would be front and center on the Commission's schedule if it were not for the CPSIA.

#### **Small Business Ombudsman**

The creation of a new Office of Education, Global Outreach, and Small Business Ombudsman to assist small businesses will also likely end up a waste of Commission resources. This office was created last fall with an unspecified budget and staff size.<sup>1</sup> The stated purpose of the new office is to provide additional information to small businesses and other industry stakeholders through a "coordinated approach to education and outreach activities."

But this purpose could be fulfilled under existing Commission offices, and does not address small businesses' real concerns with the CPSIA. Small businesses are not clamoring for more information about how to comply with this law; they are asking for relief from this law because it is killing them.

The solution for small businesses negatively impacted by the CPSIA is to repeal the portions of the law that impose tremendous costs without increasing safety. Furthermore, no matter how successful this new office may be, small businesses will still need to hire lawyers to understand their obligations under the Commission's far-reaching and complex regulations.

To date, the Small Business Ombudsman has focused on responding to CPSIA-related questions posed by small handcrafters. This limited service to a small minority of manufacturers does not begin to assist the vast majority of small businesses -- with greater numbers of employees and a much larger impact on the economy -- suffering under the CPSIA. If the Commission really wanted to help all small businesses, it would use its rulemakings to mitigate the unintended consequences of the CPSIA, and propose meaningful legislative reforms to Congress. It is wasteful and counterproductive to instead create a new Small Business Ombudsman office to perform limited outreach to micro-businesses when an existing agency office could perform the same service.

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<sup>1</sup> The agency has moved around existing employees to fill vacancies in this new office, including an Acting Small Business Ombudsman. The 2012 budget request includes two new FTEs to allow the Commission to hire a Director to develop the office and a permanent Small Business Ombudsman.

### Public Database

The new Public Database will also unjustifiably drain Commission resources. According to the Commission's 2012 budget request, by the end of fiscal year 2011, the Commission will have already spent \$29 million on IT modernization and to develop the Database—two expenses that are interlinked. But the official \$29 million figure understates the real cost of the database. It does not include the hours CPSC staff dedicated to developing the database and preparing for its launch, including managing contracts.

Moreover, the \$29 million figure represents only the estimated contracting costs through FY 2011. And while we have not been able to estimate future costs, it is likely that the costs to maintain the Database will continue to strain Commission resources for years. For instance, the agency has yet to estimate the number of new FTEs we may need, year after year, to administer the public database, including new Compliance investigators and lawyers to handle claims of material inaccuracy. The Commission's 2012 Performance Budget Request discounts these expenses. According to that document, the "New and Reallocated Resources" dedicated to "Data Intake, Incident Review, and Investigation" is derived from an extrapolation of the growth trend line for reported incidents and investigations dating back to 2003. If, as is likely, this projection is proved to be too low, the assigned staff will be unable to timely manage all of the information reported through the database. As a result, Commission staff will be even less likely to resolve claims of material inaccuracy within the ten-day period prior to the posting of unverified information. The Commission will then either request and be provided additional funding in subsequent years, or preside over an increasingly misleading database.

Additionally, the Commission did not perform a cost-benefit analysis of their Database Rule. I believe the rule that was passed by the Commission's Majority is tremendously flawed and will result in a public database that is full of inaccurate or unverifiable information and therefore helpful to no one.<sup>2</sup> If this Commission is to have a public database funded by taxpayers, it should be *different and better* than any source of information that already exists in the public domain, such as websites like Amazon.com or Yelp.com. Unfortunately, due to the agency's regulation, our public database will be no more useful than similar sites that are already available to the public today, and will, in fact, be more misleading to the public, given the likelihood of inaccurate reports and the lack of ability for anyone to verify them. Many believe the public database, if left unchanged, will be useful only to trial lawyers or advocacy groups that will be able to populate it with unverifiable, second-hand information for their own purposes.

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<sup>2</sup> The Commission Majority's database rule suffers from three major infirmities: 1) It interpreted the statute to allow *anyone* to report incidents to the database—even consumer advocacy groups, trial lawyers, and others with ulterior motives and who may not have firsthand knowledge of the incident; 2) the rule fails to require enough information from submitters so that reports are even verifiable; and 3) the rule requires that all reports will be made public on the 10<sup>th</sup> day following transmittal to the manufacturer, regardless of whether there's a pending, valid claim of material inaccuracy.

Further, the Commission has limited resources for enforcement. As a result, unverifiable information in the Database will divert resources from addressing genuine risks to monitoring and processing the likely increase in reports to the agency. Additionally, because inaccurate incident reports will be indistinguishable from accurate ones, the media's attention may focus on inaccurate reports, pressuring the agency to prioritize its efforts based on publicity rather than risk level.

### **CPSIA: Impact on the Economy**

#### **The lack of cost-benefit analyses**

In March 2009, Commission staff reported that the economic costs associated with the CPSIA would be "in the billions of dollars range."<sup>3</sup> Industry associations representing manufacturers of furniture, mattresses, sports equipment, children's clothing and handmade toys, just to name a few, have all told us that they will be saddled with enormous costs, first to reengineer their products to satisfy the new standards imposed by the law, and then to third-party test every component of every product they make to demonstrate compliance with all of the applicable standards.

This Commission has received a considerable amount of anecdotal evidence from companies and trade associations regarding the costs to test at independent labs, as well as the cost of certification, tracking labels, continued testing, record keeping, testing to product standards, and the potential reputational and litigation costs that will result from the upcoming Public Database. **Attached** is a sample list of businesses impacted by the CPSIA, as well as other economic data. Our staff has compiled some sample testing costs for toys and bikes, as part of a Regulatory Flexibility Analysis for our Testing and Labeling Rule. But the Commission has never conducted a full cost-benefit analysis of any regulation we have promulgated under the CPSIA.<sup>4</sup>

I believe such analyses would reveal that much of our CPSIA mandated regulation cannot be justified. To begin with, there is no scientific evidence suggesting there is any benefit from many of the law's requirements. For instance, no government health agency, including the CPSC, has ever concluded that the components of children's products containing either 300ppm lead content or the interim-banned phthalates pose a safety risk to children. The Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC) report that in 1978, about 13.5 million children ages 1-5 had elevated blood lead levels. However, by 2007-2008, this number had declined to about 250,000 children.<sup>5</sup> Similarly, 2007 data indicates that one percent of children selected for testing across the country showed an elevated blood lead level as established by the CDC. This

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<sup>3</sup> Letter from Acting CPSC Chairman Nancy Nord to Representative John Dingell, March 20, 2009.

<sup>4</sup> Most of the CPSIA mandated regulations are not required to be promulgated under Section 9 of the CPSA, which normally would entail a cost-benefit analysis. However, it also does not *prohibit* the agency from doing so, if the Commission recognizes a need for such analyses.

<sup>5</sup> [http://www.epa.gov/opeedweb/children/body\\_burdens/bl-graph.html](http://www.epa.gov/opeedweb/children/body_burdens/bl-graph.html)

number was down from nearly eight percent in 1997,<sup>6</sup> and is likely attributable to the elimination of lead in gasoline, as well as lead paint education and abatement. The CDC and the EPA have issued guidance for reducing children's exposure to lead, and neither has ever suggested that parents take away a child's bicycle because of the lead in the substrate of the metal comprising the spokes, pedals or handlebars. Nor has it ever been argued that the CPSIA, with all of its costs, will lower the number of children reaching the "tipping point" of having an elevated blood lead level.

### **Burdensome Testing and Certification Requirements**

Given the available tools of manufacturers to determine compliance and our own improved enforcement methods, I do not believe the complex, third-party testing and certification requirements of the CPSIA are necessary or helpful in ensuring compliance with the law's new requirements. In fact, relief from the law's testing requirements is the number one request of small businesses, many of whom may be able to comply with the law's lead and phthalates limits but still cannot afford the mandatory third-party testing.

By requiring all manufacturers of children's products to send their products to be tested at a third-party lab, regardless of risk, the law disproportionately hurts companies with robust in-house testing programs, those with more creative and effective ways of ensuring compliance internally, as well as domestic American companies who have never had a violation. The CPSIA's micromanagement of a company's testing, certification and tracking of each and every component of a product is entirely unnecessary—and in fact, will be less helpful than the sophisticated internal controls manufacturers are currently using and continue to develop and perfect. Furthermore, a "bad actor" with a casual attitude toward safety standards compliance will be just as casual about maintaining accurate records to support CPSIA-mandated certifications.

The CPSIA also requires the creation of massive new paperwork and tracking systems, often without any safety enhancing product changes. A member of the American Home Furnishings Alliance reported that it spent \$13 million dollars on tests, new systems and tracking processes, despite the fact that every single component it used on children's furniture already complied with the current lead standard. The company was therefore not required to change a single material used in its manufacture of children's furniture, and there was no corresponding benefit in the improved safety of its children's furniture to justify the costs.

Similarly, some industry associations have had very few, if any, safety violations; yet, they are required to comply with onerous third-party testing, certification, tracking and labeling requirements that will not improve safety. The American Apparel and Footwear Association writes in their public comments on the Component Parts rule:

As the CPSC continues to issue specific compliance requirements, manufacturers become increasingly wrapped up in ensuring compliance over ensuring product safety. All AAFA members have had long-standing quality control programs in

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<sup>6</sup> <http://www.cdc.gov/nceh/lead/data/national.htm>

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place that have developed based on the product, production of the product and the manufacturer's unique circumstances. These programs are effective and do not need to be changed. To demonstrate, only .0084% of all apparel and footwear sold in the U.S. in 2008 were involved in a recall. Moreover, most apparel and footwear recalls have been drawstring violations – a compliance issue that results from lack of information not lack of testing.<sup>7</sup>

The testing and certification requirements of the CPSIA have yet to be fully implemented. This Subcommittee can therefore prevent the law's onerous testing requirements from going into effect by withholding in any upcoming appropriations laws funding from the Commission for the purpose of promulgating regulations to implement the third-party testing and certification requirements of the CPSIA. This would allow the Commission's House and Senate authorizing Committees to fulfill their pledge to reform the CPSIA before it can further undermine the nation's economic recovery.

**Recommendations to Reform the CPSIA and Reduce the Budget :**

**1) Reform the CPSIA's major requirements to be risk-based:**

Reforming the CPSIA so that the law's principle requirements are based on risk, would greatly relieve the pressure on agency resources to have to implement, enforce and monitor non-risky products—and allow the agency to use its limited resources more effectively to fulfill its safety mission. This can be accomplished in a variety of ways:

➤ Amend the law's Absorbability Exclusion §101(b)(1)(A) so that it is meaningful:

The CPSIA included three statutory exclusions from the lead limits. But the Commission has meaningfully interpreted only two of them. The law's third exclusion, based on the absorbability of lead in a product, has not excepted a single product from the CPSIA' scope. The CPSIA should therefore be amended to exclude products or materials with a level of absorbable lead that the CPSC determines not to be harmful to a child's health.

Drawing the line at the level of absorbable lead that is harmful to a child's health is consistent with the findings of our leading scientific agencies, the National Institutes of Health, the CDC and the EPA. Only lead that is "absorbable" at greater than *minimal levels* is dangerous, especially to children ages five and under. Thus, the experts at the CDC and NIH have found that lead paint in old houses and lead in dirt near old gas stations are the main source of environmental lead presenting a danger to small children (<http://www.cdc.gov/nceh/lead/>). In other words, the *risk of absorbability* from lead in dirt that is tracked into a home or lead paint in an old home that becomes chipped and may be inhaled or ingested is quite high. Notably, the EPA standard for lead in soil is 400 ppm

<sup>7</sup> American Apparel and Footwear Association. Request for Comments. Docket No. CPSC-2010-0037 & CPSC-2010-0038. August 3, 2010.

(<http://www.epa.gov/lead/>). This standard for safety is less strict even than the current 300ppm lead content standard provided in the CPSIA for children's products, including bicycle handlebars where any lead is embedded in the metal substrate and cannot be absorbed.

Unlike other Commission rules, the CPSIA, as interpreted by the Majority, has led to the banning or substantial reengineering of many products that pose no risk of harm from lead. For example, the CPSIA has led to a ban on children's books published before 1986, because the ink in them is likely to contain lead above the allowable level. But children are not likely to eat the pages of old books or ingest more than miniscule amounts of lead after touching their pages. Likewise, youth ATVs and bicycles are outlawed or must be reengineered even though the lead that is in the hood, handlebars, or hubcaps will not become ingested and absorbed in meaningful amounts. Other everyday products such as school lockers, the hinges on a child's dresser, or jackets with zippers and buttons are outlawed if they contain tiny levels of lead in the substrate. Even ball point pens are outlawed if they have a toy or game attached to them and are marketed to children, due to the brass found on the tip. Because there are still *negligible amounts of lead detectable by scientific equipment* that may be wiped off by touching a bicycle handlebar, the CPSIA treats these items in exactly the same way it treats products that truly could hurt a child by increasing the blood lead level.

If the law is amended to unambiguously exclude products with a level of absorbable lead that is not harmful to a child's health, the scope of the CPSIA will be considerably narrowed, and the Commission can focus its limited resources on real risks to children.

➤ Lower the age-range of products impacted by the law:

Under the CPSIA, a "children's product" is any product intended primarily for use by children twelve years old or younger. The CPSIA thus treats all products intended primarily for use by children under thirteen the same, regardless of whether they are intended for one-year olds or twelve-year olds. Recognizing the substantial difference in risk presented by the same products to different age groups, CPSC staff have suggested to the Commissioners that lowering the age range of products impacted by the CPSIA would be one of the most efficient ways to amend the law in order to exclude those products which many believe should not be impacted.

The 12-and-under age range affects many products that are also used by teenagers, thus creating enforcement difficulties over marginal products. Producers argue that the products are primarily intended for children age thirteen and older, and the Commission examines marketing and other factors to assess the claim. Some blurring of the age lines will happen regardless of the age cut-off, but there are many more products subject to this uncertainty for "tweens" (e.g., certain sporting goods, apparel, etc.)

In addition to enforcement difficulties, the benefits of the law are vastly reduced as applied to products for older children who are well past the age when they mouth things or constantly put their hands in their mouths. Thus, Congress could amend the statute to apply only to products primarily intended for children under age six, while giving the agency discretion to raise that age limit for particular materials or categories of products that are found in the future to pose a risk to older children. And in any event, the CPSC would retain the authority to issue a stop-sale order or to recall any product determined to pose “substantial product hazard” under the FHSA.

➤ Eliminate third-party testing and certification requirements:

As stated previously, the law’s third-party testing, certification, tracking and labeling requirements are the most burdensome for small manufacturers. They are also unnecessary for verifying compliance, particularly given the agency’s improved traditional enforcement tools. As a result, Congress could eliminate current third-party testing and certification requirements all together, allowing manufacturers to test in-house and/or in the best way they know how to determine compliance. The Commission would retain the discretion to impose third-party testing requirements on products with a risk that such testing would address.

At the same time, this Subcommittee can also prevent the law’s onerous testing requirements from going into effect by withholding funding from the Commission for the purpose of promulgating regulations to implement any further third-party testing and certification requirements of the CPSIA.

**2) Eliminate the 5-member Commission and put the agency under one Administrator:**

I believe the CPSC could be run more efficiently by one Administrator, rather than a Commission of five or even three. In fact, similar proposals have been considered in the past: <http://www.gao.gov/products/T-HRD-87-14>. Managing a small agency simply does not require more than an Administrator. Additionally, I have confidence that Chairman Tenenbaum (or a future Administrator) would be able to run the agency much more efficiently without the pressures from her Democrat and Republican colleagues, who wish constantly to influence her actions in one direction or another. Reducing from five Commissioners to an administrator would save the substantial costs of office space, Commissioner and staff salaries, and all other expenses associated with a Commissioner’s office.

The Chairman is already solely accountable for all of the agency’s core functions, including setting the rulemaking agenda, public relations, human resources duties, and budgeting. The other four Commissioners may be asked to sign off on these things from time to time as a formality or to provide input, but ultimately all accountability lies with the Chair.



Rulemaking involves the participation of five Commissioners. However, I would argue that this “participation” rarely involves more than duplicative analytical efforts—all of which usually result in a 3-2, party-line vote. This also means five different Commissioners, all their staffs (12 people), plus dozens of technical staff and lawyers are reviewing, editing and analyzing the exact same rule-making document. Moreover, despite hours of effort by me and my staff, many of the Commission’s largest regulations approved by the Majority have actually become *worse* through the process rather than more balanced—simply because at the end of the day, the Majority’s vote rules on any contentious, policy votes.

**3) Public Database – require reforms to the Database Rule to ensure that incident reports are verifiable and useful.**

Finally, the Commission’s Database Rule could be revised in order to ensure that incident reports going up on the new, public database are verifiable. Potentially inaccurate and unverifiable information is of no value to the Commission in its enforcement efforts, and useless to consumers seeking actionable product safety information.

Several features of the Majority’s rule guarantee a database populated by inaccurate information. The Majority has broadly defined the statutory categories of submitters to the Database to include groups and individuals with no direct knowledge of the incident or the person harmed. Such groups include consumer advocacy groups, trade associations and attorneys, for whom the accuracy of the incidents they report may be secondary to their own agendas, giving them no incentive to avoid the posting of false or misleading information.

The Database Rule also does not require sufficient information from the submitter to ensure that Commission staff or consumers can tell one type of product from another. Only the minimal amount of information is required, including manufacturer name and a “description of the product” which could include simply “baby stroller.” But one company may produce dozens of different models of baby strollers, some of which may no longer be in production. As a result, the limited product information required is insufficient to permit the Commission to investigate the claim, and of no value to a consumer seeking to identify a safe model of baby stroller.

The problems created by permitting inadequate product identification and allowing individuals and groups without firsthand knowledge to report alleged incidents of harm, are compounded by the rule’s failure to require the identification of the victim or product owner who experienced the risk of harm. As a result, the Commission’s staff may be unable to verify the accuracy of the report by speaking to the only party with actual knowledge of the product and incident. Moreover, because manufacturers’ bear the burden of proving a material inaccuracy, the Commission will publish a report that contains the

minimal required information, even where inadequate product identification or the absence of victim contact information leaves the report unverified. There are therefore likely to be many cases where a manufacturer will have good reason to believe a reported incident is either completely false or materially misrepresented (and companies routinely receive these types of mistaken or fraudulent claims), but neither the manufacturer nor the Commission will be able to obtain the information necessary to resolve the claim. Under those circumstances, the manufacture will be unable to meet its burden and the challenged, but unverified and unverifiable report, will remain on the database forever.

Inaccurate information will likely also be posted on the database - at least temporarily - even when there is sufficient information to eventually confirm the truth. That is because the Majority's rule requires the Commission to publish an incident report on the public database by the 10<sup>th</sup> day after sending notification to the manufacturer, notwithstanding that a manufacturer has adequately supported a claim that the report is materially inaccurate. Unless the Commission can conclude within 10 days that the report is materially inaccurate, it is published on the 11<sup>th</sup> day and remains on the Database while the Commission completes its investigation. And because there is no fixed period within which the Commission must complete its investigation, inaccurate information can remain on the site indefinitely.

**Killing Small Businesses:  
CPSIA in the News, Letters and Public Comments**

***A MESS OF A LAW:***

*March 11, 2011*

“President Obama has been on a campaign to shake his antibusiness reputation, so a good place to start would be to revisit the Consumer Product Safety Improvement Act, a mess of a law that has put new burdens on small businesses...”

<http://online.wsj.com/article/SB10001424052748703408604576164510202890494.html> “Get the Lead Out, Sir,” *The Wall Street Journal*, March 11, 2011. Editorial.

***HIGHER COSTS FOR SCHOOLS:***

*January 11, 2010*

“NSSEA members sell educational supplies, equipment and instructional materials to schools, parents, and teachers...”

... the costs to schools, municipalities, libraries, and others of identifying and replacing such books would be extremely high and there is no reason to impose such costs given the lack of identifiable risk.

... While we applaud the efforts the CPSC has made to find solutions for small businesses... we believe the CPSC could do more if given more discretion by Congress. The alternative is the elimination of many valuable educational toys and products, some manufactured in low volume for niche markets (such as the deaf, blind, or otherwise differently-abled children) and typically not supplied by the huge multi-national toy manufacturers.”

Letter from the NSSEA (National School Supply and Equipment Association) to Commissioner Northup, January 11, 2010

***HIGHER COSTS FOR PRODUCTS WITH NO LEAD RISK:***

*October 13, 2010.*

“The government wants to regulate Hannah Montana CDs and DVDs. The bureaucrats at the Consumer Product Safety Commission (CPSC) insist that the discs marketed to children be tested for lead, but when the same young starlet churns out raunchier material under her real name, Miley Cyrus, they will escape scrutiny. Never mind that the same 10-year-olds will likely end up buying both products.

"...Never mind that Hannah Montana's fans aren't likely to eat their DVDs, the latest red tape makes no distinction between products where lead is likely to be consumed and those where it isn't."

<http://www.washingtontimes.com/news/2010/oct/13/bureaucrats-way-out-of-tune/>  
"Bureaucrats way out of tune," *Washington Times*, October 13, 2010.

***PUNISHING SMALL BUSINESSES, WHILE MATTEL AND THE BIG GUYS  
SQUEEZE OUT THE COMPETITION:***

*June 17, 2010*

"Now Mattel is testing and making toys without any trouble at all, and those of us who were never the problem are in danger of losing our businesses," says Hertzler, who runs EuroSource, based in Lancaster, Pa., with his wife and two sons...

"Nearly two years after the safety law was enacted, Congress and the Consumer Product Safety Commission are still struggling to reduce its burden on small businesses while eliminating the risk of lead and phthalates in children's products."

[http://www.usatoday.com/money/industries/retail/2010-06-17-productsafety17\\_ST\\_N.htm](http://www.usatoday.com/money/industries/retail/2010-06-17-productsafety17_ST_N.htm) "Lead testing can be costly for mom and pop toy shops," *USA Today*, June 17, 2010

***BORDERING ON RIDICULOUS:***

*June 17, 2010*

..."What the law should be about is ensuring safe products," says Edward Krenik, a spokesman for the children's product alliance. "We've crossed over into ridiculousness."

[http://www.usatoday.com/money/industries/retail/2010-06-17-productsafety17\\_ST\\_N.htm](http://www.usatoday.com/money/industries/retail/2010-06-17-productsafety17_ST_N.htm) "Lead testing can be costly for mom and pop toy shops," *USA Today*, June 17, 2010

***REGULATION FOR REGULATIONS' SAKE***

*November 8, 2010*

"Regulation for regulations' sake, where there is no inherent change to a bill of materials, a process or a product indicated after extensive, statistically significant testing across multiple points of input and verification, is simply wasteful."

American Home Furnishings Alliance  
November 8, 2010 – Letter to Commissioners

**MATTEL FINDS CPSIA A CHALLENGE – HOW MUCH MORE FOR SMALL BUSINESSES?**

*November 9, 2009*

“Officials of the toy manufacturer, Mattel, met separately with two CPSC commissioners November 3 to talk about how challenging it was for Mattel to comply with the CPSIA...

Peter Biersteker, a lawyer for Mattel with the law firm Jones Day in Washington D.C., said his client is finding the CPSIA difficult to decipher... "It's a lot of work. I don't know how smaller companies do it," Biersteker told Commissioner Robert Adler.

Despite Mattel's large team of in-house lawyers, he said, the company needed to hire outside lawyers to help understand the CPSIA. He said Mattel holds weekly conference calls on the issue, discussing how to comply with the act while remaining "cost competitive."

“Mattel Finds CPSIA to be a Challenge,” *Product Safety Letter*, November 9, 2009.

**COMMISSION ACTION ADDS TO CPSIA'S PROBLEMS:**

*August 16, 2010*

“The latest dictates from the Consumer Product Safety Commission (CPSC) will drive up the cost of manufacturing products intended for children. The agency adopted a pair of new rules in July and August implementing the Consumer Product Safety Improvement Act of 2008, but as drafted, these regulations will force companies to waste time and money on redundant testing programs solely for the entertainment of bureaucratic busybodies.

... The redundant examinations, mostly checking flammability, can be prohibitively expensive. For instance, the regulations could require a manufacturer to build a queen-sized-bed prototype of a baby's crib just so it can be tested in an independent lab. Yet each of the component parts - the crib-sized mattresses, blankets and all other component parts - already are individually tested for the same hazards when manufactured.”

Editorial: “The Red Tape Stimulus,” *Washington Times*, August 16, 2010  
<http://www.washingtontimes.com/news/2010/aug/16/the-red-tape-stimulus/>

**EVEN THE NEW YORK TIMES SPOTLIGHTS THE UNINTENDED CONSEQUENCES OF THE CPSIA:**

*September 28, 2010*

“... a new federal crackdown on dangerous toys has left some in the industry crying foul and not wanting to play.”

“...Critics point to provisions in the law that they deem ludicrous. For instance, a paper clip that is included in a science kit for schoolchildren would have to be tested for lead. But a teacher can walk into any drug store and buy a box of paper clips that would not be subject to the same testing.

Similarly, a lamp that is festooned with cartoon characters would have to be tested, but a lamp without the characters would not.”

<http://www.nytimes.com/2010/09/29/business/29toys.html> “Toy Makers Fight for Exemption From Rules,” *New York Times*, September 28, 2010

**SCIENCE KITS ARE “NOT BANNED” – BUT THE TOOLS USED INSIDE THEM ARE!**

*October 1, 2010*

“The science kit makers had asked for a testing exemption for the paper clips and some other materials. On Wednesday, in a close 3-2 vote, the commission declined to give them the waiver they sought.”

“...After the science kit vote, CPSC Chairman Inez Tenenbaum sought to reassure people that, “There is nothing in this rule that bans science kits.”

Right. But while the commission vote doesn't ban the kits, manufacturers say it may crimp the supply of kits for elementary school children.”

<http://www.lvrj.com/opinion/goodbye-to-chemistry-sets-104139059.html>  
“Goodbye to chemistry sets,” *Las Vegas Review Journal*, October 1, 2010.  
Editorial.

**FURNITURE MANUFACTURERS FACED WITH ADDED COSTS, ZERO SAFETY BENEFIT TO CHILDREN:**

*November 8, 2010*

“...there has not been a corresponding benefit in the improved safety of children's furniture for children. All the representatives told you that their respective companies have not had to change a single material they use in the manufacturing of their children's product lines since they began testing to CPSIA in 2008....The testing is simply being done to attempt to prove a negative.”

American Home Furnishings Alliance

November 8, 2010 – Letter to Commissioners

***FURNITURE MANUFACTURERS FACED WITH ADDED COSTS, FORCED TO CUT JOBS:***

*November 8, 2010*

“The majority of the annual costs will be in the record keeping requirements because none of the companies have the requisite IT infrastructure to handle the tracking of test reports per batch...Hooker estimates that it will cost them from \$350,000 to \$400,000 per year. Furniture Brands International said this will cost them over \$4.5 million per year which is more than the profits from their best quarter in the last 2.5 years. In addition, this company must invest an additional \$2 million in start up costs for setting up the production testing, programming computer systems to work with existing systems, and hiring and training employees for the administration of the CPSIA.”

To offset these new costs, the company is forced to consider these choices: 1) shut down a small domestic plant which will mean the loss of 64 full time and 30 temporary US jobs; 2) shut down a larger domestic plant which will mean the loss of 384 US jobs; 3) significantly increase prices to offset the loss in revenue making them less competitive; 4) offer a lower quality product... or 5) shut down all domestic production which incorporates any finishing processes, which will mean the loss of approximately 460 US jobs.”

American Home Furnishings Alliance  
November 8, 2010 – Letter to Commissioners

***NO MORE MOM AND POP TOY SALES:***

*July 7, 2010*

“The second program involves making wooden toys that are given to the church and other charitable organizations in the county for distribution to needy children throughout the year especially at Christmas. Last year we created over 700 toys. The idea that we now are required to have these handcrafted toys certified will bring the program to a halt.”

Dupage Woodworkers, Downers Grove, IL (July 7, 2010, Public Comment, Testing rule)

**ECONOMIC IMPACT OF THE CPSIA - EXAMPLES  
2009 and 2010**

**Costs associated with the CPSIA**

1. In a letter from the CPSC to Representative Dingell in March 2009, Commission staff reported that the overall economic impact of the CPSIA would be in the “**billions of dollars range**.” The Commission also acknowledged that the testing and certification costs will fall disproportionately on small-volume businesses. (*Letter from Acting Chairman Nancy Nord to Representative Dingell, March 20, 2009*)
  
2. “**MAJOR RULE**” - CPSC acknowledges in its FY 2011 Regulatory Agenda that its main rule pertaining to the CPSIA’s testing requirements (**[PDF] CPSC Docket No. CPSC-2010-0038**) is a “major rule” under the Congressional Review Act, resulting in, or likely to result in: 1) an annual effect on the economy of \$100,000,000 or more; 2) a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or 3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.
  
3. In an article entitled “Makers Are Pushing Back on Toxic-Toy Law” (*Wall Street Journal*, March 5, 2009 <http://online.wsj.com/article/SB123621357629835121.html>), Joe Periera reported the following loss statistics:
  - o Goodwill Industries to destroy **\$170 million** in merchandise.
  - o Salvation Army expects to lose **\$100 million** in sales and disposal costs.
  - o The Toy Industry Association estimates inventory losses at **\$600 million**.
  - o Members of the Coalition for Safe and Affordable Childrenswear lost **\$500 million**.
  - o The California Fashion Association estimates troubled inventory at **\$200 million**.
  - o The Motorcycle Industry Council expects to lose 50,000 motorized bikes and four-wheelers worth at least **\$125 million**.
  
4. On March 11, 2009, *Playthings Magazine* reported updated data from the Toy Industry of America (see <http://www.playthings.com/article/CA6643505.html>), including:



- From a pool of nearly 400 manufacturers and 220 retailers, the TIA estimates **losses of \$2 billion in retail value**.
- More than **\$1 billion** in already shipped merchandise has been returned or is being withheld for return.
- More than **\$800 million** in compliant merchandise is at risk of return.
- **40%** of all respondents plan to eliminate jobs to pay for the CPSIA, with more than 1200 jobs reported to be in jeopardy.

**“TIA: Safety Act puts \$2B crimp in toy biz”**

3/11/2009

5. Separately, the Motorcycle Industry Council advised that total losses from disruptions in its members’ businesses could total **\$1 billion**. See: <http://www.1st5ive.com/harley-davidson/motorcycles/2009/02/2452/new-lead-rule-could-cost-motorcycle-industry-1-billion-annually>

**Examples of businesses closed due to CPSIA**

*Most names provided by the Handmade Toy Alliance*

1. Whimsical Walney, Inc. – Santa Clara, CA
2. Fish River Crafts – Fort Kent, ME
3. Kungfubambini.com – Portland, OR
4. Baby Sprout Naturals – Fair Oaks, CA <http://www.babysproutnaturals.com/about/>
5. Gem Valley Toys – Jenks, OK
6. Angel Dry Diapers – Michigan
7. Abracadabra Educational Craft Kits for Kids – Bend, OR
8. Hailina’s Closet – Ellensburg, WA (thrift store)
9. Eleven 11 Kids
10. Perfect Circle Consignment – Bremerton, WA
11. JenLynnDesigns - <http://waytobow.blogspot.com/>
12. A Kidd’s Dream – Conway, AK
13. Storyblox – New Vienna, OH
14. Phebe Phillips, Inc. – Dallas, TX <http://www.phebephillips.com/shopnow.htm>
15. Pops Toy Shop - mountains of Tennessee, Virginia, North & South Carolinas

**Businesses that have stopped production of children’s lines due to CPSIA**

*Most names provided by the Handmade Toy Alliance*

1. Creative Artworks – Greenwood, AK
2. Craftsbury Kids – Montpelier, VT
3. “Pockets of Learning” *Special Needs Products Being Driven from Market By Testing Costs – Rhode Island*
4. Creative Learning Connection

5. Giverny, Inc / Mini Me Geology
6. HABA
7. Challenge & Fun, Inc. -  
<http://online.wsj.com/article/SB10001424052748703478704574612573263963560.html>
8. Hands and Hearts Far East History Discovery Kit – Greenwood, SC
9. Moon Fly Kids – Las Vegas, NV

**Businesses that closed and list the CPSIA as one of the factors**

*Most names provided by the Handmade Toy Alliance*

1. Due Maternity – San Francisco, CA
2. Frog Kiss Designs – Fairfield, CT
3. Waddle and Swaddle – Berkley, CA
4. Lora's Closet – Berkley, CA
5. Baby and Kids Company – Danville, CA
6. Baby and Beyond – Albany, CA
7. Obabybaby – Berkley, CA
8. Bellies N Babies – Oakland, CA
9. Oopsie Dazie - <http://www.oopsiedazie.com/>
10. Bears on Patrol – not a business, but program by police departments to hand out stuffed animals to scared children -  
<http://learningresourcesinc.blogspot.com/2009/10/cpsia-cpsia-casualty-of-week-for.html>
11. Simple Treasures

**Other companies hurt by retroactivity of the CPSIA's lead content ban:**

1. Gymboree – “change in safety requirements related to levels of phthalates rendered about 1.7 million of its inventory obsolete”
  - i. <http://www.reuters.com/article/idUSBNG44760220090305>
2. Constructive Playthings, Inc – ““We have millions of dollars worth of merchandise sitting in 30 40-foot-long trailers waiting to be hauled out to a landfill somewhere,” says Michael Klein, president of Constructive Playthings Inc....The banned products include beach balls, inflatable toy guitars and blow-up palm trees.”
  - i. <http://online.wsj.com/article/SB123621357629835121.html>

**Businesses no longer exporting to the U.S. due to the CPSIA**

*Most names provided by the Handmade Toy Alliance*

1. Hess – Germany

2. Selecta – Germany <http://www.zrecommends.com/detail/breaking-news-selecta-to-cease-us-distribution-due-to-cspia/>
3. Finkbeiner – Germany
4. Saling – Germany
5. Simba – Germany
6. Bartl GmbH dba Wooden Ideas – Germany
7. Woodland Magic Imports – France
8. Brio
9. Helga Kreft – Germany
10. Eichorn – Germany
11. Kapla
12. Kallisto Stuffed Animals

**EuroToyShop** – On this company’s homepage, you will find links at the bottom with a list of “endangered toys” or “extinct toys” that are still sold to children in Europe but which the company will no longer be able to sell in the U.S. due to the CPSIA.

*Endangered Toys The CPSIA (Consumer Product Safety Improvement Act) has unintended consequences. Now, some European toys are no longer available in the USA.*

<http://www.eurotoyshop.com/>

Associations that have voiced concerns to the Commission regarding CPSIA’s costs (list is not exhaustive):

Association of Home Appliance Manufacturers  
 International Sleep Products Association  
 Retail Industry Leaders Association  
 Specialty Graphic Image Association  
 American Coatings Association  
 The Carpet and Rug Institute  
 National Retail Federation  
 Association of American Publishers  
 Consumer Healthcare Products Association  
 Toy Industry Association  
 Glass Association of North America  
 American Honda Motor Company, Inc.  
 Society of the Plastics Industry, Inc  
 American Home Furnishings Alliance  
 Sporting Goods Manufacturers Association  
 Handmade Toy Alliance  
 Consumer Specialty Products Association  
 Footwear Distributors and Retailers  
 Fashion Jewelry Association  
 Craft and Hobby Association

National Association of Manufacturers  
Halloween Industry Association  
American Apparel and Footwear Association  
Juvenile Products Manufacturers Association  
National School Supply and Equipment Association  
National Federation of Independent Business  
Promotional Products Association International  
Bicycle Product Suppliers Association



## US Consumer Product Safety Commission

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### BIOGRAPHICAL INFORMATION

#### Anne Meagher Northup, Commissioner Consumer Product Safety Commission



Anne Meagher Northup served the Third Congressional District of Kentucky, representing the Louisville district in the United States House of Representatives as a Republican from 1997-2006. Before her tenure in Congress, Northup served in the Kentucky House of Representatives for nine years, from 1987-1996.

Soon after taking office in 1997, Northup was appointed to the House Appropriations Committee, the committee that considers all federal spending bills. She sat on the Labor, Health and Human Services, and Education; Transportation, Treasury, HUD and Independent Agencies; and Military Quality of Life and Veterans Affairs Subcommittees.

Throughout her tenure in Congress, Northup was recognized for her straightforward, honest style in taking on tough issues. She is a pro-trade, pro-economic expansion Republican focused on issues that create a better environment for competition, growth, and worldwide commerce. She is a proponent of permanent tax relief for all American taxpayers.

expanding affordable health insurance, cutting red-tape and making sure government programs are measured based on results.

Congresswoman Northup is the recipient of numerous legislative awards. In 2003, she received the prestigious "Adam Smith Award," which is presented annually to one federal elected official who exhibits an exemplary commitment to economic freedom.

Congresswoman Northup has been an aggressive advocate for education reform. In March 1998, she founded the House Reading Caucus, a bipartisan caucus that raises awareness about the growing number of children who are failing to learn to read. She introduced legislation commissioning the National Reading Panel, the findings of which were incorporated into the "Reading First Initiative" of the 2001 No Child Left Behind education law.

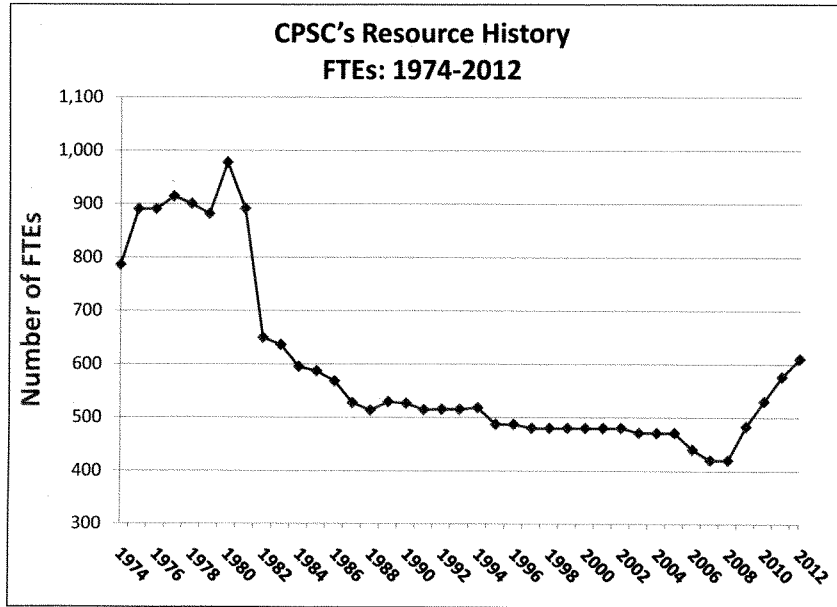
Additionally, Congresswoman Northup was a member of the Congressional Coalition on Adoption and was an instrumental proponent of legislation promoting adoption. As co-chair of the coalition in 2002, Northup traveled to China to work on eliminating the growing bureaucratic obstacles between the United States and China that were threatening to reduce the number of Chinese orphans available to American families for adoption. In 2003, Northup introduced legislation that resulted in extended paperwork deadlines for families adopting children from China who were impacted by delays due to the SARS epidemic. Northup and her husband are the parents of two adopted children.

In February 2005, Northup was elected by a committee of her Republican House colleagues to chair the GOP's Retirement Security Public Affairs Team. As chairman of the group, Northup was front and center in the effort to strengthen Social Security for younger generations of American workers.

Congresswoman Northup has been highlighted by the national press for her pragmatic approach to public policy and her ability to effectively communicate the priorities of Congress. She has appeared on such shows as Meet the Press, Fox News Sunday, CBS Evening News with Dan Rather, Larry King Live, CNN & Co., The News Hour with Jim Lehrer and Hardball with Chris Matthews and Lou Dobbs.

Congresswoman Northup graduated from Saint Mary's College in 1970 with a Bachelor of Arts degree in Economics and Business. She has served for years on community boards, is a recipient of numerous civic awards, and is an active community volunteer. She is a member of Holy Spirit Catholic Church, and has been married to 'Woody' Northup, a small business owner, for over 37 years. Together, the Northups have six children.

Mrs. EMERSON. Thank you so much, Commissioner Northup. I want to welcome Mr. Diaz-Balart, the Vice-Chair of our committee today. Chairman Tenenbaum, can you do me a favor and have somebody pull that chart up again that you just showed us before. [The information follows:]





Ms. TENENBAUM. These are full-time equivalents.

Mrs. EMERSON. Okay. Do you have budget numbers?

Ms. TENENBAUM. It was 150, but that is what the equivalent was. I can give you that budget number. We had 978 FTEs. And then, in 2007, when we had the year of the recall which prompted the CPSIA, we had 393 workers. And that is why, in the CPSIA, the language was put in that we had to hire 500 by October 1, 2010.

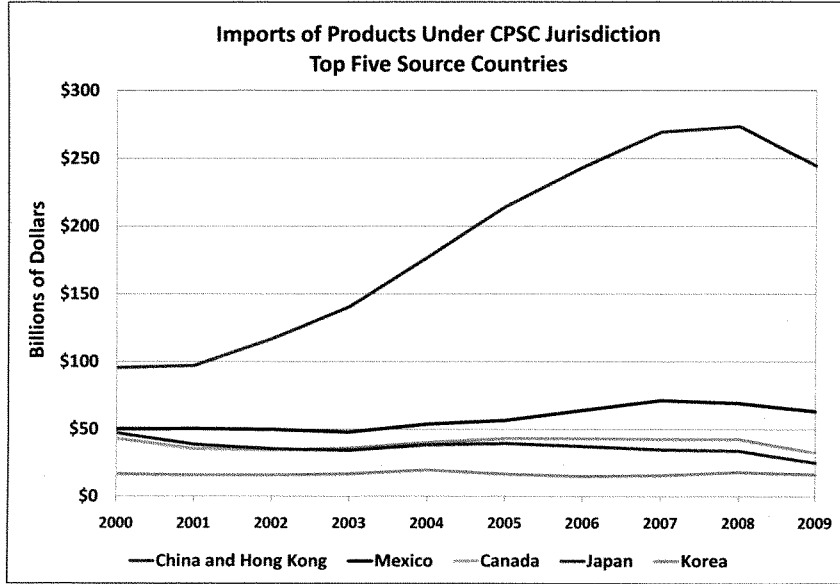
Mrs. EMERSON. Right. Here is what is interesting to me, and now that I think about it, how is it that we ever arrived at having you all having to hire 500 people? How would we have known how many people have had to hire? Do you recall?

Ms. TENENBAUM. I was not here during that.

Mrs. EMERSON. I know you were not.

Ms. TENENBAUM. I think that they looked at the agency, and the second part of that law said, Ports of entry, overseas inspections, as part of the 500 full-time employees required by Paragraph one, the commission shall hire personnel to be assigned to duty stations at United States ports of entry, or to inspect overseas manufacturing facilities. They envision that we go to China, subject to the availability of appropriations. And one of the things that is so interesting, and it affirms what Commissioner Northup just said, is here are our imports.

[The information follows:]



As you can see, the red line represents China and Hong Kong. So it starts off in 2000 at roughly just under 100 million. And now before the recession it peaks in 2000.

But look at that, 80 percent of all the toys that are imported in the United States come out of China, just like she said, and 42 percent of all consumer products come out of China. Our second largest importer has flat lined, that is Mexico. Canada is the green, and then you have Japan and Korea. We both made visits to China, and we are I am glad to tell you that we opened up our first overseas office in China, and Ambassador Huntsman allowed us to be in the building right next to his residence. In fact, every time I go to China, he has always met with me personally at the residence, because it is so important for him to keep up with our issues. And if you want me to show you these other charts, I can. They have to do with FTE's.

Mrs. EMERSON. All right. Tell me what the impact would be, because I know you all have had to plan for it, or at least noodle ideas around, about what a return to Fiscal 2008 finance levels would mean for the CPSC?

Ms. TENENBAUM. I have that right here. If we go back to 2008, which would put us back at 80 million, and it would be a 32 percent reduction, we would have to furlough staff for 92 days, or four out of the last six months of the year, effectively shutting down the agency. We would have only available 340 FTEs versus the 576 that was planned for 2011. A strict hiring freeze would prevent filling critical vacancies. We would also have to not do our nanotechnology project. We would be stopped from implementing the CPSIA in terms of the durable nursery equipment rules that we are supposed to write. We would have to close the Beijing office, and we would have to stop our hotline where consumers can call and tell us about their experiences. The Virginia Graham Baker Pool and Spa Safety Act, which is about swimming and drowning prevention, would be cut. And we would have to slow down our modernization of our technology overhaul at our agency.

Mrs. EMERSON. Okay, thanks. Mrs. Northup. How would you address those two questions? First, the FTE question, and, secondly, going back to 2008 budget levels?

Ms. NORTHUP. First of all, Madam Chair, I have to ask for a clarification. I thought that the law said we were to go to 500 by 2013, not by 2010.

Ms. TENENBAUM. It was 2010.

Ms. NORTHUP. Was it 2010? If somebody could just clarify that.

Ms. TENENBAUM. It was 2010.

Ms. NORTHUP. In any event, we are of course approaching 600 employees, and I would just say that I think you see what happens when you have a very complex bill, and you have to implement it, and it has a lot of regulations. The regulations are horrendous. Any business, just about any small business, when we talk about the ombudsman, the ombudsman is primarily dealing with micro-businesses, with crafters with people that are one-person businesses. If you are a small business, you are going to have to hire a lawyer to make sure you comply with all the new regulations that we have written.

I would just point out that, when we were at the low point, that is when the recalls happened, and that in a sense you could make the argument the system worked. They caught the toys coming in, the agency was able to do a sweep of all toys, and while it is true that there were somewhere, I think in the area of 78 toys that were recalled, it means that there were thousands upon thousands that complied with all the paint specifications. And so we were able to do that, and to implement a system. We assessed very serious penalties for those companies that broke the law, Mattel was the leading one. They paid about a \$1 million, \$1.5 million I think, maybe \$1.8 million but they also settled the class-action lawsuit for \$14 million. And there is no evidence that any child was hurt by those products. Obviously, lead in paint is dangerous, unlike lead in handlebars, I might point out, of a bike, or a peddle or the other things where the law went way beyond what was risky. But the law worked, and we did catch those toys, and they were removed from the market. And the companies were penalized and that is what set into motion these companies establishing far more oversight over their plants in other countries, putting in in-plant labs. So, you could make the argument that the CPS, being out of compliance in 2007 with 380 employees, that the system did work.

Ms. TENENBAUM. I have a correction to make. Commissioner Northup was right, it was 2013.

Mrs. EMERSON. The 500?

Ms. TENENBAUM. Yes, my notes say 2010, but it is 2013.

Ms. NORTHUP. Okay, thank you, so we are already 100 over that. We are going to be 100 over that if you fully fund us, and we are still a year out from 2013. So the bureaucracy that is growing, it is staggering.

Mrs. EMERSON. Okay, I am going to turn it over to you Mr. Serrano, we have lots of questions and I have to let my colleagues have their shot too, thanks.

Mr. SERRANO. So far, Chairman Tenenbaum on the implementation of the Consumer Product Safety Improvement Act, we are talking about numbers. How are you working to educate manufacturers about their new responsibilities under the law, and also with regard to the improvement act, since the commission has delayed until 2011, its enforcement of testing and certification requirements for many children's products, how can consumers be assured that the law is being followed and that children's products are safe? What are you telling the business community about this, and what are you doing about the children's products?

Ms. TENENBAUM. Okay, thank you Mr. Serrano. We have held workshops for the business community as early as 2008, before I came to the commission. The staff pulled together all stakeholders to teach them about the CPSIA and what the requirements are. We also have made a new Office of Education, Global Outreach, and Small Business Ombudsmen. For almost 20 years we have had a small business ombudsman at the CPSC, but it was only part time. And Commissioner Nord and I talked, and she argued that we really need to go fulltime again to a small business ombudsman. We have had a wonderful time young attorney who is working with small businesses, taking the Plain English Act and writing summaries of our regulations of frequently asked questions for the

business community. We frequently go to trade shows, we work with the major manufacturers to tour-businesses.

I think that what we really need to celebrate is the number of American manufacturers that have extremely high-quality quality assurance programs, that they are state of the art. That they are keeping risk away from people. That they have been testing using third party testing for ten years. Many of the people, once they have gone into China, determine that since it was a global market, it was a supply chain they could not keep control of, they needed to test, even before they left China, the raw materials that went into the product before it was sent to the United States. And once it gets to the United States, the manufacturers retest.

I have been to manufacturers who tell me what they do to make their product safe, and it is extraordinary. So, many of the larger manufacturers have been complying with third party testing and testing for chemicals and lead. Recently, I went to the toy fair in China and met with the top five Chinese companies that manufacture probably most of the toys made in the world. And they have worked with their industry to develop a chemical database, so that every chemical that you use in a toy is listed in that database. And you can keep up with every chemical that is in that toy, so that if you have a recall, the batch and the lot number, and you can pull that toy even before it is sent.

In terms of what we have done, we have implemented the Consumer Product Safety Improvement Act. Although we stayed enforcement for some of the products until December of this year, we did not stay compliance. So you still had to comply with the lead limits, the small parts, the phthalates, and F963. We did not stay compliance. And that is why so many people have already complied, because you have to comply with the lead paint limits, 90 parts per million, total lead content, 300 parts per million, limits on phthalates, small parts, and ASTM, which is the major toy standard. We only stayed testing and certification.

Mr. SERRANO. Right.

Ms. TENENBAUM. And most people already do that already.

Mr. SERRANO. Right. Yes?

Ms. NORTHUP. Third party testing and certification is just a giant step different from what is currently being done. When we proposed the rule, we have hundreds of pages of comments coming in from small and large businesses alike, telling us that when we actually go, when they actually have to comply with the paperwork requirements of that, when they have to comply. Third party testing, some businesses use it, many businesses have brought in ISO labs inside their companies. That is my point. They are very eager to make sure that they comply with all of our regulations.

But the command and control requirements of the law in the CPSIA, and the tracking of that information, and the way it is being implemented at the CPSC is a gigantic step in a different direction than what they are asking for. And if it were true that they were all doing it, you would not get, universally, and it is universal, from small and large businesses, saying this is going to be horrific. It is going to be costly and impossible in many cases.

Let me also say that I am glad we have a Small Business Ombudsman. Unfortunately, this office is going now from one to—now

we are requesting two more, which was a reason I did not support it. Small businesses are not asking us for more information. They are asking for changes in the law. They are telling us it is killing them. And they are saying, it is not more information they are asking for, yes, crafters are, but small businesses that have 10, and 15, and 20, and 30 employees? They are hiring their own lawyers en masse. And even people like Mattel told us that they had to hire a huge cohort of new lawyers, internally and externally, because what they had was simply not enough for them to comply with the law. They said in a public statement that was printed, they did not know how a small business could comply with this law.

Mr. SERRANO. Well, when you two speak to us here today, we see what the problem is. And I am in, it must be because it is opening day, I am in a, baseball opening day.

Ms. NORTHUP. You are in a good mood.

Mr. SERRANO. I am in a, let us find common ground and the middle ground here. Now, you walk into, and I hate to mention names. You walk into Toys R Us, staying on the issue of children. Sure, it is a business. And they want to make money. But I do not think they are irresponsible people, the people who own Toys R Us. They know what impact they have on children. So there has to be testing. There has to be some government oversight of those products coming into the country.

But at the same time, since I am in this great mood today, there should not be something that strangulates the economy and the business community. So what is it, to both of you, that the business community is willing to comply with? And what is it that bothers them? Because if you tell me, I mean, let us be honest. You served with us. You know that there are some colleagues of ours who want no oversight of anything, no regulation; they are all good people, and they will take care of the American people. That is not how it works.

Ms. NORTHUP. No.

Mr. SERRANO. Right?

Ms. NORTHUP. And you see that every day when you are at the Commission.

Mr. SERRANO. Exactly. So what is it that is squeezing them too much, and what are they willing to do on their own? Because one of our big complaints, besides, China owns all our economy, or whatever, all our debt, is, all these products come from China. And we cannot just accept them as they are. So just briefly, can you tell me, where is the middle ground here?

Ms. TENENBAUM. Well, last year, we sent a report to Congress saying that we needed four things changed in the Consumer Product Safety Improvement Act. First of all, we needed greater flexibility in granting exclusions for the lead limits. For the lead limit, CPSC only allows three exemptions: one if it is an inaccessible part, two, if it is certain electronic parts, and the third thing is, by use and abuse of the product, any lead is not absorbed into the human body. So we wanted greater flexibility, because we had ATVs and bicycles where the child is not going to mouth the handlebars, and we wanted to be able to give them an exception.

The second thing is we wanted an exclusion for children's books. In August, the lead limits go to 100 parts per million. And we also

said, Do not make this retroactive like CPSC did for the 600 parts per million. Only make it prospective, so people will not have to get rid of their inventory. And we also wanted relief for small manufacturers and crafters. In fact, we are working on a rule called Periodic Testing. We are looking at carving out an exception, that, if you make 10,000 units or less, you do not have to periodically test. You have to initially test, but you do not have to periodically test.

We also came up with a component part rule. So if you made children's dresses, you did not have to test the whole dress, you could just buy buttons that were already tested, from the button maker, and you were compliant. We made rules that say, if you had cotton, untreated wood, if you were a hand crafter and made things out of untreated wood, you never had to test. So those are the things we have done to be creative, to exempt people from testing and certification.

The common ground is that we need flexibility. But to do away with third party testing really goes against what I have seen in the marketplace. And I think that it is to whom you speak. I went to see a major children's clothing manufacturer, and they told me, just two weeks ago, that when they started manufacturing in China 10 years ago, they started doing third party testing because they wanted to make sure they met the flammability standard and that the fabric did not contain toxic metals.

Mr. SERRANO. Madam Chair, I do not want to go over my time, but I would like the commissioner to comment because she did say, she did.

Mrs. EMERSON. Yes.

Mr. SERRANO. I was pleased to hear that you say you see it every day at the Commission. So you are not one of those who says get rid of the Commission.

Ms. NORTHUP. Let me just say that every day we get the overnight incident reports. And there are children that have died, there are cases. We see products that catch fire; we see products that are harmful. There is no question that there is a very important responsibility at this agency. However, what has been a tidal wave of focus of this agency has sort of swamped everything, is the implementation of the CPSIA. I have to tell you, Mr. Serrano, had I been here, and I was not in 2008, I feel sure I would have voted for that bill.

And because in reading it, it seems as though it is logical. But of the three exceptions to the lead limit, the question of inaccessible electronic components, the third one is absorbability. The majority of the commissioners have determined that this is in conflict. But they have interpreted that to not apply to one single thing: not a button, not a snap, not a zipper, not a handlebars, not any part of a toy, not the screw in your crib. None of those things can have 300 parts per million of lead. Now, you could absorb lead in paint. We know what you can absorb lead in. We know if you can swallow a charm that has lead in it, that your body will absorb it.

But we also know that if you lick the handlebars all day or the screw in your crib, that has slightly more than that but has more strength, it has machineability. I mean, lead also contributes certain things that you are not going to—there are just going to be an unregistrable amount in a child's blood lead level.

Europe has had lead levels for years. They are based on the absorbability. They call it bioavailability, whether or not that lead can be extracted out and into a child's body. We should make that absorbability mean something. And then finally, the testing, I would just say that I do not believe that I have heard from one plant that said, I am sure I have not, that said, Oh, yes. We think third party testing, outside of our plant, the way it is written in this law, is going to be good.

Do they use third-party labs? Of course they do, because they care about it. But they do it for their own check and recheck, not so that they then have to change the label every time they have the red paint runs out one day. Now, you have a new set of red paint. It has a new certification level. Now, the final certificate has to change the number on that. Now, the label has to be batch #107 instead of 106. An hour later, the yellow paint runs out. You have to stop the presses. You have to change every single thing all the way through. The next minute, the snaps run out and you have a new batch of snaps. You have a new lot number, so you have a new certificate number. All of that has to be reflected in the label.

This is chaotic and Ashley Furniture came in and told us they had spent \$14 million on third-party testing and setting up a system by which they could track all the layers on a piece of furniture and everything. Not one single component of this furniture violated the lead limit. They were in compliance. They still did not know how, once we applied this, once we put in testing, third-party testing, and that they were going to be able to comply. So you got no benefit in safety and 13 or \$14 million and cost.

Mr. SERRANO. Thank you. Thank you, Madame Chair, for allowing me to go over my time but it has been quite a while since I have heard this kind of very direct testimony.

Mrs. EMERSON. Oh, and it is excellent.

Mr. SERRANO. So informative. Thank you.

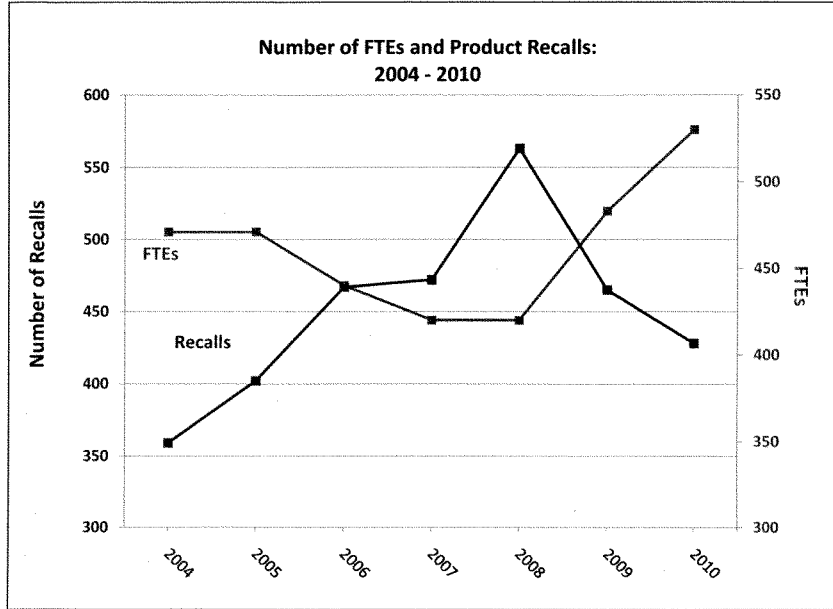
Mrs. EMERSON. And it is very helpful, very helpful for us. Mr. Womack.

Mr. WOMACK. Wow. Where do I begin? I was a mayor for 12 years and I spent a great deal of my time fighting my own bureaucracy. And it has been my experience that when you hire a lot more people, those people start trying to justify their existence. And so, my first question is, when the law was passed, that pegged 500 as the number of people, where did we get that number? How did we, all of the sudden, decide 500 employees was the magic number?

Ms. TENENBAUM. Well, I will show you two things that probably prompted Congress to do that.

[The information follows:]





The blue line are the full time equivalents. As you can see, in 2004 we were a little over 500. And then, in 2005, we were at 500, and then we dipped. And this right in here was the year of the recall. If you look here at the number of recalls, they spiked. They spiked a little around 2007.

So what Congress, in looking at this data, determined, is that with the less people you have doing port surveillance, working in China to make sure manufacturers understand our regulations, the more recalls you are going to have. Recalling costs money for manufacturers.

Mr. WOMACK. Do you have a chart that shows the competency level of those employees?

Ms. TENENBAUM. We hire people who are competent. And we hire really good people.

Mr. WOMACK. I will give you that. I am sure you do on paper. The point I am making is, can we just simply conclude, based on a numerical chart, that the spike in recalls was directly related to the fact that we had a fewer number of people.

Ms. TENENBAUM. Yes, we only had 393 people and we did not have enough people. We had five people at the ports. Now we have 19 people at the ports. We are working with Customs, and have 19 people at 15 ports. We work with Customs and Border Patrol. We were the first agency to sign a memorandum of agreement with them and, we get all the pre-arrival manifest data. We go through all of that data, and we target now shipments before they are even unloaded. Products like fireworks and electrical products, we pull them so they do not get on the store shelves.

Mr. WOMACK. Well, Madame Chairman, everywhere I go in my district and look, I have got a major retailer that is in my backyard. A small five-and-dime named Walmart. And they sell a lot of toys.

Everywhere I go in my district, I hear people telling me about pushing jobs overseas, moving jobs overseas. Is it possible that maybe part of our problems is that we continue, the reason we have so many imports of toys, is our tax policy and our government bureaucracy is so big, so reaching, so much into the private sector that there might be some other quantifiable data that might yield a different conclusion about pegging the number at 500. I am just using that as a thought process because it always bothers me when somebody says, Golly! We are in trouble. We need more people.

Ms. TENENBAUM. I have been in plants in China. And people in China make \$1.50 an hour. They live in dormitories and they may or may not get food in those dormitories, and they also do not have air-conditioning in some of the dormitories. So, if you look at textiles, my state, South Carolina, was a major textile state. And now, textiles and toys have moved. And the chart I showed you, 80 percent of all the toys coming into the United States come from China. Forty-two percent of all the consumer products come from China. And they make \$1.50 an hour.

Here is another thing that Congress looked at when they passed the CPSIA. Here are the number of investigations. And you can see, in 2003, we were over 50,000 investigations. And we had dropped to below 30,000 by 2009. Here were the number of pro-

jected incidents, and this is before we even implemented the database—the public database that people have been talking about.

So, we are able to only investigate about 10 percent of all the claims of injury that consumers send us. Ten percent. And one reason that we are asking for 24 more people this year is because we have so much data and so many reports from emergency rooms, coroner reports, the newspaper, and we have our public database, that we cannot even investigate because we do not have the people. This is where the majority of the new people were going, is to investigation. And our new employees have gone into our laboratory as well as in Compliance and Enforcement.

Mr. WOMACK. I would like for Ms. Northup to comment.

Ms. NORTHUP. Well, I think your question is, Can we do more with less? And I think I would like to say, first of all, that I have been exceedingly impressed by the people that work at the CPSC. They work hard. They are talented and they are well-trained. They know what they are doing. But they have been given a responsibility to implement a law, and all these rules and regulations are very involved. They are very complicated.

But I would tell you this, all of the new ways of screening things coming in work with the Border Patrol Customs and Border Patrol. That is a new way of doing more with less. And so that is why I have asked, please, do away with the requirement of third-party testing and tracking and certification, because both within businesses and the huge investment they have made and our investments at the port, this is an emerging world where new technologies are available that were not available or were not used previously, and we could do a lot more with less.

And finally, I would just like to say that the rules that we have implemented, the ones that affect businesses the most have been written and there has been division between the majority and the minority. Where we could have made it apply to fewer items, we made it apply to more items. Where we could have allowed fewer tests, we have interpreted it in the most severe manner. And now, yes, much of the regulations and investigations is going to be investigating whether or not people complied with the certifications, whether they complied with the third-party testing, as opposed to whether or not the item is compliant.

And finally, just the very fact that every single lab that uses a third-party test, we have to certify the lab. We have to take in that information. These businesses know what third-party labs they can trust, but you create a bureaucracy that stretches back. It is not just any third-party lab, it is a third-party lab that is ISO certified? No, it also has to be certified by us. And so, even though that seems like it is not a lot of time, everything is incremental. When every single child's product, every component of it has to be third-party tested in a lab that we have certified, you are talking about an enormous process of just doing that.

Mr. WOMACK. That raises costs. And I just want to make this comment for the record, that my question about competency was not related or not in any means directed at the quality of your staff. I realize you have a quality staff. What I am simply asking is, are there other measurable criteria that could point to other factors that may contribute to the incidents, or the investigations, or

the complaints. And that is merely the line of direct thinking I had at that stage.

Finally, let me just ask this. Are we sure that we are doing everything we can to mitigate the impact on small business? As my colleague from the Bronx said just a moment ago, we do not want to under regulate, but we really do not want to over regulate. And I would like to know where that line is in an ideological sense, as to when this organization is going too far, trying to do much, and exponentially raising the price of goods in an attempt to try to remove all risk from the public.

Ms. TENENBAUM. Well, thank you, Mr. Womack. And one thing I want to clarify is we will only have one small business ombudsman. I created this office of Education, Global Outreach, and Small Business Ombudsman, and we put three offices in there together. We put the International office, the Inter-governmental office, and the Small Business Ombudsman. And so, the two new positions in that would be to hire an Executive Director for that office. But let me go back to what we have done for small businesses. We want the full-time Small Business Ombudsman because we are working so that people do not have to hire a lawyer. We are doing seminars, we are going to trade shows. Our Small Business Ombudsman gives his card out to people at seminars, and they call him personally. He answers questions for them. But we also have done other things. When we were debating tracking labels, we decided that one size did not fit all, that the small businesses did not have to have the same compliance as the large companies. We developed component part testing guidance and that is so that the small business, we were hopeful, could buy component parts already tested and would not have to re-test their products.

The third thing we did was determinations, that if you were a small business and you were making children's clothing or handmade toys, that there were certain materials that never had to be tested, like untreated wood, textiles, and gem stones. So those are the kinds of things we look at. We also have the Regulatory Flex Act. We look at how it is going to impact small businesses before we come up with a rule. And so, Reg Flex Act is something we look at and point out the impact. But we are very mindful of small businesses. But, under the Consumer Product Safety Improvement Act, everyone had to test third-party testing, regardless of the size. That is why we were hopeful that component parts would be developed so that people could buy those, could go in a hobby store, or buy them from the manufacturer already tested, and they would not have to re-test.

We also hope that this year, that the House and the Senate will give us more flexibility so we can allow companies, if we do not think there is a likelihood of mousing the product, or swallowing the product, that we can give them flexibility and they will not have to test.

Mr. WOMACK. I yield back.

Mrs. EMERSON. It seems to me that you are the perfect agency to make sure that the President's call for cost-benefit analyses of regulations actually comes to be, because obviously some things are so onerous. There is no way that you can say they are not. It appears that if we do not understand the impact at the end of the

day in a very fragile economy, we may be cutting our nose off to spite our faces, in which case there is no businesses to have to regulate anyway. I do want to come back and talk about cost-benefit analysis of regulations. So far, I have not seen any federal agency in this government who is capable of doing that.

Mr. SERRANO. Would you yield for a second?

Mrs. EMERSON. Yes.

Mr. SERRANO. I am sorry. I usually do not interrupt. In listening to our new colleague, Mr. Womack, I think the balance here is that we are appropriators. We are not authorizers, although on many occasions we behave as authorizers.

Mrs. EMERSON. And we have.

Mr. SERRANO. We appropriate. And we have to. We keep them in check. This is a law that is in place already. The question is, Do we fund it and to what extent do we fund it? And that is the balance, because if we get back to 2007, and you see people, kids actually being hurt because maybe for insufficient funding, or funded to a point where they function. And that is not how they authorized it. They passed that law. It is on us. That is the delicate balance that we have to reach. So we do not over regulate, but as I said, do not under protect. And that is the challenge.

Mr. WOMACK. Which I think feeds it directly into Madame Chairwoman's request, that a cost-benefit analysis probably fits this agency as well as any in government.

Mr. SERRANO. Absolutely.

Mrs. EMERSON. And thank you all. So with that, it is time for Mr. Diaz-Balart.

Mr. SERRANO. Of the Florida Marlins.

Mr. DIAZ-BALART. Who did beat the Yankees, if I recall, a few years ago in the World Series? My memory is not very good, but did not that happen recently?

Mr. SERRANO. I think that was your moment of glory.

Mr. DIAZ-BALART. Madam Chairman, you see how he cannot admit it. It just hurts him to admit it. It hurts him.

Mr. SERRANO. All right, it hurts me. It hurts me.

Mr. DIAZ-BALART. Thank you, Madam Chairwoman. It is good to see you the both of you. You know, if I may, I have some questions on Chinese drywall. But Mr. Womack really peaked my curiosity. So if that is all right, I would like to submit the ones on Chinese drywall in writing later on, because I do want to go back to what our colleague was asking.

One of the things that we have to be careful in government not to do is get stuck with that kind of weird logic of, Since cheese is round and the moon is round, so therefore the moon must be made of cheese. And I think sometimes, when you look at these charts, it is not always the case, but sometimes we get stuck in that syndrome about, Oh well, if we had a spike and we only had 300 people. So if we have 500 people, we would not have a spike. Is it just because of the products that all of a sudden are manufactured differently, because of technology, because of whatever. And again we just need to be very careful about that. If I may, kind of, follow up on my colleague's line of questioning. By the way, before I do that, when was the hotline created?

Ms. TENENBAUM. We have had the hotline for years. It is the publicly searchable database that was mandated that we created under the CPSIA in 2008. So we just launched it in March.

Mr. DIAZ-BALART. Madame Chairwoman, when you mention about the things that you would have to get rid of or cut if we went back to 2008, you mentioned the hotline. But it was there before. It was there in 2008. So why, all of a sudden, if you could do it in 2008, and it was there before 2008, when we had less money, more money; I am not quite sure.

Ms. TENENBAUM. Because what we are trying to do is increase the number of investigations and increase our rate of compliance in investigations that we are able to do. When we are asked to make cuts, we look at what are some items that are discrete that we can cut. And so that was one of the things that would have to be cut. The fact that we had more money also allowed us to spend the \$5 million that we have done on the drywall investigation, which is the most expensive inquiry and investigation we have ever done in the history of the Commission.

Mr. DIAZ-BALART. Okay. Let me go back to what Mr. Womack started talking about. We have heard a lot about some of the issues that may be onerous to business owners. Specifically what are the things that you are doing that are actually helping business be more competitive? Because, obviously, with technology and everything else, there have got to be areas where you look at ways to be less onerous, less expensive to business, and you can go to them and say, Hey, look, right now you are required to do A, B, and C. Let me show you a way that you can do that and you can reach the same level of safety without having to go through the expenses. Are there specific recommendations like that, that you all are going to the private sector on and saying, Here is where we can help you streamline, that you do not have to do certain things that you were doing before because technology has changed. What are some of the specifics that you are doing in order to help business be more competitive?

When I looked at that chart of the number of Chinese toys, and again, now I am going back to the same analysis that really kind of frightened me, was the fact that there was at one time in our history when we manufactured a lot of those toys. There were a lot of reasons why; clearly labor costs is one of them. But if labor cost was the only issue, we would not be doing anything in this country because labor costs are a lot less expensive in a lot of places, and yet we are still competitive in a number of different areas; obviously, toy manufacturing is not one of them, unfortunately.

But what are the areas, specifically, that you all are looking at to be more competitive where you can cut cost for business? Some specific areas like that that you are bringing forward?

Ms. TENENBAUM. Well, education is a service that we can provide, and businesses tell me that helps them tremendously. If we educate them on what our requirements are, then they do not make mistakes. They can build safety into the product. And that is why when I came here I wanted to create the Office of Education Global Outreach and Small Business Ombudsman and put three offices together so that we could have a targeted, standardized approach. We could work with colleges and universities, trade asso-

ciations, other government agencies, so that we can help people understand what the requirements are, thereby saving them money so they do not have their products recalled. Recalls are not the best way; it hurts industry; it hurts their brand. We want to get ahead of that.

Another thing is counterfeiting. We get complaints on counterfeiting. The largest problem on counterfeiting in China that we find is electrical products. And so the good people want us to catch the counterfeiters. And we are constantly working with AQSIQ, letting them know when we find counterfeiters.

Another thing we have is called the 15J Rule, which means if it is a standard that the industry is complying with, and it is visible to the eye, we can then stop products that are not compliant, so that the good people and the compliant people get to sell their products. We have done this on drawstrings, hair dryers—the bob on the end of the hair dryer that is the circuit breaker—if we see one coming in the country that does not have that, we stop that at the port. So one way that we help industry is by helping the compliant have their share of the market and remove the people who do not comply.

And the other day, Diane Sawyer did a piece where she went into a home and took out all the furniture that was made in China and replaced it with furniture made in the United States. And the cost of the furniture was essentially the same. I am going down next week for two days in North Carolina to go to the furniture market. A lot of furniture is still an industry that the United States has a large market share in. Next year we need to go and create an upholstered fabric standard; the industry has asked us for it. We worked on the standard for 16 years.

We also work with standards-making bodies, such as the UL, which are the electrical products bodies, as well as ANSI, and ASTM. We work with them when we see a product that is not working. And with the staff working with industry on these committees, we come up with a standard that improves the product and reduces everyone else's risk. And those are voluntary standards.

Mr. DIAZ-BALART. Let me see if I can give the Commissioner a shot at that, too.

Ms. NORTHUP. Well, first of all, let me just say that there is nobody that wants recalls less than every business. And that is why they are more efficient and better at putting in prevention ways: ways to test their own things, internally; ways to make sure that they are in compliance. For us trying, without manufacturing experience, being in the plant, and knowing what is going on, it is impossible that we could ever provide the sort of expertise that businesses are able to hire and provide for their own businesses.

In the rule-making, first of all, the rule itself, the law itself, said that absorbability would be one of the exclusions. If you could not absorb lead. If that had actually meant something, and I presume when you passed it in Congress you meant for it to mean something, much of our problems would not exist today. But the majority of the commissioners decided that if you rub the handlebars and a fraction of a fraction of a fraction of a molecule comes off, of that, and one percent of it is lead, the fact you could put your hand in

your mouth, that meant that nothing could comply with the absorbability standard. Even though in the world, and in Europe, it is an absorbability standard, if you suck on the handlebars and you cannot get the lead out, it is not what they call bio-available, they exempt all of those things.

So when the Chair talks about, we exempted materials like cotton, it is the smallest, it is a list of about eight things and they are mostly materials.

Mr. DIAZ-BALART. Is there an issue in Europe with lead?

Ms. NORTHUP. No. And more importantly, let's look at our own. We have CDC, NIH, EPA, that all talk about lead issues. First of all, one percent of the children tested in this country reach what we call the tipping point of lead. They are about one and a half years old. They are crawling around on the floor; they are picking up dust that has lead in it; it is either from chipping paint, or it is tracked in from outside because lead was in gasoline, it was in the dirt; it gets tracked in, it gets on the floor.

We do not have to research that; they tell us where children are impacted by lead, and how they get impacted by it. And none of them say, Take away your child's toys; take away their bicycle. None of them say, Change the screws in the cribs. And yes, there are some groups: the American Academy of Pediatric wants us to make it 60 parts per million. But when you look at their website, about what they recommend for children that start to have an increase in blood lead level, and maybe are approaching the tipping point, they do not say one word about it being in their toys, in the furniture. And why would they? Think about it. We are requiring, much to my dismay, and something I think the law would have allowed us to do differently, we are going to say that a lamp in a child's room that has a child's, say a fairy for a little girl's room, every single component of that is going to have to be third party tested: the brass; none of that is going to comply, because it all has lead in it.

But that child is going to walk around the rest of the house and turn on the lights. And no one would say, Do not let your child touch a lamp. There is a ludicrousness in this. And a lack of reasonableness that we could have not required it in carpets. We have a requirement on flammability and testing of rugs and carpets. But we decided that we still had to apply this third party testing requirement to rugs in a child's room. If they have a child's rug, say a star in the middle of it, that would be bought at Pottery Barn, you can go to Pottery Barn and buy the exact same thing with solid color with a yellow outline, and do not have to third party test it. If it has a star in the middle of it, then you have to third party test it. And so, do you think there will be that right? And what is the difference? And in the meantime, the child is going to crawl out of the bedroom, into the living room, into the mother's bedroom, none of which is tested. It does not make common sense to me. In places where I think we could have written the rule so we could have exempted out products where we already have protocols and they are in general use; we did not.

Mr. DIAZ-BALART. Yes, well, that does not pass this.

Ms. TENENBAUM. First of all, when Congress was considering the CPSIA, they heard testimony from scientists, from physicians, who



told them there is no safe level of lead. That is why Congress put it in the statute that you could not let a product be used, or that we could not get an exemption if any lead could be absorbed. So it was not the majority that came up with this ruling, it was the plain language of the statute.

Mr. DIAZ-BALART. Are you going to come back with recommendations to change the statute, then?

Ms. TENENBAUM. We did last year.

Ms. NORTHUP. But not that.

Ms. TENENBAUM. And we also wanted more flexibility in letting out certain products where we knew the exposure was very low. But in August we will go down to one hundred parts per million. Canada already set its lead limit for content in children's articles to 90. So Canada is already below us. We are seeing remarkable progress where industry is getting the lead out. You see lead coming out of zippers for children's clothing, for buttons, for toys, out of vinyl, you see it out of rhinestones and bling. The market is getting the lead out of children's products. And we do not want an amendment to this that will take us back so we have to test every article, because the CPSC does not have the capability.

You are talking about more staff, Mr. Womack? If we had to test everything for solubility, when solubility depends on the child. A child that is deficient in calcium will absorb more lead. Lead is a powerful neurotoxin. There is no safe level. It reduces the brain functions and it interferes with the brain functions and the IQ of children. It is well-documented. So it is something that Congress did hear plenty of testimony about, when they said, we want the lead out of children's products.

Mr. DIAZ-BALART. Let me just, in the interest of time, thank you, Madame Chairman, you are being very generous. Allow me to say that this is, frankly, one of the most informative hearings that I have been in, in my years here because we are actually beginning to talk about the issues.

There always seems to be, and the legislation is part of that, an increase in regulation. Could you tell me what decreases in regulations you are either doing or you are proposing, again, because of changes in technology, because the need is not there, because the cost is too much, or the cost is too much for the gain? Are there any areas where you are looking at decreasing regulation, decreasing activism or activity, in the private sector?

[The information follows:]

**Response of Chairman Inez Tenenbaum to Question from the  
Honorable Mario Diaz-Balart**

The Commission is always seeking new scientific approaches and regulatory pathways that can decrease the burden on the regulated community, while at the same time maintaining a high level of health and safety protection for consumers. One very recent example of the Commission's effort to ease regulatory requirements where appropriate involves the testing requirements for determining compliance with the standard for lead (Pb) in paint and other similar surface coatings. See *Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies – Lead Paint*, 76 Fed. Reg. 18,645 (April 5, 2011).

The previous CPSC staff test method for determining total lead in paint recognized a "wet chemistry" method that involved removing paint from a product by scraping or using a solvent, dissolving the paint scrapings in nitric acid, and analyzing the acid solution by spectroscopic means, such as inductively coupled plasma optical emission spectrometry (ICP-OES), inductively coupled plasma mass spectrometry (ICP-MS), flame atomic absorption spectrometry (FLAA), or graphite furnace atomic absorption spectrometry (GFAA).

These analytical techniques used in "wet chemistry" are capable of yielding precise and accurate results and have low enough detection limits to measure lead in paint at the new limits of 90 mg/kg.

However, this test method is time consuming, and typically requires several hours to prepare and analyze samples, and is sample destructive. Insufficient quantities of paint, such as samples from an item with a thin coating of paint in a small area, also can impact use of this procedure. For example, this test method recommends that a minimum of 5 mg of paint be collected. Collecting at least 5 mg of paint from products with small painted areas can be difficult, sometimes requiring compositing of like paints from multiple items to obtain sufficient material for analysis.

As a less burdensome alternative, the Commission recently recognized the use of XRF technology, in addition to the "wet chemistry" method, to test for lead in paint and other similar surface coatings. The main advantages of utilizing XRF over the current digestion/ICP method are:

- 1) XRF analysis is often nondestructive, and the paint can be tested *in situ* on the item.
- 2) Little to no sample preparation is required, which greatly reduces the analysis time and cost. Sample times for XRF *in situ* analysis are typically less than five minutes. It takes several hours to collect, digest, and analyze paint scrapings using the "wet chemistry" test method.

- 3) XRF has the potential to directly test small painted areas, without the sometimes difficult task of removing enough paint from a small area to quantitatively analyze using the current digestion and ICP method. XRF analyzers equipped with video cameras can be used to analyze spot sizes of a few millimeters.
- 4) Some XRF analyzers are portable, allowing for field-screening of products.

As resources permit, the CPSC is also considering whether to reinstate a program, started in 2004, to conduct a systematic review of its current substantive regulations. The primary purpose of the review is to assess the degree to which the regulations under review remain consistent with the Commission's program policies.

Ms. TENENBAUM. I want to go back and talk to our laboratory and our scientists to give you a complete answer. We regularly meet with standards-making bodies. In fact, the law is plain that we cannot write a mandatory rule unless the voluntary rule is shown to be inadequate to protect the consumer. So the great majority of our rules are voluntary standards. The UL writes standards for electrical products, for example, and most of the rules that the industry uses to make products are voluntary. We only make a rule if it is not adequate. So we will get back to you.

Going back to the President's executive order. The order asked all agencies to look at significant rules. Significant is defined as having a certain financial, I want to say, \$100 million; is that correct? \$100 million?

Mr. DIAZ-BALART. I think it is \$100 million.

Ms. TENENBAUM. So it has to have the impact of a \$100 million. The only rule that we have implemented that rises to that level, since I have been the Chair, has been our new crib rule. And we worked together to give the industry time to manufacture those, and also public accommodations to purchase those. But I will send you a list of those. But I just want to clarify, the rule-making, mostly, are voluntary rules that industry uses.

Ms. NORTHUP. If I could just correct, Canada left many of their things at 600 parts per million lead. It was the things that were swallowable that they lowered to 90 parts per million. And, again, I think that anything that is risky, we can ban. We have that authority.

Ms. TENENBAUM. Well, and the AAP really wanted 40 parts per million, not 60; so the American Academy of Pediatrics wanted us to set our limits not at 100, but at 40. And the compromise was 100 when they passed the CPSIA.

Mrs. EMERSON. Thank you all.

Mr. Serrano.

Mr. SERRANO. Thank you. Before I start, I will preface my comment. You spoke, Madame Chair, about the cost benefit analysis. And I think it is fine, in some cases, when we talk about paperwork or regulations. But cost benefit analysis can never be acceptable in terms of a child's life or safety. And I think that is where we have to be careful. When we study how much we are spending, it can never be at the risk of having a child, or any person, but certainly children, who were the most affected in 2007, so that is important.

Which brings me to the question of the new product testing lab that is slated to open very soon, compared to the CPSC's current laboratory. How will the new one enhance the work, and how will consumers ultimately benefit?

Ms. TENENBAUM. Thank you, Mr. Serrano. Our lab opens in May, and we would like for all of you to visit the lab with your staff, if you so choose. The lab is going from 37,000 square feet to 63,000 square feet, and we can now perform, in the lab, many more tests than we were able to perform. We have a new testing laboratory for fireworks, for example; we have our own chemical laboratory, toy testing laboratory, and it will be a huge improvement over the laboratory that we have been operating in for so many years. So we appreciate the funding that Congress has provided to us. It is

a \$19 million project. We purchased a used building that was already built for a lab, and remodeled it to fit our needs, and we hope that you will come out and see it. It is in Rockville, Maryland.

Mr. SERRANO. Thank you. And that will launch when? In May, you said?

Ms. TENENBAUM. May of this year. And we would love for you all to come out.

Mrs. EMERSON. That would be a good field trip, I think we should do that.

Ms. TENENBAUM. Yes, please do.

Mr. SERRANO. We can bring some Republicans' items, some Democrats' items, have them tested.

Ms. TENENBAUM. You are right.

Mrs. EMERSON. Great idea.

Mr. SERRANO. We could bring the Federal Budget, test and see how much harm the cuts will cost.

Ms. TENENBAUM. Very clever.

Mr. SERRANO. I could not help that. Every so often, you see a perfect example of the differences around here. It seems there are a significant number of Members of Congress who would like to get rid of the searchable database. But the public likes it. What do we need to know about how it is working? What is, in your opinion, the strength? What is, in your opinion, the weakness? Only to be fair, I think there are no weaknesses. But if someone wants to say there is a weakness, we certainly will hear that. But it seems to me that the ability for someone to get on a website and know that there are items they should be looking out for, cannot hurt anyone. We put all our legislation up on the Internet and people comment on it; and some love it, and some hate it; and some love us, and some hate us; and that is fine; that is public information.

First of all, who is complaining about the database, other than Members of Congress? And what is the strength? And to be fair, if you want to comment on its weaknesses.

Ms. TENENBAUM. Well, we had a spirited debate when we were debating the rule on the public database. But I want you to know, even though we televise our debates and we have open and transparent meetings, 86 percent of all of our decisions are unanimous.

Mr. SERRANO. Eighty-six percent?

Ms. TENENBAUM. Eighty-six percent. But this is one where we had different views, and we argue our views passionately; and I think that is a good way to be. And once it is over, a lot of times we go to lunch, and we remain cordial to each other and friendly. But that was a very tough decision. And it was a spirited debate.

Let me give you a little background on the database. First of all, the CPSC has had a website where people report data to us for a number of years. In fact, we receive over 17,000 a year. However, that Website is not searchable by the public, nor do we have a portal so that manufacturers can go on and side-by-side and give us their comment on what someone said about their product. In fact, we are the only federal agency that has a manufacturers' portal. NHTSA does not have one, and the other agencies like Agriculture, who may have a website, do not allow manufacturers or people to comment side-by-side.

But let me give you some numbers, too. The database is a part of a risk-assessment system that Congress mandated that we create under the CPSIA. We have spent \$23 million so far to create the risk-management system, and \$3 million for the database. All the money that has been given to us has been spent because we launched the database in March.

We receive each year 458,664 reports from consumers. The majority of these come from emergency-room data. We purchase emergency-room data on injuries people sustained from products. That is 397,000 out of the emergency room. Like I said, the website yields about 17,000. We collect mortality data. We get 8,000 death certificates, 550 medical examiners reports or coroner's reports. We look at the newspaper every day. Commissioner Northup spoke about the daily reports; we find out through the newspaper who has drowned or who died because of a product, and that is 6,554 reports.

We also get a little over 163,000 reports on the hotline, but only 5,531 are actually reports of harm from a product. A lot of people just call and ask us questions. Retailers such as Wal-Mart, Target, Sears, Home Depot, Amazon: we get about 23,000 reports from them, because we have got a retailers' reporting program. If they have a problem, they call us and let us know immediately.

We also have a substantial product-entry hazard under Section 15 of our statute. If the manufacturer knows, or the importer knows, that their product has a defect, they have to call us. So we get thousands of reports, about 20,000 reports from them each year. So anyway, to make a long story short, you add all those up together, we get about a half a million reports every year on consumer products.

Now let's go to the publicly searchable database. Remember, I said we get about 17,000 each year from our website anyway, but it is not searchable and it does not have the manufacturers' portal. Since we started in March 11, we have 436 reports of harm in the database. Of those, we have notified 306 manufacturers. Of those, we only had 17 reports that the report was materially inaccurate, and most of the time, 13 of the 17, the manufacturer has said, We are not the manufacturer. We are the private labeler. And we keep a database on labels, so we are working very hard to track down who is the actual manufacturer.

And one thing that Commissioner Northup said was every three days a week our attorneys and everyone sit down to go over this data. The reason they scrub it so hard is they are making decisions now that will be our policy in terms of will we allow it on the database or will we not? We have 2,368 manufacturers who have registered: 2,368. Now, 2,115 have been processed so that we have notified them.

Mrs. EMERSON. Let me interrupt you just for a second. All right, let's just say I am John Q. Smith, and I have a complaint to make because my baby's zipper on their jacket caused a rash on the baby's neck; and so that might be something that I would think that the zipper could have caused. And so I can go on the database and I can fill all of that in. I went on there; I know exactly what you can put in, and all the things that you require because you only have red stars on certain things that are definitely required.

Anyway, it seemed to me, unless I just felt horribly guilty about sending a fake report in because I could not do that just because there was that little signature thing at the end, but there are people who could do that. If I made my complaint, does that immediately get popped onto the database? Because obviously, you could only search the recalls on the database, as of yesterday. I guess tomorrow is the launch date for all of the consumer types of reports. So if I put in that complaint about the zipper causing the rash on my baby's neck, would that automatically show up, or does it get sifted through by you all first?

Ms. TENENBAUM. First of all, we would look at that and make sure you filled out all the data points.

Mrs. EMERSON. But it would have kicked it back to me if I had not filled it out, right?

Ms. TENENBAUM. Right, and we would not put it on the database if you did not give complete information, and if you did not check that you verified that the information is accurate and to the best of your knowledge.

And then have five days after you put that in there to send that to the manufacturer. And the manufacturer could say, First of all, it is materially inaccurate because we are not the manufacturer, and here is who has manufactured it. It might be a private labeler, but anyway that is confusing it. You could say that you are not the manufacturer, and then we would not post the report if you were not the manufacturer. We would find out who was, and notify the manufacturer. But we would send it to the manufacturer, and the manufacturer said, You know, the zipper does not touch a child's neck if you wear it appropriately, and why do you have the zipper around the child's neck anyway?

Mrs. EMERSON. Well if it comes up and it is one of those types.

Ms. TENENBAUM. Okay, all right; you are right. Then they would say, We will take a look at it and see, or they could say, We tested it before we put it on the market. We tested it on 2,000 children, and no one had a rash. Maybe your child has a sensitivity.

Mrs. EMERSON. But my point is, or my question really is, if I make that complaint and I just made it up to cause harm to a competitor, would that get posted on the website?

Ms. TENENBAUM. Well, if it is a competitor, then it would not be a true.

Mrs. EMERSON. In other words, is it possible that false data could be put on the website?

Ms. TENENBAUM. If we find out that it is false data, we will turn it over to the Justice Department.

Mrs. EMERSON. Well I understand that. Is it possible that false data could be put on? Because I went through the whole thing; I could have made up anything on there last night and at least sent it, but that is what worries me. After I pushed the Send button, does it pop up on the database?

Ms. TENENBAUM. No, we have to send it to the manufacturer first.

Mrs. EMERSON. Right, but it is possible, though?

Mr. SERRANO. But the manufacturer would have a right, prior to posting it to say, This is not true.

Ms. TENENBAUM. Right, they would.

Mr. SERRANO. You know, we go through that. We have a meeting and people get up and say, You did this and you did that, and we say No we did not.

Ms. TENENBAUM. And anyway, if we find out that it is false, it is against a federal statute to give false information to an government agency.

Mrs. EMERSON. Well of course I know that, but there are some people who do not care.

Ms. NORTHUP. Well first of all, of course the manufacturer can say, We tested it, it did not happen. They would not say that they tested it on 2,000 people. I mean, you think they tested a sweatshirt on 2,000 people? So they would probably say it complies with all the norms, and that comment could go up if it wanted. But the point is, yes, it would go up on the database.

The problem with the database is a number of things. First of all, you do not have to have firsthand information about an incident in order to put information in. Now let me just say, as a mother of six children, I can tell you that many, many products over the course of my children's lives got altered. You know, somebody bumped into one of the kids bikes, and Oh, it bent it when we were trying to fix it, the screw broke, so we got another screw. I mean, you put things back together. So let's say the bike broke and my child broke their arm. I go to the hospital and the hospital reports it, and it goes in and it says the child broke their arm. I mean, I know that the bike was altered. I would be willing to tell the manufacturer that the bike was altered. But the incident on the database is not going to show that.

Mr. SERRANO. But are we not, in a way, Commissioner, being picky, perhaps? I mean, there is always that danger. There is a contradiction going around this country now. We have got to return government back to the people. We have got to give information to the people. The people, the people, the people. I am all on board with that. But yet in this particular case where the people have an opportunity to say something is wrong and then you have an opportunity to see if indeed that is correct, and yes you run the risk that some information is incorrect, I would think that this should fall right in line with this new belief, or this renewed belief to give more power to the people. I mean, here the people can go online and say, I was affected by this. Will you check it out?

Ms. NORTHUP. Well, Mr. Serrano, let me just say that as a matter of fact, I use that information all the time.

Mr. SERRANO. And one last point. Since it is one of those few agencies that allow the manufacturer to say, Not true, which I think is pretty fair, well, what is really the problem?

Ms. NORTHUP. Well, the problem, first of all, is that it does not require enough information that comes in. Right now, American people have all of that at their fingertips. If you go on Amazon.com and you say you want to order a Graco highchair, you will get a choice of over a hundred products. They will be from \$55 to \$148. And you can also check that you want to see what consumers say about it, and they will tell you whether it was hard to put together, whether they sent the wrong item, whether they thought it was overpriced, and yes, much of it is safety information. So there is already in the market, without us spending this enormous amount



of money, and we can talk about the amount of money later, there is all that information available to the American people. What is important about what comes into the Consumer Product Safety Commission is that we are expected to take action about products, and so it is important that we have accurate information.

Now, if you go on, let's say I buy that highchair, and then Amazon.com sends me an e-mail and says, Why do you not comment about this highchair? And if I click on that link, it takes me right back to the highchair I bought, so we know exactly what the product is. What comes into us, you say who the manufacturer is, Graco. You say it is a highchair. You do not have to say which one of the 120 items it is. Maybe you have not even thought about that, and you say the leg broke. Well, how does Graco know which one? Is it the \$55 highchair, or is it the \$148 highchair? How do we know which one it is?

The person putting in the incident has to give their name and address. That is fine. But we already have third-party groups putting in data. What if it is Consumer Reports? What if it is a trial lawyer trying to make a class-action suit? This is what is terrifying the manufacturing community, the fact that without enough information, how do they comment on it if they do not even know which highchair? And if it comes in through a third-party organization that does not know who the consumer is, they got the report, then we cannot even verify it ourselves if we want to do safety information. So the first problem with this is is that it does not require enough information.

Let's say a highchair broke at my Thanksgiving dinner. Is it the highchair I lugged up from the basement that is 30 years old? Or is it the one I bought last year when my first grandchild was born? Or is it the antique I have sitting next to the fireplace? None of that has to be given.

Mr. SERRANO. I understand. At the beginning, if I recall correctly, you said, Do not fund the database. Right? Now you are saying, Make the database better. I mean, I am not putting words in your mouth.

Ms. NORTHUP. Well, let me just say, I would say do not fund it until you can make it better. But having been on appropriations and knowing that you cannot legislate on appropriations, that is one of the problems. There are other problems with it too, but I think you can improve it. I actually wrote a rule that I thought would have made the database something really good for consumers, and really good for us.

Ms. TENENBAUM. And we used a lot of the points made in it.

Ms. NORTHUP. Not the big ones.

Ms. TENENBAUM. Well, here is another thing too. We do not require the model as a required field, as you saw yesterday. But we do have it as a field that we want people to provide.

Mr. SERRANO. Why did you not require the model?

Ms. TENENBAUM. The product might have burned up, it might have been destroyed. But 90 percent of the people are putting the model in, so we do have a lot of information on the model. It could have been a cause of a fire in a home. I turned on my microwave the other day and flames shot out. Had I turned it on and walked outside, it could have caught the kitchen on fire.

Mr. SERRANO. This happened to you, you are saying?

Ms. TENENBAUM. Yes, it did.

Mr. SERRANO. Sue. No, I am only kidding.

Ms. TENENBAUM. No, I threw it away because I said, This thing is old, and I did not report it. So I just took it to the recycle place and did not let anybody use it.

Mr. SERRANO. Right, I understand. I was only kidding.

Mrs. EMERSON. My husband did it by putting silver foil or aluminum foil in the thing, and blew up a brand new, never used microwave. And it was time to get a new one.

Ms. NORTHUP. He did not want to cook, did he? Clever.

Mr. SERRANO. On behalf of men all over America.

So what are you hearing from manufacturers that are close with that? Because I know that there is a concern, but let me preface my comments by saying that I think this is one of the better items that we have in the federal government, the ability of the public, the consumers, to come and state their case, and the idea of having the manufacturer's side-by-side comment. Can it be fixed, can it be made better, can it be more efficient? Absolutely. But I am worried about your initial statement, Do not fund it. I like your later statement, Do not fund it until you make it better. I do not like the Do not fund it at any level, but this is a good thing and if it can be made better, of course. But this is one power we have given to the people that we should not take away.

Ms. TENENBAUM. Well, what I am hearing from manufacturers is that manufacturers are signing up for the business portal, 2,368, and they are taking this very seriously. Another thing is we had a workshop for manufacturers and all of our stakeholders before we even wrote the rule on the database, and that was extremely helpful. After the databases rule, we had a separate workshop for the manufacturers. We want manufacturers to feel confident that we are going to do everything to find the actual manufacturer, and that we are going to work with them to ensure that only truthful information is on the database. And as Commissioner Northup said, we are meeting every Monday morning for a few hours because the decisions we make now set precedent.

But if I could say about the entire IT modernization, that has been so important, because we had five different silos of data at the Consumer Product Safety Commission. The CPSIA required us to modernize our whole IT system so that all of the data can be tracked through the agency so that we can have case management, so everyone, whether you are in the legal department or in the laboratory or are in compliance, can look at the same cases at the same time. This will revolutionize and allow us to intervene early on emerging hazards. And so I wanted to please give that information, because our people have worked so hard to modernize our IT system.

Mr. SERRANO. Thank you.

Ms. NORTHUP. If I may, please do not interpret our meetings with manufacturers as saying that there is not universal angst over this. And I agree with you, information is powerful, but I would also tell you that if identifying, for example, let's say the Graco highchair. If that is given information to consumers to go buy a different kind of highchair that may be less safe, because

maybe Graco swamps the market, there are five billion of those out there. If accurate information is helpful, inaccurate information is not only unhelpful, it could be dangerous, and the idea that requiring the model number, and also the approximate date it was purchased so that is it something still on the market or is it something that was made 30 years ago? These were amendments that were offered by those of us, is ways to make this a more useful database, and they were turned down by the majority. So there is great disagreement about this.

And finally, if today, we get a comment from a manufacturer saying, We do not see how this could happen, this does not seem like a leg could have broken off the highchair, whatever they say, in other words, a question about materially inaccurate. How much chance of one of the incidents going up tomorrow? They have no transparency and no confidence that we will be able to resolve that material inaccuracy before tomorrow. And what this rule said is if we have not resolved the material inaccuracy, it goes up. So if I am GE, and somebody puts in something and we cannot resolve the material inaccuracy, it goes up. That is wrong. That is wrong.

Mr. SERRANO. All right, well my time has come up. Let me just make one comment. And we are not here knocking the business community, but I am still waiting for that day when the business community says, Why do you not regulate us on this? Why do you not supervise? Why do you not check into us? I suspect if tomorrow we said, Government will not issue one rule for the next year. You guys regulate yourselves on every subject, a year will pass, and probably not one rule will come out of the business community saying, We should not do this. And so we did not get to be the great country we are by just allowing everybody to do as they please. We set in place some things to protect people, and to protect workers, and to protect the consumer, and to protect the business community, and so on and so forth. Thank you.

Mr. DIAZ-BALART. Thank you, Mr. Serrano. Mr. Womack.

Mr. WOMACK. Are fewer recalls good or bad?

Ms. TENENBAUM. Well, for industry, fewer recalls are good, because it means that their brand is not called into question. And that is what we want to get ahead of. We want to make sure that we can work with industry to be proactive so that they understand what the requirements are, and they can build safety into the product so that they will have fewer recalls. For all products in fiscal year 2008, we had 564 recalls. In 2010 fiscal year, we had 428. For toys, 2008 was 172, and fiscal year 2010 was 44. So recalls are, we say, are declining. And most of our recalls are voluntary, the company calls us and says, We have a problem and we want to work with you to recall the product. Which we do. There is a fast-track. So, we work with industry when they have a problem to go ahead and get the product off the market. But we would like to see fewer recalls because it costs companies a lot of money.

Mr. WOMACK. Well, in previous administrations, like during a Republican administration, fewer recalls might be looked at, and probably were looked at, as a sign that we were not doing our jobs. And yet, we are going to ask for more people so we can push for fewer recalls. So which is it?

Ms. TENENBAUM. Well, what it is, is that we have put the new people, a large number of the staff, in import surveillance. And we are working with CBP so that we look at that pre-arrival manifest data, and we can target products before they are unloaded. But now we have an office in Beijing, and with our Office of Education, Global Outreach, and Small Business Ombudsman, we will be able to form partnerships and train more people in China, in Vietnam, and in other areas. When I went to Vietnam, the government of Vietnam was so appreciative of us visiting. I think if we could have stayed longer, they would have extended our visa, because they wanted to ask all kinds of questions, because they had government-operated labs. And if I could have had our staff stay there to make sure that their laboratories were running the tests that we were requiring that they ran, they would have appreciated it. So we are looking for ways to educate governments as well as educate businesses. Every time we go to China and meet with the Chinese, we put on a seminar. We did one on training on ATVs, and what the requirements are for ATVs. We had 150 people attend that seminar. American manufacturers who manufacture their products in China welcome the idea that we will work with them to educate manufacturers and their workers. So, where I am headed, is in prevention. I want to help manufacturers. I want to help them have fewer recalls.

Mr. WOMACK. Ms. Northup.

Ms. NORTHUP. Well, measuring whether or not we are effective by the number of recalls is just spin. I mean, when we had a lot of recalls—like I said, it happened in 2007; it happened under the lowest budget, but it happened because when they thought there was a pattern, the agency sprung into action, and so did all the businesses spring into action. This is similar to what our Chair has done with regard to cribs, with regard to strollers. When we see that a stroller cuts off a finger, what she has done, and she has really initiated this as part of the proactive work she has done, she immediately requires that we look at strollers that have exactly the same hardware to make sure we are not going to have more fingers being amputated tomorrow. And they end up being recalled. And so yes, we would like to decrease the recalls, and companies want to decrease the recalls, too. They are putting in place their own safety, and prevention, and tracking, and so forth. But the agency, here, is good and, I believe, has gotten better at being proactive about looking at something that is a real critical issue and immediately stretching out beyond that.

Mr. WOMACK. One of the concerns I have, as a new member of Congress and when I talked to people in advance of being elected, it was the concept of government underwriting risk. At some point in time, you just cannot eliminate all risk. It is just fundamental. It is part of life. You cannot write a code for every circumstance, and you cannot craft a law to prevent something bad from happening. And when you interject the human factor into our everyday lives, things happen. We had a case in northwest Arkansas this year involving a kid. It was a very unfortunate tragedy. A young man was crushed to death by a soccer goal that came over and hit him. It was very unfortunate; one of my constituents. But the answer on the state level was to change the law and require that all

soccer goals are made by a certain licensed company doing certain things, when we all know that the issue was not the construct, it was the anchoring. And so, fortunately, Arkansas got it right and changed the law to require anchoring.

But the point I am making is we just cannot eliminate all risk. The balance I am looking for, as a legislator, is: At what point do we get into diminishing returns in our desire to want to protect the public? Diminishing returns meaning that we are going so far into the regulatory process that we are killing jobs, ruining our economy, but boy, look at the things that we are doing to protect humankind from some things that are nothing more than just bad judgment and misapplication, a poor build out of the product, because they did not go by the complicated diagram that came with it—and I am the master at that—so I am philosophically saying that I want us to be very careful that we do not get into a situation where we are throwing the baby out with the bathwater. Now, for the record, I would like for your agency to provide the breakdown of additional personnel in your ramping up, and where those personnel are going to be assigned; to which office they are going to be assigned.

How many of them will go to the Chairman's office? How many will go to the Office of the Executive Director? How many will be in Public Affairs? The point here is that I want to see if the ramping up of personnel is going direct to the operational functions of the organization, deployed out to the areas where they actually can make a difference, and not just serve to add a few more layers of administrative, bureaucratic red tape within the agency. That is one of my concerns.

[The information follows;]

## Response of Chairman Inez Tenenbaum to Question from the Honorable Steve Womack

## CPSC Proposed 2012 FTE Requests

<b>General Function</b>	<b>FTEs</b>	<b>Office and Position Description</b>
Data Intake/Rapid Incident Review.....	+18	This includes 16 Program and Triage Analysts in the <i>Office of Hazard Identification and Reduction</i> to quickly input and triage the increasing number of incident reports received by the Commission, and two Attorneys in the <i>Office of the General Counsel</i> to support data intake, incident review, and investigations.
Incident Report Investigations.....	+6	The six Field Investigators in the <i>Office of Compliance and Field Operations</i> will provide additional support for field investigation of consumer incident reports.
IT Modernization.....	+4	The four Information Technology Specialists in the <i>Office of Information and Technology Services</i> will maintain CPSC's new safety information technology systems.
Global and Small Business Outreach/Education.....	+2	This includes a Senior Small Business Ombudsman and a Director for the <i>Office of Education, Global Outreach, and Small Business Ombudsman</i> to increase the agency's focus on providing additional support to businesses, especially small businesses.
Finance.....	+3	This includes an Internal Controls Officer, a Budget Analyst and an Accountant, all in the <i>Office of Financial Management, Planning, and Evaluation</i> , to strengthen internal controls.
Inspector General.....	+1	One Attorney is sought for the <i>Office of the Inspector General</i> to provide independent legal counsel as required by the Inspector General Reform Act of 2008 (P.L.110-409).
<b>Total 2012 Increase Requested.....</b>	<b>+34</b>	

And then, finally, I want to ask this question: Madam Chairman, do you actually go to the toy manufacturers? Mattel has been mentioned already, and it has been a while since I have bought a lot of toys, but go to the shelf at Toys R Us. Do you go to those manufacturers as part of your outreach and sit down with the CEOs and the General Counsel of these organizations, and actually ask, What can we do better with our agency as it concerns your capacity to deliver goods to your consumers? What can we do better? And I am not talking about the Ombudsman's program. I am just talking about: What have you done, as the Chairman, what has your Commission done to go out here and see how we can create jobs in this country, making these products for the benefit of the people that are consuming?

Ms. TENENBAUM. Thank you for that question, Mr. Womack. And yes, I do sit down with CEOs. I recently went to China and met with the five CEOs of the largest Chinese toy manufacturers. And they are Chinese. I have met with them twice now since I have been Chair. And they were telling us, and told me personally, what their concerns were with certain rules. They were also very proud that they had created a chemical database so that they are going to track every chemical that goes into a child's toy, and they would have software that recorded that. I have been, personally, up to New York to visit with the CEO and the leaders of Hasbro. I have worked with Mattel. And in fact, Kitty Pilarz, who is in senior leadership at Hasbro, Chairs the Toy Standards Making Committee for ASTM. So we meet with them and have interaction with them regularly. When we put rules out, we provide for a period of comment, and we write down every question, and we provide an answer to every question we receive, and we have comments on rules. So we work closely with the industry to develop voluntary standards, as well as mandatory. And I do make it a part of my job as Chairman to meet with people.

Mr. WOMACK. Same for apparel and strollers?

Ms. TENENBAUM. Yes. Last year, when the American Apparel and Footwear Association had their meeting, they asked me to come over and speak. And they said, You are coming into the lion's den. And I said, That is fine. And I not only gave a speech, I answered questions. I have been to children's apparel companies in China as well as the United States, to their distribution centers. I have gone to China and watched the testing that companies do on strollers and that is what I said earlier. We ought to be telling the great stories of what our American companies do to ensure the quality and the safety of their products. It is extraordinary. When you see that a stroller gets on a treadmill and for days is run over and over again through that treadmill so that it is durable and before its release, it is remarkable what our companies are doing to ensure the safety of people and that is the good story we ought to tell.

And they are working hard to get the lead out. We had a hearing the other day on what would be the impact on industry when we, in August, go to 100 parts per million. We have asked that Congress change the law so it is only prospectively applied. We had one of the largest third-party testing laboratories testify that they had already tested 90,000 units of products and have found that over

90 percent, in fact, I think it was 94 to 95 percent already are of less than 100 parts per million.

And so the industries have complied, they are moving forward. I am person whose glass is always half full. My husband and his family were in the steel business for a number of years, and I know that steel had to meet many requirements, and I never heard them complain about the requirements that steel had to have, the standards. But I am also positive when I see what American companies are doing to ensure the safety and remove the risk for customers.

Mr. WOMACK. I just want to make sure when those conversations are taking place, it is not, I am from the government and I am the bad guy; or, I am perceived to be the bad guy, and there is a reason for that because we can be your worst enemy if you are not doing certain things. I want that to be a good open line of communication because I think that is the way back to get regulation out of the business of stopping this dilemma we have called lack of job creation. Mr. Chairman, I will give it back.

Mr. DIAZ-BALART. Thank you, Mr. Womack, and again, I apologize, but we are all kind of going back and forth to other hearings. I hope that some of these issues that I am going to bring up, maybe if they have already been addressed, just let me know. The IT modernization issue, when the private sector does IT modernization, they usually then are able to shrink the size of the personnel. How many less people are you going to need if you do go forward with the IT modernization?

Ms. TENENBAUM. Well, the IT modernization goes back to the fact that we had all of this data coming in. I do not know if you were here when I talked about the amount of data; it is almost half a million from various sources. And we had them in separate systems so that when we wanted to look across all these systems, our people had to manually go through system after system. And when Congress asked us to modernize our IT system, it wanted the CPSC to have one system that you would put all those systems in a data warehouse, and so that you could see emerging hazards. Everyone in the agency could pull up the same system and would have the data in there. IT modernization will go on into governance, case management, finances; our whole system will be modernized.

Mr. DIAZ-BALART. So it will be more efficient?

Ms. TENENBAUM. It will be more efficient.

Mr. DIAZ-BALART. Right, but if you are going to be more efficient, and you just mentioned about how right now people have to do it manually, that hopefully will not be the case.

Ms. TENENBAUM. Well, we do not want to just investigate 10 percent of all the claims we have. This is our investigation rate. These were projected even before the database, that these are the incidences that keep going up, the number of reports, and we are only able to investigate 10 percent. So we are asking for 24 new people this year to look at all this data that is coming in, to look at the incidents reports, and to do investigations. We are trying to keep people safer. This is a good return on our investment.

If you look at our little agency, \$118 million, 500 people, and we have 300 ports of entry, we have 19 people at those ports. We are trying to create as many partnerships as possible through our Edu-



cation, Global Outreach, and Small Business Ombudsman. We are working with other agencies, but it is a huge investment, \$118 million, this little tiny agency, and we have over 15,000 products. We have 80 percent of the toys coming from China, and you know that this is a global complex supply chain. It is a good investment; it is a good return.

Mr. DIAZ-BALART. I am not denying that, Madam Chairwoman, but again, just specifically about that issue. Usually when you get more efficient, you can then, since you are more efficient and you are investing in technology which costs money, you are able then be more efficient.

Ms. TENENBAUM. Well, we were tiny to begin with. Just in 2008, we had 393 people when we used to have almost 1,000.

Mr. DIAZ-BALART. So you are not going to then reduce that with IT technology?

Ms. TENENBAUM. We are trying to be more effective in spotting dangers early. We are trying to be more effective in keeping consumers safe.

Mr. DIAZ-BALART. Okay, let me ask you this, though, now. Mr. Serrano mentioned something which I think is accurate. He mentioned that obviously if whoever, right? You could tell people you regulate yourself. Unless you have a reason to regulate yourself, whether it is for business reasons, whatever, you are not going to do it. The flip side of that is that usually if government were allowed to say, Hey, what regulations would you get rid of? unless they are forced to, they do not voluntarily usually. I think on both counts, we could probably agree that that is the case.

Mr. SERRANO. If I may, I do not know if you were here, but I think I may have coined a new phrase which is, Do not over-regulate, but do not under-protect.

Mr. DIAZ-BALART. Sure. And I think that is the balance that we all try to reach, and there is disagreement on what that balance always is. But when, for example, CPSIA, the legislation that we have been talking about, when those regulations are taking place, is there an estimate as to, when you speak to the businesses that you are going to deal with either on the legislation or anything else, as to what those regulations are going to do as far as actual cost to the manufacturers, how much it is actually going to cost them dollars-wise, which then translates to jobs or not?

Ms. TENENBAUM. Yes, well, prior to the CPSIA and before we implemented our proposed rule, we had to do a cost estimate. Now, under the CPSIA, Congress decided that we needed to promulgate rules on durable nursery equipment: toddler beds, bassinets, slings, baby bouncers, baby bath seats, baby walkers. And Congress said, Under these rules, you do not have to do a cost estimate. We are going to put CPSIA rule making under the Administrative Procedures Act because Congress had testimony that children were killed in defective cribs, play yards, and Congress wanted us to work with industry and first of all, look at the voluntary standard. And most of the rules for consumer products are voluntary. Very few are mandatory rules.

So we work with industry on the voluntary standard and look to see if it is strong enough. And if it was not strong enough, we are to come back with our own rule. We have passed baby bath seats,

baby walkers, full size and non-full size cribs. And Congress required us to have two new rules every six months proposed. Two rules every six months of proposed rules. We will vote on next week, bed rails, portable bed rails on youth beds. We just had a briefing yesterday on toddler beds. We will also do bassinets this year. So we are keeping up with the schedule, but we do not have to do cost estimates on those. But, for example, if we do upholstered furniture, which we have been working on 16 years, we will have to do a cost estimate.

Mr. DIAZ-BALART. Yes, Commissioner, do you want to comment?

Ms. NORTHUP. Yes, we do these rules, but I should say the Regulatory Flexibility Act, just the one on youth beds and rails, showed that there would be substantial harm to businesses and that it would cause some of the small businesses, primarily small businesses, to get out of business. But that does not stop us from issuing the regulation; we go ahead and do it anyway.

Mr. DIAZ-BALART. Right. So, okay, let me just see if I understood that.

Ms. NORTHUP. We are required, as the chair said, we are required to take two durable goods every six months and issue a rule. And so if we look at youth beds and rails, there really is not a lot of injury on these. The injury data is very, very low. But we are required to consider how maybe these could be made so that even and so we issued new rules. And there is substantial product difference that we are making, that we are going to require. And so, businesses that have been in this business for years, that are small, that are not going to be able to cover these sort of changes, they, and our regulatory flex analysis said there will be substantial problems for some of them, some will go out of business. But it does not stop us from issuing the regulation.

Mr. DIAZ-BALART. Let me put it this way. If it does not stop you, then.

Ms. NORTHUP. Just to require that we do it. I mean, I know, it is, I mean—

Mr. DIAZ-BALART. However, that is not part of the decision making.

Ms. NORTHUP. It is not part of the decision making.

Mr. DIAZ-BALART. In other words, it is the consequences of the decisions?

Ms. NORTHUP. We are required to do a regulatory analysis. Not only that, the law does not say. We still have to issue, what would we do? It is the law there that requires us to address every single child's durable product on a certain pace, and to consider how we can make it safer. And every one of them comes with a regulatory analysis. Some of them, the changes are because they are a product that is more likely to cause injury, or there is more. The companies themselves have evolved over the years. But in some cases, the product, there is a low incident rate, but we still are required to consider how the product might be revamped, so that it would be safer, and to issue those as mandatory standards. We are required to do that.

Mr. DIAZ-BALART. That is because of the new law?

Ms. NORTHUP. Yes.

Mr. DIAZ-BALART. And you do not have flexibility there?

Ms. NORTHUP. No.

Mr. DIAZ-BALART. That is amazing, by the way. That is truly amazing. Particularly in this day and age.

Ms. NORTHUP. Yesterday's regulatory flexibility analysis was one that certainly caught my eye because of the number of companies that they thought it would impact negatively. If you are in multiple products, you will be able to spread your cost over more products, and so there will not be a problem. But, it said that, for businesses that only make youth beds, or that are smaller businesses, that it would have a negative effect, and may put them out of business.

Mr. DIAZ-BALART. And the flipside, what would be the positive effect? Do we know what the positive effect would be, how many less deaths? How many less, do we know that?

Ms. NORTHUP. You could say how many deaths there were over the last 20 years. Over the last 20 years, do you know that?

Ms. TENENBAUM. On the toddler beds, there were two.

Ms. NORTHUP. Over the last 20 years?

Ms. TENENBAUM. I do not know if it was 20 years, but there were two because they got between the railing and the mattress and were suffocated. But the rule, the reg flex language in the toddler beds said that if you are a responsible manufacturer, and you are already following the voluntary standards, you would be impacted far less than the people who are manufacturing toddler beds, are not following the voluntary standard. It did not say that they would go out of business; it said it would have a substantial impact because then you will have to follow what was already the standard. But if you are a responsible manufacturer already following, you will have less impact. It did not say anyone would go out of business. It just said it would have a substantial impact.

Mr. DIAZ-BALART. But, if you are doing it, two is a tragedy, I mean, one is a tragedy.

Ms. NORTHUP. The problem with youth beds is that the majority of injuries occur because people, you are not supposed to use a youth bed for a child under the age of two, and it is primarily when people put a six-month-old or an eight-month-old in a youth bed, that they have an injury. But we are required to consider use and abuse. And so, if it is foreseeable that people are going to put eight-months-old in there, we have no flexibility on this with the law, in terms of whether we decide to issue a mandatory standard. That is what the law requires us to do. And it has to include use and abuse.

Mr. DIAZ-BALART. I think that is one of those things that does not quite pass the logic test. I mean, I do not know what the stats are. And again, one tragedy is a tragedy for that family, as a parent we all know that that is an incredible tragedy. But I do not know if we have stats about how many kids may die because they fall downstairs. I do not know if there is, I do not know what those are, but I guess you could put Nerf stairs so that they bounce. You could, I mean, obviously.

Ms. TENENBAUM. Use a gate, you could use a gate.

Mr. DIAZ-BALART. Right. But I mean even then. And then are we going to require a gate that closes by itself with a motion detector. The bottom line is that we could always go to the extreme. And we would like that nobody ever dies and nobody ever gets injured, ob-

viously. As a parent, that is what we would all like. But it seems to me that if you are dealing with two tragedies, and they are tragedies, some of those may be because there is misuse. And then, we can lose jobs for that, which is a huge tragedy. Because those are probably jobs that, those people might have children as well. It seems to me that that does not pass.

Ms. TENENBAUM. Well, I do not know that anyone will lose their job.

Mr. DIAZ-BALART. Well we do not know if—

Ms. TENENBAUM. Well, the top, on the durable nursery equipment, what we were seeing was a trend, in that the materials used were flimsy and the hardware was not as strong as it needed to be. Particularly cribs. We had over 30 deaths in drop-side cribs. And that is because the drop-side, if you looked at the wood, it was not the strong wood that was required for a crib. We did not require a racking test, which we are now, that we borrowed from Canada. And the hardware was plastic.

Now, we had a baby bed in our family that everyone in the family passed around. But it was a stronger wood, and the hardware was made out of metal, so it slid up and down and did not come detached from the sides. So you are seeing a lot of products that are being made that are not as durable. And that is why, when Congress heard testimony about infants and children being killed, and hurt severely, they wanted the best product.

Look at car seats. Look how strong car seats are now. Look at the strollers. When I visited the stroller factory, it was amazing to see all the tests that they put that stroller through so that a child is not harmed. And so it really is the safety of the child. It is based on the best science. It is based on the best engineering that we know. And we have worked with the Standards Committee. And I want to point out that there are probably 1,000 standards-making committees around the world. Think about that. And most of the standards for products that you use are voluntary.

Mr. DIAZ-BALART. I understand.

Ms. TENENBAUM. It pales in comparison to mandatory rules. But Congress heard testimony and they said, We want you to work with the Standards Committee, look at what the standards are for toddler beds, and if you think they can be made stronger, make them stronger. And that is what we are doing for all durable nursery products.

Mr. DIAZ-BALART. But you could always make everything stronger.

Ms. TENENBAUM. Well, this is based on the best science.

Mr. DIAZ-BALART. How many people die in automobile accidents?

Ms. TENENBAUM. Well, look at the automobiles.

Mr. DIAZ-BALART. I know, but we can make them better.

Ms. TENENBAUM. How much they have changed?

Mr. DIAZ-BALART. But we can make them better. And we can make them stronger. We can make it so that nobody dies by literally wrapping people in bubble wrap, and putting in a nerf car. I mean, we could.

Ms. TENENBAUM. But we do not feel like we are doing that. We feel like we are really using the best science.

Mr. DIAZ-BALART. I understand that. I understand that. But there gets to a point where, then, the cost benefit analysis shows you that you are going overboard. And I, again, I am not talking about this specific case, I am just saying that there is a time when you go overboard, and where are we not reaching that case, particularly in the case where, again, two tragedies, horrible tragedies, when you are dealing with two tragedies, some of those may be misuse. And then you have the potential of hurting people's businesses who have kids, and that is a tragedy as well. Are we not potentially going overboard?

Ms. TENENBAUM. We are very sensitive to that. But we also are sensitive that our mission is to keep children and families safe, and we believe that we need to be.

Mr. DIAZ-BALART. I understand that, but every day we are losing more and more jobs overseas.

Ms. TENENBAUM. Well, I think that there are a number of factors.

Mr. DIAZ-BALART. There are.

Ms. NORTHUP. If I could just say, if I had been asked what sort of changes you might make in the rule, I might make mandatory standards for durable infant goods where there is a trend towards injury related to the product and how it is made. We were not given that, nor have we sent up that, as a recommendation, but the fact is that when we change something, when we tell somebody they have to re-engineer their product, and there has been a low incident rate on dangers to them, but never mind, we do not care, do it. And they either go out of business, or lose product, or cannot, or it is prohibitively expensive to re-engineer this. That is a question that Congress will have to consider. But it would be a recommendation that I would make.

Mr. DIAZ-BALART. And finally, and again, I will submit some questions on Chinese drywall.

Ms. TENENBAUM. We have a lot to tell you on that. If you want us to meet with you personally, we certainly will. We will even come to your district and have a public hearing.

Mr. DIAZ-BALART. Thank you. Just lastly, do consumers have any responsibility to check products for quality and safety, or really is it kind of government control to do that? In other words, should government be in a position to make sure that everything is safe, and so that consumers never have to worry about checking to see if one product is stronger? Because they are all going to be as strong, or checking that one product. Is there any responsibility that we as consumers should have, or really is it that frankly should government be taking care of those issues so that consumers should never have to worry about those things?

Ms. TENENBAUM. Well, philosophically I believe that everyone has the responsibility to use products responsibly. But I also feel like the government plays a key role in working with manufacturers in coming up with the best standard possible for products. I remember when I read *The Jungle*, which was about the meatpacking industry, years ago when I was in high school and how the meat was contaminated because we had not regulated the meatpacking industry appropriately. And I remember that book from years and years ago, and what an impression that made on

me. My first job in state government in South Carolina was licensing childcare facilities and going in to old buildings that could barely pass fire safety standards, and worrying about children dying in those facilities. I have been a child advocate all my life, and my job is to protect children who cannot protect themselves.

Every week, we see some product that is pretty incredible and we all say, Good gracious, why would anybody think that the use of that would be safe? We looked at one yesterday, and it is almost unanimously, Oh, that is so unsafe. So we have to balance that. You cannot over-regulate, but you also have to look at who your most vulnerable citizens are, and that is children and elderly people, and people who cannot take care of themselves.

So I think it is good that we have a rule that says you have to have a voluntary standard first, and the industry has to govern itself. And if you find that that standard's not effective in keeping people safe, then you can write a mandatory rule. I think that is the way it should be. And the great majority of rules are voluntary rules that industry makes themselves. And like I said, there are probably 1,000 standards-making bodies around the world, and they work very hard to make sure that the standards are the best that they know. It is our job if we have new scientific information to work with them to improve these standards. And that is basically my philosophy.

Ms. NORTHUP. First of all, we do not oversee products because they are flimsy. I mean, because a product is flimsy, because it breaks, we do not have any oversight of that. It is only if it has the potential to injure somebody that we have a responsibility for it. So, yes, somebody going in. But remember, there are plenty of families that are of modest income, and they go in and they look at a crib, and they are judging, What can I afford? And they have to presume that every crib there on the floor is going to be safe.

I remember as a mom myself thinking that was not what I was thinking. I was thinking would it last, sort of thing. And so if it is unsafe, that is where we have a responsibility. It is this law that required us to make mandatory standards that what the chair just said is exactly right. We should have voluntary standards, and when we see that there is a danger, and the voluntary standards are not sufficient to protect children, then we should make a mandatory standard. The law did not allow us to do that.

Mr. DIAZ-BALART. Thank you. Mr. Serrano. I believe you Ms. Northop.

Mr. SERRANO. Just a closing statement because I need to leave, myself. The database does exactly what you mentioned. It puts responsibility on the consumer to put forth information, and then it allows the manufacturer to say yes or no and defend themselves. Secondly, what role does the consumer play and should government play a role? Well, our colleague, Henry Waxman, I remember, I am old enough to remember this, asked the tobacco company over and over and over at public hearings for a series, for a number of years, How harmful are you? And each one said, Oh, we are not harmful at all. It is fine. And we now know differently.

And lastly, one of the attacks these days is on labor unions. Labor unions have too much power. Well, how did they gain some power? Because there is an HBO special running around now, sad

special, about 146 women who died at the shirt factory in New York because there were no rules and no regulations whatsoever. And so yes, we do not want to over-regulate, but as I said, we need to protect. And there is the balance.

But this knee-jerk reaction that we hear from some folks in this country, not necessarily Members of Congress, that everything is over-regulation, no. The commissioner is right. You go into the store to buy a crib, and the issue should not be because I cannot afford the more expensive crib, am I getting a bad crib unsafe for my child? That person should know that whether it is a \$50 crib or a \$500 crib it is safe for their child. And if their work is to make sure that happens, I do not think that is over-regulating. That is actually protecting the consumer. And I thank you for your testimony. It has been a wonderful hearing. But do not get up until the chairman.

Mr. DIAZ-BALART. Thank you, Mr. Serrano. You and I here do not have a philosophical disagreement. We may have a disagreement as to how much over-regulation there may be or not, but I think we have heard it from both of you today that there are some issues where we may have gone overboard, where they do not have flexibility.

Mr. SERRANO. Well, you are coming from a point that makes sense to me which is that you know that the big Yankees payroll was beaten by the Marlins team with a payroll of about \$1.50, and so you say less is better. Well, maybe not.

Mr. DIAZ-BALART. Mr. Serrano, I still detect a little bitterness there on that one. I do. I just do. And I know you cannot help it, and it is okay. Let me just thank both of you. This has been, I think, one of the most really illuminating hearings that I have had the privilege of being with in a long time. You both have put issues on the table, you have done so straightforwardly and have taken our questions and answered our questions. I just cannot thank you enough. And we hopefully will continue this conversation, because both of you have just been wonderful today. Thank you so much.

Ms. TENENBAUM. Thank you so much.

House Committee on Appropriations  
Subcommittee on Financial Services and General Government  
Hearing on the Consumer Product Safety Commission FY 2012 Budget  
March 31, 2011

Responses of Inez M. Tenenbaum, Chairman,  
U.S. Consumer Product Safety Commission

Questions Submitted by Chairwoman Jo Ann Emerson

**RECREATIONAL OFF-HIGHWAY VEHICLES**

**Mrs. Emerson:** I understand that the Commission is moving forward with a mandatory safety standard for Recreational Off-Highway Vehicles. At the same time the industry continues to work to evolve the existing voluntary standard in consultation with the Commission.

Does the Commission believe they have an active partner in addressing safety concerns with the Recreational Off-Highway Vehicles manufacturers?

**Mrs. Tenenbaum:** In my view, we have an active partner in addressing safety concerns with the Recreational Off-Highway Vehicles manufactures.

**Mrs. Emerson:** And does the Commission intend to pursue further mandatory safety standards beyond the voluntary standards being jointly developed?

**Mrs. Tenenbaum:** If staff finds that the voluntary standard does not adequately protect consumers from undue risk of death or injury, or if there is not sufficient compliance with the voluntary standard, I believe the Commission will pursue mandatory safety standards.

**BUDGET**

**Mrs. Emerson:** The budget request proposes \$400,000 for a new office of Education, Global Outreach, and Small Business Ombudsman.

Why does the agency need this office?

**Mrs. Tenenbaum:** The need for this office has existed for some time but became even more apparent during the agency's recent strategic planning process. As the Commission explored implementing each objective within the new strategic plan, it had to assess whether any gaps currently existed that would restrain or prohibit it from achieving each of its objectives.

The most pressing gap identified was the lack of any institutionalized, coordinated approach to education and outreach activities. The CPSC's current office structure does not allow for an easily coordinated approach to these activities, and its current service



and product offerings either did not accomplish the objectives or were insufficient to allow implementation of certain action items. The strategic planning process also highlighted the need for CPSC to be responsive to the changing realities of the global consumer product environment and this required an increased emphasis on education, coordination, outreach, collaboration, and other similar partnering initiatives.

To address these issues, the Commission created the Office of Education, Global Outreach, and Small Business Ombudsman. This new Office will absorb the existing personnel and infrastructure of the Office of International Programs and Intergovernmental Affairs and the Small Business Ombudsman. Accordingly, I anticipate that a maximum of four new full-time equivalent (FTE) positions will be added to the new Office, assuming funding is available.

**Mrs. Emerson:** How does the agency currently work with small business? Given their importance to our economy I hope this is something you are already doing.

**Mrs. Tenenbaum:** The Commission acknowledges the unique contributions that small businesses make towards growing and sustaining our economy. For over two decades, the Commission had a staffer that worked on small business outreach issues. However, this position was reduced from a full-time position to a part-time position due to budget cuts in recent years.

In September 2010, the Commission addressed this situation by creating the position of Small Business Ombudsman within the newly formed Office of Education, Global Outreach, and Small Business Ombudsman to further assist small businesses. With this position, the Commission realized that the agency needed to seek new, cutting-edge ways of reaching out and working cooperatively with small businesses to assist them in developing innovative products that are both safe and compliant with the agency's regulations.

The Small Business Ombudsman serves as a resource for the small business community in several ways. First, the Ombudsman has reached out to small business trade organizations to listen to their members' concerns and, in turn, to bring those concerns back to agency staff for serious consideration and action. The Ombudsman also has spoken at trade events, participated in interviews, and written articles for trade publications. Through these conversations and events, the Ombudsman serves as an important and informal way for agency staff to learn about what is happening in the marketplace in order to make better informed decisions.

Second, the Ombudsman maintains a website and a dedicated toll-free telephone number from which he fields a variety of daily inquiries from small manufacturers, importers, suppliers, and retailers, providing them with timely, easy to understand answers to their questions. The agency has received excellent feedback from these businesses about the clarity of answers and level of customer service provided.

Third, the Ombudsman is developing new educational materials to help small businesses of all levels of sophistication to gain more understanding of their responsibilities to comply with consumer product safety laws. For example, the Ombudsman has produced a new series of summaries titled, "How Does This Affect My Small Business?" and is rewriting the "Frequently Asked Questions" area of the Consumer Product Safety Improvement Act of 2008 (CPSIA) page on our website in accordance with the Plain Writing Act of 2010 (P.L. 111-274), a project which the agency expects to rollout this summer with the full modernization of our website, CPSC.gov.

In addition to the Ombudsman, the Chairman, the Commissioners, and the agency's staff are often engaged with small business in providing compliance and technical answers to their concerns. Agency staff, many of whose phone numbers are available on our website, are widely recognized as being accessible to stakeholders, including small businesses, to address their concerns and questions.

I believe strongly in the importance of small businesses and fully support the Small Business Ombudsman position as an important and dedicated way to ensure that small businesses receive the guidance and information they require for their businesses to continue to grow and prosper.

**Mrs. Emerson:** Are the functions performed by this new office already being performed elsewhere within the CPSC?

**Mrs. Tenenbaum:** The primary function of the new office is to coordinate and provide education and outreach activities to various domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, foreign governments, and consumers. While some of the functions of the new office are currently being performed elsewhere within the CPSC, the current state does not allow for an easily coordinated approach to these identified activities. There are also a number of functions this office will perform that are not being performed currently by the Commission. These primary functions and stakeholders include:

- **Manufacturers:** In the current Commission office structure, there is no single source for manufacturer-related safety information. Consequently, many manufacturers either do not know where to turn for this information or experience difficulty in accessing the information they need to fully address safety in the manufacturing process. The new office is dedicated in part to addressing this issue, and will facilitate the transfer of knowledge to industry and ultimately create safer products through better educated manufacturers. The office also will consult with industry to address issues such as quality assurance in the manufacturing process to assist manufacturers in producing products fully compliant with all relevant safety standards and requirements.
- **Retailers and Resellers:** The office will benefit retailers and resellers through coordinated education and outreach activities. One of the largest issues this new office will address is developing a system by which retailers and resellers are

informed of product recalls and other important safety information, including instructions on how to respond to this information in a timely fashion.

- Small Businesses: With the passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA), a part-time Small Business Ombudsman is no longer sufficient to meet the Commission's needs. The CPSC requires a full time individual dedicated to serving the nation's many small businesses in the area of consumer product safety. Additionally, the Small Business Ombudsman will be charged with developing and providing information and guidance specifically tailored to small batch manufacturers so that they can understand and comply with applicable safety standards and the CPSC's regulatory requirements.
- Foreign Governments/Regulatory Bodies: Foreign governments and regulatory bodies rely on the United States for assistance in developing their own regulatory standards, and the new office will serve as a coordinated business unit to assist with this activity. This will allow the CPSC to enhance its outreach to the international community. Working with these foreign bodies, the office will enable these organizations to increase their capacity to develop product surveillance strategies, product testing methods, and voluntary and mandatory product safety standards. Finally, given its interaction with the various domestic and international stakeholders, the office will be responsible for all CPSC harmonization efforts.
- Consumers: The CPSC already engages in numerous communication and outreach activities for consumers, which are the responsibility of the Office of Information and Public Affairs (EXPA). Although the new office will not assume this role, it is intended to be the primary supplier of education and outreach-related subject matter and expertise to other stakeholders. Consequently, the new office will work closely with EXPA to better educate all stakeholders on consumer product safety and to ensure message consistency and discipline across all stakeholder groups.

#### DATABASE

**Mrs. Emerson:** Can you tell me how much this database has cost up to this point, and how much it will cost to maintain it per year?

**Mrs. Tenenbaum:** In presenting its annual budget, the Commission has not separated the cost of the public database from the overall Consumer Product Safety Risk Management System (CPSRMS) information technology modernization costs. Below, however, is an estimate of the work done within the CPSRMS project to develop the public database and the projected cost to maintain the public database. These estimates have been established after reviewing workload associated with the public database.

Portion of the Consumer Product Safety Risk Management System Costs  
Dedicated to the Public Database

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Total
Development	\$1.450	\$1.000				\$2.450
Operations and Maintenance		\$0.400	\$0.050	\$0.050	\$0.050	\$0.550
Total	\$1.450	\$1.400	\$0.050	\$0.050	\$0.050	\$3.000

Please note that the costs (in millions) above include contracted goods and services by fiscal year. Costs in fiscal years 2009 and 2010 are based on actual obligations. Costs in fiscal years 2012 and 2013 are for planning purposes. Costs in fiscal year 2011 are a combination of actual obligations and are for planning purposes.

**Mrs. Emerson:** Why has there been so much confusion over the cost of this database?

**Mrs. Tenenbaum:** Some have confused the fractional cost of the public database with the overall cost of the Commission's upgrade of its information technology (IT) systems to the Consumer Product Safety Risk Management System (CPSRMS). While the public database is a part of the CPSRMS, it is only small portion. The CPSRMS IT modernization includes:

- improving our internal operational processes to more efficiently identify emerging hazards regardless of the source of the information;
- putting all the information we receive (only about 20 percent of which are candidates for the public database) into a common database for better hazard identification. This includes information such as mandatory manufacturer reporting required by section 15, manufacturer responses to staff inquiries required by section 6(c), medical examiner reports, to name a few;
- bringing the way we interact with consumers and businesses into the modern age using an online portal rather than U.S. postal mail;
- improving data quality, reducing or eliminating manual and redundant processing, and making better use of the collective knowledge of the staff;
- modernizing the Commission's home page, [www.cpsc.gov](http://www.cpsc.gov) to improve public outreach and education. A critical component of this project is cleaning up thousands of published documents to help the consumers and businesses find what they are looking for faster; and
- making IT governance improvements, including improvements in IT contract management, IT budget management, Capital Planning and Investment Control, Enterprise Architecture, Information Assurance, Project Management, and Independent Verification and Validation.

CPSC has obligated approximately \$23.2 million from the end of Fiscal Year 2009 to the end of April 2011 for the entire CPSRMS program. Of this, only \$2.85 million has been

obligated to cover the public database portions of the CPSRMS program. As noted in the chart above, the Commission anticipates obligating approximately \$50,000 annually in FY 2011, and in subsequent fiscal years, to operate and maintain the public database portion of CPSRMS.

**Mrs. Emerson:** How many new people are needed to administer the database?

**Mrs. Tenenbaum:** The CPSC has requested four additional personnel (FTEs) and four new contractors to administer the public database (data intake). This increase in personnel is necessary to meet the quick turnaround required of staff to process these reports. The CPSC also needs less than one FTE on the IT side to operate and maintain the public database.

**Mrs. Emerson:** Do you believe the number of FTEs requested is an accurate number?

**Mrs. Tenenbaum:** Yes, we believe the above number is accurate.

**Mrs. Emerson:** Do you have concerns regarding the accuracy of the information published on the database?

**Mrs. Tenenbaum:** No; the statute, and the Commission's final rule at 16 C.F.R. §1102, achieve the correct balance in providing accurate information to the public in a timely manner while also ensuring that manufacturers of consumer products have a reasonable chance to respond to reports about their products.

The law sets forth at least six provisions which help to ensure the accuracy and integrity of reports of harm published in the database:

First, reports must contain eight minimum requirements in order to be included in the database. This ensures that the quality of the report is sufficient to be helpful to others.

Second, the law requires that the submitter verify the truth and accuracy of the report. This verification applies to all information contained on a report, including the submitter's affiliation, name, and address.

Third, submitters must include their name and contact information for a report to be eligible for publication. If a question arises about the validity of a report, CPSC has the means to investigate these incidents.

Fourth, both the CPSC and manufacturers have the ability to post comments about a report, and to make a claim that a report contains materially inaccurate information (MII). The CPSC endeavors to make a decision on all timely submitted MII claims before a report is published in the database. Thus far, we have been successful at resolving these claims in a reasonably short time frame.

Fifth, both the CPSC and a manufacturer that receives the submitter's contact information can conduct further investigation into the incident described in the report, including the identity of the submitter. Many submitters are providing their contact information to manufacturers, but it is unclear whether manufacturers are taking advantage of the opportunity for follow up with the submitter.

Sixth, as the CPSIA requires, the Commission provides a clear and conspicuous notice that the CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database.

**Mrs. Emerson:** Is it true that other persons, aside from those directly harmed, can submit complaints to the database?

**Mrs. Tenenbaum:** Yes. In the interest of public safety and our statutory mission to protect consumers from unreasonable risk of injury related to the use of consumer products, we have always accepted reports from any source. This is consistent with our experience in maintaining a database of consumer product incident reports that assists in our efforts to remove products from the marketplace that pose a substantial product hazard.

Our mission to protect the public would not be served by excluding reports based solely on the person that submitted it to us. Section 6A(b)(2)(B) of the CPSA reasonably relies on the nature and quality of the information provided to determine whether a report is eligible for publication in the database. Currently, in addition to those "directly harmed," parents, guardians, and family members are an important source of information collected for the most vulnerable segments of the population. In the most basic example, if the user of a consumer product is killed or seriously injured in the incident, or is an infant, he or she will be unable to enter the report. Parents, for example, may enter information related to consumer products used by their children, regardless of whether they personally witnessed the incident or purchased the product. Restricting reports to only those people directly harmed would ensure that all deaths and the vast majority of serious injuries would be excluded from the database.

Manufacturers have a means to publicly respond to reports in the database by submitting a general comment that will display with the report. For those few reports where a manufacturer believes that knowledge of the incident is lacking and detrimental to a basic understanding of the incident, it can state this in a comment on that report for the public to view and consider.

**Mrs. Emerson:** Why did the CPSC not require the submissions come from firsthand knowledge of incidents of harm?

**Mrs. Tenenbaum:** Congress did not write Section 212 of the CPSIA to require firsthand knowledge of incidents of harm. For instance, the statute permits medical and safety personnel — most of whom Congress recognized are unlikely to have firsthand knowledge of incidents — to submit reports of harm. To have attempted to require

firsthand knowledge not only would have undermined the safety purpose of the public database, but also would have been contrary to the plain language of the statute.

**Mrs. Emerson:** How will the CPSC handle information regarding complaints about one type of model of an item? For example, how will consumers know that the information posted is not regarding every model of an item that a company makes?

**Mrs. Tenenbaum:** Most of the reports submitted thus far contain helpful, product-specific detail, including model numbers where they exist. The report form instructs submitters to provide as much detail about the product as possible, including specific requests for the model number, serial number, and UPC code. As of April 11, 2011, 85 percent of database eligible reports submitted since the March 11, 2011, launch had a nonblank value for model or serial number.

Furthermore, a report without a model number does not necessarily mean that the product has been insufficiently described. Some products, such as certain types of imported drywall, do not have model numbers. In addition, model and serial numbers are often destroyed in serious product incidents, such as fires.

**Mrs. Emerson:** Does the database require specific model numbers be submitted?

**Mrs. Tenenbaum:** As mentioned immediately above, it would be counterproductive to require a model number before a report of harm may be published in the public database. Although the database does have a field for entry for model number, serial number, and any other product specific information, it is important to note that some products, such as certain brands of imported drywall, do not have model or serial numbers. Moreover, in serious product incidents the model number may have been destroyed, along with the product.

While we agree that it is better to have detailed product information in a report, we do not agree that there is one field that will always ensure that sufficient information for every consumer product is provided. Making the model field mandatory rather than simply optional as is the case today is not a practicable solution where such information does not exist. Most report submitters, however, are providing detailed product information, including the model number, when they have this information.

#### IMPACT OF REGULATION

**Mrs. Emerson:** Many of the CPSC's rules have an impact on manufacturers both large and small. It seems to me that these rules also have a large impact on consumers, giving them less choices and higher prices.

When promulgating rules, how does CPSC consider their impact on businesses and consumers?

**Mrs. Tenenbaum:** Consideration of a rule's potential impact on businesses and consumers often depends, in large part, on the nature of the rule itself. For example, we sometimes engage in technical amendments to our regulations to update them or to reflect

new technologies; the affected industry may bring to our attention the need to amend or modify a rule, and we then consider the issues raised before engaging in rulemaking.

Furthermore, the processes that apply to some regulations, such as our regulations on durable infant or toddler products pursuant to section 104 of the Consumer Product Safety Improvement Act of 2008, require us to consult various groups, including representatives of consumer groups, manufacturers, and others, as part of the rulemaking process.

Finally, for our proposed rules, as well as our interim final rules, we provide an opportunity for public comment, and this provides yet another avenue for our consideration of a rule's potential impact on businesses and consumers. It also bears mentioning that, in almost all cases, we provide an opportunity for public comment on our interpretative rules even though the Administrative Procedure Act does not require us to do so.

**Mrs. Emerson:** Does the Commission do cost benefit analyses before promulgating rules? If not, why not? If so, how comprehensive is the cost benefit analysis?

**Mrs. Tenenbaum:** The underlying statute determines whether the CPSC engages in a cost-benefit analysis for a particular rule. For example, section 9(c) of the Consumer Product Safety Act (CPSA) requires a description of the potential benefits and costs of a proposed rule, "including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs." Section 9 of the CPSA establishes the procedure for consumer product safety rules. Section 3 of the Federal Hazardous Substances Act (FHSA) establishes the rulemaking procedures under the FHSA and contains language that is almost identical to section 9(c) of the CPSA.

In contrast, the Consumer Product Safety Improvement Act of 2008 (CPSIA) does not contain a cost-benefit analysis requirement for rules issued pursuant to the CPSIA.

However, for all rules that are published pursuant to the notice and comment rulemaking requirements of the Administrative Procedure Act or other laws, we engage in a Regulatory Flexibility Act analysis. This analysis requires us to evaluate whether the rule will have a significant economic impact on a substantial number of small entities.

**Mrs. Emerson:** Can you think of any rules currently in place that are redundant?

**Mrs. Tenenbaum:** If the rulemaking process suggests that a new rule would be redundant to an existing rule, we take steps to eliminate the redundancy. For example, section 104 of the CPSIA expressly mentioned full-size and non-full-size cribs as products to be addressed by rulemaking, yet the Commission already had regulations pertaining to such cribs. Consequently, when we engaged in rulemaking to adopt a new safety standard for full-size and non-full-size cribs, we simultaneously began the process to revoke the older crib regulations.



**STOPPING HARMFUL PRODUCTS AT PORTS OF ENTRY**

**Mrs. Emerson:** I am encouraged by the CPSC's Memorandum of Understanding with Customs and Border Protection. By stopping harmful products at our ports of entry, the CPSC is using resources to proactively stop harmful products from reaching the U.S. market. As I understand, once products are in the market, it is very difficult to recall a significant amount.

Is this program a priority for CPSC?

**Mrs. Tenenbaum:** The Import Surveillance program is one of my top priorities. I believe an effective approach to ensuring that harmful products never make their way into the hands of consumers is to stop them from entering our country.

To that end, I have taken a number of steps to add additional technological resources and personnel to the Commission's Import Surveillance Division. This Division works directly with the Department of Homeland Security (DHS) and Customs and Border Protection (CBP) to keep dangerous products out of the United States.

As you noted in your question, the CPSC recently executed two interagency Memorandums of Understanding (MOUs) with CBP that allow us to access more "real time" importer information and target the most dangerous incoming shipments. The first of these MOUs, signed in April 2010, allows CPSC personnel to work at CBP's Commercial Targeting and Analysis Center (CTAC) in Washington, DC, and access real time manifest entry data collected by CBP. This, in turn, allows Import Surveillance Division personnel at the ports to target high-risk shipments prior to their entry into the domestic stream of commerce.

The second MOU, signed with CBP in August 2010, gives the CPSC access to information in the Treasury Enforcement Communications System (TECS). This will assist CPSC Import Surveillance staff at the ports by providing them with additional information to improve local targeting and interdiction of dangerous products.

The CPSC is also actively involved in supporting the Importer Self Assessment – Product Safety (ISA-PS) initiative that is currently being piloted by CBP. The ISA-PS is intended as a partnership among CBP, CPSC, and importers to ensure product safety compliance. It is based on a voluntary approach that provides meaningful benefits to importers who demonstrate readiness to assume additional responsibility for managing and monitoring their own product safety compliance.

We have also taken steps to increase CPSC's physical presence at ports of entry. In FY 2008, the Import Surveillance Division had only five full-time employees (FTEs), and of those only three FTEs were actually stationed at ports of entry. Today, the Division has 25 FTEs, with 19 FTEs collocated at 15 different ports of entry.

**AVOIDING DANGEROUS PRODUCTS**

**Mrs. Emerson:** What advice can you give the parents of young children to avoid lead and other dangerous elements in children's products?

**Mrs. Tenenbaum:** First and foremost, parents can check for product recalls at CPSC's website ([www.cpsc.gov](http://www.cpsc.gov)) and subscribe to CPSC's email subscription list to receive recall notices and other consumer product safety information. Parents also can review recall information as well as the experiences of other parents with products (and share their own experiences if they wish) at [www.saferproducts.gov](http://www.saferproducts.gov).

In addition, parents should not allow young children to play with cheap metal jewelry that may possibly contain lead and other potentially toxic heavy metals.

Finally, we encourage parents to make sure their children wash their hands often, especially before they eat and before nap time and bed time.

Questions Submitted by Ranking Member Serrano**IMPORT SURVEILLANCE DIVISION**

**Mr. Serrano:** The CPSC instituted the Import Surveillance Division in 2008, an effort to place CPSC investigators at major U.S. ports to reduce the number of unsafe products that make it to store shelves in the first place. I think we can all agree that this is a prudent use of taxpayer dollars – stopping the harmful products before they get to the store is the best way to prevent future harm and recall efforts.

Can you describe for us how this effort is progressing and what the CPSC has learned in the years since implementation?

**Mrs. Tenenbaum:** Since creating the Import Surveillance Division in 2008, we have learned that CPSC's resources to support import work are grossly underrepresented as compared with other agencies with similar missions, such as Food Safety and Inspection Service (FSIS) and Food and Drug Administration (FDA). Even with limited resources, CPSC continues to pursue valuable partnerships with Customs and Border Protection (CBP) to advance the import safety mission: including updating of information sharing agreements, performing joint inspections on importers with dual agency histories, and piloting the use of CBP labs to perform product testing for lab violations.

The current 19 port inspectors stationed at ports of entry, with support from CPSC compliance field investigators and scientists, are able to inspect approximately 7000 products per year and, of those inspections, about 1750 products are sampled from shipments that are held. These collocated staff, however, cover only 15 of the 327 ports where goods enter commerce.

In an effort to maximize interagency resources, we also have stationed two staff at the Commercial Targeting and Analysis Center (CTAC) located at CBP in Washington, D.C. This office is a fusion center of many health and safety agencies that work on stopping products with overlapping jurisdictional issues to avoid duplication of resources.

CPSC Import Staff, along with CBP, have prevented more than 13 million units of non-complying products from entering the U.S. market. As our targeting methodologies evolve, and we are able to further increase staffing in the Division, we hope to further reduce the number of violative and harmful products entering the marketplace.

**Mr. Serrano:** What percentage of imported products are currently tested and can we expect that someday soon every product sold on store shelves in America has been tested for safety?

**Mrs. Tenenbaum:** The percentage of imported tested products is impossible to state with complete accuracy. The vast majority of reputable businesses appear to be complying with the law and, in particular, the implemented testing requirements of section 102 of the CPSIA. CPSC strives toward the goal of having as many consumer

products as possible, particularly children's products, tested or examined for safety prior to importation into the U.S. stream of commerce.

Through developing the risk assessment methodology for identifying non-compliant imports, as directed by the CPSIA, CPSC will make strides toward that safety testing goal by becoming better at identifying the noncompliant importers who might attempt to bring in untested products.

#### COMMISSION STAFFING LEVELS

**Mr. Serrano:** The CPSC has seen a steady decline in staffing levels over the years. Staffing levels peaked at about 1,000 in 1980 and now stand at around 550. This year's request would allow the agency to hire an additional 34 people to fill areas of critical need.

Is there a target staffing level that you think the Commission needs to be at in order to successfully implement and enforce our consumer protection laws?

**Mrs. Tenenbaum:** Any target staffing level CPSC would provide today must be a short term target. This is because there are rapid changes occurring globally that affect the safety of consumer products and require action by CPSC. The volume of consumer product imports has skyrocketed, with the value of imports from China and Hong Kong quadrupling from 1997-2008, resulting in a record number of recalls in 2007 and 2008 (e.g., recalls for lead paint in children's toys, powerful magnets falling out of toys that could be ingested by children and dangerous cribs).

There also has been a shift in recent years to explosive growth in import volumes from the rapidly industrializing nations of India, Thailand, Mexico, Brazil and Malaysia. Manufacturers in these countries often lack the quality control systems that aid in the development of safe consumer products. Additionally, the complexity of global supply chains has increased so that today, a single product can contain safety-critical components provided by between 10 and 100 different suppliers.

At the same time, incidents reported to CPSC have increased by 66 percent from 2005 to 2010 and are forecasted to increase another 36 percent from 2010 to 2015. However, the percent of incidents we can investigate has decreased as our resources have not kept pace.

To address these developing trends, Congress mandated that the CPSC promulgate numerous new safety rules through 2015 under the Consumer Product Safety Improvement Act (CPSIA), adding significantly to the agency's workload. With the passage of CPSIA, rulemaking activities increased more than threefold, from seven rules per year from 2000 through 2008 to 26 per year for 2009, 2010 and proposed in 2011. Each new rule increases the need for long term enforcement throughout the nation and at the more than 300 U.S. ports of entry. Experience shows that enforcing a new rule takes considerably more resources than enforcing an existing rule that has been in place for a number of years.

While we cannot estimate a long-term target staffing level, we believe that future growth will be needed to staff our safety programs commensurate with the size and scope of the issues facing us. Our 2012 request includes 610 FTEs and we believe this staffing level to be justified to minimally meet challenges facing the agency. However, CPSC is charged with providing the only national consumer product safety program for over 15,000 types of consumer products, so it is likely that additional future growth will be needed.

**Mr. Serrano:** In what areas is the Commission in the greatest need of adding staff?

**Mrs. Tenenbaum:** With over \$1.5 billion in container import shipments entering the U.S. each day, monitoring the safety and quality of all imported consumer products is an extremely challenging task. Investigators at the ports work hard on a daily basis to stop unsafe products from entering the country, as well as collect samples suspected of safety violations and verify third-party certifications. The port investigators send import samples to our laboratory staff and other scientists for in-depth testing and analysis, and to compliance officers for corrective action against bad actors.

As we look into the future, CPSC's greatest staffing need will most likely come in the area of import surveillance: requiring additional investigators at the ports, as well as additional staff to support their efforts, such as compliance officers and scientists. Ultimately, with a more visible investigative presence at the ports, we will be more proactive, and consequently more successful, in stopping harmful and violative consumer goods from ever entering the country.

Questions Submitted by Congressman Tom Graves

**DATABASE**

**Mr. Graves:** With the recent launch of the Consumer Product Safety Information Database in the past few weeks there is concern that reports of harm can be submitted by individuals that wish to do damage to their competitors by submitting erroneous information. If the database is to be effective the CPSC needs to ensure the utmost accuracy of those individuals that submit information to the database.

What specific steps are in place to validate the identity of individuals that are submitting the information for the database to make sure they “are who they say they are”?

**Mrs. Tenenbaum:** Congress required protections against false information being submitted to the public database and the Commission has implemented those protections. One of the eligibility requirements for the public database is that the submitter of a report of harm verify that they have reviewed the report of harm and that the information in the report is true and accurate to the best of their knowledge.

For reports submitted via the public portal, the user cannot submit the report until they attest to the following: “I certify that I have reviewed the report and the information provided in it is true and accurate to the best of my knowledge, information, and belief.” A submitter’s verification of the truth and accuracy of a report includes the submitter’s affiliation, name, and address. Also, we explicitly state in our rules that we will take appropriate legal action against individuals who submit false information to the government through the database.

**Mr. Graves:** To date, have you found any instances of falsified individuals or actual individuals whose identities were stolen to submit information?

**Mrs. Tenenbaum:** No. To date, the CPSC has not found any instances of falsified individuals or actual individuals whose identities were stolen to submit information.

**Financial Services and General Government Subcommittee  
Hearing on the Consumer Product Safety Commission FY 2012 Budget**

**Questions for the Record for Commissioner Northup  
Submitted by Chairwoman Jo Ann Emerson**

**BUDGET**

**Commissioner Northup, I noticed that you did not sign off on the CPSC's fiscal year 2012 request. Can you tell the Committee why you did not approve the budget request and what your specific concerns are with the request?**

I did not support the Commission's overall 2012 budget request of \$122 million, because it calls for an increase of \$3.8 million over current funding levels. I believe we could be doing much more with less. Given the imperatives of reducing the national deficit and controlling federal spending, as well as requests from the Commission's House and Senate oversight committees to reduce our spending, we as Commissioners have a responsibility where possible to cut, modernize or otherwise change our programs to ensure that we are using our resources efficiently and not straying from our core mission of safety. Where we are bound by statute to take actions we believe are not in the public interest, it is our responsibility to bring that fact to the attention of Congress so that it can devise a legislative solution. Notwithstanding the obvious importance of these responsibilities, I am unaware of any rule making decision of the Commission as currently constituted that has taken into account the impact on the agency's budget, and rarely has the outcome of any rule making been influenced by consideration of its impact on American consumers or businesses.

Since starting my job as Commissioner in August of 2009, I have seen ways in which the Commission uses its resources both effectively and ineffectively. As mentioned in my written testimony, I believe the Commission has used its resources effectively in expanding its coordination with the U.S. Customs and Border Patrol, increasing our enforcement capabilities at the border, and through creative uses of social media to educate the public about product hazards. Each of these activities demonstrates that if we target our resources appropriately, where we know consumers are at risk, and using the most effective means of responding to such risks, we can do a lot of good.

Unfortunately, a majority of the Commission's time and resources since I have been a Commissioner have been spent on implementing the CPSIA, a law that largely is not based on risk. Implementation of the law and its non-risk-based, costly, lead and phthalates standards, and testing and certification requirements have taken up most of the time of the agency's top staff and has required the Commission to delay or forego its traditional risk-based rulemaking priorities. For example, since 2008 there has been a significant delay in progress on actions to address safety hazards, such as promulgating standards to reduce the risk of death and injuries caused by cigarette lighters, table saw blades and portable generators. Instead, the agency spends time and resources debating such topics as the amount and degree of testing to impose as

part of the CPSIA's Testing and Certification rule – and enforcing the law's lead standard, which bans lead in books, bicycles and other products that do not present a harm to children.

My primary request to Congress would be to amend the CPSIA to allow the Commission to refocus its resources and expertise on what it does best—assessing risk. This change, in addition to the agency's new and improved enforcement efforts at the border, would free up agency resources and allow us to better target the funding Congress provides. Certainly, it would allow us to reduce our 2012 budget request. However, because this is primarily an authorizing issue, I would also suggest two immediate ways that the Appropriations Committees can effectively reduce the agency's budget in the coming fiscal year, while maintaining our commitment to safety:

- 1) First, prohibit continued funding for the new public database until the Commission's regulations ensure that the information contained in a report of harm is verifiable, and the Commission has established an effective procedure for resolving a claim of material inaccuracy before a report of harm is put on the Database. Otherwise, the Commission and manufacturers will continue to be unable to determine the accuracy of some incidents, and the database will continue to contain incident data that is inaccurate and unhelpful to consumers. A database full of inaccurate information is not only wasteful; it misleads consumers who will use the imprecise or erroneous information on the database to select less safe products for purchase. In one recent example, the Commission discovered on its own after posting an incident report to the public database that it inaccurately identified the product's manufacturer. The incorrectly identified manufacturer had not been given sufficient information even to make a claim of material inaccuracy. Now, the agency has submitted a budget requesting new FTEs whose primary function will be related to the database, including IT staff, investigators, compliance and legal staff to review incident reports. All of this could have been done much more efficiently had the rulemaking included protocols to reduce the submission of inaccurate information in the first place.
- 2) Second, prohibit funding for the Commission to implement any *new third-party testing and certification requirements* of the CPSIA. As discussed at the hearing, such requirements are clearly the most burdensome and costly of any of the CPSIA's non-risk-based requirements. Requiring that all components of all children's products (age 12 and under) be tested at third-party, CPSC-accredited labs is unnecessary to ensure safety and simply adds layers of costs for manufacturers—primarily small manufacturers, who cannot achieve economies of scale. Of course, the Commission would maintain its authority to impose such requirements on specific products if it were necessary to address a risk. This will ensure that our focus is on ensuring safety rather than on enforcing standards and paperwork requirements entirely unrelated to risk.

**The budget request proposes \$400,000 for a new office of Education, Global Outreach, and Small Business Ombudsman. Why does the agency need this office?**



I have many concerns about this new office, and declined to support its creation. I believe the office's stated objective of having a "coordinated approach to industry education and outreach activities" can be achieved by existing Commission offices. I am also concerned that the office will follow the usual expansionist path of government. Whenever a new office or program is created by the federal government, it seldom shrinks or even maintains the same budget, regardless of whether the need for it exists or continues over time. For example, what began as a proposal to expand a part-time Small Business Ombudsman position at the Commission to a full-time position (in our fiscal year 2011 budget), later swelled to include the current proposal for "global" outreach, a new Director, and an unspecified budget and number of staff. However, now that both the President and Congress are calling for shrinking or freezing federal spending over the next several years, it seems particularly ill-advised to promote new spending on an office that we do not need.

When the Commission, by a 4-1 vote, created the new office, the office had no specified total number of staff or budget. Under the current plan, the new office will include the current Office of International Programs and Intergovernmental Affairs (EXIP), the addition of a full-time, Small Business Ombudsman, and a new Director. For now, the agency has reassigned existing employees to fill some vacancies. However, the 2012 budget requests two new FTEs to allow the Commission to hire a Director to develop the office and to fund a permanent Small Business Ombudsman. The new Director will then be authorized to develop the office as he or she sees fit.

Although the stated objective for the office is to have a "coordinated approach to education and outreach activities," I am concerned that creating a new office to govern these responsibilities to industry may complicate or even supplant the more effective outreach we already perform under other offices. Today, a small company wishing to determine if its product is subject to a particular regulation may call the Office of Compliance for advice. It is a key function of that office to assess products every day in the course of its enforcement responsibilities. By creating a new office in charge of "outreach" duties, we create unnecessary complications and risks in our communications with the public. For instance, the two offices could answer the same question differently. Or, as is more likely, the new office will seek advice from the more experienced Office of Compliance. In that case, the new office becomes merely an intermediary, with the added risk that the second hand advice will be misunderstood or miscommunicated by the new office. In addition, a new office tasked with responding to regulatory scope issues risks moving the agency away from its enforcement responsibilities and toward something akin to providing product pre-approval services. Adoption of the latter role could turn a relatively small CPSC into a behemoth similar to the Food and Drug Administration.

The "education and outreach" activities of the agency also fall to our Office of Public Affairs, which is responsible for our website, editing and posting fact sheets on new rulemakings, and providing other resources to stakeholders. Overall, the Office of Public Affairs is in charge of the Commission's messaging to the public, including ensuring that the agency's message is on point and consistent. In that regard, it is risky to put a similar "education and outreach" objective under the purview of a brand new office, which may provide a duplicative or contradictory message to the general public and our stakeholders.

Finally, I am concerned that the stated purpose of the office implies that it will solve the problems the CPSIA has caused stakeholders like small businesses. Small businesses are not clamoring for more information (“education and outreach”) about how to comply with this law; they are asking for relief from this law because it is killing them. The solution for small businesses negatively impacted by the CPSIA is to repeal the portions of the law that impose tremendous costs without increasing safety. Furthermore, no matter how successful this new office may be, most small businesses will still need to hire lawyers to understand their obligations under the Commission’s far-reaching and complex regulations.

To date, the Small Business Ombudsman has focused on responding to CPSIA-related questions posed by small handcrafters. This limited service to a small minority of manufacturers does not begin to assist the vast majority of small businesses – with greater numbers of employees and a much larger impact on the economy -- suffering under the CPSIA. If the Commission really wanted to help all small businesses, it would have used its rulemakings to mitigate the unintended consequences of the CPSIA, and propose meaningful legislative reforms to Congress. It is wasteful and counterproductive to instead create a new office to perform limited outreach to micro-businesses when at least two existing agency offices already perform similar services and could more easily assume any added responsibility that will be assigned to the new office.

**Are the functions performed by this new office already being performed elsewhere within the CPSC?**

Yes. The following offices perform education and outreach duties to Commission stakeholders:

- Office of Compliance: This office monitors and responds to incoming incident reports from a variety of sources and pursues enforcement action (recalls and corrective actions) against manufacturers or other parties. This office is key in responding to questions from manufacturers who may seek advice on whether they are in compliance with a regulation in advance of putting a product into commerce.
- Office of Public Affairs: Many of the duties of the Office of Public Affairs are listed starting on pg. 61 of our 2012 Budget Request. These duties include: monitoring the Commission’s website, blog and Twitter account, responding to press calls, running safety awareness campaigns, issuing press releases on recalls and new regulations, posting key fact sheets for consumers and industry stakeholders regarding new regulations, and communicating with stakeholders, such as thrift stores, regarding recalled products and other safety awareness issues.
- Office of International Programs and Intergovernmental Affairs (EXIP): This office was designed to coordinate our interactions with the international community and other federal agencies. EXIP coordinates the Commission’s international and intergovernmental efforts with respect to consumer product safety standards development, harmonization efforts, inspection and enforcement coordination, consumer education, and information dissemination. Some of the activities of EXIP can be viewed on the CPSC’s homepage ([www.cpsc.gov](http://www.cpsc.gov)) by clicking “International” in the left-hand menu.

The newly proposed “Office of Education, Global Outreach, and Small Business Ombudsman” will now include all of EXIP and place them under a new Director.

**How does the agency currently work with small business? Given their importance to our economy I hope this is something you are already doing.**

Traditionally, the agency has worked with industry through the following activities: 1) staff meetings with industry (many of which are posted on the Commission’s public calendar); 2) Commissioner meetings with industry (many of which are posted on the Commission’s public calendar); 3) comments received during the rulemaking process; 4) Commission workshops for targeted stakeholders; 5) communications from the Office of Compliance or the Office of General Counsel with advice on compliance with Commission regulations; and 6) materials posted on the Commission’s website, including fact sheets on regulations, regulation packets, technical guidance, enforcement guidance, and Commissioners’ statements.

While the agency has an open line of communication with industry, including small businesses, these communications have not translated into more effective regulations for small businesses, particularly when it comes to the CPSIA. I believe that under the statute the Commission could have taken a number of steps to alleviate such burdens without impacting safety. In fact, the primary request I received from both Democrat and Republican Senators prior to my Senate confirmation hearing was that I “find flexibility” in the law wherever possible in order to mitigate its many unintended or unforeseen consequences. Despite my best efforts as a Commissioner, this has not happened. The flexibility that I found in the following rules was rejected by a majority of Commissioners:

- a) **Absorption exclusion:** I argued that the absorption *exclusion* under Section 101 was actually intended to exclude certain products from the lead limits (rather than be meaningless), and therefore that the term “any lead” in that section may be interpreted to mean a *de minimis*, harmless amount of lead in a children’s product. If the Commission had accepted my interpretation, lead in the substrate of ATVs, bicycles, and brass axels on toys would be legal—since lead in the substrate of these products is not harmful. This change would also have eliminated the requirement to third-party test and certify such products. Because the Commission rejected this interpretation, it voted to reject the petition of a manufacturer of toy cars, even though the car’s brass fitting contained less absorbable lead than the Food and Drug Administration deems to be acceptable in a piece of candy.<sup>1</sup>
- b) **Civil Penalties Factors** – In the Commission’s interpretive rule on Civil Penalties Factors, I proposed a number of changes to provide more certainty for the regulated community and to ensure that, while the overall civil penalty ceiling was raised, “technical” violations, such as incorrect paperwork, would not be treated the same way as more serious violations, such as failures to meet safety standards. This is one area of the statute that was not too prescriptive, and a middle-ground could have been reached.<sup>2</sup> Unfortunately, a majority of the commissioners did not want to provide that leeway.

<sup>1</sup> <http://www.cpsc.gov/pr/northup110409.pdf>

<sup>2</sup> <http://www.cpsc.gov/pr/northup03102010.pdf>

- c) **Definition of Children's Product** – The CPSIA applies to all “children’s products”, statutorily defined as products “primarily intended for a child 12 years of age or younger.” The comments that the Commission received following the proposed rule made clear that the parameters we had tried to set in the proposed definition were not helpful to most manufacturers that produce children’s products intended for children aged 10-12, or for an age range falling both inside and outside the upper age limit of 12. The purpose of defining the term was to guide the manufacturers of such products in determining which of them fall under the purview of the CPSIA. After receiving these comments, the Commission had a chance to put a much narrower “fence” around the scope of covered products—or to at least define clearer boundaries. Unfortunately, the Majority chose to leave the definition vague whenever possible, which helped neither the CPSC staff,<sup>3</sup> nor the regulated community.<sup>4</sup>
- d) **“Children’s product safety rules”** – I offered a valid, alternative interpretation of the statute’s requirement of third-party testing to all “children’s product safety rules.” A clear distinction can be made between “children’s product safety rules” and more general “consumer product safety rules” promulgated well before the passage of the CPSIA. Unfortunately, because the Majority chose to view all consumer product safety rules of the Commission as potential “children’s product safety rules,” it imposed an unnecessary, additional layer of testing (at third-party labs) on manufacturers of carpets and rugs, vinyl, clothing textiles and mattresses—all of which are subject to consumer product safety rules. The Commission did not have to take this step, and there is no risk associated with these products that necessitates new third-party testing requirements.<sup>5</sup>
- e) **Database:** I proposed an alternative database rule that would have responded to a number of manufacturer concerns and made the database a more accurate source of information for consumers. Unfortunately, the Commission’s Majority passed a rule that went well beyond the statute’s requirements, allowing “anyone” to submit reports of harm—even advocacy groups, attorneys and random bystanders that may not have firsthand knowledge of the incident. The Commission Majority’s database rule ensures that the database will be filled with inaccurate reports of harm that will be useful only to advocacy groups and trial attorneys, and will be time consuming and costly to manufacturers—particularly small businesses. Due to the inaccuracy of reports on the database, it will be a waste of taxpayer resources and will not be useful to the consumers it was intended to help.

Thus, small businesses do not need better education and outreach from the CPSC, or a new Office dedicated to these activities. They need a Commission that will meaningfully respond to their request for relief from the burdens of the CPSIA. And where statutory language limits our discretion to do so, we have a responsibility to apprise Congress of the need for a legislative solution.

#### **Are you in favor of this office being created?**

<sup>3</sup> Justin Pritchard, “Feds dismiss need to recall lead drinking glasses,” *Associated Press*, December 11, 2010.

[http://news.yahoo.com/s/ap/20101211/ap\\_on\\_he\\_me/us\\_cadmium\\_lead\\_glassware](http://news.yahoo.com/s/ap/20101211/ap_on_he_me/us_cadmium_lead_glassware)

<sup>4</sup> <http://www.cpsc.gov/pr/northup09292010.pdf>

<sup>5</sup> <http://www.cpsc.gov/pr/northup07122010.pdf>

As mentioned above, I voted “no” on approving the creation of this new office.

#### DATABASE

**There has been much concern over the CPSC’s consumer complaint database. There have also been various reports on how much the database actually costs.**

#### **Why has there been so much confusion over the cost of this database?**

I believe the confusion surrounding the cost of the database stems from the fact that it cannot be separated from the associated cost of the Commission’s broader IT modernization program. As a result, efforts to do so have produced radically varying numbers, some of which seem designed more to serve the purpose of minimizing the cost rather than reflecting it accurately.

For instance, the Commission’s FY 2012 Budget Request, dated February 2012, estimates the contracting costs of both the public database and IT modernization to be \$29 million, and does not distinguish the funding for the two initiatives.<sup>6</sup> Moreover, the agency has long promoted its IT modernization and database plans as inseparable on the grounds that the former is essential to having a more efficient database. This argument was intended to reduce the risk that the Office of Management and Budget (OMB) or Congress would seek to cut the budget by eliminating funding for either IT modernization or the database. Since 2009, OMB has requested not only our Exhibits 300 and 53 on the database costs, but also a Spend Plan for the Consumer Product Safety Risk Management System (“Database Spend Plan”) laying out in more detail the annual costs of the database. In none of these documents does the agency attempt to separate the funds allocated to IT modernization from those dedicated to the public database. On the contrary, a single combined figure has always been presented. The contracts the Commission has let to execute its IT modernization plan and to create the public database also do not distinguish between the two.

In late March 2011, I requested from the CPSC Budgeting Office figures reflecting the exact cost of the database. In response, our budget office was unable to separate funds allocated to “IT modernization” from those associated with the creation of the database. Notwithstanding this admission, a variety of other cost estimates for the database (or database plus IT modernization) have been provided by various sources, including:

- A statistic cited in Commissioner Bob Adler’s January 14, 2011, Supplemental Statement on the Public Database: “In fact, according to CPSC staff, the cost of the database is only a small part of the \$9 million spent on the first phase of the IT modernization.”<sup>7</sup>

<sup>6</sup> Commissioners began their review of the 2012 Budget Request in fall 2010. The document states at Page 5: “By the end of 2011, the Commission will have spent \$29 million in contracted work for the public database and IT modernization.” <http://www.cpsc.gov/cpsc/pub/pubs/reports/2012plan.pdf>

<sup>7</sup> <http://www.cpsc.gov/pr/adler01142011.pdf>

- An estimate communicated orally by CPSC staff that the database might cost between eight and ten million dollars.
- An estimate reported by the Associated Press on February 25, 2011: “The database was ordered by Congress as part of a 2008 product safety law aimed at removing lead and other dangers from toys, and last April the commission estimated it would cost about \$20 million. That estimate included a major technology upgrade of antiquated computer systems that the agency said at the time was essential to providing a foundation for the searchable database.”<sup>8</sup>
- Chairwoman Tenenbaum stated during a February 17, 2011, hearing before the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade, that the database was estimated to cost \$3 million.
- A March 8, 2011, memorandum, prepared over two weeks *after* Chairman Tenenbaum announced the \$3 million figure at the February 17, 2011, hearing, for the first time provides written documentation that the database has been estimated to cost \$3 million. A copy is attached for your reference.<sup>9</sup>

The March 8 memorandum speaks for itself, but I find it to be an extremely confusing and loosely drafted post hoc justification for the \$3 million figure. Its effort to separate the costs associated with creating the public database from expenses associated with other technology improvements is difficult to follow and unpersuasive. Indeed, before launching into its rationale for the precise delineation, the memorandum’s author concedes that “[b]ecause modernizing the Commission’s business processes and supporting IT systems is required in conjunction with deploying the public database, it is challenging to draw a bright line between these efforts.” But the thrust of the argument appears to be that all of the funds used to create the database should not be included in its cost, because the accompanying IT modernization improvements and certain features of the database have uses beyond facilitating the public’s submission and search of consumer product safety reports.

For example, the memorandum states at page 2 that “regardless of whether a report is a candidate for publication” the agency wants to: (1) drive the public from reporting incidents via the hot line or U.S. mail to an online form on the database; (2) change its standard communication method with businesses from paper forms to online forms via the business portal of the database; and (3) otherwise share with the public through the database valuable information in addition to the reports posted to the database by the public. Through this logic, the creation or upgrade of a public portal to facilitate consumer incident reporting and searching online is *not entirely* a cost of the public database, because the CPSC would have wanted *some* of this upgrade, regardless of the statute’s requirements.

<sup>8</sup> Jennifer Kerr. “New Unsafe Products database Under Fire on Hill,” *Associated Press* (February 25, 2011). [http://hosted2.ap.org/APDEFAULT/89ae8247abe8493fae24405546e9a1aa/Article\\_2011-02-25-Dangerous%20Products/id-e20609a71a1d4f74af36b0430f1d233c](http://hosted2.ap.org/APDEFAULT/89ae8247abe8493fae24405546e9a1aa/Article_2011-02-25-Dangerous%20Products/id-e20609a71a1d4f74af36b0430f1d233c)

<sup>9</sup> CPSC Staff Memorandum, March 8, 2011, Subject line: “Estimated Costs of Public database Development.”

While nicely supporting those who seek to minimize the apparent cost of the database, I believe this carve out is unwarranted. It amounts to writing off a portion of the database's cost simply because certain of its features can also be used to accomplish other agency goals. To illustrate this point, imagine a vacuum purchased for \$500 with the intent to clean a floor. The vacuum is then used for cleaning blinds, removing cob webs, and even blowing leaves from the driveway. Does this mean that the vacuum actually cost \$300 because \$200 was saved that could have been spent to perform the additional work? The same faulty logic – formulated in hindsight to reduce the apparent cost of the database – underlies the reduction of the database's cost from \$29 million to \$3 million. The features of the database that serve functions beyond facilitating public reporting and searching, including much of the IT modernization work that was an essential prerequisite to the creation and functioning of the database, have been deducted from its cost. But the fact remains that none of the database's features and their uses, nor much of the underlying IT modernization, could have been achieved had the Commission not received and spent funding to design and program the database.

The fact that the agency's broader IT modernization efforts have only just begun also indicates that much of the money spent to date directly supported the database. The database became public on March 11, but the work necessary to achieve the IT modernization goals the Chairman discussed at the hearing will not be completed for several years, and for the most part has just begun. This includes integrating our different information silos, so that our staff can search across incident reports, field investigations and standards work, and perform more complex statistical searches. So far, we have standardized the way we intake data—a laudable accomplishment considering the agency's multiple internal databases. We have also begun a website redesign, and a plan to begin standardizing incoming data. However, the "IT modernization" piece, even if it could be broken out completely from the public database, is in the early stages -- even after incurring over \$29 million in contract and other costs.

It should also be noted that even the \$29 million figure assigned to both the database and IT modernization understates the real cost of the database. The \$29 million figure represents only the estimated contracting costs through FY 2011. It does not include the hours CPSC staff dedicated to developing the database and preparing for its launch, including managing contracts. Agency projections for the future cost of the database are also misleadingly low. The FTE cost estimates in the CPSC's Database Spend Plan only account for IT employees, ignoring the additional staff needed for data intake, investigations, and legal work associated with the new public database. The Chair is in the process of setting up multidisciplinary teams to review each incident as it is submitted to the database. This will, of course, require new FTEs or pull incumbent employees off of their current assignments, requiring new FTEs to support the increased work load. The FTE cost estimates in the CPSC's Database Spend Plan also appear to discount the expected increase in incident reports, material inaccuracy and confidentiality claims, and other work likely to be generated by the existence of a searchable public portal for the reporting of product safety incidents and issues.

The Commission's 2012 Performance Budget Request also discounts these expenses. According to that document, the "New and Reallocated Resources" dedicated to "Data Intake, Incident Review, and Investigation" is derived from an extrapolation of the growth trend line for reported incidents and investigations dating back to 2003, long before the public database was even

conceived. If, as is likely, this projection is proved to be too low, the assigned staff will be unable to timely manage all of the information reported through the database. As a result, Commission staff will be even less likely to resolve claims of material inaccuracy within the ten-day period prior to the posting of unverified information. The Commission will then either request and be provided additional funding in subsequent years, or preside over an increasingly misleading database.

**How many new people are needed to administer the database?**

The official Commission position communicated to me by the agency's Executive Director (ED) is that the CPSC has requested four additional personnel (FTEs) and four new contractors to administer the intake of data into the database, and less than a single information technology FTE to operate and maintain the public database. The ED also explained that the increase in personnel is necessary to meet the quick turnaround required of staff to process the reports.

**Do you believe the number of FTEs requested is an accurate number?**

I believe that this official position underestimates the human resources that will be required to administer the database. First, the agency's 2012 Budget Request includes a considerably larger number of new FTEs that appear to be needed to administer the new database. Starting on pg. vii of the 2012 Budget Request, \$3.075 million is requested for "modernizing the CPSC's information technology (IT) systems and implementing the public database through a mixture of new and existing FTEs and contractors." On pg. viii, this funding is explained as including "four FTEs and three contractors to maintain the new IT systems [and] . . . an increase of 24 new FTEs and contractors to conduct data intake, incident review, and investigations for a total of \$3.075 million." On the following page, a chart (Table C) is included which breaks down most of the needed FTEs for data intake, rapid incident review, and customer service—all for the database. And pg. ix includes one sentence in the first paragraph explaining that an additional six new FTEs are requested "to continue to investigate the increasing number of incident reports"—again, all related to the Commission's database.

I agree that the agency needs the flexibility to determine where to assign the new employees as we learn more about how to manage this new public database. However, it seems disingenuous to characterize only the "Data Intake" employees as "needed to administer the database", while ignoring the other 27 new FTEs and contractors in our budget request under the headings "IT modernization" and "Data Intake, Incident Review, and Investigation." As I have previously discussed, I believe this is part of an effort to diminish the apparent cost of the public database by artificially separating the costs of database, IT modernization, and other related expenditures, when they are inseparable. As explained above, up until shortly before our Appropriations hearing, these distinctions had not been made in any funding justifications to Congress or the Office of Management and Budget. Rather, all funding for the database and all other facets of the Consumer Product Safety Risk Management System was sought as a single lump sum.

Notably, even the Budget Request underestimates the cost of the database and the employees needed to administer it. First, the staff's justification for some of the new FTEs (*e.g.*, the six new FTEs requested to continue to investigate the increasing number of incident reports) is based



solely on the expected organic growth in incident reports that the Commission would receive even without a new database. However, since the Commission's database will be made public for the first time, and because the Commission itself is promoting its use, it is almost certain we will receive a greater quantity of incidents than ever before – in addition to any organic growth. Also, the budget request does not take into account the time and resources that Commission senior staff, including legal and compliance staff, will continue to dedicate to the new database, which may take them away from other duties. If, as is likely, the projected number of staff is proved to be too low, the assigned staff will be unable to timely manage all of the information reported through the database. As a result, Commission staff will be even less likely to resolve claims of material inaccuracy within the ten-day period prior to the posting of unverified information. The Commission will then either request and be provided additional funding in subsequent years, or preside over an increasingly misleading database.

**What concerns do you have regarding the accuracy of the information published on the database?**

Several features of the database and the Commission's policies governing the posting of reports make it likely that inaccurate information will be published on the database.

To begin with, the database requires that submitters of reports include their own contact information, but does not require that a report submitter have any firsthand knowledge of the product, harm or risk of harm. Nor does it require submitters to provide the contact information of an individual with firsthand knowledge, such as the product owner or the person who used the product. As a result, requiring the contact information of only the submitter is not much different from permitting the submission of an anonymous report. In both cases, the Commission has no means to verify the alleged circumstances of the incident or to obtain supplemental information relevant to determining the existence and scope of an alleged product hazard. Without access to a direct witness to an alleged incident, the Commission may also be unable to determine whether a report contains a material inaccuracy. Where a lack of information and inability to contact the product owner or a witness prevents the Commission from determining the existence of a material inaccuracy, a dubious report will remain on the database.

Moreover, these concerns are not diminished by the requirement that submitters of reports verify "to the best of their knowledge" the accuracy of the report submitted. The honest, best knowledge of someone with no personal connection to an incident or product is of little value.

The rules governing the posting of reports that are subject to a manufacturer's claim of material inaccuracy also make it likely that inaccurate reports will be posted. Manufacturers are entitled to ten business days after a report of harm is sent to them before the report is posted on the database. During that time, they may present to the Commission a claim that a report contains materially inaccurate information. But in many cases, ten days is unlikely to be sufficient time for a manufacturer to determine whether a report identifying its product contains a material inaccuracy.

This is partly because the rule passed by the majority did not require reports to contain sufficient detail about the product and incident to guide a manufacturer's investigation. Information essential to this purpose that is not required to be contained in the report, includes: the model number of the product; the date it was purchased; the UPC code; and/or, any other unique identifying information that would distinguish one product of a particular type from the potentially dozens of others that are of the same general type but are materially different. For example, a recent search of Amazon.com for high chairs manufactured by one particular company produced a list of 137 different high chairs ranging in price from \$54 - \$148. Given the broad range of identically named, yet distinctive products available from the same company at a single snap shot in time, a report of harm relating to a particular manufacturer's high chair, with no reference to the model, date of purchase or other more specific identifying information, would not permit the manufacturer even to identify the specific product, let alone to gauge the accuracy of a report about the product.

Even a manufacturer provided with sufficient information to identify a specific product may not receive enough detail about an incident to understand the role its product played in causing an alleged injury. Moreover, there may be no way to ascertain the truth in those cases where the manufacturer is certain that its product could not have caused an injury in the manner alleged. This is because a third-person reporter is not required to identify the victim or product owner, and access to a firsthand observer of the incident is necessary to resolve issues of fact.

A manufacturer forwarded a vague report has few options. Even where a firsthand observer is identified in the report, the manufacturer is not entitled to such individual's contact information. Without the ability to follow-up with a witness, the manufacturer must base its assertion of material inaccuracy upon the content of the report. In many cases, the report may not contain sufficient information for the manufacturer to ascertain whether it contains a material inaccuracy.

Even with adequate information, 10-days will often be too little time. Obvious cases of manufacturer misidentification may be discernable within the available window of time. But many products of a more generic nature will be very difficult to distinguish without a much more extensive investigation. I have spoken with manufacturers who have needed over 30-days after receiving a consumer complaint to conclude that the subject product was not their own. And those were cases where the company had access to the product. Ten days will clearly be insufficient in many cases, and as a result, materially inaccurate information will remain on the public database well beyond that point.

Even where a manufacturer meets the 10-day deadline to submit an adequately supported claim that a report is materially inaccurate, if the Commission does not also complete its investigation of the claim within the 10-day period, the report is published on the 11<sup>th</sup> day. This policy guarantees that inaccurate reports will sometimes be posted. Moreover, the materially inaccurate information will remain on the site until the Commission completes its investigation and makes a determination. And because there is no fixed period within which the Commission must complete its investigation, inaccurate information can remain on the site indefinitely. Meanwhile, the Commission's efforts to investigate claims of material inaccuracy are hamstrung by its failure to require the identification of victims of harm or firsthand witnesses of incidents raising a risk of harm. There are therefore likely to be many cases where a manufacturer will

have good reason to believe a reported incident is either completely false or materially misrepresented (and companies routinely receive these types of mistaken or fraudulent claims), but neither the manufacturer nor the Commission will be able to obtain the information necessary to resolve the claim. Under those circumstances, the manufacturer will be unable to meet its burden and the challenged, but unverified and unverifiable report, will remain on the database forever.

Further, the manufacturer has no right to inspect the product. In those cases where contact information for the product owner is neither provided nor obtainable from the third-party submitter, it would be impossible even for the Commission to inspect the product. Similarly, there would be no opportunity for the Commission to follow up with the consumer under those circumstances. The manufacturer is not entitled to the contact information of a product owner who chooses to remain anonymous.

All of these factors make it inevitable that inaccurate reports will be posted on the database, and that many will remain searchable by the public forever.

A recent example demonstrates that these are not idle concerns. A report was published on the public database in which a parent identified a particular company as the manufacturer of a toy kaleidoscope that injured her child. The report had been forwarded to the named manufacturer as required by the rule, but the report contained insufficient information for the named manufacturer to determine whether it had actually manufactured the product. The company therefore made no claim of material inaccuracy, but posted a comment explaining that it was uncertain whether it had manufactured the product. Subsequently, a CPSC compliance officer obtained the kaleidoscope from the parent as part of its investigation of the product's safety, and discovered that the parent had misidentified the manufacturer. The incident report was then removed from the database, the correct manufacturer was notified, and the report was reposted with the correct information. However, this outcome resulted from happenstance and not any protections built into the database. If the incident had not been one of the approximately 10% that lead to a follow-up investigation, the error would never have been discovered. In addition, the investigation would not have uncovered the mistake if, as the database rule permits, contact information for an individual with firsthand knowledge of the product and who retained it, was not provided. The fact that an error of this kind has already been discovered, given the short period that the database has been "live" and the small percentage of incidents that are investigated, suggests that this situation is probably not unique. Rather, it indicates that there are likely already a significant number of published incident reports that misidentify a manufacturer and that will never be corrected or removed.

**Is it true that other persons, aside from those directly harmed, can submit complaints to the database?**

Yes, even as properly construed, the CPSIA permits categories of persons who were not directly harmed to submit reports to the database. This includes emergency first responders and physicians, who are in a position to provide at least a degree of useful first-hand information

about an incident or injury. But I believe the Majority expanded the categories of persons entitled to submit information to the database well beyond those intended by Congress.

Section 212 of the CPSIA requires the Commission, subject to the availability of appropriations, to establish and maintain a public, web portal accessible Database on the safety of consumer products. The statute identifies five sources from which the Commission shall receive reports of harm. These are (1) consumers; (2) local, state, or Federal government agencies; (3) child care professionals; (4) child service providers; and (5) public safety entities. CPSIA § 212(b)(1)(A).

Each of these categories of submitters is likely to have first-hand knowledge of the harm reported. They can therefore be expected to provide accurate and reliable information that may be useful to consumers seeking product safety information.

Notwithstanding the statute's clear language, the Commission's Majority adopted a rule that greatly expanded the list of allowable submitters to the Database beyond those intended by Congress. For example, the Commission's regulation defines "consumers" to include "attorneys", and "public safety entities" to include "consumer advocates or individuals who work for nongovernmental organizations, consumer advocacy organizations, and trade associations." 16 C.F.R. § 1102.10(a). This expansion goes against the statutory purpose that the Database be "useful" for consumers and not disseminate erroneous information.<sup>10</sup> Indeed, the Majority has expanded the list of submitters to such an extent that *anyone* can submit reports of harm—thereby rendering meaningless the statutory language listing permitted submitters.

It is important that individuals with first-hand knowledge of incidents of harm involving consumer products be permitted to submit reports to the Public Database. However, groups or individuals with no direct knowledge of the incident, who did not see it happen or do not even know the person that was harmed, should not be permitted or encouraged to submit incident reports to the Database. There are several reasons why first-hand knowledge is essential, but the primary reason is *accuracy*. A Database full of inaccurate reports from individuals who have second or third-hand information is not remotely helpful to consumers using the Database to determine which consumer product they should purchase.

Soliciting information from sources seeking to promote an agenda unrelated to simply sharing first hand information invites dishonest, agenda-driven use of the Database—diluting its usefulness for consumers. Trial lawyers, unscrupulous competitors, advocacy groups and other nongovernmental organizations and trade associations serve their own agendas and lack an incentive to prioritize accuracy in their reports of harm. Trial lawyers or other groups with self-serving motives will use the Commission's Database to look for potential trends and patterns of hazards. Under the Majority's Database rule, these same groups could also submit to the Database false and unverifiable reports to fuel a lawsuit. It is no coincidence that these groups are strongly in favor of this public Database and of the Majority's interpretation of the statute, which expressly allows them to submit reports of harm.

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<sup>10</sup> On the Senate floor, during consideration of the CPSIA on March 5, 2008, Senator Pryor stated: "We have tried to find something that is balanced, that provides information, but also has some filtering so we make sure erroneous information is not disseminated. But the goal of this provision is that the public has the right to know when products are dangerous."

There are many advocacy groups and associations that serve a role in public policy, but may not have the incentive or ability to provide specific and accurate product identification information to the Commission's Database. For example, the National Fire Protection Association (NFPA) supports government-mandated sprinklers in new homes. One cause of house fires is the use of cigarette lighters, which are consumer products. Thus, the NFPA has a strong incentive to add all reports of house fires caused by lighters to the Commission's public Database. The more incidents in our Database, the better case they can make that new fire prevention technology – which some of their members sell—should be mandated in homes.

But it is not important to the NFPA whether it correctly identifies a brand of lighter in an incident report. A lighter may appear to be the branded product of a particular manufacturer, but instead be a cheap counterfeit. The NFPA is interested solely in reporting house fire incidents; the particular brand of lighter is not relevant to its goal of promoting sprinklers. Meanwhile, the company identified in the report as the manufacturer of the cigarette lighter must defend countless unverifiable and potentially inaccurate claims about its product. Such inaccurate and unverifiable information is of no value to a consumer seeking information on the safest type of lighter.

By inviting trial lawyers, consumer advocacy organizations and trade groups to input reports of harm, the Commission has all but guaranteed that the Database will be a tool for lawsuits, policy agendas and anti-competitive activity. Under those circumstances, it cannot also serve its intended function of providing a reliable resource for parents seeking useful information about product safety. A Database populated with such information will be no more useful than "Amazon.com", "Yelp.com", or any of the other hundreds of websites where anyone can submit comments on a product, and does not warrant tax payer funding.

#### **Why did the CPSC not require the submissions come from firsthand knowledge of incidents of harm?**

The issue was a topic of debate among the Commissioners. Without revealing confidential internal deliberations, the Majority's public position is explained in the published preamble to the rule:

The plain statutory language does not require a submitter of a report of harm to have "firsthand knowledge." We have chosen an interpretation of "consumer" that comports with our experience in maintaining a database of consumer product incident reports. Historically, we have received reports of harm from any and all consumers in order to protect individuals who use consumer goods.<sup>11</sup>

75 FR 76835 (December 9, 2010).

<sup>11</sup> A separate statement by Commissioner Adler clarifies the Majority's view that "the term 'consumer' generally carries a broad meaning . . . we are, in fact, all consumers." Supplemental Statement of Commissioner Robert Adler Regarding the Publicly Available Consumer Product Safety Information Database Rule (January 11, 2011), at 4-5. Thus, the Commission has a history of accepting reports from everyone and anyone.

In other words, the majority believes that because the Commission has long been willing to initiate product investigations based on secondhand reports, it should also publish such reports to the public. But there is no logical connection between the two circumstances. In the former case, there is no risk that the public will be misled by inaccurate reports, and the Commission's investigation and internal deliberations remain confidential until it determines there is a real product hazard. Indeed, it is preferable that the Commission continue to absorb as much information on consumer products as it can—and this includes potentially inaccurate reports from advocacy groups, trial lawyers and trade associations. But the *publication* of inaccurate safety information will mislead the public – including in some cases toward the purchase of products that are less safe than ones falsely described as unsafe in posted reports. Notably, it is also not statutorily required that information which is neither accurate nor verifiable be posted on the public database.

But at bottom, I believe the Majority's willingness to populate the database with potentially inaccurate information stems from a fundamental difference in philosophy. The Majority apparently believes it is better to include potentially inaccurate information than to exclude any accurate information that might be reported only secondhand. They seem not to understand that the inclusion of inaccurate information diminishes the value of all of the information on the database, because there will be no way for a manufacturer or consumer to distinguish between accurate and inaccurate reports. As a result, manufacturers will not have the opportunity to improve the safety of their products, and consumers will have difficulty knowing which products to avoid and which to purchase. In other words, unlike the majority, I do not believe that casting a wider net to avoid missing any accurate information justifies the dissemination of inaccurate information. For when the two are indistinguishably combined, even the accurate information is of little value. The database is therefore no different than the many available internet blogs on which consumers contribute unverifiable comments about products, and it should not be supported with tax payer dollars.

**How will the CPSC handle information regarding complaints about one type of model of an item? For example, how will consumers know that the information posted is not regarding every model of an item that a company makes?**

If a report identifies as potentially hazardous a product that has numerous distinct models, but does not specify the model, the report will be posted and consumers will have no way of knowing which model is the subject of the report. That potential scenario serves to highlight once again the risk that, as currently conceived, the database is likely to lead to the posting of inaccurate or misleading information that will at best be unhelpful to consumers.

I have been informed that an analysis of reports submitted to the public database shows that approximately 85% of reports contain information in the non-mandatory field designated for the model number. Although no comprehensive review of these reports has been conducted, it has been discovered that in many cases, the information contained in the "model number" field is, in fact, not the model number of the product. The Commission is therefore still working to determine how useful "model number" information provided by consumers will be in

distinguishing among products and assisting in the determination of whether the correct manufacturer has been identified.

### IMPACT OF REGULATION

**Many of the CPSC's rules have an impact on manufacturers both large and small. It seems to me that these rules also have a large impact on consumers, giving them less choices and higher prices.**

**When promulgating rules, how does CPSC consider their impact on businesses and consumers?**

The Commission conducts assessments required under the Regulatory Flexibility Act (RFA) and the Congressional Review Act (CRA). These include assessing whether or not a rule disparately impacts small businesses, particular geographic regions, prices, or the ability of domestic firms to compete. Such assessments are usually not comprehensive, because it is not required. For example, an RFA analysis may be a couple of paragraphs, depending on the rule.<sup>12</sup>

Under the CRA, when a rule is deemed "economically significant", the Commission sends a notice to the Office of Management and Budget (OMB) explaining how the determination was made. (Again, no cost-benefit analysis is required.) OMB has an opportunity to agree or disagree with the Commission's determination. Following that step, the Commission sends a one-page form to Congress and the Government Accountability Office letting them know the agency is issuing an "economically significant" rule—and that's the extent of the requirements imposed on the Commission by the CRA. Historically, the Commission has issued few "economically significant" rules. However, an increased number can be expected under the CPSIA.

Additionally, rules promulgated by the Commission generally are subject to the Paperwork Reduction Act (PRA), which requires notice and comment to the public and reporting to OMB. PRA analyses are usually perfunctory and do not influence the outcomes of Commission rule makings.

When required by statute, the Commission also considers the impact on businesses and consumers in the context of performing a cost benefit analysis, as discussed in the next response.

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<sup>12</sup> The Regulatory Flexibility Analysis that accompanied the Commission's proposed rule governing testing and certification (75 FR 28366), issued under the CPSIA, was more lengthy than usual. The assessment provides hypothetical examples of testing costs and other anecdotal data. However, it does not provide the quantitative data on the impact to industry or consumers that would normally be included with a formal cost-benefit analysis. <http://www.cpsc.gov/library/foia/foia10/brief/prodcert1.pdf>

**Does the Commission do cost benefit analyses before promulgating rules?**

The CPSC's responsibility to perform a cost-benefit analysis depends upon the nature of the rule promulgated. Before issuing consumer product safety standards or bans under the agency's core statutes (Consumer Product Safety Act/CPSA, Federal Hazardous Substances Act/FHSA and the Flammable Fabrics Act/FFA),<sup>13</sup> the Commission is typically required to do a cost-benefit analysis examining the impact on both businesses and consumers. For example, the CPSA requires a finding "that the benefits expected from the rule bear a reasonable relationship to its costs", before the Commission may promulgate a "safety rule." 15 U.S.C. § 2058(f)(3)(E).

**If not, why not?**

A cost-benefit analysis is not required for CPSC regulations that are not typical standards or bans. This would include "interpretive rules," which are meant to provide guidance to the regulatory community regarding Commission's interpretation of a statute. Nonetheless, the Commission's interpretation of a statute through such rules could have a substantial impact on both industry and consumers.<sup>14</sup> A "Notice of Requirements" to accredit laboratories, which is a specific type of rulemaking established by the CPSIA, also does not require a cost-benefit analysis. The purpose of this type of rule is to establish the requirements under which labs may be recognized as accredited by the CPSC. The promulgation of a Notice of Requirements also triggers the underlying statutory requirement to *third-party test and certify* to the corresponding safety standard, and has a substantial impact on industry. Also, enforcement guidance issued by the Commission is not required to have any kind of impact assessment. Notably, the Commission is not *prohibited* from doing more than the statutes require and could do full cost-benefit analyses in these cases, but typically the agency only does the bare minimum. The Commission also has the authority to determine which type of rule (or guidance) would be most appropriate, depending on the circumstance.

No cost benefit analysis is performed on rules promulgated under the CPSIA, because the statute excepted from the normal cost-benefit analysis requirement standards and bans promulgated under it. The decision was ostensibly made in order to expedite the rulemaking process. Unfortunately, removing this requirement has minimized public and Congressional scrutiny of the costs associated with the CPSIA mandates. In fact, it has allowed the Commission to ignore the costs associate with our CPSIA rulemaking, potentially preventing the Commission from more timely bringing cost concerns to the attention of Congress.

Notwithstanding the absence of a statutory requirement, I believe the Commission should itself perform or contract for the performance of full cost-benefit analyses of all its rules, including interpretive rules and Notices of Requirements. Nothing in the law prevents the Commission from doing a cost benefit analysis. In particular, the Commission should contract with an outside

<sup>13</sup> The Poison Prevention Packaging Act (PPPA) is another core statute of the agency, but it does not require a cost-benefit analysis.

<sup>14</sup> Two examples of recent "interpretive rules" issued under the CPSIA which will have a substantial impact on industry and consumers, include: Definition of Children's Product; Civil Penalties Rule.



party or request that the Government Accountability Office perform a full cost-benefit analysis of the testing and certification rule it is currently finalizing under § 102(b)(2) of the CPSIA. The rule requires an in-depth analysis across multiple products, industries and regulations, and is beyond the capability of the CPSC.

**If so, how comprehensive is the cost benefit analysis?**

A cost benefit analysis performed on consumer product safety standards or bans under the agency's core statutes includes a description of the potential benefits and costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, such as the impact on consumer choice. However, impact on consumer choice is not a chief consideration when the Commission assesses the impact of our regulations on consumers. More commonly, Commission staff considers the impact on consumers in terms of safety, including the estimated reduction in injuries and illnesses. A cost-benefit analysis would also consider the impact of price increases for manufacturers and consumers.

**Can you think of any rules currently in place that are redundant?**

Yes. As you know, the CPSIA requires third-party testing and certification to all "children's product safety rules." The Commission's Democratic majority has interpreted as children's product safety rules many of the more general "consumer product safety rules" that the Commission has had in place since before the CPSIA. The decision has resulted in complicated, unnecessary, and redundant testing requirements for a number of products regulated by the Commission.

For example, the Majority voted to treat the flammability regulations for carpets, rugs, clothing textiles and mattresses as "children's product safety rules" under the CPSIA. As a result, manufacturers of these products that have long been required to adhere to a strict testing protocol to ensure compliance with flammability standards now must also do additional third-party tests to certify to the agency's flammability standards, whenever they create a *children's version* of a product.

These rules have been in place for decades and have done an effective job without third-party testing. For example, there have been no recalls of youth carpets and rugs in the entire 37 years of the agency's existence. There is absolutely no reason to change a system that has worked. Carpets already must meet the flammability standard, they already get tested in house, and they can obtain general conformity certificates on that basis. Third-party testing will not improve children's safety. Nor does it make sense to treat so-called youth carpets differently. No child stays entirely in his own room and crawls or plays exclusively on his own rug. Children's rugs do not need different flammability protection than adult rugs. Indeed, every other rug in the house is more likely to have a cigarette dropped or candle tipped onto it than the carpet in a child's room. If this testing made sense, why would we not also require third-party testing for all carpets being laid in elementary schools, day care centers or in babies' rooms? If a wall-to-wall carpet installer arrives at a job to find a crib set up in the room and a mother far along in

pregnancy, why should third-party testing turn on whether the carpet has a juvenile design or not?

There is no doubt that CPSIA regulations treating clothing textiles and mattresses as children's products disrupt a preexisting effective testing regime. The clothing textile rule involves a long-standing and successful guarantee program that is unlike any of the rules promulgated under the CPSA. That regime effectively splits responsibility for determining the compliance of certain fabrics in a way that is not readily amenable to third-party testing.

In particular, the agency recently revised the mattress rule in a painstaking process that carefully weighed the benefits and costs entailed in that regulation. As part of that process, the agency determined that the rule would have an impact of greater than \$100 million on the economy, making it the rule with the single greatest economic impact in the history of the agency up to that time. Requiring third-party testing based on an overly literal interpretation of a part of the CPSIA—for which there is absolutely no evidence to suggest it applies to the mattress rule—upsets the careful balance struck by the mattress rule's design. The oddity of overlaying third-party testing and certification on this rule can be seen from the fact that the rule will now require the burning of a queen-sized prototype mattress in an accredited third-party lab to prove the inflammability of a crib mattress several times smaller.

Of all of the votes we have taken at the Commission, I had hoped that this would be an easy one. After all, it is unlikely that Members of Congress anticipated adding third-party testing requirements to the 2007 mattress standard, the 1970 standard for carpets and rugs, and others, when the CPSIA was passed. Unfortunately, because of the make-up of the Commission, I believe it will now take an act of Congress to reverse these requirements and to prevent future "consumer product safety rules" from being caught up in the CPSIA's third-party testing regime.

#### STOPPING HARMFUL PRODUCTS AT PORTS OF ENTRY

**I am encouraged by the CPSC's Memorandum of Understanding with Customs and Border Protection. By stopping harmful products at our ports of entry, the CPSC is using resources to proactively stop harmful products from reaching the U.S. market. As I understand, once products are in the market, it is very difficult to recall a significant amount.**

**What are your thoughts on this program? Do you believe this program is an efficient use of CPSC's resources?**

There is no doubt that the growing cooperation between the Consumer Product Safety Commission (CPSC) and the U.S. Customs and Border Protection (CBP) has expanded the Commission's ability to more efficiently and effectively prevent unsafe products from entering the United States.

The CPSC gained access to the International Trade Data System Automated Commercial Environment (ACE) in 2007, and since that time has expanded the number of ports at which

CPSC employees work side by side with CBP officers. ACE gives CPSC staff access to “entry summary” data for any shipment of products as soon as the data becomes available.

In 2008, CPSC created a new Import Surveillance Division. The team, in cooperation with CBP, is tasked with inspecting, detecting and stopping hazardous products from entering the United States.

While the ACE data is useful, it is generally not available before a shipment has arrived. That is why the CPSC’s October 2010 MOU with CBP is so important. It gives CPSC access to CBP’s Import Safety Commercial Targeting and Analysis Center (CTAC). CTAC provides CPSC staff with ship manifest data even before a product arrives at port, thereby allowing the CPSC to conduct risk assessments and target those shipments most likely to contain dangerous products.

The access to CBP’s databases obtained through MOUs, combined with day-to-day cooperation between CBP and CPSC Import Surveillance Division personnel working side-by-side at United States ports, permits the CPSC to target, sample and detain, export or destroy a far greater number of unsafe products. Moreover, it is able to do so with only a couple dozen employees. I strongly support these efforts and will continue to work with the Chair to identify additional ways in which CPSC can cooperate with CBP to maximize the safety return on the CPSC’s expenditure of resources.

#### **AVOIDING DANGEROUS PRODUCTS**

##### **What advice can you give the parents of young children to avoid lead and other dangerous elements in children’s products?**

Based on my experience as a CPSC Commissioner and as a mother of six, I am keenly aware of the dangers children can face from consumer products. As with all of the hazards against which the CPSC protects consumers, parents can avoid products known to contain lead in paint or other dangerous elements by checking the Commission’s [www.recalls.gov](http://www.recalls.gov) website or signing up for recall updates through email. It is also important to provide age-appropriate gifts to toddlers and young children, to supervise their play, and to remember that most incidents can happen in a split second.

Parents should also learn about the common, everyday hazards children confront at home, and be vigilant to avoid them. For example, drowning is among the most common occurrences reported to the CPSC. Drowning can occur not only in pools, but in bathtubs, hot tubs, toilets and even buckets of water. Drowning prevention is an important focus of the Commission, and I am proud to have participated in one of the Chairman’s Pool Safety Campaign events in Washington, DC. I also hope that the Commission’s education campaign on drowning prevention may extend to settings beyond swimming pools. Choking hazards also present an all too common risk for children, including from coins and small batteries.

A child’s sleep environment is also a potential source of risk about which parents should be aware. I therefore strongly support the Chairman’s “Safe Sleep Campaign”, designed to educate parents on crib safety and the potential safety hazards present in an infant’s sleep environment.

For example, soft bedding placed inside of a crib is a significant hazard, because infants' neck muscles are not strong enough to help them to avoid suffocation. Soft bedding is not a consumer product hazard, per se, but it is a common danger that we hear of all too often at the Commission. That is why I continue to support efforts at the Commission to focus not only on the safety of the cribs themselves but also on all of the general hazards related to infant sleep.

### Lead

I believe it is important to clarify the risks associated with lead, especially since the CPSIA has removed the ability of our agency to assess risk in this area, as we would for other hazards. Some advocates say that "there is no safe level of lead", implying that none of us can ever spend enough time and money to reduce or eliminate lead everywhere. But there is, in fact, an *unsafe* level of lead that has been established by our leading scientific agencies, the National Institutes of Health, the Centers for Disease Control and the Environmental Protection Agency. Only lead that is "absorbable" at greater than *minimal levels* is dangerous, especially to children ages five and under.

In order to determine risk, it is necessary to make a distinction between lead that is absorbable and lead that is not absorbable in meaningful amounts. In many other laws relating to absorbable lead levels, standards exist to allow for such minimal absorption. For example, the Food and Drug Administration allows for 0.1 microgram of lead in a one-gram piece of candy.<sup>15</sup> The Safe Drinking Water Act declares "zero lead" to be the objective for the amount of lead in water, but pipes carrying the water are permitted to be 80,000 parts per million (8 percent) lead – allowing for negligible, trace amounts to exist in the water we drink.<sup>16</sup> California Proposition 65<sup>17</sup> as well as the European Union<sup>18</sup> allow for a negligible amount of absorbable (or soluble) lead in children's products. People often are surprised to learn that all children are born with a certain blood lead level, depending on the blood lead level of the mother. Some additional amount of lead (roughly one microgram per kilogram of body weight)<sup>19</sup> is then taken into the body every day through the food we eat and the air we breathe.

So what lead is actually risky? Lead is risky when it is absorbable into the bloodstream at greater than minimal levels. The experts at the CDC and NIH have found that lead paint in old houses and lead in dirt<sup>20</sup> near old gas stations are the main source of environmental lead presenting a

<sup>15</sup> "Supporting Document for Recommended Maximum Level for Lead in Candy Likely To Be Consumed Frequently by Small Children," Food and Drug Administration, November 2006:

<http://www.fda.gov/Food/FoodSafety/FoodContaminantsAdulteration/Lead/ucm172050.htm>

<sup>16</sup> Environmental Protection Agency, Safe Water Drinking Act, Fact Sheets:

<http://www.epa.gov/safewater/sdwa/basicinformation.html>

<sup>17</sup> California Office of Environmental Health Hazard Assessment (OEHHA), Proposition 65 -

<http://www.oehha.org/prop65.html>, Children's Health at OEHHA -

[http://oehha.ca.gov/public\\_info/public/kids/schools041707.html](http://oehha.ca.gov/public_info/public/kids/schools041707.html)

<sup>18</sup> European Committee for Standardization (CEN), EN 71-3 Safety of Toys-Part 3: Migration of certain elements. CEN, Brussels, Belgium, 1994: <http://ec.europa.eu/enterprise/policies/european-standards/documents/harmonised-standards-legislation/list-references/toys/>

<sup>19</sup> Centers for Disease Control, Agency for Toxic Substances and Disease Registry, Toxic Substances Portal: Lead: <http://www.atsdr.cdc.gov/PHS/PHS.asp?id=92&tid=22>

<sup>20</sup> Although lead in dirt is a proven hazard for small children residing near old gas stations, it is notable that the Environmental Protection Agency standard for lead in soil is 400 ppm. <http://www.epa.gov/lead/> This standard for

danger to small children (<http://www.cdc.gov/nceh/lead/>). In other words, the *risk of absorbability* from lead paint in an old home that becomes chipped and may be inhaled or ingested is quite high.

In the same vein, a heavily lead-laden metal charm or piece of jewelry that can be swallowed presents a danger, because such an item could get caught in the stomach and absorbed. However, none of these agencies, including the CPSC, has ever found that a child touching a brass musical instrument or a vinyl lunchbox, or riding a bicycle, could ever rub off enough lead, day after day, year after year, to affect his or her health.

Consider the CPSIA's lead requirements in comparison to these known lead hazards in the environment today. The CPSIA's arbitrary lead content limits (currently 300ppm, and moving this August to 100ppm or the lowest achievable level between 100ppm and 300ppm) remove the ability of the Commission to assess risk, or the *absorbability* that exists for a particular product. Thus, the law's lead content levels dictate that the metal handle bars of a bike that pose **no health risk** to a child be outlawed right alongside lead paint or a solid-lead charm on a piece of children's jewelry that actually is dangerous.

The CPSIA has resulted in a ban on children's books published before 1985, because the ink in them is likely to contain lead above the allowable level. Some at the Commission and many Members of Congress have expressed dismay that books have been affected, because children are not likely to eat the pages of old books or ingest more than miniscule amounts of lead after touching their pages. Likewise, youth ATVs and bicycles are outlawed or must be reengineered even though the lead that is in the hood, handlebars, or hubcaps will not become ingested and absorbed at any discernable level (from hand to mouth touching where miniscule amounts of lead may rub off—not from actually eating the hood, handlebars or hubcaps). Other everyday products such as school lockers, the hinges on a child's dresser, or jackets with zippers and buttons are outlawed if they contain tiny levels of lead in the substrate. Even ball point pens are outlawed if they have a toy or game attached to them and are marketed to children, due to the brass found on the tip.

Finally, children do not live cooped up inside of their rooms surrounded only by "children's products"—the primary focus of the CPSIA. Children live throughout the house, run around outside, and play with adult products such as pots, pans, furniture knobs, door handles, appliances and TV remotes. For example, the new costs associated with this law will affect a young child's lamp (usually turned on and off by the parent) but not the lamp in the den or the living room that a child is as likely to turn on and off. These products do not threaten a child's health due to their lead content, because the lead in them is not absorbable. This further illustrates the absurdity of the CPSIA's requiring the unnecessary reengineering of children's products with lead, while children are just as likely (if not, more likely) to play with everything else in the house.

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safety is less strict than the current lead content standard provided in the CPSIA for children's products, which is 300ppm and scheduled to fall to 100ppm in August of 2011.

Questions for the Record for Commissioner Northup  
Submitted by Congressman Tom Graves

DATABASE

**With the recent launch of the Consumer Product Safety Information Database in the past few weeks there is concern that reports of harm can be submitted by individuals that wish to do damage to their competitors by submitting erroneous information. If the database is to be effective the CPSC needs to ensure the utmost accuracy of those individuals that submit information to the database.**

**What specific steps are in place to validate the identity of individuals that are submitting the information for the database to make sure they “are who they say they are”?**

The official Commission position is that the identity of individuals is validated by (1) the requirement that submitters verify that the information contained in a report – including the submitter’s affiliation, name and address -- is true and accurate to the best of their knowledge; and (2) the threat that appropriate legal action will be taken against individuals who submit false information to the government through the database.

I believe neither of these putative safeguards is likely to discourage individuals from misrepresenting their identity when submitting a report, or lead to the discovery of those individuals who choose to do so. A person willing to misrepresent his or her identity in connection with the submission of a report is unlikely to be discouraged from doing so by a self-verification check box. Moreover, as the official Commission position reflects, no steps are taken beyond confirming that the self verification box is checked to confirm a submitter’s identity.

I also do not believe the threat of legal action is much of a disincentive to those wishing to provide a false identity. As noted, the Commission apparently lacks a system of “specific steps” to verify a submitter’s identity in the first place. The threat of prosecution carries little weight in the absence of a system for detection. And even if the Commission became suspicious of a submitter’s stated identity, it can take no prosecutorial action independent of the Justice Department. Notably, between fiscal years 2004 and 2010, the Commission referred for criminal prosecution to the Department of Justice only one case that did not involve illegal fireworks. This reflects the fact that the Justice Department has many priorities that supersede litigating cases on behalf of the CPSC, and has historically agreed to do so only in cases involving severe and pervasive injury combined with repeated, intentional wrongdoing.

There is even less likelihood that a case would be brought based on a claim that inaccurate incident or product information was submitted through the public portal. To begin with, the difficulty of proving that a report is not “true to the best of [the submitter’s] knowledge” makes it unlikely any action would be taken. Even a consumer advocacy group in the habit of submitting reports based on third and fourth hand information heard “through the grapevine” is still submitting a report to the best of its knowledge. Finally, assuming the Commission concluded that a report failed to meet this lax standard, the choice to prosecute would be made by the

Department of Justice. I would be shocked if the Department of Justice, overwhelmed by significant cases effecting the national interest, would exercise its discretion to dedicate resources to litigation over whether someone really didn't believe something they heard about a consumer product.

**To date, have you found any instances of falsified individuals or actual individuals whose identities were stolen to submit information?**

In response to your inquiry, Commission staff has informed me that the Commission is unaware of any instances where an individual submitted a report under either a fictitious name or the name of another individual without authorization. Notably, based on the response to the above question, it is unclear, in any event, how the Commission would become aware of such a falsification. Commission staff apparently make no effort to verify the identity of report submitters beyond ensuring that the "self-verification" box is checked.





FRIDAY, APRIL 1, 2011.

**OFFICE OF PERSONNEL MANAGEMENT**

**WITNESS**

**HON. JOHN BERRY, DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT**

Mrs. EMERSON. The subcommittee will come to order.

Happy April Fool's Day.

I want to welcome Director Berry from the Office of Personnel Management. I do appreciate your service. You have a tough job. And I know that while today usually is reserved for practical jokes and pranks, I think it is only opportune for us today to consider the serious challenges of OPM's mission to recruit, retain, and honor our world-class Federal workforce to serve the American people.

OPM leads Federal agencies on personnel management issues for the country's 1.9 million Federal civilian employees. It designs, develops, and oversees compliance with workforce policies in areas of recruiting, selection, development and compensation. Also, OPM has the responsibility for managing tens of billions of dollars in retirement, health and life insurance trust funds for Federal employees.

For fiscal year 2012, the President's budget requests annual operating expenses of \$258 million for the Office of Personnel Management, including the Inspector General, to carry out OPM's mandated responsibilities. This is an \$18 million, or 7 percent, increase over fiscal year 2010.

As you know, our current spending levels are unsustainable and our committee is committed to fiscal responsibility. And Director Berry, I want to try to work as closely as we can to fund your highest priorities without adding anything additional to the Federal debt.

As the Federal Government transforms itself to address the country's most pressing needs, agencies must have the ability to recruit and retain talented and highly skilled employees. Over the next decade, the Federal Government is facing a huge retirement wave which will result in the loss of leadership and institutional knowledge across the government. So the Federal agencies really need your help to meet this challenge.

You have significant responsibilities, Director Berry, and I look forward to working with you to accomplish your goals and make sure we have the best workforce to serve the American public.

With that, I would like to recognize my friend, our subcommittee ranking member, Mr. Serrano, for any opening remarks he would like to make.

Mr. SERRANO. Thank you, Madam Chairman. And I did notice that Albert Pujols set a record—

Mrs. EMERSON. Zero for five.

Mr. SERRANO. Zero for five and three double plays in one opening day. That has never happened in the history of sports.

Mrs. EMERSON. So do you suppose that having a 10-year contract would have solved that?

Mr. SERRANO. Yes, he would have relaxed more and paid more taxes and maybe kept the shutdown from taking place.

Mrs. EMERSON. Well, there is that.

Mr. SERRANO. I would also like to welcome Mr. John Berry, who we have a lot of respect for.

OPM has a very challenging and important mission overseeing the employment and benefits for millions of Federal workers and millions of Federal retirees. We may disagree up here about the appropriate size of government, but we all agree that it is critical to have a personnel system that has the flexibility and resources to hire and retain a high-quality workforce to staff an efficient Federal Government.

In addition to the current workforce, you are responsible for retirees, a number that is expected to increase substantially in the coming years. Recently, there have been many failed efforts to modernize the retirement system. Despite repeated investment, we still have a system that is outdated and inaccurate, and therefore unable to accomplish its mission. I understand that you are planning a more incremental modernization of the retirement process, and I look forward to hearing about these efforts.

Finally, although we appear to be making progress, there is still an unfortunate possibility of a government shutdown. OPM will have an important role in making sure that the necessary parts of the Federal Government continue to function. I look forward to hearing how you are preparing agencies for this eventuality and making sure that Federal workers know their role in the event of a shutdown. I look forward to addressing these issues during the time for questions, and I would like to welcome you again, Director Berry.

Thank you.

Mrs. EMERSON. Thank you.

Now I would like to recognize Director Berry. Please, if you would keep your remarks to 5 minutes, that way we can get some extra questions in. And let me also say that I believe we are going to have votes called somewhere between 10:45 and 11:00. I am hopeful that we are going to just have a couple, and so we will perhaps have to recess just for a couple minutes. So thank you, and welcome.

#### OPENING STATEMENT

Mr. BERRY. Thank you, Madam Chair. It is an honor to be with you and Ranking Member Serrano. Thank you so much for having us today. It is great to be here and to discuss some of our priorities. I will try to keep it real short so we get to your questions right away.

Government is increasingly a knowledge-based enterprise where our people are our most important asset. To have a government

that delivers the best services to the taxpayers in the most efficient, cost-effective way possible, we can't avoid investing in our workforce.

Over the past 2 years, as directed by President Obama, we have led a government-wide initiative to reform hiring by making the process quicker and easier so that good, qualified candidates can apply. Our goal: Bring the best and the brightest into the Federal civilian service by making government the model employer for the 21st century. And we are trying to lead by example within the Office of Personnel Management.

In 2010, under President Obama's Veterans Employment Initiative, we hired 2,000 more veterans than in 2009, despite hiring fewer overall people across the government. I am very proud that at the Office of Personnel Management we hired the highest percentage of disabled vets in the government, more than DOD and VA.

We met Congress' 2004 goal to speed up security clearance investigations, eliminating a backlog that we inherited that was over a year in length. Now over 90 percent of investigations are done within 40 days. When we inherited it, it was 179 days. So you can see the improvement on that. And the GAO removed us from the high-risk list this year. A lot of things go on, very little comes off; this one came off. And our movement of this towards the 40 days was one of the primary reasons it was able to.

We are supporting agencies as they work to improve employee engagement and facilitate greater partnership between agencies and employee groups. We are increasing the strategic use of telework. Thank you all for passing and adopting the Telework Enforcement Act of 2010. We are on point in getting that implemented.

Our budget request for 2012 will build on these accomplishments. As part of the President's budget, it is a responsible plan to ensure that we live within our means while still investing in key areas for our future.

Our general funds request for basic operating expenses represents an overall decrease of almost \$3 million from 2011 from the CR level. For the administration of civil service retirement and insurance programs, we are requesting a slight increase of \$19 million from the annualized 2011 limitation on transfers, and it is to deal with some of the numbers that you all have reflected and talked about.

We are facing an increase in retirement claims. Even in the first third of this year, there is a 15 percent increase in retirements. The Postal Service has announced an additional group of retirements that they are going to pursue, and we also have retirements coming from the Base Closure Realignment Act, in addition to our normal rate of about 100,000 retirements a year. So you can see the demand that is going to put on our services.

To save money and to counteract some of the increases we are asking for, OPM has made the difficult decision to terminate the Retirement Systems Modernization Program. However, we can better achieve automation by now getting back to basics. We are conducting a full review, bottom up, of our systemic process and looking at what pieces make sense to automate that are the most com-

monly used and the most easy to automate. It is going to be almost impossible to automate the entire process. It is just too complicated and too individual in basis. And so what we are looking at is automating the key pieces of it instead. By eliminating that as a formal program, we don't have to provide the oversight, et cetera, that we would have to, which will produce a \$2 million administrative cost savings for us by eliminating that program officially.

Also, we are eliminating the second phase of our financial systems, looking at the earned benefit trust fund, our CBIS Phase 2 approach. We have run into problems with CBIS Phase 1. We are working through those problems. We are working with the Comptroller General of the United States. We think we can work this out. Our problems aren't unique. Every agency that is using this system is having similar problems. We are probably having the fewest problems of anybody across government, so I think we have the best chance of making this work. But we certainly don't want to go any farther until we have worked the kinks out of Phase 1. So that will save \$41 million from that project that would otherwise be spent.

The Affordable Care Act directs OPM to approve and oversee the multi-state health plans that will be offered to Americans on state insurance exchanges, a major new responsibility. We stood up the preexisting condition plan in less than 45 days. Our overhead is .08 percent, and we now provide primary coverage for that in over 23 States of the Union.

In addition, ACA opened the Federal Employees Health Benefits and Life Insurance Program to employees of tribes and tribal organizations. That is going to add another 1 million people to our workload. We have consolidated and reorganized our staff to better efficiently manage these responsibilities so that our request for increases is less than it would otherwise be.

Our budget proposal also includes several other long-term saving initiatives: A wellness program that I believe is going to have a long-term impact, that we can demonstrate through our agency that if we take this government-wide, will produce millions and millions of dollars in savings; a health claims data warehouse that will allow us to achieve greater savings in FEHBP and for our retirements. And we can assure you that we will maintain tight oversight on patient privacy.

Finally, we are seeking authority to streamline pharmacy benefit contracting within the FEHBP and to leverage enrollees' purchasing power to reduce cost. We estimate that we can save \$69 million in the first year, and almost \$2 billion in the ongoing years. Our 2012 budget helps ensure our ability to provide the best value to the American people by continuing to recruit, retain and honor our world-class workforce.

Thank you, Madam Chair, and I am happy to answer any questions.

[The statement of Mr. Berry follows:]



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF  
THE HONORABLE JOHN BERRY  
DIRECTOR  
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES

on

OFFICE OF PERSONNEL MANAGEMENT FY2012 BUDGET REQUEST

APRIL 1, 2011

Chairwoman Emerson, Ranking Member Serrano, and Members of the Subcommittee:

I appreciate the opportunity to testify before you today on the President's Fiscal Year 2012 Budget request for the Office of Personnel Management (OPM). This budget will help us achieve our vision to recruit, retain, and honor a world-class workforce to serve America. Our people are our greatest advantage. To have a government that delivers the best services to the taxpayers in the most efficient way possible, we need to invest in them.

Over the past two years, we have made significant progress toward making the Federal Government the model employer for the 21<sup>st</sup> Century. As directed by the President, we are spearheading a government-wide initiative to reform recruiting and hiring to bring the best and brightest into the Federal civilian workforce.<sup>1</sup> To that end, I am also committed to leading by example and making OPM a model employer.

We have moved from a complicated essay-based application process to accepting resumes and cover letters. We have reduced job announcements to a reasonable length and put them in plain language. We are contacting employees at four points in the process and reducing the time to hire so we do not lose good people. And in 2010, when government agencies hired fewer people overall, with help from President Obama's Veterans Employment Initiative, we hired 2,000 more veterans than in 2009.<sup>2</sup>

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<sup>1</sup> Presidential Memorandum, *Improving the Federal Recruitment and Hiring Process*, (May 11, 2010).

<sup>2</sup> From OPM Enterprise Human Resources Integration – Statistical Data Mart (EHRI-SDM).

**Statement of Hon. John Berry**  
**Director of the U.S. Office of Personnel Management**

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**April 1, 2011**  
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I also want to note our success in meeting Congress's goal to speed up clearance investigations for individuals the Federal Government wants to hire. When OPM took over the Background Investigation Program pursuant to the *Intelligence Reform and Terrorism Prevention Act of 2004* (IRPTA), we inherited over a half million pending cases and a backlog of 133,095 cases that were over a year old. Now, we have cleared the backlog and the security clearance program has been removed from the Government Accountability Office's (GAO) 2011 High-Risk Series.<sup>3</sup>

We are supporting agencies as they work to improve employee wellness and engagement, and we are facilitating greater partnership between agencies and employee groups. We are also working to implement the provisions of the *Telework Enhancement Act of 2010*,<sup>4</sup> to help agencies update and implement their telework policies in order to establish a flexible and more efficient workforce, reduce agency overhead costs, and help ensure continuity of operations in the event of bad weather, disaster, or terrorist attack.

Our budget request for FY 2012 will help us build on these accomplishments and achieve our strategic goals to Hire the Best, Respect the Workforce, Expect the Best, and Honor Service.

**FY 2012 Budget Request**

The President's budget is a responsible plan for ensuring that we can live within our means while at the same time making critical investments to win the future. The budget makes tough choices to cut spending and cut the deficit by calling for a five-year non-security discretionary freeze, saving more than \$400 billion over the next ten years and bringing domestic discretionary spending to the lowest it has been as a share of the economy since President Dwight D. Eisenhower.

OPM's budget makes tough choices as well, and recognizes challenges the agency faces in FY 2012. OPM's General Funds request for basic operating expenses totals \$100,027,000, which represents a decrease of \$2,944,000 below the annualized amount provided by the continuing resolution for FY 2011. For the administration of civil service retirement and insurance programs, OPM also requests a total of \$132,523,000 in transfers from the three earned benefit Trust Funds, an increase of \$19,786,000 above the annualized FY 2011 limitation.

In response to the financial challenges our Government is currently facing, OPM has made the difficult decision to suspend our retirement systems modernization (RSM) program. The full automation of the Federal retirement process is needed to bring better and more efficient services to current and future retirees and we have endeavored for many years to fully implement these changes. However, we can better achieve these goals by getting back to the basics of retirement services rather than managing improvements through a large scale project. Eliminating the RSM program as a formal budget item will save at least \$2 million in administrative costs while we

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<sup>3</sup> Dodaro, Gene L. *GAO's 2011 High-Risk Series: An Update*. (GAO-11-394T). (February 17, 2011).

<sup>4</sup> Public Law 111-292 was signed into law on December 9, 2010.

**Statement of Hon. John Berry  
Director of the U.S. Office of Personnel Management**

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**April 1, 2011**  
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conduct a bottom up review of the Retirement Service process and maintain a focus on achievable goals to automate the retirement processing system.

Also, the planned second phase of OPM's financial system, Consolidated Business Information System (CBIS), to encompass the earned benefit trust funds has been placed on indefinite hold to address and remediate critical issues exposed during deployment of the system in FY2010. This will result in a savings of approximately \$41 million over the lifetime of the project.

The enactment of the Affordable Care Act (ACA) designated OPM as the agency responsible for approving and overseeing multi-state health plans to be offered to the American public on the state exchanges.<sup>5</sup> In addition, the Act extended eligibility for participation in the Federal Employees Health Benefits Program and the Federal Employees Group Life Insurance Program to employees of Tribes and Tribal organizations.<sup>6</sup> OPM has consolidated its existing and new healthcare and insurance responsibilities into a new Healthcare and Insurance (HI) organization to help us carry out these responsibilities more efficiently while protecting the integrity of our existing operations.

Our budget proposal also includes several other initiatives to help us realize savings in the long-term. We have launched a wellness program with the General Services Administration and the Department of Interior that offers biometric screening, wellness classes, smoking cessation programs, and a health clinic. In addition, the Health Claims Data Warehouse (HCDW) project is an initiative to collect, maintain and analyze data from health claims under the Federal Employees' Health Benefits Program (FEHBP), including drug utilization from Pharmacy Benefit Managers (PBMs), the Pre-existing Conditions Insurance Program (PCIP), and Multi-State Plan options on an ongoing basis. And let me be clear that patient privacy is foremost in our minds and it will be vigorously protected.

The budget also proposes that OPM be given authority to streamline pharmacy benefit contracting within the FEHB program and leverage enrollees' purchasing power to reduce costs and obtain greater value for enrollees and the American people. We estimate this will save approximately \$69,000,000 in the first year and \$1,800,000,000 over ten years.

As this Administration's chief people person, I again want to express my appreciation for the opportunity to testify in support of this budget request which will help ensure that we are able to provide the best value to the American people as we continue to recruit, retain, and honor a world-class workforce to serve America.

Thank you, and I'll be glad to answer any questions that you may have.

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<sup>5</sup> 42 U.S.C. 18054

<sup>6</sup> Section 409 of the Indian Health Care Improvement Act (Public Law 94-437), as amended by section 157 of S. 1790, the Indian Health Care Improvement Reauthorization and Extension Act of 2009 (IHCIREA). Section 10221 of ACA (Public Law 111-148) incorporated IHCIREA.



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
1900 E STREET, NW WASHINGTON, DC 20415

## BIOGRAPHY

# John Berry



John Berry is the Federal Government's Chief People Person. As the Director of the United States Office of Personnel Management, he is responsible for recruiting, hiring, and setting benefits policies for 1.9 million Federal civilian employees. Calling this a new day for the civil service, he is reinvigorating the Federal workforce to meet the challenges of the 21st century.

John is working closely with partners both inside and outside of government to fulfill President Obama's charge to "make government cool again" by developing flexible, results-oriented HR policies and working to change how Americans view their public servants. His goal: build a workforce of dynamic innovators who put serving the American people at the heart of everything they do.

With over twenty years of experience in the Federal government, Berry is a passionate and aggressive advocate for public service and Federal workers. He first developed expertise in Federal employee and retirement issues during ten years as Legislative Director for Congressman Steny Hoyer of Maryland, now the Majority Leader.

During the Clinton Administration, Berry served as Deputy Assistant Secretary and Acting Assistant Secretary for Law Enforcement at the Department of the Treasury, where he had direct-line authority over 40% of the Federal law enforcement community, including the Secret Service and the ATF. He then served as Assistant Secretary for Policy, Management and Budget at the Department of the Interior.

From 2001 to 2008, Berry pursued his interest in conservation as Director of the National Fish and Wildlife Foundation and then as Director of the National Zoo, where John the Lion is named after him.



Mrs. EMERSON. Thank you very much, Director Berry. I appreciate very much your testimony.

#### BUDGET REQUEST

Under the budget request, you list a few things that you needed extra people for—interspersing it with savings, I might add, so it was harder to add it all up at the same time. Anyway, tell me now, your budget request is for 7 percent more, or \$18 million, than the 2010 request. So the initiatives that OPM plans to spend they have proposed increase on are?

Mr. BERRY. The increase is getting ready to handle the multi-state exchanges under the ACA. That is the bulk; \$12 million of the increase is for that to really staff up.

Mrs. EMERSON. And how many people is that, do you think?

Mr. BERRY. It is approximately 20. Am I correct on that? Twenty-six people.

Also, the Employee Viewpoint Survey, which we have done every other year, is proposed in this budget to go to an annual survey, and then every other year to survey every employee in the Federal Government. We used to just survey a random sample. So that has an additional cost of \$1 million.

We have stood up a new Office of Diversity and Inclusion. That is a \$1 million increase to allow us to continue forward progress there. And there is a request that is being made government-wide by the Office of Management and Budget that we would play a role in for improving our acquisition of \$640,000. So those are the major increases in that.

Mrs. EMERSON. Okay. So if you went back to 2008 fiscal year levels, or let's say a 17 percent decrease, more or less, tell me how that would impact you all.

Mr. BERRY. I think we could make that work, Madam Chair, if you would work with us on flexibility on the trust fund side of the house. What we could work with you and your staff on developing is if we had to go back to the 2008 level, we can't avoid the additional burden, and I can't pretend that we can just eat the entire cost of getting ready for these multi-state exchanges. It is going to be a significant new responsibility for us. But I believe we could work with you on—as I said, we managed this with less than 1 percent of overhead cost. And I think that if you were to give us—we are not talking about a wild increase here. You are allowed under the law to go up to 2 percent to authorize this. So with a slight increase of taking us to 1 percent, for example, would allow us potentially to go back to a 2008 level and still maintain getting ready for these important new responsibilities.

#### MULTI-STATE EXCHANGE

Mrs. EMERSON. Let me ask you something; when you have to stand up the multi-state exchange, does that require more people at the outset, but then once you have it going then those people could be either shifted elsewhere or they could be temporary employees? I mean, is that how it works once you have things on a roll?

Mr. BERRY. I think the 26 that we are asking for, Madam Chair, is I believe going to be sort of a stable baseline. It is one that we

will build into over the course of—if you give us the authority. I don't see going much beyond that. In other words, I think that is a good, stable thing to be able to handle the millions of people that will have to come on in addition.

Mrs. EMERSON. So the FEHBP people wouldn't be able to perform a dual function?

Mr. BERRY. Right. First, let me say what the law requires. The law requires us to keep these absolutely separate. How I have done this though, so that we have the efficiency of being able to share, obviously, good information and training—because you want both to inform the other—is we have one Office of Health and Insurance that has two deputies, one for FEHBP, one for the ACA. That way, their staffs, the statistical analysis, the data warehouse, the information that we can share back and forth, that will inform both, but the actual management and policy direction that is required under the law we can keep separate. So we will be able to do that.

So clearly the FEHBP is going to continue to be the larger element of the staff. The numbers are larger and they will probably remain so. But there will be, we estimate, in the millions that will be an additional workload that we will have to manage through those exchanges that would be under the ACA section.

Mrs. EMERSON. I really do have to commend you for being able to keep your administrative costs to manage the FEHBP at .08. I mean, it is remarkable. And it certainly sets the bar for any—in the private sector, we know that they could then perhaps reduce their administrative costs as well.

#### FEDERAL HIRING

Let me ask you one other question during this round because this is a pet peeve of mine. If, for example, I found a job at the Department of the Interior in which I was interested, I was qualified, tell me what the process is for me to apply for the job, who reviews my application, and how that all works, if you would.

Mr. BERRY. Each agency controls their own hiring. So, for example, we don't hire for the Federal Government, we create the policies within which they work.

Mrs. EMERSON. Right. So I want to talk about the policy piece just for a second.

Mr. BERRY. So in that case, for example, Interior, we try to share to gain efficiencies in certain portions of the process, for example, advertising the positions. So all the agencies have come together with us and we have created USAJobs. So there is sort of a central, automated entry place for you to enter your resumes. But those resumes, in that case, would go to the Interior Department. They would screen and assess those resumes to create a pool of well-qualified candidates and then would select—and apply veterans preference. That is what we have set the policies to do all of that. The agency in Interior would then interview people from that well-qualified pool and make their selection to try to match the best skills with the position that they are hiring.

Mrs. EMERSON. So are HR managers within each of those departments making those decisions, or are the people for whom the applicants would be working doing the screening?

Mr. BERRY. The ultimate decision is made—and what the President wants to see done in the Executive order on hiring reform, we want to make sure that responsibility is put with the hiring manager, the person who is actually going to have to be managing the job because they know what they need and can match the chemistry of that job with the right skills set. The HR people are supposed to make sure that the policies are being followed so that veterans' rights are being protected, disabled vets are being protected, et cetera, and creating a legitimate, well-qualified pool that has open access for competition. They are making sure that box is checked, but the actual hiring decision is being made by the hiring manager who is going to be supervising the work.

Mrs. EMERSON. But the hiring manager is only given a select number of people from the pool, even if all of them are equally qualified?

Mr. BERRY. Now here is where we would love to work with you on improving this. One of the things the President's Executive order—that we could do within the law and we are allowing—is, let's say you were applying for an accountant position and you didn't get the job for the accountant but you have gone through a very arduous process, you have competed, you are in the well-qualified pool. Right now you would have to start all over again. To alleviate that, what we have done to try to make it easier is within that department, if they are hiring other accountants, you don't have to start over. They can interview and hire from the well-qualified pool of accountants anywhere in Interior.

Now I asked the obvious question: If Transportation is hiring accountants, why can't they hire from that pool? The law prevents us from sharing between departments now. We would obviously support changing that to allow us to share those positions government-wide. Any company does this, we should do it too. Right now we have made it easier within departments; I would love to make it easier across the government.

Mrs. EMERSON. So what in the statute actually prevents it? What line? What does it say?

Mr. BERRY. We will get you the specifics, but it limits our authority to share those positions within the department, it says. And so we just essentially need to—we would have to change a word.

[The information follows:]

#### HIRING REFORM

We do not think there is a sufficient way to broadly interpret current statute to provide an authority for agencies to share competitive certificates across agencies with other appointing authorities. The authority to appoint employees lies with an agency head or with his or her designee.

During the earlier years of Civil Service, OPM (formerly the Civil Service Commission) was responsible for competitive examining within the Executive branch. Based on 5 U.S.C. 3317 and 3318, OPM certified individuals out to agencies for appointments within those agencies. That OPM authority has since been delegated to agencies through 5 U.S.C. 1104. Agencies are responsible and accountable for the appointments they make within their agencies. These appointments must be made in accordance with the merit system principles, veterans' preference and the statutory provisions regarding the proper order of making appointments. Executive Branch agencies have signed agreements with OPM that authorize them to appoint individuals to positions within their agencies using the rules, regulations, and processes that OPM would have used absent a delegation.

In September 2010, OPM transmitted to Congress a legislative proposal entitled the Federal Hiring Modernization Act of 2010, which, among other things, would have amended 5 U.S.C. 3317 to expressly permit agencies to share with each other the names and scores of candidates who have been assessed and found to be qualified. The other agencies could make selections from the same certificate for similar jobs for a period of 240 days, without having to post a new job announcement. This would reduce some of the time it takes agencies to fill jobs and would eliminate the need for applicants to submit multiple applications for the same types of jobs.

Mrs. EMERSON. Well, certainly for a position that is an accountant, an accountant is for the Interior Department or DOT, or whatever.

Mr. BERRY. I couldn't agree more. It would be a great common-sense advance. It would certainly reduce the frustration level of applicants because now they would have an opportunity to be considered across the government for those pools of jobs. So I think it would be a great step forward in terms of efficiency.

Mrs. EMERSON. Okay. I appreciate that. We may come back to that. Thanks.

Mr. Serrano.

Mr. SERRANO. Thank you so much.

#### INFORMATION TECHNOLOGY

Director Berry, you inherited several troubled IT systems when you came to OPM, including the Retirement Systems Modernization Program and the Consolidated Business Information System. In the fiscal year 2012 budget you propose to put both systems on hold to address and remediate issues with each system. We had a hearing 2 weeks ago about government IT, and OPM is now playing a bigger role in helping to get some of these systems back on track.

Are you working with OMB to address the problems in these systems.

Mr. BERRY. Absolutely, Mr. Serrano. It is one of our highest priorities. We also work very closely with OMB and Vivek Kundra there, who is the chief CIO, if you will, for the government. And I believe we are one of his cutting-edge practitioners in how to do IT acquisition. We have learned from the private sector here. We have met with CEOs who have advised us, avoid any RFP that is longer than 9 months; get away from the multi-year buys; go short; go for instant deliverables that you can turn on and bring it on in phases, as opposed to trying to do everything at once. And I think that is very wise counsel. And so we have been working in that direction, sir.

We are going to be overhauling USAJobs this fall. And we have been designing it in pieces, we have been testing it in pieces, and we will be turning it on in pieces. And the ultimate goal is to deliver success. I don't want to claim success before it happens, but we are on track, we are on schedule and on budget with that project. And so it is a good example of applying the new techniques to an IT acquisition. We are now taking that into retirement, into our accounting system, and the other IT acquisitions we will do, but that is sort of the approach we are taking, sir.

Mr. SERRANO. And what are your goals? Do you have a time by which you want things to run a certain way? And which way would you want them to go?

Mr. BERRY. Well, the first and the most important I think we can do is, one of the things we are again trying to lead by example on is setting a very tough performance standard for our employees and then asking them to step forward to meet it, and working closely with them in partnership to develop those goals so that there is good buy-in on the front, everybody understands what is being expected, but then people know they have to deliver.

#### RETIREMENT PROCESSING

So, for example, on the retirement processing, it is a very complicated, arduous process that is largely pen and paper right now and is going to be for many years to come. We can automate pieces of it, and that is what we are looking to do. So for example, where a calculation needs to be made, we can automate that calculation. And we are trying to electronically get all the data now. The good news is we have made some progress. Every applicant is now fully electronic. So all new hires, we won't run into this problem. For existing hires, we have reached about 3 to 4 years back of getting people who are eligible to retire. Our goal is everyone eligible to retire within 5 years will have their file fully automated, because if it is fully automated, it again increases the speed with which people can review documents, adjudicate them, and make sure people are getting the right calculation.

Mrs. EMERSON. Is it a matter of speed or is a matter of losing information? Was it that people who were around 20 years, 30 years, all of a sudden we didn't know they were around?

Mr. BERRY. RSM was killed just before I came into the job, the official acquisition, the contract that we had with a carrier. The best thing I would describe as why it died was they tried to take an off-the-shelf system and apply it to the Federal system, which doesn't have—each case is so unique. Let me just give you a hypothetical example. If you were a Federal employee and you worked at Commerce but you had military service and you were in the reserve and you served in Afghanistan, for the period of time that Congress will award a higher rate of pay for retirement, you get credit for those years that you were in a war zone in Afghanistan, in your case, but it doesn't necessarily apply to every action.

Mr. SERRANO. What do you mean to every action?

Mr. BERRY. For example, the treatment and formula that Congress has passed for Afghanistan is different from Iraq. And so our people adjudicating this have to go back and say, okay—and the days are assigned. It gets really sort of into details that you would be amazed. So they have to go back and verify, were they in the war zone during those days, and if they are, then they get a higher credit and a higher calculation. Well, there was no way the off-the-shelf system could go back in and say, okay, how do I handle this situation and that situation? And so how those cases are done now is we pull all that evidence together and we have a legal specialist who adjudicates those files and certifies that, yes, this employee worked at this period of time, they are eligible for this level of benefit, and then they apply the formula that applies to that unique person. But it is literally different for every employee, which is the problem. This is one, where together, if we could come up with—I know it would be too much to ask to expect Congress not to

award these unique benefits because I know that that political pressure is going to be there regardless of party, regardless of year. What I would love to do would be, wouldn't it be great if we could agree together on, let's agree on a basket of benefits and give you sort of a low, medium, high choice. You all could decide, okay, we want to award the high benefit to this one, or the low, but then we could get some sense of standardization. What happens is sort of with each event we end up with new rules, and that makes it really hard to administer. And so if maybe we could work together to sort of standardize this, we could have an easier life going forward.

#### MILITARY SERVICE CREDIT

Mr. SERRANO. Now there is a limit, right, X amount of years, of how much military time you can purchase, if you will?

Mr. BERRY. Yes. And I can get you that, sir, officially for the record.

[The information follows:]

#### MILITARY SERVICE CREDIT

In general, an individual cannot receive credit for any military service in his or her Civil Service Retirement System/Federal Employees Retirement System (CSRS/FERS) computation if they are receiving military retired pay (except if the retired pay is awarded on account of a service-connected disability or if the retirement is from a reserve component of the Armed Forces). However, the individual can elect to waive the military retired pay and make a deposit into the civil retirement system in order to have the military service added to his or her civilian service in computing the CSRS/FERS annuity. An individual may only make payments to capture service credit for military service after 1957, and deposit must be made prior to retirement.

Mr. SERRANO. Otherwise, Mr. Womack will purchase like 30 years or something, right?

Mr. WOMACK. Thirty years, 5 months and 19 days.

Mr. SERRANO. Which means that immediately he would be in the Federal Government much longer than I. I understand that.

#### RETIREMENT PROCESSING

So just finishing up on this issue, I mean, I even know of some folks who have considered retirement but won't retire because their paperwork is not in order for them to retire, they would be missing out on many years. When can this be in order? Or are there some people that have been lost through the system and can never be recovered, or their information cannot be recovered?

Mr. BERRY. Well, we definitely don't want to lose anybody; I mean, that would be a failure of our fiduciary responsibility. We do encourage employees who are thinking about retirement, we try to work with employees and agencies long in advance of their actual retirement date—sometimes even a year ahead—to say let's make sure we have copies of all of your file. Work with your HR professional in your agency—see, the files aren't with us, they are with the agencies. And let's take your Interior example. If you are at Interior, you would work with the Interior people to make sure you have gotten all your paperwork right. If you had military service, you would go back to DOD and you would get that paperwork in order.

When we have a full file, then we can adjudicate that file very quickly, where one of our problems, our biggest problems of delay is, we will receive a file from an agency and it will be missing the military piece or it will be missing—you had worked at FAA before you came to Interior and they won't have the FAA piece of paper. Well then we have to work to get that, and that obviously takes time as we try to get that.

So we encourage retirees—it is much easier for them, they know their record, they know where they were—to go back and get that all pulled together for us. And then the speed with which their file can be adjudicated is much, much faster. So we try to educate both employees who are coming into retirement as well as the agency HR officials to get those records complete because then we can adjudicate quickly.

Mr. SERRANO. Okay. Well, thank you, Madam Chair. I certainly encourage you to continue to move on this, and certainly in the area of veterans benefits. We hear a lot about “support of our troops.” Well, I am a big believer that the support is not only when they are in uniform, it is later on as a national thank you for their service.

Mr. BERRY. I couldn't agree more, sir. Our strategic plan, one of its four goals, is honoring service. And I believe every day, when we are processing retirements, we are reflecting how the American taxpayers are thanking people for their service, both in uniform and in the civil service, for honoring their country. And so it is up to us to make sure we give them respectful treatment and fast, efficient treatment as well.

Mr. SERRANO. Thank you.

Mrs. EMERSON. Thank you.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Madam Chair.

Good to see you, sir. You have kind of touched on this, but I just want to make sure that I got it right. And you talked about some of the issues. So is it 46,000 Federal retirees who basically will receive only about 60 percent of their annuity payments through errors; is that correct?

Mr. BERRY. No. I didn't mean to imply that, sir.

What we do, because we know it takes a while to get these files put together to make the correct adjudication, is if someone comes in, we pay what is called a partial payment. And now, because we know, because of the backlog, that we have a longer period of time to get these things adjudicated, we are paying 95 percent of what we estimate their payment would be. So I don't want to give the impression to any of the members of the committee that you are sitting there not getting paid in your retirement while we are waiting to adjudicate the file or waiting to get the paperwork from the FAA. You are getting your monthly check right from the beginning, and that is what we try to do, and up to what we estimate to be 95 percent of what you would get through the paperwork we have.

The only people that are complicated in that are folks who have court orders. Let's say, for example, a divorce, where a judge has said 50 percent of your retirement needs to go to your former spouse. In that case, you might be expecting X payment. We have to honor the court order and reduce—we can't pay you 90 percent

of your whole payment, we have to factor the court order in. And oftentimes that leads to tension, as you can imagine, resolving those cases. Many of them end up on your desks and we work those out with you. But I do want to explain that because it is an important distinction.

Mr. DIAZ-BALART. All right. Let me ask you then—so I got that; now how long does it usually take then to finalize the process so people can actually get their real number as opposed to the estimated 95 percent? In both cases, in the cases of the regular folks, and then how long does it usually take to adjudicate the cases where there are more complicated circumstances? And I am sure there can't be a one set answer for that, but roughly.

Mr. BERRY. We have 100,000 cases a year. Three to six months. Here it is. 100,000 cases a year. Right now we have a 45,000 case backlog, which is what we are wrestling with. And it takes, the average case—here, let me see. It might be better, if it would be okay for the record, to get you the details on the specifics of the average case. And we can break down sort of the entire case so you will be able to see the numbers of each one.

[The information follows:]

#### RETIREMENT PROCESSING

Currently, the average case will be processed fully in 117 days. If the case involves a disability, court order, service credit or survivor benefit, the longest it will take to fully process the case is 141 days.

But we usually have sort of about a 10,000 to 20,000 case carry-over; that is sort of an average backlog. The 45,000 one now is sort of a function of increased postal retirements, getting ready for the Defense Department retirements under base closure that are coming. And some of what we are seeing is an increased retirement rate. Just in the first third of the year we are seeing about a 15 percent increase in retirements. And so that is what is driving this.

Mr. DIAZ-BALART. Thank you, Madam Chair.

Mrs. EMERSON. Ms. Lee.

#### DIVERSITY

Ms. LEE. Thank you very much. Good afternoon. Thank you for being here.

Let me reference your testimony where you indicated that, as directed by the President, you are spearheading the government-wide initiative to reform and recruit and hire the best and the brightest workforce. Of course we all want to see, as you said, OPM to become a model employer.

In the President's directive, in the memo, "Improving the Federal Recruitment and Hiring Process," was diversity an issue? And in terms of diversity, if it was included as one of the best and the brightest and diverse workforce, how you are recruiting people of color into the workforce? Do you have a plan to do that? And if you have the information in terms of what the demographics look like or the characteristics of your workforce look like now, I would like to know what it looks like.

Mr. BERRY. We definitely have a plan; it is one of my highest priorities. My Deputy Director, Christine Griffin, we recruited away from the EEOC. She is a lawyer, an attorney, one of the highest



ranking people with a disability in the Federal Government, along with Secretary Shinseki and others. She is a veteran of the United States and a phenomenal leader on this issue. She has been leading a working group across the government and agencies on this specifically. We have a working group on Hispanic employment, we have a working group on diversity throughout the government, and also people with disabilities.

Ms. LEE. How about African American, Latino and Native American?

Mr. BERRY. African American is included, and all of the groups are a part of this focus.

The good news is—and it is not great news, but it is good news, at least we are pointing in the right direction, let me give you some of the numbers. The numbers of minorities in the Federal workforce increased by 5 percent in 2010, or essentially 31,000 more employees. The Federal workforce is 17.7 percent black, 8 percent Hispanic, 5.6 percent Asian Pacific Island, 1.8 percent American Indian, and 66 percent white. Minorities constituted 33.8 percent, if you will, of the workforce.

Now we also are following and tracking senior pay in SES because I think it is important not just to look at overall hires. The number of minorities at senior pay levels increased 9.4 percent between 2009 and 2010; it went from 3,700 to over 4,000. Women represent 31.2 percent of senior-level positions. We can do better there. But again, we had an improvement. The proportion of women and minorities in GS Grades 13 through 15, the more senior-rank grades just before the SES, increased by 7.9 percent, and the SES by the 9.4. So you can see some good early starts, but now how do we keep that going? And we are looking at this from sort of a three-pronged approach. One is, we have stood up—and we are asking your support to keep funding to allow us to continue going—an Office of Diversity and Inclusion at OPM. We believe it ought to be not just assigned to EEO or HR, we have to merge and marry and break down those silos so that people see diversity as an asset.

I will give you a good example. I was talking with a FEMA Administrator in their planning for Katrina, and he said had we had a more diverse workforce, our plans, quite frankly, for Katrina would have been better. We had not thought through the impact of, in an emergency situation, sending all white officers into African American communities, knocking on the door saying you must leave your homes. We did not have the right mix of employees to think that through nor to implement it effectively in the event of an emergency. And so diversity is powerful not just in—it needs to pervade everything we do because it will produce better results at the end of the day.

So we are looking at this from student hiring, and our Office of Diversity is working with our Office of Student Outreach and Recruitment through minority institutions. And we are also looking at this from the SES. We have stood up an SES office at OPM that had been disbanded. And the three of them are carefully coordinating and tracking similar data. So this is one we are going to look at from every angle, recruitment, retention, training, and advancement.

So my commitment to you is we are not taking our eye off this ball just because we have had some good early progress in the first year. We are going to stay at this and hope it continues to get better.

Ms. LEE. Thank you very much. I appreciate that response and what you are doing because I ask this question of all of the agency heads; and some of the answers are very vague, but it sounds like you know what you are doing.

Mr. BERRY. Trying very hard.

Ms. LEE. And on track. Maybe you need to train some of these other agencies. Thank you very much.

Mr. BERRY. I did just speak this week to HR professionals and CHCOs and EEO. There was a convention up at the Wardman Park, and I was a keynote up there about doing that training, just what you talked about.

Ms. LEE. Good, thank you.

Mr. SERRANO. I want you to be aware that you got praise about what you are doing from Ms. Lee and you got praise from the chairwoman about the budget. That is pretty rare around here.

Mrs. EMERSON. How did I praise on the budget?

Mr. SERRANO. He said he had 1.8 percent in one of the areas—

Mrs. EMERSON. No, how they administered the FEHBP. They did a fabulous job on administering that.

Mr. SERRANO. Take it as praise.

Mrs. EMERSON. Praise is praise.

Mr. Womack.

Mr. WOMACK. Thank you, Madam Chairwoman. I will try to do my part to contribute to the love affair going on here today.

Mr. Berry, you have an impressive resume. I give you credit for your longtime service to our country.

As I looked at your resume, or your bio, I noted that perhaps the most qualifying aspect of your background must have been when you were Director of the National Zoo because my experience as a Mayor for 12 years in dealing in the HR arena, that is precisely what that arena is, it looks a lot like a zoo. I want to congratulate you for the work that you have done to streamline your processes to make what appears to be your organization much more user friendly and for your work and having come from a military background and knowing the real difficulty in background investigations and its relevance to what we do here in Washington. You are to be commended for that.

#### WELLNESS

The other thing that I noticed in your testimony was in regard to wellness programs, and I want to kind of drill down on that for just a moment because I am a huge believer that in this debate that we have—and have had now for quite a while—about health care and health care reform, that we have said some things and we have done some things, but we haven't done enough to put some of that emphasis back on the people that work for us. And look, the private sector is doing this stuff and they are doing it with great results. And so I want to congratulate you for your wellness program, and I want to know a little bit more about it.

Mr. BERRY. Well, Mr. Womack, thank you, I couldn't agree more.

Every CEO I mentioned, when you ask them, what do you think is the low-hanging fruit where we can save taxpayers money on this, and every one of them, first on the agenda is what you just described, wellness. They say it has produced bigger savings over the long run than they even anticipated. Now the hard part for an annual budgeting process is people want to see results in 1 year. And all of them will say you are not going to see it in year one, you won't see it in year two, but by four and five it starts to show up in a major way.

We brought on, in our little campus—we sit next to Interior Department and the General Services Administration, so we thought, let's work together and we hired a wellness company that has come in. We offer everything from—we have a Weight Watchers class that is fully subscribed; we have weight training, we have exercise classes. All of the screenings are free.

I do a monthly town hall meeting. And everything is religiously private and only the employee knows, so I don't get to see the data. But as a way to encourage the employees I have shared my data as saying you got to do this because it is free. And what I was so impressed with was the counselors. I wish my primary care doctor had spent as much time with me as this counselor did. They went through my results for 45 minutes. And I had been ignoring my triglycerides, I was 5 points above the goal. But the lady who was talking with me found out that my dad had had heart issues. And she said, because of your genetic predisposition, do you realize that those 5 points don't sound like much—my doctor had always just said, oh, it is five points—it is a 20 percent higher risk rate for a heart attack in your category; you have to lose 10 more pounds. So I had taken off 10 pounds already. I said, another 10? And I am going to do it, I am on my way.

And the interesting thing is this dialogue, what is so exciting to me, Mr. Womack, is people in the elevator—it is so invigorating to have people who are saying to me, Mr. Berry, I lost 14 pounds. Now people are talking about their weight efforts and commenting what they are carrying on the elevator, oh, shouldn't be doing those wings, got to get to the salad bar more. That is the stuff that is going to produce the millions—and if you can imagine, transferred out, billions of dollars in savings. This will have a huge impact in early cancer diagnosis, earlier treatments, healthier employees, and it is going to translate into direct savings for FEHBP, which is big dollars, over \$11 billion a year. So you can imagine, if we can produce just 5 to 10 percent, we are talking hundreds of millions of dollars.

So it is one I am passionate about. I appreciate your interest and focus and experience on this and look forward to your counsel as to how we can do better.

Mr. WOMACK. Well, I won't use too much of my time to brag on the city where I came from, but we established a wellness center for our seniors because we recognized we had a growing senior population and we built a 55,000 square-foot facility with warm water therapy and light pools and those kinds of things.

Mr. BERRY. Great.

Mr. WOMACK. We charged a very nominal fee just so we could know who is there and have a little information on them. The first

year, Madam Chairwoman, we thought we would have 1,000 members in this organization, and we had 1,500 members in the first week, and now over 14,000 members, and average daily use of between 1,000 and 1,500 people in this facility in a small town in northwest Arkansas.

What you said a moment ago is correct about the savings on the health care side of the house, but here is the lost information, and this is what I want everybody to be mindful of, particularly as it concerns our Federal workforce. It is also a productivity issue.

Mr. BERRY. Absolutely.

Mr. WOMACK. And so when we have a healthier person, they are not going to be on sick leave as much, they are not going to be hospitalized, and they are not going to have to be resorting to all these tests and everything, medical procedures, and what have you, that come with a bad lifestyle. So from a control of health care costs standpoint and also from a productivity standpoint, it has worked where I was and it will work here.

Are you getting any pushback? In other words, are any of these programs mandatory, so to speak, or being forced on people? Are there any requirements? How are you going through that legal—

Mr. BERRY. Totally voluntary now, sir. And what we are finding very much tracks what we have heard from the private sector. It is interesting, when I met with the CEOs they said, well, there are two ways to do this, you can just make it totally voluntary or you can incentivize. They all encouraged us, there is enough data to show you you need to incentivize it because totally voluntary you are going to end up with about 20 to 30 percent participation rate. Well, now we are a year into this, guess what our participation rate is, without any incentive, just totally voluntary? It is like 24 percent. So we are right between where they told us we would be.

Where the private sector is making the big savings is their percentage rates run 80 to 90 percent participation in these programs. Well, how do they do it? They do it by incentivizing. So they will either lower a copayment, or you get a rebate or things like that. Each company will take an entirely different approach. I think the future of this—and it will be interesting to work, especially with your experience on this, and we would really welcome your ideas—how can we move from the 30 percent to the 80 percent? And I don't have a specific proposal for you other than to know we would have a lot more savings if we had 80 percent participation.

None of them recommended to make it mandatory. They all said you can reach the 80, 90 percent level if you do the right incentive structure. So maybe if we could work together, we could figure out how to do that.

Mr. WOMACK. I think it is a way forward, and I would certainly recommend that to the agencies. I do appreciate your testimony this morning and your leadership in the OPM.

I yield back, Madam Chairwoman.

Mrs. EMERSON. Perhaps we should have a Biggest Loser contest or something.

I am going to shift away from this discussion, given the fact that my doctor just told me to lose 10 pounds and I just can't seem to stay away from good food. But it is impressive what you are doing. And peer pressure is terrific, but certainly making it easy for some-

one to participate is even, I think, more important, and it is wonderful.

As far as what Mr. Womack was doing with the senior center, I find that sometimes it takes a little bit to get some of our seniors doing it, but once they do, then everybody wants to do it.

Mr. BERRY. Well, and it is also making it easier. So like in our cafeteria, for example, I went down yesterday, it is so easy, they have a Weight Watchers option. And it is already calorie counted for you—salmon, vegetables—everything is proportioned and so you don't have to do any of the thinking. And so you say, okay, give me the Weight Watcher option. What we have done, our salad bar used to be a pretty lame salad bar, now we have one of the best salad bars in the city, and it is a really good one. People are going to it because it is more interesting. So sometimes just making it more easily available is part of the solution.

Mrs. EMERSON. And Weight Watchers is a good thing; we will talk to the Mayor of Capitol Hill about that. But in the meantime, if you can invite our subcommittee down for lunch, that might be a nice thing to do.

#### PAY FOR PERFORMANCE

All right. I want to talk a little bit about Pay for Performance and step increases if we could. In 2009, only 737 out of more than 1.2 million employees were denied a regularly scheduled step increase and accompanying raise because of poor performance. That equates to about a, what, .06 denial rate, or less than half of 1 percent, which, despite being low, is still the highest rate in recent years. So just a couple of questions with regard to that.

In your opinion, under the current Federal pay system, are Federal pay and promotions correlated with performance? What does OPM do to monitor or give guidance to agencies on awarding performance pay increases? And do you think managers actually have the flexibility or the range of carrots and sticks to improve employee performance? And are there consequences at all for poor performance, not only for the employee, but for the manager?

Mr. BERRY. Let me begin by saying, we can do a lot better. I would not sit here and tell any of you that we have nailed performance management in the Federal Government. We have not. Our managers are too timid. We do not have regular—a good performance system would be managers regularly sitting down at least quarterly and having a very straightforward conversation with employees about what is being expected and is it happening? Right now it is done more on an annual basis, and it is given short shift, it is not given the attention it deserves. We are going to be working very hard this year to change that.

We have created a working group of the Chief Human Capital Officers Council on how we can do a better job on having managers and employees pay more attention, and use the authority—you give us broad authority in performance management, both to incentivize and to discipline. And quite frankly, the Federal Government has not done a good job in exercising the authority you have given us. I am going to try this year—that is one of my highest priorities this year—to move the needle on that. I am doing it with my own employees by example, but we are also going to do it across the gov-

ernment. So this CHCO Council is working on that. We are having it chaired by two career senior executives so that it is not seen as a political gotcha game, so that it will be something that can be professionally applied. We are working with the Partnership Council, with the unions to get buy-in to this.

Now more specifically to your question on the within grades. First, I agree we can do a much better job on performance, and we are going to try it, and I hope to have some really good results to bring back to you. This time next year I hope to be able to describe just what we are doing that is going to hold people more accountable. And quite frankly, if someone is not doing the job, we ought to fire them. I mean, we ought to give them a chance to correct—and obviously, if we are not giving them the right tools or training, then we ought to do that, but if after all of that they are still not doing the job, get rid of them. And we can get rid of them in the Federal Government; it is just that managers have not been doing that. And we are going to try to work to create a more rigorous system to apply that principle.

#### WITHIN GRADE INCREASES

Within grades, now it is kind of interesting. Let's discuss within grades for a second. Every company, private or public, has an approach of sort of a career advancement trajectory. What within grades do is there are 10 steps that take you 18 years to go through. And the principle that sort of both the private sector and the public sector use in terms of HR management is, you want to advance people to the midpoint of their range relatively quickly as a way to keep them because you are making a huge investment up front in training. And a lot of times what happens is if you train somebody, now another of your competitors will come in and steal them away, they save the money of not having to train them. So if you are not advancing people up front to sort of a midpoint of their career, then it is more slowly.

And so how it works in the Federal Government, building on that model, is for the first third of your career you get a step increase, which is 3 percent of your pay annually. For the second third of your career you get it every other year. For the third, the last percentage of your career you get it every 3 years. And what that does is it creates a natural trajectory if—and you only can be awarded this if you have acceptable performance. So you can see where we can—that is broadly defined. So through the performance management—and I think our unions are going to work with us on this—there has to be a natural trajectory.

So if you come in as a GS-12, step 1, it takes 18 years to get to step 10 just through a normal trajectory of that 1-year, 2-year, 3-year approach, and it is in 3 percent, a step equals 3 percent. We can, I think, through performance management, better define what acceptable performance is to ensure that if you are not performing well, a big stick can be we can withhold your within grade.

So we are going to be looking at that as part of this equation, but that gives you a little bit of an example.

Within grades aren't designed to really be performance pay, per se. They are designed to create a career trajectory that retains the training that you are making in that person over an 18-year period.

So there are performance elements—bonuses, awards and things like that—that are purely performance-based, but the within grades weren't ever designed in the law to be a pure performance base. There is a performance element, but it is really to create a career trajectory.

If that is a long answer, I apologize.

PERFORMANCE MANAGEMENT

Mrs. EMERSON. No, I understand. I mean, we all get caught up. Having worked many years in the private sector myself, in many cases I saw people who should have been fired be given promotions just to shovel them out of specific departments and the like. And I dare say I have seen that, having worked in my very first job for the Federal Government, but that was more years ago than I want to say.

Another thing that is frustrating to me is the process by which one would sever the relationship because I know that there are people, for example, who are involved with the Bernie Madoff scandal of the Securities and Exchange Commission who have not yet been terminated because of adjudication and all sorts of things.

I mean, we are not talking about some minor screw-up, they are talking about major lives that were ruined by people not being able to perform their jobs. And I don't understand why it takes so long for them to be terminated.

Mr. BERRY. As I say, we have the ability in the Federal Government right now to do something called a performance improvement plan. So if a manager has an employee like that, you can as the manager put 30, 60, 90 days and say this is what you are doing, this is what I want, you have X days to get there, you don't, you are fired. It can be that straightforward. And our managers don't exercise that.

Mrs. EMERSON. And they are not held accountable either; correct?

Mr. BERRY. It is a historic problem that we are going to wrestle with. But I believe that if we go after that it will have a huge productivity increase for the government, as Mr. Womack was mentioning. And it will serve the taxpayer better. And quite frankly, our labor unions and our employees will be grateful, because as a Federal manager I have removed people, and the people who have come back to thank me when I removed somebody have been their co-workers because they said thank God somebody actually had the backbone to deal with the situation. We have been carrying this deadwood. We have been doing their job for them. You weren't happy to come to work. Getting them out, I am happy to come to my job now.

And it is for the credibility of our managers we have got to be serious about this, and our employees want it. It shows up in our employee surveys. One of the highest things that people feel is we do not discipline poor performers. And it is our workers are telling us that. They feel it is unfair, and they are right. And we need to fix it. So we are going to go after it full force.

Mrs. EMERSON. And that hurts morale.

Mr. Serrano.

## WELLNESS

Mr. SERRANO. Before I get to a couple of questions let me just say I was really very pleased to hear Mr. Womack speak of wellness. For a while in government it has been seen as a perk. If you have any exercise facility within a Federal place, that is a perk, even if people pay to join it.

But if you have a person come in and tell you about weight or about heart disease or whatever, it is a perk. And yet we have learned from many countries throughout the world, even some we don't like very much, that if you put up front wellness as an issue, if you put up front preventive medicine as an issue, at the end of the day you don't have the situation we have in this country. I was so pleased to hear that.

Mr. WOMACK. If the gentleman would yield on the subject, it says a lot about the employers. The employer demonstrates a concern for his or her employees' health. Because there is only one of those people, and if their health is in jeopardy, I think it is the employer's responsibility, the leader's responsibility to help that person look for success. So it is productivity. It is a sense of compassion for the well-being of the individual, and of course it is the cost of government. So it is all relative. And if you have been on our side of the table from the executive branch, you get that pretty quickly. The private sector get its completely.

Mr. SERRANO. But my praise with your comments was the fact that you don't hear that often enough, that you usually hear, that is a perk. Let these people go after work to their own place. Don't do it at the work site. Don't have any assistance. That is such a mistake.

So I hope we hear more of this. And I think that there is something happening in Congress that could help with that area, is that more and more of the people coming to Congress for some reason in the last 10 years, I have noticed, are people who are physically active and exercise. And you will see it in a couple of weeks when we have our annual race for charity when more and more and more House teams get together and run and participate. So that is a good thing.

## VETERANS EMPLOYMENT INITIATIVE

Tell me about the Veterans Employment Initiative. You know, I have always felt there was a contradiction in this country in some areas, and that is you have people who are very gung-ho about our involvement in military actions, but are not supportive when the troops come home. And I have seen these bumper stickers that say "support the troops" and I wish you could add to that, yes, for the next 20 years, for the next 30 years, for all the time it needs to help them. I am the kind of guy you see voting against the military action and then voting for whatever they need when they come home. Whatever they need when they come home. Of course, it is not the troops that I have a problem with, it is the people who decided to send them there or the action itself.

So tell me about the initiative and tell me how closely you are working with the Veterans Administration.



Mr. BERRY. Well, Mr. Serrano, thank you for your leadership on so many veterans issues. You have been a stalwart over so many years. The President's Executive order I have to say is the thing if you were to ask me for my 2-year term what am I most proud of, it would be having recommended that Executive order to the President.

My father served in the 1st Division in Guadalcanal, and my name I earned from my uncle who was killed in the Pacific, my dad's brother. And so this is a close personal issue for me and I look at it as a way to honor the memory of my father.

The first thing I tackled was looking at veterans—the unemployment rate for returning vets right now from Iraq and Afghanistan is amongst the highest in the country. And knowing the difficult economic times they were coming back to and the competition they faced and we looked at it, and DOD and VA do a great job and so does OPM. Almost 30 percent of our new hires are vets. So we are in the highest category. But many civilian agencies I looked at weren't really carrying their weight. They were not doing a good job. Two to 5 percent of their hires were vets.

So we went to the President and made him aware of this and he said we have got to get everybody to row in the same direction. And he created an Executive order and a council that is chaired by Secretary Shinseki and Secretary Solis, so we have both Labor and VA as the heads and then I am the COO of the council. And we have met four times. What they do is we get every agency together, it is very high level, and people are tracked on their performance. For the first year we were just getting it set up and we just told everybody to do better. The good news is that every agency but two did better.

This year, not wanting to just count on that, we set up an accountability model to hold everybody in place. So if you were in the level of DOD, VA and OPM, above 25 percent in your hires, stay there. You are doing great, keep it up. If you are in the middle category, sort of 10 to 20 percent, do an additional 2 to 3 percent. If you are below 10 percent, that is kind of like the Weight Watchers thing, you have to lose some more weight, you have got to run faster, you have got to do 3 to 5 percent. And so for the lower performers we are expecting them to hire more and to move up faster.

And so every agency now has and knows exactly where they fall. I sit on the President's management council with Jeff Zients at OMB; all of the deputy secretaries come in addition to this council. Monthly. I share the data with every agency, here is where you are. You are either on track or off. It is regular, religious attention. And we are not going to take our eye off of this.

The first year results, like I said, 2,000 more vets hired across the government. Even though we hired less Federal employees it was an impressive step to get this out of the box.

The other thing, lastly, is that we are working with the VSOs, the veteran service organizations, the Legion, the VFW, the Student Vets are in sync with us and we are developing some innovative approaches. What we are looking at is jobs in the military that ought to be easily transferable to the civilian side.

Med techs. We have a desperate need for nurses. We can't hire enough. What if we train med techs to become nurses and guar-

antee them a job in the Federal Government when they come back. Now we are moving beyond from just tracking the data to looking how can we take jobs that are easily transferable and give them the training to do it.

Mr. SERRANO. Well, again, I think that that is a great initiative and a great approach and you should be proud of that Executive order because it is a good one.

Let me take you to a couple of places now where we would probably all like to go right now, to the American Territories.

Mr. BERRY. I volunteer, sir.

Mrs. EMERSON. Let's all go to Puerto Rico. Sounds awesome today.

#### RECRUITMENT IN THE TERRITORIES

Mr. SERRANO. So both in the area of hiring diversity, of hiring minorities, the Northern Mariana Islands, Guam, Samoa the Virgin Islands, Puerto Rico fit that category well. But also just in the area that I have always discussed with you and other agencies that they are members of our country. They live in Territories. They don't live in States, but they should be included.

And I call your attention to the fact that sometimes it works. For example, NASA has quite successfully recruited from the University of Puerto Rico at Mayaguez, my hometown, for many years now. In fact proudly we say that whenever a rocket goes up there are a lot of folks from Mayaguez on the ground that made it possible. It works for them. It should continue to work for the rest of the agencies. What are we doing to recruit?

Mr. BERRY. Well, we are doing a lot but we have to stay with it. It is one of these things it is not going to be a one-shot effort. I was very pleased and thank you for your support and helping us get the word out in Puerto Rico. The hiring event we did in last October there it was very well subscribed. And we did get a number of jobs, at least 36 that I know of, but it may end up being more now.

But the more important thing was in doing that event we also trained people on how to apply for other Federal jobs so they had a good learning that will I believe will increase their probability of success in future job searches. We need to do that regularly. We did that jointly with NASA, DOD and VA. And we are going to continue to look at how we can continue to outreach effectively through those. I think there are very powerful ways to do.

The other thing we have done specifically I think will help the Territories. We have included them on this specific focus area. The diversity data I was talking with Ms. Lee about. The Hispanic community is underrepresented relative to its numbers in the civilian labor force. It is probably the largest gap, if you will, of our diversity categories right now, 8 percent versus about 14 to 15 in the civilian side. And so we are at 8 in the Feds. There might be a lot of reasons for that. So we have got to make sure that our access points are open and we are reaching out in the right places and including the Territories in this.

We have created a Council on Federal Employment there that is chaired by my Chief of Staff, Liz Montoya and John Sepulveda, who is the H.R. Director at the VA, who understands this well, and

they have an agency group of 65 people across the government that are developing student outreach, training, mentorship, on boarding, the whole 9 yards on this on how to do better by outreaching to Latinos and Latinas and people from the Territories. And I think this is going to bear fruit. There is a lot of great brain power going on this and some very creative, initiative approaches to this that are going to build much more than the annual hiring fair. It is going to be an ongoing more consistent, religious approach that will get this into practice.

Mr. SERRANO. Let me say this, even in that issue there is a disconnect. We send dollars to the colleges throughout this country and then we recruit. Well, we send dollars, not equal shares, to the Territories and then traditionally we don't recruit in those universities. So even if you just are talking about, you know—I cannot believe I'm saying this—what the taxpayer deserves, if you invest, then go recruit some place. But I thank you for your efforts.

Mr. BERRY. Mr. Serrano, if I could, one closing point, and it circles back to your first question. Our effort to hire vets is also going to help on each one of these categories. Every one of those categories in the diversity is well represented in the military. They know that through the voluntary workforce.

We have already invested billions in training in these people. They are great leaders. They are great assets. I use the vet to be "valued, experienced and trained." We would be darn fools not to take advantage of this and by doing it not only we will get great skilled people but we will also increase our diversity numbers.

Mrs. EMERSON. Thank you, Mr. Serrano.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. I don't know if I could read anything into when Mr. Serrano was talking about people being out of shape. He was looking in this direction.

Mrs. EMERSON. I am the only one out of shape up here.

Mr. DIAZ-BALART. Well, Madam Chairman, this is not all muscle, trust me. Years of working on that.

Actually still talking a little about aerospace—

Mr. SERRANO. He is still a great baseball player.

#### NASA WORKFORCE

Mr. DIAZ-BALART [continuing]. There are obviously going to be a lot of retirements because of NASA and the space shuttle. I know that you have been looking at that and you have been very proactive. Can you talk about how it is going and what you are looking at, please?

Mr. BERRY. I am also very excited. I am finally going to get to see a shuttle launch. I am going to go down with Secretary LaHood and NASA Administrator Bolden next week to see the shuttle launch. Hopefully I should say, if the weather and everything cooperates.

We are committed. Obviously there is going to be a major transition in this program and just like we did with Base Closure and Realignment and everything else, these are great employees. They have served their Nation, they are highly skilled, many of them engineers.

Mr. DIAZ-BALART. Literally rocket scientists.

Mr. BERRY. Literally. And we need to take full advantage of them. I am working with Administrator Bolden and Lori Garver, the Deputy. We have issued guidance and encouraged agencies and we are going to be working to hire these folks and to provide them opportunity and to give them every tool in our book that we can do to help them. And so my commitment to you is that we look forward to continuing to work on this and provide priority focus until we have them in good jobs. And to do everything we can to help. And so I am very open to suggestions or other ideas of how we can help in that kind of transition. Because like you say they are the best and the brightest and we need to keep them.

Mr. DIAZ-BALART. Thank you.

Mrs. EMERSON. Ms. Lee.

#### NURSING WORKFORCE

Ms. LEE. Thank you very much. You mentioned, Mr. Berry, the need for nurses, the nurse shortage, yet nurses are telling me they can't find jobs. We had a hearing last year—

Mr. BERRY. Send them to me. I will hire them. Let me tell you, we are having such a hard time, Mrs. Lee, that I have issued—we only do this in categories that every one of our attempts to try to solicit hires have failed so badly and our need is so great that we do something called direct hire authority, that I have given that authority to any agency in the Federal Government, that if they can hire a nurse directly they don't have to compete the position. So as long as they are certified, they can do the job, they can be hired immediately.

Ms. LEE. There are several organizations who represent nurses who have testified and indicated that they cannot find jobs for nurses in those who have just graduated from nursing school.

Mr. BERRY. It might require people to move obviously. In other words, in some areas they might not find it in the location they want, but we have got jobs for them. And they are well-paying jobs, they are in great places, they can work with our VA hospitals, our HHS hires. The nursing need is severe across the government.

The other category in desperate trouble is veterinarians. We are not competitive in that field. So this is a tough area, and so like I say, that is another direct hire thing that I have given out: Find one, hire them.

Ms. LEE. Okay, I am going to go back and have some more discussions on this. Appreciate that.

#### HIRING AND THE DIGITAL DIVIDE

Let me just ask you in terms of in the process of streamlining and modernizing the processes at OPM, have you taken into account the whole issue of the digital divide and how when people—I know many of our communities still, people of color, seniors, don't have access to computers. How do you apply for a job if you don't have access to a computer or do you have a variety of ways that you can do it?

Mr. BERRY. There definitely are a variety of ways and we do try to work, you know, not only with sort of traditional methods, we work with a lot of the retirement groups who help us get word out and work with that. But also sort of our libraries and other folks

who are great at making computers available so that people can come in and apply and get on to USAJobs and other things.

But we also are trying to help in sort of a—good case in point is I opened at OPM this year an office aimed at veterans, veterans hiring, that had all the specialized disability equipment so that sometimes it is not only a question of the digital divide. Even if they have access to equipment, it does not accommodate a disability. And so working with DOD, we got all the specialized equipment. So now vets with disabilities can come in and use that equipment. We are making that available to any agency on a space available basis. So we try to help in every way we can to make it fully accessible, you know, to as many people as possible.

Ms. LEE. It is not apply only through the web? I mean through the Internet?

Mr. BERRY. That is clearly the primary mechanism now, but it is not the only way. You can come in other ways.

Ms. LEE. If I wanted to apply for a job and did not have a computer, no library nearby, which is the case in many communities—

Mr. BERRY. You can use paper.

Ms. LEE. Do it the old-fashioned way still. As long as that option is there. So many private employers now won't even accept an application the old-fashioned way, and it is a barrier right there that excludes so many people. You still don't have for whatever reason access.

Mr. BERRY. My staff informs me that you can still do the old paper-pencil.

Ms. LEE. Thank you.

Mrs. EMERSON. We have such a slog of votes that there is no way—slog? We will be over on the floor for 2 hours almost. We will certainly not make you wait for us. And the only other question I just wanted to ask you briefly was with regard to the your request to hire an environmental manager. Don't you have somebody who already does that now?

Mr. BERRY. I'm sorry?

Mrs. EMERSON. I think there is a request here, let me find it. \$100,000 for an environmental manager who is going to be responsible for ensuring that OPM is in compliance with all major environmental laws and regulations. I am assuming you already have somebody who does that.

Mr. BERRY. This is part of the Greening the Government Initiative that we are looking to make sure we can step up in a full way so that on everything we do, whether it be paper purchasing, our fleet management, our energy use, I believe it is an investment that will produce, just like the Wellness Initiative, significant savings. Because, for example, just on electricity alone, that person should hopefully pay for their job three times over if they help us to design and take advantage of all of the new technologies and energy monitoring and management systems that are out there. They have gotten very sophisticated.

And the reason that this is a specific request is this has become a specialty profession. It used to be okay, we are going to buy recycled paper. Now they need to have an engineering understanding to look at energy flow and water flow and other things, and that

is where this is generated from. I believe it is a request that will produce the savings that will more than pay for itself in the years ahead.

Mrs. EMERSON. It is with skepticism that I will close the hearing on that note. It was a wonderful hearing and you did a great job and your team does as well. And I think it is not always easy to be a Federal employee because they get bludgeoned by so many and it is hard work, and I thank you very much for your contribution.

Mr. BERRY. Thank you, Madam Chair, I appreciate you and it is an honor to be with you today.

[The information follows:]

Financial Services and General Government Subcommittee  
Hearing on the Office of Personnel Management FY 2012 Budget

**Questions for the Record Submitted by Chairwoman Jo Ann Emerson**

RETIREMENT SYSTEMS MODERNIZATION (RSM)

Ms. EMERSON: In August of last year, OMB identified your Retirement Modernization Project as “high-risk” and in need of more scrutiny. GAO has done several reviews of this troubled project over the years and made many recommendations to improve its execution. OPM requested \$1.5 million in fiscal year 2011 to develop a retirement calculator, but no funds are requested for the project in fiscal year 2012. What is the status of the project today?

**Mr. BERRY: The Retirement Systems Modernization (RSM) program has been cancelled as a formal development project. Efforts to automate the retirement system are continuing with a “back to the basics” approach starting with incremental changes that can be piloted before obligating large amounts of resources. Funding will be used to continue imaging and scanning of incoming retirement records, upgrades to existing retirement systems, and other small-scale enhancements to retirement systems (i.e. on-line retirement application).**

Ms. EMERSON: How close is the retirement calculator to completion?

**Mr. BERRY: The retirement calculator was completed as of December 2010.**

Ms. EMERSON: How was the decision made to halt this program and request no funding for RSM in fiscal year 2012?

**Mr. BERRY: Based on an evaluation of the RSM investment and other alternatives, OPM decided to terminate the project and transfer future retirement investments toward other IT services in the retirement program. We believe the full automation of the Federal retirement process can be better achieved by getting back to the basics of retirement services rather than managing improvements through a large scale project.**

**Eliminating the RSM program as a formal development project in the budget will save at least \$2 million in administrative costs in FY2012, while the agency conducts a bottom up review of the retirement service process and maintains a focus on achievable goals to automate the retirement processing system.**

Ms. EMERSON: Accuracy remains a major problem in processing retiree claims with 23 percent of all claims missing one or more records. Additionally, 11 percent of claims are not received during the first 30 days of retirement causing further delay. What is OPM doing to address issues pertaining to the speed and accuracy in which agencies submit retiree claims?

**Mr. BERRY: OPM is currently conducting a complete review of the Retirement Service process from the bottom up, to determine changes needed to improve business processes and increase speed and accuracy. There will be incremental technology changes where**

appropriate, but the agency will not be able to identify broader technology changes until the review is completed.

#### FEHB COSTS

Ms. EMERSON: OPM manages the Federal Employees Health Benefits Program and you've made it your goal to be the innovation leader in employer-based health insurance. In 2007 and 2008, OPM was able to hold Federal employee health insurance costs to about a 2 percent increase despite rising health care costs. Now, it's been over a year since Congress passed the Affordable Care Act and we continue to see dramatic increases in health care costs across the country. In this past year Federal employee health insurance costs have increased by about 7 percent. Can you explain why costs are going up?

**Mr. BERRY: There are a number of reasons for the premium changes. In general, FEHB rates reflect changes in the health care marketplace. The FEHB Program uses market competition and consumer choice to provide comprehensive benefits at an affordable cost to enrollees and the Government. In addition, we use firm negotiation with health insurance carriers to keep cost increases as reasonable as possible.**

Following is a breakdown of the contributors to the 2011 FEHB premium increase:

<b>Average 2010 Biweekly Premium</b>	<b>\$257.04</b>	<b>\$113.89</b>	<b>\$370.93</b>	
Utilization, Technology & Medical Inflation	\$18.56	\$8.11	\$26.67	7.2%
Demographics (Age, Sex, etc.)	\$0.52	\$0.23	\$0.74	0.2%
Benefit Changes	\$1.90	\$0.83	\$2.73	0.7%
Enrollee Choice (Plan Movement)	(\$4.34)	(\$1.89)	(\$6.23)	-1.7%
Reserves, Financing, etc.	(\$1.33)	(\$0.58)	(\$1.92)	-0.5%
Other Factors	\$3.56	\$1.55	\$5.11	1.4%
<b>Average Biweekly Change</b>	<b>\$18.86</b>	<b>\$8.24</b>	<b>\$27.10</b>	<b>7.3%</b>
<b>Average 2011 Biweekly Premium</b>	<b>\$275.90</b>	<b>\$122.13</b>	<b>\$398.03</b>	

\*Totals may not add due to rounding.

The question notes that Federal employee health premium increases were held to about 2 percent in 2007 and 2008. For those years, OPM used its authority to use contingency reserve funds in order to defray increases in premiums, thus making the increases for those years smaller than what they otherwise would have been.

Ms. EMERSON: To what degree have you been able to control Federal employee health insurance costs and in future years will you negotiate better deals for Federal employees?

**Mr. BERRY: For 2011, health care premiums were projected by some employers, consultants and others to rise at faster rates than FEHB premiums did. OPM attributes "choice" as part of the reason FEHB compares favorably to premium increases nationally and firmly believes choice helps promote healthy competition among carriers. FEHB has**



**important features, including a wide choice of health plans and competitive benefit packages as well as no pre-existing condition limitations or waiting periods. OPM's goal is to continue to find innovative ways to keep the FEHB Program affordable and to make sure premium dollars are spent on the benefits that customers want and need.**

#### HEALTHCARE

Ms. EMERSON: For fiscal year 2012, OPM requests \$12.3 million to fund management, development, design, and analysis activities for the Multi-State Option Plan. This is the first request that OPM has made to Congress for the new healthcare law. However, I understand you received funding in fiscal year 2011 from the Department of Health and Human Services to help administer the Federally-run Pre-Existing Condition Insurance Plan. How much funding did OPM receive in fiscal year 2011 from the Department of Health and Human Services?

**Mr. BERRY: As of May 4, 2011, OPM has received \$10,236,821 in FY2011 through an Economy Act agreement with HHS as well as reapportionment of HHS funds. The total is broken down as follows:**

**\$2,481,000 for Pre-Existing Condition Insurance Plan (PCIP)  
 \$ 288,821 for State Appeals  
 \$2,467,000 for External Review  
 \$5,000,000 for Affordable Care Act implementation  
 \$10,236,821 TOTAL**

Ms. EMERSON: How much has OPM already obligated and how many employees worked on healthcare in fiscal year 2011?

**Mr. BERRY: OPM expects to utilize all the funds provided by HHS for FY2011 healthcare reform implementation. About 20 current employees (to varying degrees) are working on healthcare reform activities. OPM is in the process of increasing staff levels to perform all of its responsibilities under the Affordable Care Act and to obtain expert consulting contracts to assist with key aspects of implementation.**

Ms. EMERSON: Does the fiscal year 2012 budget include any funds from HHS?

**Mr. BERRY: OPM's budget request does not include funds from HHS. However, we expect to receive approximately \$2 million from HHS to operate PCIP in 23 states and the District of Columbia on HHS' behalf.**

Ms. EMERSON: Can you provide more specifics on how your \$12.3 million request for 2012 will be spent?

**Mr. BERRY: The request will fund FY 2012 management, development and design, and analysis activities for the Multi-State activities. This will fund:**

- \$6.2 million for OPM salaries and benefits to fund 26 FTEs.

- **\$2 million for partial support of the design and development of the Health Claims Data Warehouse Project, including funding for cost associated with the system integrator.**
- **\$4.1 million for contracts providing specialized technical support (e.g., actuarial, demographic, economic, or statistical analysis) and institutional support (facilities, travel, training, equipment, etc.).**

#### HIRING REFORM

Ms. EMERSON: Director Berry, you have been put in charge of overhauling the way the Federal government recruits and hires our civilian workforce. In doing so, you have sought to streamline the USAJOBS process by eliminating the lengthy knowledge, skills and abilities questionnaires-- and replacing them with more specialized assessment tools. I understand that as part of this streamlining process, HR officers must take on more responsibility in overhauling the hiring process. However, a study issued in August of last year by the Partnership for Public Service found that chief human capital officers are worried their HR staffs aren't up to the task. In fact, the study found that three out of five respondents feel their HR staffs don't have the skills to help their agencies transition to a new state of improved human resource operations and workforce management. What is OPM doing to help agencies' chief human capital officers come up with solutions to these problems?

**Mr. BERRY: Pursuant to President Obama's May 11, 2010 memorandum, *Improving the Federal Recruitment and Hiring Process*, OPM has taken action to track agencies' performance in implementation of hiring reform and work with senior agency leaders, hiring managers, and human resources professionals to correct agency hiring problems. OPM is also identifying best practices across the Federal Government for improving the hiring process and provides policy guidance to agencies on implementation of reform efforts.**

**OPM has launched, in partnership with the Chief Human Capital Officers Council (CHCOC), the HR University (HRU), the Federal Government's one-stop training resource center for the Federal HR professional. Through the use of a web-based platform, the HRU provides a wide variety of training and development resources geared toward Federal HR professionals.**

**OPM has also developed and launched video training on veterans appointing authorities, military spouse employment, and hiring individuals with disabilities. These trainings provide HR professionals and hiring managers with the salient points on these authorities in a quick and entertaining way.**

**We are also developing a web-based training application that will train HR professionals and hiring managers on the special appointing authorities for Veterans and Veterans' Preference. The web-based training program will be launched in the summer of FY 2011. This training will be made available on the HRU as well as provided to agencies to allow for customization.**

**Also, on Veterans Hiring, we will be conducting a 2nd Veterans Employment Symposium in July 2011. The Symposium will focus on hiring managers to ensure they understand the special appointing authorities for Veterans and value of the America's Veterans.**

Ms. EMERSON: How are you helping agencies to retool the people they already have in place?

**Mr. BERRY: OPM has conducted Nationwide Hiring Reform Training Sessions, which have touched on all aspects of Hiring Reform. The statistics on our Training Session outreach breaks down as follows:**

- 17,300 trained (HR professional and hiring managers)
- 351 workshops
- 31 states
- 66 cities
- 55+ agencies/organizations
- 21 Federal Executive Board locations

**OPM has also provided "train-the-trainer" sessions for agency human resources practitioners on developing a strategic "on-boarding" program to maximize employee productivity, engagement, and retention. On-boarding is not limited to orientation or mentoring; it is an ongoing process that includes welcoming, training, and acculturating a new hire.**

Ms. EMERSON: What action still needs to be taken to improve the timeliness and quality of the federal hiring process?

**Mr. BERRY: More than two years ago, the Administration embarked on a broad initiative to reform the entire Federal hiring process. We have attempted to address broad systemic problems such as reducing long job announcements, allowing resumes and cover letters as applications, and contacting potential hires throughout the process.**

**In September 2010, OPM transmitted to Congress a legislative proposal entitled the Federal Hiring Modernization Act of 2010. Among other things, the proposal includes provisions to allow agencies to quickly increase their hiring to meet urgent and unexpected needs; give hiring managers a larger pool of qualified applicants to choose from; permit agencies to share with each other the names and scores of candidates who have been assessed and found to be qualified; and allow agencies to post targeted job announcements for certain jobs. These improvements would help agencies address ongoing challenges in meeting applicant's expectations for user-friendly procedures, clear communication regarding processes, and seamless transition into the Federal Government.**

**Questions for the Record Submitted by Congressman Yoder**

## USA JOBS WEBSITE

Mr. YODER: Last August, OPM announced that it would build the next USAJobs website in-house and no longer use a commercial vendor to supply these services. At the time, OPM insisted that it would not cost more than the use of a commercial vendor and that the site would be ready for launch in July of 2011. What is the anticipated savings by using internal resources to build and maintain this website?

**Mr. BERRY: The anticipated savings are predominantly in the ongoing operations and maintenance (O&M) of the system. We have already added new features beyond the original which make it hard for a direct comparison; however, we predict the O&M in the out years will be fairly level yet provide more functionality and ease of use over the prior system. Estimated expenses, projected over a 5-year period, suggest that the system can be delivered for costs that are competitive with what is available commercially. The value added benefits of a non-proprietary solution that leverages economies of scale should result in long-term cost-savings across Government.**

Mr. YODER: What did it cost OPM to outsource this project?

**Mr. BERRY: The operating cost for FY2011 paid to the contractor is \$6.1 million. Going forward, we are using a hybrid approach that capitalizes on internal OPM resources to build the core technology while leveraging both public and private sector methods and tools to produce a seamless, secure, cost effective, and flexible recruitment and staffing environment. The development and implementation of each phase of the project is using a collaborative approach with agency partners. The project is not completed yet, but the work is tracking to the predicted cost of \$5.7 million.**

Mr. YODER: Will this new website be ready for launch this July? If not, when do you anticipate it will be ready?

**Mr. BERRY: We are on schedule to complete the development of the new USAJOBS in July 2011. In accordance with OMB and NIST requirements, an independent IT security review will be conducted to ensure appropriate security measures have been built into the new website before it is actually implemented in a production environment. After successfully completing all testing, the system will launch into production October 2011 with new features such as: improved search capabilities; enhanced security; improved account management; and common data standards to name a few. This system also includes an entirely new platform with many new features that streamline and enhance the applicant's experience while providing a more open architecture making it easier to leverage best practices and tools from the vendor community.**

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