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NOMINATION OF SALLY KATZEN

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF SALLY KATZEN, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

SEPTEMBER 15, 1999

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NOMINATION OF SALLY KATZEN TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

WEDNESDAY, SEPTEMBER 15, 1999

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room SD–628, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Voinovich, and Levin.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. The Committee will come to order, please.

This morning the Governmental Affairs Committee is holding a hearing to consider the nomination of Sally Katzen to be the Deputy Director for Management at the Office of Management and Budget. The Deputy Director for Management at OMB has two roles:

The first is external, by providing government-wide leadership to Executive Branch agencies to improve program performance. This role involves working with the departments and agencies as well as the President's Management Council, Chief Financial Officers Council, and other management and financial groups.

The second role is internal to OMB. As a member of OMB senior staff, the Deputy Director for Management participates fully with the Director, the Deputy Director and other appointees in determining how OMB will carry out its duties.

By virtue of the Chief Financial Officers Act of 1990, the three statutory offices of OIRA, OFPP, and OFM report to the Deputy Director for Management.

Ms. Katzen has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had her financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the hearing record, with the exception of the financial data, which is on file in the Committee offices.[1]

In addition, the hearing record will be open for 2 weeks.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Ms. Katzen, would you please stand and raise your right hand? Do you solemnly swear to

[1] The biographical and professional information appears in the Appendix on page 39.

tell the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. KATZEN. I do.

Chairman THOMPSON. Please be seated.

I want to yield to Senator Levin so that he can introduce Ms. Katzen to the Committee. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Mr. Chairman, thank you, and I am very pleased indeed to be introducing Sally Katzen to the Committee this morning. She has been before us many times, so in a sense she needs no introduction. But I am delighted to say a few words.

Sally lives in Washington, so she doesn't have a home State Senator to sit next to her there. I think the reason that I was selected for what I consider to be a treat and an honor is that she is a graduate of the University of Michigan Law School, the connection that we are relying on here for this pleasure.

We have a number of things in common, actually, Mr. Chairman. We both went to small schools. She graduated *magna cum laude* at her small liberal arts college—I graduated. We both went to prestigious law schools, where she was the editor-in-chief of her law review. That is where the similarity stops. I remember reading a law review article once, but that is about it.

As a matter of fact, I believe, although I am not certain of this, that not only was she the editor-in-chief at the Michigan Law Review, but she, I think, was the first woman to serve in the capacity of editor-in-chief at any major law school in the United States. She has been a pioneer in many ways.

After she finished law school, her career turned into a wonderful blend of private practice and devotion to public service. She has balanced being a partner at a leading law firm with a number of tours of duty in the Executive Branch. From 1979 to 1981, Sally served as the General Counsel and Deputy Director for the Program on the Council of Wage and Price Stability under President Carter. And from 1993 to 1998, she served in one of the most difficult positions in any administration, which is the Administrator of the Office of Information and Regulatory Affairs of the OMB. Then from February 1998 to June 1999, she served as Deputy Director of the National Economic Council.

I am most familiar with her work, and I believe probably most of us are most familiar with her work as the Administrator of OIRA. And at the center of a myriad of competing interests and concerns with consequences involving millions of lives and billions of dollars, she carried out her responsibilities there with intelligence and aplomb.

She brings to her work not only a tremendous intellectual capacity, but a real passion for issues which make a big difference in the lives of people, but they are too often ignored by people because these issues can be dry ones. These are the ways to make government work better. It is what this Committee, led by our Chairman, spends so much time trying to achieve. Sally has devoted a good part of her life to trying to achieve common-sense government, government that cares, government that is working well, but govern-

ment that is cost-effective, that doesn't squander resources, that tries to assure that benefits of regulation justify costs of regulation.

I know both of us, Mr. Chairman, were particularly grateful for the work that she did working with you and me on making the Regulatory Improvement Act, Senate bill S. 746, a bill which the administration said the President could sign into law if we could get it to him intact. That took a lot of work on your part, Mr. Chairman, and a number of us on the Committee working on that bill, but Sally Katzen played an integral part in making that happen.

And now she is up, as you pointed out, Mr. Chairman, for the Deputy Director for Management position at OMB. Few people come before us who are so well prepared for the position to which she has been nominated. She has worked in her OIRA capacity with every Executive Branch agency. She has worked with us here on the Hill. She has worked with the people at the White House. And, of course, her main goal has been public service so that the public gets their dollar's worth out of our efforts here in Washington.

I don't know of any public servant who has got a greater, deeper respect for the institution of government, for the offices with which she has worked, for the people with whom she has worked. Sally Katzen is as bright as they come. She is a top-notch lawyer. She is a stickler for detail. She is an expert in the administrative process. As I indicated, she is dedicated to a government that works better, costs less, and delivers it services efficiently and effectively.

Beyond that, she is a loving wife and mother. Her husband is with us this morning, and we welcome him. Sally Katzen brings a special love for life, for people. She has a very strong moral character. She has an extraordinary inner strength, which has been tested in recent years. And if I can add a personal note, she has a love for opera, which also makes her special in my book.

Chairman THOMPSON. The Grand Ole Opry? [Laughter.]

Senator LEVIN. I was just going to say it, Mr. Chairman. You beat me to the punch. I was going to say, I think at least for this morning's purposes, that includes the Grand Ole Opry. I think it may anyway include the Grand Ole Opry. But I am delighted to present Sally Katzen to the Committee. We know her well, so it is really, I guess, on behalf of many of us that I am introducing her to our Committee this morning.

Chairman THOMPSON. Thank you very much for that wonderful introduction.

At this point I would like to give Ms. Katzen an opportunity to introduce anyone that she might care to introduce who is with her here today.

Ms. KATZEN. Thank you, Mr. Chairman. I would like to introduce my husband, Timothy Dyk, who is a lawyer in private practice and who has been supportive of me during my tenure in this administration and encouraging me in this role as well; and next to him, our son, Abraham B. Dyk, who I see got here from school this morning and will be going directly back. He is a senior in high school and thinking about his future full-time.

Chairman THOMPSON. Wonderful. We welcome them here this morning.

Senator Levin, do you have any further opening comments to make?

Senator LEVIN. No.

Chairman THOMPSON. Ms. Katzen, do you have a statement that you would like to make at this time?

TESTIMONY OF SALLY KATZEN, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Ms. KATZEN. If I may, Mr. Chairman, a very short statement, because I wanted to thank you and the Members of the Committee for providing me this opportunity and for being so responsive, graciously and with courtesy throughout this process. I am truly appreciative of that.

I am particularly appreciative of the comments that Senator Levin made on my behalf. It was indeed a glowing statement. I am going to remember it for a long time. Thank you.

As both of you noted, this is the second time that I come before this Committee asking for favorable consideration on my nomination. Having reported me favorably for Administrator of OIRA in May 1993, I served in that capacity until February 1998, and during that time I had a number of opportunities to work closely with the staff and with the Members of this Committee. I think I testified about 10 times.

I was always impressed by the quality of the discussion, the seriousness of the questions, and the understanding and insight that the Chairman and Members of this Committee brought to the various policy issues. And I also know how much time and attention this Committee has spent on the management, the "M" in OMB.

I share your view of the importance of improving management of the Federal Government, and it is because I believe that these issues are so critically important that I was deeply honored to be nominated for this position of Deputy Director of Management. And, again, thank you very much for this opportunity.

Chairman THOMPSON. Thank you. As indicated earlier, the Committee submitted some substantive pre-hearing questions to the nominee, and the nominee has also met with Committee staff to discuss a variety of issues of congressional concern regarding the Office of Management at OMB. Your written responses to these questions will be placed in the record.[1]

I will start my questioning with these three questions that we ask of all nominees.

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

Ms. KATZEN. Not at all, sir. I have recused myself from those matters that have been a subject that my husband has worked on or that I have had a financial interest in. My assets are in a blind trust, which has remained intact since it was approved by OGE in 1993. And I will follow diligently and completely any advice I get from the OMB ethics officer for particular matters as we proceed.

Chairman THOMPSON. As I recall, the so-called blacklisting issue was one that you had recused yourself on.

[1] The questionnaire appears in the Appendix on page 49.

Ms. KATZEN. I have recused myself.

Chairman THOMPSON. Could you tell us what the line of responsibility then will be on that issue within OMB?

Ms. KATZEN. This is actually a matter within the Office of Procurement, OFPP, and there is a confirmed administrator of OFPP, Deidre Lee, who will be maintaining the responsibility for that. She is, until I am confirmed, the Acting DDM as well. So she has combined in single-stop shopping management responsibility for that issue.

Chairman THOMPSON. And who will supervise, who will be——

Ms. KATZEN. The Director of OMB would ultimately be responsible for any actions emerging from OMB.

Chairman THOMPSON. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging responsibilities as Deputy Director for Management at the Office of Management and Budget?

Ms. KATZEN. No, sir.

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

Ms. KATZEN. Yes, I do.

Chairman THOMPSON. All right. Thank you for those answers.

Ms. Katzen, I want to lay out some areas of concern here this morning because this is one of the few opportunities that Congress has to do that, that means anything. It has nothing to do with your personal history or background. You have been an exemplary public servant in many respects over the years, and I have a great deal of personal admiration for you. But I am increasingly concerned about the way our government operates and how many of these agencies have operated and do operate. We don't seem to be making any progress, and you are going to be in a position to make a difference. And, frankly, I am not sure that you agree with me that there is that much of a problem, and I want to engage with you this morning on those issues.

It seems to me we can start out on the basis of agreement on some things, and that is the ultimate responsibility of the government to be as free as practically possible of waste, fraud, abuse, and inefficiencies, and that agencies should always be trying and striving certainly to fulfill their obligations under the law and to do the best they can with regard to those matters.

I think we can also agree that it is the responsibility of the Office of Management and Budget to manage, and that has to do with making these agencies do the right thing and making them try, making them attempt to do the best that they can do as far as saving the government money, not being inefficient.

All the surveys we see now that come from the Pugh Institute and other national polling firms show, even in these good times, a falling respect for our government among people, especially among our young people. And so much of that, according to them, has to do with their perception that government is full of waste and fraud and abuse and inefficiencies, and it has done really for those who are in the business of governing instead of the public at large. I think that there is a basis for that concern.

Then there is the responsibility of Congress, and particularly this Committee, and in response to all that, Congress has passed a series of statutes, financial management statutes such as the Chief Financial Officers Act, information management statutes such as the Clinger-Cohen Act, GPRA—the Government Performance Results Act that you are so familiar with—all in an attempt—recognizing this problem that we have and in an attempt to do something about it.

So most recently I asked the GAO to do reports on the performance plans that these agencies have. As you know, under GPRA these agencies are supposed to come up with performance plans. How do they plan to do their job? And how do they plan to do their job better? And how are they going to address some of these, in many cases, long-term systemic problems that these agencies have?

Once we get those plans done, we evaluate them, see if they are any good and how useful they are, and then the agencies have to come back later and give us an accounting as to whether or not they have met their goals and to what extent they have met their goals. And you have got your plan, and then you have got your results. It is called the Government Performance Results Act. So all that is now in the works.

So we asked the GAO to take a look at these plans now that have been submitted. The second go-round of plans now have been submitted for fiscal year 2000. We had plans submitted for fiscal year 1999, and they were pretty inadequate, to say the least, for 1999. So we said let's take a look at them for 2000.

We have had IG reports along the same lines with regard to some of these systemic problems.

So now we have got the results back in from the GAO, and although there has been some marginal improvement in many of the plans from 1999, that is not saying very much. We see the same kinds of problems, and most disturbing to me with regard to so many of these systemic problems, most of these agencies don't even address in many cases up to half of the high-risk list problems that they have had on their books for a long, long time. They don't even set out goals for how they might try to go about changing them. It is like they don't have any fear that anything is going to happen if they don't.

I get the impression that it is basically thumbing their nose at the Legislative Branch in not trying to at least come up with some kind of a plan or some kind of a goal to solve some of these problems.

So I can't emphasize my concerns strongly enough. The conclusion is that OMB has not been doing its job. The management part of OMB has in many cases been ignored. And this leaves it up to Congress. What is our responsibility? And, again, this is nothing obviously personal towards you. We all have the greatest respect for you. But Congress, when it comes right down to it, only has two powers, and one is the power of the purse and the other one is the power of appointment. And the power of appointment is what we are dealing with here today.

Despite your admirable public record, when I read your answers to questions—and I know you may have had some help with this, maybe more help than you wanted or maybe should have had. But

I asked the question here: We appear to be making little progress in resolving mission-critical management problems that impede—I am reading from page 6 and 7 from your answers, our questions and your answers—problems that impede program performance, waste countless billions of dollars annually, and undermine public confidence in the Federal Government. The General Accounting Office and the inspectors general tend to report on the same seemingly intractable programs year after year. What changes do occur are mostly adding rather than subtracting problems. The most obvious example is GAO's high-risk list, which grows each time it is updated and now stands at 26 problem areas. In your view, what will it take to generate real movement on these problems?

And your response indicates there really is no problem. Your response, you say: I am encouraged, rather than discouraged, by the progress that has occurred over the last few years. As noted above, the administration has identified 24 priority management objectives (PMOs). These are areas that are in need of real change and which receive ongoing attention from OMB's senior officials. The PMOs are published annually in the President's budget, and OMB staff reports monthly to the director regarding ongoing efforts. I have been advised that most of the 26 mission-critical management problems discussed in GAO's high-risk list are addressed in the PMOs. Resolving each of the PMO objectives will require sustained commitment over many years. Nonetheless, I believe OMB has developed an effective approach to ensuring that senior officials remain focused on these objectives.

So, I read this, and you looked at everything that causes me so much concern—and you are encouraged by it, and the administration has identified the problem. We publish it annually. We report monthly. We are focused. And OMB has developed an effective approach for ensuring that we remain focused.

I wish you would let the rest of America know what this effective approach is that OMB has developed that is addressing these problems. So with all of that rather long-winded preface, Ms. Katzen, I think you see the overall nature of my concern. I want to talk to you in more specifics. But would you care to respond at this point?

Ms. KATZEN. Well, I am sorry that the impression from the answer has apparently led to a misunderstanding. I did not in any way, shape, or form intend to say that there is no problem and that we have got it all well in hand. What I was saying was simply starting as the optimistic cheerleader, I am encouraged by what has happened in the last several years.

I have been living in this city now for almost 30 years and have seen a lot of different attempts to try to get better management of the Federal Government. And what I am encouraged by is that it seems to be taking hold now. When the GPRA was passed, it could have been just another law that was never paid attention to. I think it is taking roots. Instead I think it is actually going to have some results. But, it is going to take some time.

And what I am encouraged by is that the agencies and departments do seem to be paying more attention to this than some of the other experiments in management that have happened during the 1970's, during the 1980's, and in previous times.

I agree with you that there are serious management problems that need to be addressed. The PMOs, the priority management objectives, are exactly that. Twelve of them are cross-cutting across the government, government-wide. First, is managing the Y2K experience. There is nothing that was a greater management challenge, to this administration or to any administration, both in the private sector and State and local governments that had to wrestle with getting ready for Y2K. That was something that was a real challenge that needed to be wrestled with. That is the No. 1 PMO.

The second one is using results to improve program management. That is GPRA in all of its beauty and all of its potential. And what I was trying to communicate here is that we have structured our review of this in a way that provides, I think, leadership. Can it be more focused? Yes. Can more be done? Yes. Does more need to be done? Absolutely yes. But it can't be a fiat from above. It has to be the agencies themselves institutionalizing these types of approaches, or it too will pass in the night. And for that reason, it seems to me that it is essential to work with the agencies to understand the different issues that have been raised.

I understand that you recently sent letters to all the departments and agencies highlighting items on the high-risk list, items from IG reports, items from GAO, and asking for a status report. I think that is terrific, and there was a discussion of this at the last PMC meeting. Agencies and departments are expecting to be responsive and to let you know which of those problems have, in fact, been corrected, which of those remain a problem and why, and what they expect to do about them.

So I think that we are heading in the right direction, and that is why I was emphasizing the positive and not in any way trying to disparage the job. That is one of the reasons I am interested in having this position as DDM—to be able to work on these kinds of issues—because I think more progress needs to be made. And I share your commitment to do that.

Chairman THOMPSON. Well, I am interested in specifically what you plan to do to make change, and if you send out word to these agencies, if your appointment is a message to these agencies that I am looking forward to working with you or making progress and we need to partnership this thing on through the process for another couple, 3 decades—because people in the past have not done very well, either—then that is very troubling to me.

Many of these things—you point out some of the things on the high-risk list are government-wide, which it is still under your purview. Then some are not. The high-risk list has included some HUD programs since 1994, student financial aid programs since 1990, farm loan programs since 1990, asset forfeiture programs since 1990, DOD inventory management since 1990, DOD weapons system acquisition since 1990, DOD contract management since 1992, Department of Energy contract management since 1990, Superfund contract management since 1990, and NASA contract management since 1990.

So these agencies continue year after year—since 1990, the year the list came into existence, the high-risk list has grown from 14 serious management problems to 26. And in the history of the list, only six areas have come off because either agency management

was serious enough about solving the problem or the problem just went away, like the savings and loan crisis. But many of the original problems, 14, as a matter of fact, remain on the list today, almost a decade later, such as IRS receivables, student financial aid programs, DOD inventory, management I mentioned, and NASA I mentioned. Only one area has been removed in the last 5 years while seven have been added.

Ms. KATZEN. Well, the fact that they are still on the list means that they are getting and will continue to get attention. There has been some progress. There is the Department of Education's student financial area; with Congress' help this has become a PBO, a performance-based organization, where they are redoing the whole way that they are structuring that operation. And I think we are seeing preliminarily very positive results.

There are certain remaining issues, and you are correct to point them out. My message to the agencies is not come let us reason together or be sweetness and light and all is well and I will just keep holding your hand. It is: I am here to support you, but we also have very high expectations. And when budget requests are submitted for the 2001 budget, we are taking, I think, another step forward in integrating performance measures and results——

Chairman THOMPSON. Well, I think Congress and the OMB have both been derelict in that respect. There has been absolutely no response from anybody from a budgetary standpoint to any of these problems. You keep submitting the same thing, the same monies, or increased monies for the same programs year after year. We keep giving it year after year after year. So I am encouraged to hear you say that. We all need to do a better job there.

But let me just quickly—and then I will relent here for a few minutes, but the next question then becomes: What are these agencies doing? Are they making an attempt? And you look at that and you get an even bleaker picture.

Of the 24 agencies, GAO has identified 300 major management problems. GAO and the inspectors general, they have made hundreds of recommendations to these agencies which remain open. That means unresolved. That means nothing has been done on them.

On the high-risk list alone, there are 26 major management problems. There have been over 700 recommendations by the GAO that remain open today. In total, there are over a thousand open, unresolved recommendations. Many of them are years old.

And so we asked the GAO to go and look at their performance plans, and they come back and so many of these areas, in agency after agency after agency after agency, the agencies or the departments don't even address the problem areas.

The Treasury, for example, there are five high-risk areas that are there. Treasury in its performance plan addresses one out of five. It doesn't even address goals for the other four.

The IRS is zero out of four. They don't even address—and I could go on and on, and I think when it comes back around to me, I will—on some of these other departments. Many of them, in just thumbing through there, half of the problem areas, many of which have been there for years, their plans don't even address ways in which they plan to do anything about it. This is going to require

more than working together. This is going to require leadership from the top. This is going to require consequences. That is all I am saying.

It is imperative that the next person that holds this position understand that.

I am going to relent now and call on Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

I am looking at the high-risk list, and I am curious about one thing. By the way, I basically agree that failure to comply with requirements of law or internal requirements should have consequences. I agree with the Chairman on that. But I am curious about the high-risk list.

For instance, I am very much familiar with DOD inventory management, DOD contract management, DOD weapons systems acquisition. They are on the high-risk list. Does this list show progress? Because I know for a fact there has been progress in inventory management at the DOD. There are still problems. I have no doubt it still belongs on the high-risk list. It is here. But there has been significant progress there.

Just taking that one issue, does this list reflect any progress, or is it still on the list because there is a ways to go?

Ms. KATZEN. It remains on the list until it is resolved to GAO's satisfaction, whether or not there has been progress. And that was why I was referring to the Chairman's letters to the departments and agencies in which he has asked for progress reports, and DOD, among others, will be talking about the progress that they have made and the distance they have to go on inventory management, financial management, a number of other areas in which they have taken giant steps, but there was a very, very long way to go. And I think the responses to the Chairman's letter will show that because, otherwise, as you indicate, they are on the list and they stay on the list without any indications that we are working on them or have made any real progress.

And it is quite varied throughout the government. Some agencies have made a lot of progress. Some have not made as much as we would hope that they will soon make.

Senator LEVIN. And maybe some have made none. And so I think it is useful——

Ms. KATZEN. To review.

Senator LEVIN [continuing]. The Chairman's effort here, to try to identify more detail. His letter I think is a very useful effort.

Ms. KATZEN. And we supported that—I am sorry.

Senator LEVIN. I say I very much support it, but I do think it would be useful also if we could find a way maybe in our annual listing to indicate if there has been some progress, even though something is still on the list.

I would treat a situation very differently if half the problems had been solved than if none of the problems had been solved. It would give us a fuller picture.

By the way, Senator Lieberman—who is the Ranking Member of the Committee here—regrets that he cannot be here this morning because of a longstanding conflict. But he does extend his support for and his confidence in our nominee here, Mr. Chairman. I just

wanted to mention that because I know he did look forward to this hearing but he had this other commitment.

Can you tell us the relationship between your office and the National Performance Review, which has been established by the Vice President's office, which is outside of OMB? How do these two offices or your future office relate—assuming you are confirmed—how do they relate to each other?

Ms. KATZEN. Historically, and I believe for the future, we have worked very closely together. The NPR was originally designed to be a vehicle for bringing in front-line government employees from all the departments and agencies to talk about how to deliver services better to the American taxpayer. And it was a large group made up of detailees that was organized under the Vice President's office but worked through and closely with OMB, through the DDM's office and some of the other OMB offices.

On regulatory issues, for example, I worked very closely with NPR when I was at OIRA. I know that others in the procurement office, on procurement reform and simplification which led to the legislation that this Committee enacted, they worked very closely with the NPR folks on that.

It is an aspect of this administration that there are a variety of interagency groups. The Chairman mentioned as part of the responsibilities of the DDM that, if confirmed, I would chair the President's Management Council. There is a CIO Council. There is a CFO Council. We have been working in interagency groups, and NPR is one of those and brings together resources from a variety of agencies and experiences from a variety of agencies who were temporarily banded together.

As their work has evolved, they have a smaller staff or reduced their staff, and we now work with them even more closely, both in close proximity and shared responsibility for this, because one of the aspects that they are looking at—indeed, several of the aspects of what they are looking at—have to do directly with management and, therefore, are clearly within the purview of OMB and its responsibility.

Senator LEVIN. I know you believe, as many of us do, that agencies should do cost/benefit analyses before they select a particular regulatory approach. It may not be a be-all and end-all, but it is an important tool.

What progress, if any, do you think we have made in the agencies in obtaining these, getting them done, and in the way that they are done? Could you comment on where are we? We have an Executive Order. We haven't yet passed the bill we hope to pass, but can you comment on the progress, if any, both in the number of—how often are they made and how well are they done?

Ms. KATZEN. I think there is improvement—I might borrow from GAO and say "moderate improvement"—in the agencies' use of these tools. I can think of particularly striking examples where there was enormous resistance, and through working with the agencies, we showed them that by doing cost/benefit analyses it didn't mean that you don't pursue the regulation, but rather that you get much more benefits for the same amount of costs, or that you can achieve the same benefit that you wanted to at much less

cost and, therefore, much greater credibility and much less opposition.

Some agencies have moved very well and are doing more of them and are doing them better. Recent legislation has asked OMB to provide guidelines for cost/benefit analyses. I think I have seen those in draft form about to be circulated and to be subject to peer review. I think that will provide some greater commonality, more consistency, but it is like almost anything in the government: Different departments and agencies react differently.

I was actually quite gratified during my tenure at OIRA by the number of instances where I heard from senior officials as well as staff people from the agencies saying, "You know, considering alternatives really works. We came up with this interesting approach or this better way of doing it, and we thank you for helping us."

That reflects that they are now prepared to institutionalize it for themselves and to try it again and again and again. And that I think is the only way we are going to get progress.

Senator LEVIN. I agree with the Chairman it is useful to get agencies to institutionalize and to see the value on their own. But it is also critically important that they do it. If an Executive Order requires it or if a law requires it or a regulation, it sometimes takes hitting someone with a two-by-four or having consequences. Hopefully people will see the value of it, but if not, there has got to be an effect of not following what either an Executive Order or a directive requires or a law requires.

And I do agree with the Chairman that I think your instinct to try to show people the way and tell them it is really in their interest to do so and do it on a cooperative basis is fine, up to a point, but they have got to know that at the end of that approach they really have no alternative when they don't, when they should. So I will leave that, unless you would like to comment.

Ms. KATZEN. OMB's review under Executive Order 12866 will not clear a regulation for publication unless the agency has done a cost/benefit analysis. The most striking example during my tenure was the PM/Ozone rules where the statute precluded consideration of cost, but EPA nonetheless did a very reputable, very credible, thoroughly complete analysis of the costs and benefits. You can differ with EPA as to some of the specifics of the analysis, but they went through the exercise and they did that analysis, and that analysis was used both in congressional hearings and in court litigation on the issue. And that was because of the Executive Order and our insistence that the analysis be prepared.

So I think there are, in fact, consequences, and the Executive Order is being adhered to in that respect.

Senator LEVIN. My time is up. Thank you.

Chairman THOMPSON. Thank you very much. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Good morning. First of all, I would like to start out and say that your credentials are very impressive. You certainly have had a great deal of experience at OMB. The real question that I have from my experience with your office and with you and my staff is whether or not you fit into, from a public policy

point of view, the approach or attitude that I believe that someone should have at the Office of Management and Budget.

According to my definition of the job, part of the responsibility is to work with State and local government organizations to improve and strengthen intergovernmental relations and provide assistance to such governments with respect to intergovernmental programs.

We have had a chance to deal with your office and with you in your capacity with OIRA, and I have some very, very serious concerns about your attitude in terms of intergovernmental relationships and some of the responsibilities that you have had with OIRA.

To begin with, the unfunded mandates reform legislation, which I was intimately connected with and lobbied for with Senator Glenn and with Chairman Roth at the time to get that legislation passed, I really feel that your input into that, for example, with Senator Glenn's staff in negotiating the judicial review during the conference committee to the point that UMRA's judicial review really is kind of toothless.

And it is the same kind of thing, Mr. Chairman, that we are running into with the legislation that we are promoting right now. The attitude there is they don't want the judicial review. Just stay out of it, we don't need judicial review. And that is an attitude and that is your point of view, but it is one that I don't agree with.

Implementation of Title II of UMRA, which required agencies to assess the impact of regulatory mandates on State and local governments and the private sector, GAO prepared a report for Senator Thompson that found that UMRA was not improving the way agencies made rulemaking decisions. As a matter of fact, the study examined 110 major regulations and found no risk assessment or cost/benefit analysis were conducted in 80 of these very, very important regulations. I think that was a responsibility of your office to make sure that that was done.

In addition, I felt very strongly at the time that we ought to set up a commission to look at areas where the Federal Government could improve their relationship in terms of unfunded mandates, areas where they were reaching way out more than what they should. And I was finally convinced—and it was the administration's point of view—that we ought not to set up a separate commission. I don't remember if you were on the committee or not, Chairman Thompson.

So we went along with the ACIR, and the ACIR did their study, and they came back and they had some very specific things that they thought the Federal Government had overreached and that needed to be looked at. And the bottom line was that that report was quashed by the administration and watered down, and now, of course, we don't have any ACIR. But the attitude seemed to reflect one of—it is none of their business. You know, I am interested in federalism. I am interested in moving more responsibility back to State and local government. I am for looking at cost/benefit and risk assessment. And, quite frankly, from my point of view, it hasn't happened.

The same way with the Federalism Accountability Act, that is another area where cost/benefit was supposed to be looked at. And

you mentioned Executive Order 12612 on federalism, the Reagan Executive Order. GAO released a report early this year that found that out of 11,000 rules studied, only 5 were accompanied by a federalism assessment as required by the Executive Order.

That is one of the reasons why, Senator Levin, we are talking about putting this in statute because it wasn't done by the administration. And, quite frankly, I think it could have been done by the administration.

And then the administration came up with a brand new federalism order, and instead of sitting down and meeting with the governors and the Big 7, they went ahead and did it. The President was off someplace else, and they released it. And we went berserk.

And it would seem to me that somebody in your responsibility should have thought enough of the people in State and local government to sit down and not just drop a bomb on us. And, of course, we went to town to try to change this issue. And I was there with Governor Carper back in Milwaukee last year, and we kind of watered things down so we didn't have a major confrontation. And since that time, some of the problems have been reconciled.

But I must tell you, from my perspective and what I consider from a public policy point of view, I don't think you are aggressive enough. I don't think that you have the right kind of approach and attitude that we need in someone in your position.

I am being very candid with you. I am not for your nomination. From all the experience that I have had with you and your people, and my people have had, I don't believe—and I say it in all due respect, not in terms of integrity, and I hate to say this in front of your husband and your son. But I just disagree with your approach as I have seen it in many, many instances.

Now, you talked about NAAQS. I spent 100 hours trying to get Congress and Carol Browner and the EPA and the administration to really look at the new ambient air standards for ozone and particulate matter. And OMB was supposed to look at that, and you just talked about the big stack of things that you did. But when OMB did their impartial, objective review of that, they came back and said that EPA hadn't done some things that they should have done and pointed out that there were some problems in terms of the cost versus the risk. And when it came time to submit that report by OMB, it was watered down because some people in EPA felt that it would hurt them in terms of their proposed ambient air rules—it wasn't supportive of what they were doing.

Now, I consider OMB to be an independent agency and that they should have expressed their concern about this and the fact that there were some problems with it. And, quite frankly, I think if OMB had done their job and had been more aggressive within the administration, perhaps we wouldn't have had those ambient air standards for particulate matter and for ozone. And now we have had a lawsuit filed, and we have been successful, and now we are trying to negotiate some more. But the job of that office should be more aggressive. We are talking about the Government Performance Results Act today.

From what I can see—I have looked at the Government Performance Results Act. I have looked at some of the things that—I have

had two hearings with Health and Human Services and the Department of Education. There was a requirement there that there be some coordination when they are putting their performance plans together. It wasn't done. And finally Secretary Riley said to me, "Well, I am glad you pointed this out, I am going to bring this into my office."

It just seems that we need to have some agency around here—and I think it is the Office of Management and Budget—that ought to be more aggressive in following through on some of these things and be very independent and not get rolled by agencies that say, what you are doing is interfering with what we are supposed to be—what we want to do. That is part of what the job is.

I have had hearings and started hearings on quality management. I think the A-team, the culture of the A-team in the Federal Government is abominable. I have met with the presidents of the two largest labor unions. No quality management, no money for retraining, no incentive package. And then we have written to OMB, their attitude was we are not involved in quality, that is not our responsibility.

And so I just have some real serious problems, not with you personally. You are a fine woman. You are qualified and so forth. But your attitude—your approach to it is not the approach that I believe that we need to have at the Office of Management and Budget. I think that it is very frustrating to see what is going on around this place. Report after report, and nobody seems to be following up and staying on top of it. I think that is the role that OMB—I want somebody in there that is aggressive, that is going to go after it and say the Executive Order says do risk assessment, by golly, you ought to—we are going to make sure you do it. And we are going to question it. You have the Government Performance Results Act. We want to make sure that you do that.

So I just am very, very concerned, and I wanted to say this publicly so that you would have a chance, because I am going to continue to repeat it to my colleagues, and I am going to do what I can to make sure, very honestly, that you are not appointed to this position. And I think it is fair for me to lay it out for you today so that at least your side of it can come out.

Ms. KATZEN. Well, I appreciate your giving me an opportunity to respond because there are some aspects of your comments that I would like to address, whether or not it convinces you that my nomination should go forward.

On the issue of federalism, part of my responsibility at OIRA was to enhance the relationships between the State and local governments. When we drafted Executive Order 12866, which is the regulatory review Executive Order, we crafted a particular section, which had never been in any of the Reagan orders at all, that said we would meet quarterly with State and local governments to find out what was on their mind, what their concerns are, what their thoughts were, and how best to proceed. That was a process that we set up. We set it up not just because I think it is important but also the President, having been a former governor and been very active in NGA, was very dedicated to strengthening the relationship between the Federal Government and our partners in State and local governments.

Right after the President signed Executive Order 12866, we presented for him an Executive Order 12875. I remember these numbers because I spent hours and hours negotiating them with the agencies and I think being fairly aggressive in shoving down their throats some things that they were not particularly interested in that would require them to consult with State and local governments whenever there was any allegation of an unfunded mandate being imposed upon them. And it was Executive Order 12875 that was codified in the Unfunded Mandates Reform Act, which the President supported and which he signed. They had tried to get that through the Congress for a while, and it was not successful.

We were able to have it enacted into law, and my office and I personally spent a substantial amount of time to make sure that it would happen and that we would have that kind of legislation.

With respect to the failure to consult with the State and local officials before the promulgation of the revised Executive Order last summer, I have said that it was a mistake, a terrible mistake, a regrettable mistake, which I have spent the last year trying to rectify. And I think if you talk with the representatives of the Big 7, they will talk about the number of hours, the amount of effort, and somewhat of the passion that I have devoted to ensuring that we could produce a viable, good, solid, strong federalism order. And when we released the new Executive Order a couple of weeks ago or a couple of months ago, we had a letter in hand as well as statements from all of the Big 7 organizations, including the NGA, with Governor Leavitt and Governor Carper signing, saying that we had met with them, that we had proceeded in good faith, that we had been responsive to their concerns, that the order that we produced was stronger than the previous order, that it was more protective, that it was more in favor of a strong partnership.

That was the work that I was trying to accomplish, and whether I was sufficiently aggressive at all of the different stages I will leave for others to judge rather than for myself.

Senator VOINOVICH. May I respond to that?

Ms. KATZEN. Certainly.

Senator VOINOVICH. Because I know I am the Leader's liaison between the Senate and the Big 7, and I spend a lot of time with them. They really weren't that happy, but they felt that it got—it was fine. It was just let's let it go, it is the end of the administration, fine, we worked it out. And I would like to say to you that they were not as enthusiastic as you have portrayed here today.

I think the real issue here is that you have a former governor who is the President of the United States, who is the former chairman of the National Governors' Association, and within his own house, no consultation. In fact, the Big 7 people who were there quoted you as saying there will be no Reagan Executive Order on federalism by the time this administration leaves office.

In other words, from a governmental point of view, in terms of where your heart is, I am not sure it is where it ought to be in terms of the things that I think are important for that office.

Ms. KATZEN. Senator, I say to you under oath that I have been and will remain supportive of strong relations and partnerships with the State and local governments. When I said "no Reagan Executive Order will be in place," I was responding to what the Presi-

dent had said in the East Room of the White House when he spoke to the NGA because he said it wasn't followed by the Reagan administration, it wasn't followed by the Bush administration. He wanted one that the agencies will follow.

And so when I say we didn't want the Reagan order, it was that we didn't want one that was just a piece of paper. As you indicated, GAO found that there were 11,000-some regs that had never cited it. If GAO had done the exact same study 10 years previously, 5 years previously, they would have found the exact same thing because nobody had been following it.

What we have in place now is, I trust, I hope, I pray, an order that can, in fact, will, in fact, live up to the expectations that we have because I do not disagree with you on the objective. And when I said no Reagan order, it is because I want one that will work. And President Clinton said he wanted to sign one that would make a difference. And that is what I think we produced.

Now, one of the things, again, that we built into this Executive Order that was not in previous Executive Orders is that 180 days from the effective date, the Director of OMB, and the head of Intergovernmental Affairs, will sit down with the principals and the executive directors of the Big 7 to make sure that our expectations are being fulfilled, that we are not just on a paper process. That provision was put in the new Executive Order specifically to make sure that we got results, that we were able to live up to the expectations.

If I am coming on a little bit stronger than I should, it is just because I believe our objectives here are the same. And what we wanted to do was have something that the agencies would follow that they could be held accountable for. There were a variety of areas in which we strengthened the Executive Order beyond the Reagan Executive Order, so that it would, in fact, work.

Senator VOINOVICH. Well, see, from my perspective, in terms of what that required, that could have been handled from a management point of view. If the State of Ohio—I had an Executive Order, and it required our agencies to look at cost/benefit assessment, we would have had our people in. We would have talked to them. We would have had a program to follow up on it. I wouldn't have cared too much about what the language is. The purpose of it was to try and get—and I would have laid out a little plan for it, and I think that could have happened in this administration.

Here we are at the end of the administration, and we finally got it, in 180 days you will be gone, and then we will have a new administration. And I am just saying that a lot of this—it is the aggressiveness that I am talking about. We have an Executive Order. Somebody should have—and OMB, that is their responsibility, should have taken hold and ran with it.

The unfunded mandates legislation that also required review of things in terms of cost, was not done.

Ms. KATZEN. With respect to implementation of Title II of UMRA, the Unfunded Mandates Act, it talks about significant regulations, and we use the definition of economically significant—$100 million in costs. There is no finding that any of those that were within that framework that had any impact on State or local

governments were not correctly analyzed. GAO was talking about all regulations, and not all regulations are subject to UMRA.

There is a statutory dollar cutoff for legislation. There was a dollar cutoff for regulations. And OMB has submitted once a year a list of the regulations and the portions of the preamble where alternative approaches are considered, where there is a recitation of the amount of consultation that has taken place with State and local government officials, a summary of their concerns, a summary of what, if anything, was done to respond to their concerns, and, where their concerns were not responded to, why they were not responded to. Those are all in the preamble of the regulations which have been sent here to this Committee and to the Congress under UMRA.

And so on that particular issue, I would have to, I am afraid, somewhat aggressively say that I think we have actually implemented the law as the law was written and as the Executive Order was written. But I will follow up on some of these other issues if you wish.

Senator VOINOVICH. You disagree with the GAO report that said the study examined 110 major regulations and found that no risk assessment or cost/benefit analysis was conducted in 80 of these regulations as required by UMRA?

Ms. KATZEN. Because of the dollar cutoff that is set forth in the Executive Order and in the legislation, and that was the reason why.

Senator VOINOVICH. We will follow up on that.

Ms. KATZEN. Thank you very much.

Chairman THOMPSON. Thank you.

The federalism issue, of course, is one that is of concern to me also, and I think all of us here this morning, we have worked on this issue. You can see the concern as we go forward as indicated by what has happened in the past. It is always difficult to confront an argument that prior administrations did these various things, so we are going to do the same thing. All I know is that my recollection is that President Bush directed, as the President of the United States, directed that these departments follow the Reagan Executive Order. Jim Miller, as head of OMB, directed that they be followed.

When you all passed, in the dead of night over here this—abrogated the Reagan Executive Order and came up with something else, as Senator Voinovich said, the Big 7 went wild. I mean, there was some reason why they thought that was a worse thing for them than had been previously the case.

I introduced a resolution that passed unanimously in the Senate calling for repeal of what you had done, and the White House suspended it and started working with the Big 7 to draft a new order. So that was all the background coming up to this resolution that came about. As the Senator pointed out, 11,000 rules or regulations, 5 federalism assessments, over 1,900 regulations that EPA issued between 1996 and 1998. GAO found that EPA had not prepared a single federalism assessment. It never even mentioned Executive Order 12612 in any of the 1,900 final regulations issued.

So the question of where you heart is a valid one as we go forward, especially when we look at the language. I don't know wheth-

er the Big 7 is delighted or just got tired and said we have fought this long enough, it is not going to last that much longer or what. But when I look at the language of the new Executive Order, it says, "I am concerned that there are some weakening changes made to the Reagan order that would lead to the opposite result that you intend."

For example, the new Executive Order requires three hurdles to be crossed before a federalism summary impact statement is required. The regulation, first, must have federalism implications; second, must impose substantial direct compliance costs on State and local government; and third, this is not required by statute.

It seems to me that this third condition, that the rule must not be required by statute, raises a high hurdle for the requirement for a federalism impact statement, because presumably most of the major rules that concern State and local governments are required by statute. I mean, what you have done here by setting out your criteria for when an impact statement is required, you have set the hurdle so high, you have exempted all of the stuff that really counts.

So that is kind of the coup de grace, it looks to me like when you look at this, in terms of what State and local governments can expect in terms of consultation.

And on the consultation issue, Senator Levin—and I just spoke with him about this. He asked the GAO to find out—you say you told him, consult and you are committed to consultation. Well, let's look at the results. The proof is in the pudding. Senator Levin asked GAO to find out how many major rules involved consultation with State and local governments, setting aside the issue of whether or not a federalism assessment was done.

GAO reported to Senator Levin that based on a quick review of the 117 major rules issued between 1996 and 1998, December 1998, 96 of those rules did not mention intergovernmental consultation, despite the fact that 32 of those 96 rules had a federalism impact. In fact, 15 of the 32 rules said that they were going to preempt State law.

So, I must say when it comes to the issue of federalism and the history of the administration and your personal history in shepherding all this thing through, I think there is great cause for concern on the part of State and local governments.

Ms. KATZEN. If I could just make two modest points, the section that you were reading from is, I believe, subsection B, which was specifically an embodiment of the unfunded mandates legislation. It said that where there are unfunded mandates imposed by statute, that is a congressional decision that has been made.

If Congress says you must do A, and the agency then does A, that would not trigger the full round of consultations because whatever consultations may take place are not going to affect the end result since the agency will do what Congress has told it to do.

There is also subsection B in the Executive Order which does not have any statutory language. It says that if you have federalism implication and you preempt, you are to do the consultation. There is no limitation in any way, shape, or form about a statutory bar. That was what we added to this Executive Order to solve, I think, that problem.

Second, with respect to whether or not the Reagan Executive Order was actually cited, I think Senator Levin's follow-up helped get us some part of the way to what types of consultation took place, whether or not they cited the Executive Order as such. And there are a number of different types of regulations which may have a federalism impact in some way, shape, or form that would be unaffected: Where you have something like auto safety standards, or where you have the Med fly attacks the peach crop in California and USDA has to issue a quarantine, that is done through regulation, and that would be done on an emergency basis. There are a variety of different explanations.

I would be very interested and indeed most eager to sit down and look at the 36 instances where there is a federalism impact and no consultation took place and see what went wrong, because that shouldn't be happening.

But I tell you that there probably are instances where the agency did not do what the agency should have done, and that is why I would like to know. We did this early on after the Congressional Review Act was passed, which requires that all regulations, once issued by the Executive Branch, come and sit before Congress. GAO did a study and said that there were 1,000 regs that had never been sent to Congress, and I said I want the list. I want to go through these. I want to know which agency did not do what it should, who was responsible, and why.

And it turned out that there were a couple of instances of good faith misunderstanding. But there were a number of instances where, in fact, they had been sent to the Congress but, they had been sent to the wrong committee. There were a number of different explanations.

But I asked my staff and I personally got involved in reviewing that list, so that if an agency was not doing what it was supposed to do, we took them to task. And if I had to go to the Secretary of the Department I did that, and in one instance I did and said we are not getting the cooperation we need.

So that is the kind of follow-up that I would take—when I said to Senator Voinovich that I would like to proceed in this area. If the agencies are not doing what they are supposed to do, I am happy to spend my time and my effort to make sure that they do what they are supposed to do and I would work with this Committee, as I have in the past, to make sure that they are following the rules.

Chairman THOMPSON. Thank you. Senator Levin.

Senator LEVIN. I want to go back to the federalism assessments for a moment. There have been previous Executive Orders on that subject which had been ignored, as I understand it. Is that correct?

Ms. KATZEN. Yes, it is.

Senator LEVIN. This is under President Reagan and President Bush. Is that correct?

Ms. KATZEN. That is correct. That is my understanding. I was not there at the time, but this is what my staff, who was there, informed me.

Senator LEVIN. So you came along or the President came along and attempted a new Executive Order which has been ignored in

part, ignored mainly, complied with? How would you summarize it, on the federalism assessment question?

Ms. KATZEN. That was the order that was issued last summer which met with such scorn and derision that it was immediately suspended.

Senator LEVIN. OK.

Ms. KATZEN. And so we have now issued a revised Executive Order, and I believe its effective date is within the next few weeks—if it hasn't been the last couple of weeks. So there has been no Executive Order signed by this President that would have required a federalism assessment during this period.

Senator LEVIN. Does the order on consultation?

Ms. KATZEN. The order on consultation, Executive Order 12875, that I believe was followed, was not applicable in areas of preemption, and that was why I wanted to look at the list. What Executive Order 12875 referred to was the unfunded mandates issue.

When we first arrived in 1993–94, the issue we heard about constantly was unfunded mandates. No one was talking about preemption at that point. They were talking about unfunded mandates and the gross unfairness of having the Federal Government tell a State or local body: You must do something, but we are not giving you the funds to carry it out. And they were legitimately concerned about that, and that was the origin of Executive Order 12875 consultations.

Senator LEVIN. A number of questions have been raised by Senator Voinovich, and one of those has to do with that GAO study about what percentage—in what percentage of cases has the unfunded mandates requirement been ignored. And you are going to submit that to us for the record, or we are going to double-check that, I think Senator Voinovich said, because what you have told us here this morning is that where it has not been complied with is where the law said it was not in effect. Is that correct?

Ms. KATZEN. My understanding is that under Title II the obligations to undertake the analysis were tied to the economically significant regulations, and that in those instances it was carried out. In other instances, it would have not been required to be carried out.

Senator LEVIN. All right. I think it is a very important point. I think it is a fairness point, too. And Senator Voinovich is a very fair person. I think we all know him and admire him for both his directness but also for his fairness. And I would hope that at least on that point that we would withhold final judgment until we can get the clarification of that.

Senator VOINOVICH. I am—that is why I brought it up now.

Senator LEVIN. And so I do think it would be useful for whoever does that review, if I could ask my good friend, Senator Voinovich, whether you do the review or both do it, that it be shared with the Members of the Committee. Perhaps we could directly ask Ms. Katzen to also submit for the record her review when she goes back and looks at it. I think it would be useful to all of us.

Chairman THOMPSON. Is that agreeable?

Ms. KATZEN. That is fine. Thank you.[1]

[1] The information appears in the Appendix on page 86.

Senator LEVIN. We have recently approved in this Committee a bill which our Chairman and others of us have introduced. We have supported the Chairman on a Federalism Accountability Act. It is a very important bill. I think the vote was something like 12–2 in the Committee supporting this bill, and you have worked with us in creating this bill. But now apparently it is running into some other difficulties, including opposition from both the Chamber of Commerce and the environmental community. They are now apparently in league and opposed to our Federalism Accountability Act.

One of the reasons for the act is that the requirement in the Executive Order that there be a federalism assessment has been ignored over the last decade, or however long that Executive Order of President Reagan was in effect. And we are trying to put into law something so that it can't be ignored by the agencies. When the agencies ignore an Executive Order, too often there are no consequences. If they ignore a law, it is at their peril. So one of the purposes of the bill is that we put into law the federalism assessment.

I think we have worked out at least most of the problems. The administration hasn't signed off on it, apparently, but at least a number of the problems have been addressed in this bill. If we can get it to the floor, we will then run into opposition from a number of sources, including apparently, again, the Chamber of Commerce, environmental groups and so forth, but at least this Committee is trying very hard to get to the floor and get passed a bill which will put into law a federalism assessment so we don't rely on Executive Branch enforcement of an Executive Order, but we have a statutory requirement.

Can you tell us as to whether or not in your judgment that requirement that there be an assessment should be in law given the history of ignoring an Executive Order on this point? Do you have any problem with our putting that into law, just that part that there be an assessment? Not the specifics on presumption and judicial review. I am just talking about that part of the bill.

Ms. KATZEN. My initial response would be that the agencies, when they know that the President is supportive of something, do what he has asked them to do, and that whether to codify it or not would depend on whether, once it takes effect, the agencies are following it.

But on the substance, it seems to me to pass a law when there is no need is not all that productive. On the other hand, if we have——

Senator LEVIN. Isn't there a proven need here if we had agencies ignoring an Executive Order?

Ms. KATZEN. It is my view that they have not been ignoring the Executive Orders that the President has, in fact, issued in this area, Executive Order 12875 I think being the principal one.

If there is a pattern of disregard or if there is now so much suspicion that it is impossible to have any trust in the agencies, then on the policy I think that the provisions of the bill—it is S. 1214, I believe—as to what would be the content of a federalism assessment I think are responsible and represent what the agencies should be doing.

Senator LEVIN. One last question. What would you estimate are the top, say, two areas with respect to management that you think need the greatest focus right now?

Ms. KATZEN. If I were confirmed as DDM, I have a top-three list. The first is better integration of the "M" and the "B." I think that the management and the budget go hand in hand, and I think it is what the Government Performance Results Act is all about, trying to put together management and budgeting. OMB has taken a number of steps in getting ready for the better merger of management and budget, and this is something which I would like to see take a dramatic step forward.

Second are the PMOs, the priority management objectives, from Y2K to agency specific issues, such as the HUD housing and the DOD inventory management. These are the issues which have been identified time and again as demanding heightened attention and aggressive behavior, and these are areas in which some progress has been made in some and not nearly enough in others. And they run the gamut, but they all bring efficient, effective government for the American people for the money that they spend.

And I guess the third area is one that is not on this list now, and it is one that we have not really talked about, except it was touched on a little bit in the Chairman's opening comments, and that is the issue of human resources, the human capital issue. Do we have the right skill sets? Do we have the right training? Do we have the right incentives for the right people to come and serve in the government at all levels?

I think that the human capital dimension is one that has too long been overlooked by everyone and that serious work can and should be done in that area. And that would be the third of my top three.

Senator LEVIN. Thank you, Mr. Chairman.

Chairman THOMPSON. Did you have a comment, Senator Voinovich?

Senator VOINOVICH. I just had one comment, and it refers to approaches and attitude.

We have been working on the Federalism Accountability Act, and we know that the administration has had some problems with judicial review. We thought that we accommodated the administration's concern when we removed part of the rule of construction.

According to my staff, your staffers came in on Monday with a new list of changes and concerns that they have with respect to the federalism bill. And we were also told that this list was not exhaustive and there could be other suggested changes on the way.

Now, we thought we had worked things out, and then, well, no, you haven't.

Senator LEVIN. Would you yield on that?

Senator VOINOVICH. Sure.

Senator LEVIN. Just on that point, because my understanding is that we requested whether or not there were issues in addition to the ones which had been worked out, and I don't think it was ever represented to us that everything had been worked out. But our recollections may be a little different on that, but I thought I would at least say that we requested that list. That was for our purposes;

we want to know whether or not the President would sign it, veto it, or what.

Thank you for yielding.

Ms. KATZEN. My understanding is that when we were originally shown the bill, we indicated that there were two or three areas that it seemed to us were just non-starters and that we needed to really work through. And on those three areas, the amendments that were reported by this Committee were responsive to our concerns, thus sort of wiping out the veto threat hanging over the whole bill, as these changes were, in fact, responsive.

We had identified a number of other things, and some of them are very trivial. For example, remember in the very first meeting I had, I noted that the definition of "State" included territories. And I said, there is a very different constitutional relationship between Maine and the United States and between the Marianas and the United States. And there are certain things that we can do or should be doing with the Marianas that shouldn't be judged by what we can do or shouldn't do with Maine.

And I said there are a host of these things. One of the issues that I understand raised a lot of concern was the definition of "rule." Instead of using Section 553 from the APA, the bill uses Section 551, which includes policy statements. The Secretary of the Treasury has informed us that this would cover every time there is a request for a revenue ruling from any individual or any corporation to not have to pay a tax. Also, this will have federalism implications for those States that use the Federal base for calculating income taxes. As a result, the IRS cannot issue any revenue rulings without doing a federalism assessment; and that since revenue rulings come not just from headquarters here in D.C. but from regional offices throughout the country. They would have to shut down their entire declaratory judgment rulings process.

Now, this came to me, and I said, that this is a problem. Let's take this up to the Committee staff. We got that comment by sending the bill around to all of the agencies. They came back with a whole host of things. We winnowed out the comments that we thought didn't make a whole lot of sense. But on something like that, I said, yes, go up and explain to them this is the problem and see if there is a response. I have to be able, when we go to the President and say he should sign the bill, not say, "And the Secretary of the Treasury is going to shut down the IRS." So we need to have some discussion on these points.

I don't know what the reaction was to the list. I am surprised that it was represented that it is either the beginning or the middle and not the end, because we did do what I understood Senator Levin had wanted us to do. We asked the agencies, "Give us your problems," and we only presented those that struck us as reasonable, rational, and at least the subject of appropriate discussion. I don't know what the disposition of that would be, but we thought it important to raise it now rather than sandbag somebody afterwards and say, "oh, here is this problem."

So, again, our staff was trying to be helpful in raising issues that the agencies had raised, and it is not my understanding that there is another list lying in wait or anything of that ilk.

Senator VOINOVICH. So there wasn't any representation that it wasn't exhaustive and that there were no——

Ms. KATZEN. I don't know. I was not at the meeting. But I am surprised to hear that somebody would say it was not exhaustive, because it was intended to be a complete and comprehensive list. But I was not at the meeting, and I do not know. There was only one person from OMB that was there. We also invited members from the different departments and agencies who could speak firsthand. There was someone from the Treasury Department who could talk about this issue rather than having someone from OMB be the spokesperson. I don't know who may have made this representation or on what authority. But it didn't come from me. I do not believe it came from the OMB individual, but I will find out.

Senator VOINOVICH. Thank you.

Chairman THOMPSON. I would think the legislative language would be broad enough that by regulation you could exempt some of these things. I mean, when you throw out to all the agencies any theoretical possibility of any problem they might have, you know what results you are going to get. We are looking at it—for years the requirement has been ignored, and then we come up with some statutory language, and then, the world is going to come to an end because every time you turn around you are going to have to do an assessment. There has to be some reasonable middle ground here.

Ms. KATZEN. Yes.

Chairman THOMPSON. But I want to talk about another subject that is under your jurisdiction, or was. As OIRA Administrator, you were responsible for, among other things, reviewing regulations to ensure that they comply with Executive Order 12866, which requires a cost/benefit analysis on these rules and so forth.

The GAO report and testimony show that the quality of agency cost/benefit analysis sometimes is very poor. Would you agree with that?

Ms. KATZEN. Yes.

Chairman THOMPSON. Moreover, a study of Bob Hahn of the American Enterprise Institute shows that about half of the major rules he studied between 1990 and 1995, the benefits did not justify the cost. Finally, a Harvard study indicates that we could save 60,000 more lives per year at no additional cost by setting smarter priorities.

That is in kind of background to the point I want to discuss, with you, and that is, the EPA PM/Ozone Rule that I think you referred to, and I think you used that as an example of where cost/benefit analysis was thick, anyway. And I assume you think it was well done. But apparently the court did not.

OIRA staff, I think, originally raised problems with the EPA's cost/benefit analysis on particulate matter in ozone under the Clean Air Act. I think the OMB staff and other officials raised concern that EPA was not complying with the administration's guidelines for cost/benefit analysis and risk assessment and was grossly underestimating the cost of the proposed regulations. But EPA went forward anyway.

In fact, the President announced this policy even before the final rule was reviewed by OMB, as I understand it, which raises real

questions about how he views the role of OIRA and OMB and the administration's regulatory policy.

But be that as it may, the D.C. court remanded the rule, EPA's rule, because, first, EPA failed to even consider the potential substitution risk of the ozone standard. For example, in reducing ozone to protect against asthma, EPA might be creating new risk from skin cancer and cataracts since ozone can shield people from the sun's ultraviolet rays.

Second, the court held that EPA's interpretation of the Clean Air Act violated the non-delegation doctrine because EPA failed to establish any intelligible principles that would limit its discretion in implementing the act. Apparently, EPA was taking the position it could do anything it wanted to. And, ironically, applying the principles of our Regulatory Improvement Act arguably might have saved the largest regulatory initiative of this administration because EPA would have been required to consider substitution risk and could have used the risk assessment and substitution risk principles to guide this discretion in implementation of the Clean Air Act.

So basically EPA was deficient, according to the court, in all these different respects, and the OMB staff in their analysis in their draft response, original OMB draft response of January 8, 1997, they said, "While these analyses"—talking about the EPA analyses—"produce much useful information, there were several areas in which they did not fully conform to the principles discussed in the best practices document." That has to do with cost/benefit analysis and these other things we mentioned.

But by the time it got to be the final OMB response, submitted to the Commerce Committee on January 15, you concluded that these analyses were consistent with the best practices document. So it looks to me like you had your professionals inside the OMB over there doing their job, and they saw what the court saw early on. And by the time it got up to official OMB response, their minds had been changed and they were consistent with best practices after all.

To me, these things—if it is a policy matter, we can disagree on policy matters. But if it is a management matter and an objective professional analysis, that is something else. We really should not let pressure come to bear with regard to those matters. If we can't have an agreement as to sound management policies, then that doesn't leave us with very much to work with.

So I must say that your statement earlier about EPA's cost/benefit analysis and all, I don't understand where you—how you feel comfortable with that and doing what the court did.

Ms. KATZEN. It has been several years since I taught administrative law, but I remember vaguely that the non-delegation doctrine, which had last been heard from in the early 1930's as a concern about some of the New Deal legislation and had not been heard of again except in dissents, goes to the question of whether there is ample guidelines given by the Legislative Branch to the Executive Branch agency to carry out a function or whether the agency has exceeded the delegation from the Legislative Branch. And the court here said that in the Clean Air Act there wasn't the kind of criteria that would enable the agency to proceed.

As I understand it, this decision is not yet final. There has either been a request for rehearing or for rehearing en banc by the court on that particular point. But that does not go to whether or not they accurately did an analysis of the costs and the benefits.

The correspondence that you are referring to was one that apparently a series of questions was asked. Staff drafted some answers. They were then reviewed by staff, as well as by policy people, who thought that the initial draft was, as initial drafts sometimes are, a little too strident, a little too critical, when it was not appropriate to do so. And this happens almost in any organization where the draft starts at the bottom and it gets drafted and as it gets——

Chairman THOMPSON. At the bottom it says it is black and at the top it says it is white. That is a little more than stridency, I think.

Ms. KATZEN. But I think, that in terms of the ultimate objective, the thing that we care about is are people doing the analysis? Are agencies thinking about the alternatives?

I was pleasantly surprised during my consultations with the NGA that they said that EPA was one of the best agencies, that EPA had one of the better State and local federalism officers, and that consultation on some of the regulations had been among the best that they had seen in the Federal Government. I thought that that was very important because so much of what EPA does impacts the States directly.

That may have been one person's view, and it is not shared by others, and it may have only been in the case of one or two rules, which does not apply to other rules. But I am suggesting that the experiences of the agencies are quite varied. What I was talking about, the PM/Ozone rules, is that EPA was not required to do a cost-benefit analysis under the law. The Clean Air Act specifically says, "without consideration of cost." It is health-based standard.

And yet because of the executive order, EPA did put together a very comprehensive, some might say flawed, in part, but they did do a very comprehensive cost-benefit analysis, and I thought that was something worth commending them for and encouraging even greater dedication.

Chairman THOMPSON. Well, your original, your OMB staff said it was flawed originally.

Ms. KATZEN. And changes were made in the cost-benefit analysis during the review process.

Chairman THOMPSON. Consider the thing in context. The GAO reports, and you agree, that a cost-benefit analysis sometimes is very poor. OMB's own people said that it did not conform with the best practices document. And then, at my request, the GAO reviewed OMB's two previous regulatory accounting reports under the Stevens Amendment and found much room for improvement.

But relevant to this point, the GAO interviewed seven expert economists about the reports, and they criticized OMB on a number of points. For example, these experts criticized OMB for acting as, in their words, a mere clerk in taking wholesale agency estimates of benefits and costs without exercising any independent judgment on their plausibility and reliability.

So a lot of problems with cost-benefit analysis. You are right, some of these statutes do not require it. But you have an executive order, and you get the best of both worlds. You put all of this stuff

in the executive order, and you say it is all there, and we believe in it and so forth. But in practicality, whether it is issues of federalism, whether or not it is doing a decent cost-benefit analysis or any of these other things that make a difference in the real world, according to expert, after expert that has looked at it, it leaves a lot to be desired.

I am going to change subjects again, Senator Levin, but I will bow to you for——

Senator LEVIN. I just wanted to clarify one thing. It was a question that Senator Voinovich asked about representation of completeness of problems. And I think there may have been a disconnect, although I may be wrong, as to what meeting was referred to. And I want to make sure that there is no misunderstanding on that.

When you answered, you referred to a meeting, was that the meeting this week that you were referring to in this list of——

Ms. KATZEN. Yes. It was on Monday.

Senator LEVIN. I am not sure that that was the reference that Senator Voinovich was making, and I may be wrong on this. I thought that Senator Voinovich was referring way back to whether or not there was a representation that problems that were identified were the only ones. But I just want to make sure, for the record, that the record is clear. The meeting you were referring to, where you laid out this list of things that you would like to see clarified or improved or whatever, that meeting was a meeting——

Senator VOINOVICH. No. I am talking about, I know that that meeting went on, and I know that they tried to accommodate us——

Senator LEVIN. It was just this week, though.

Senator VOINOVICH. This was just this week.

Senator LEVIN. OK.

Senator VOINOVICH. I think the explanation was that they went out and did a larger networking and came back with some ideas.

Senator LEVIN. I was confused then because I thought that there was a reference to an earlier meeting.

Senator VOINOVICH. No. There was a meeting this week and then the answer was, well, we are trying to get this bill ready to go.

Senator LEVIN. Right.

Senator VOINOVICH. Well, no, we have not given—we may have some other problems with it.

Senator LEVIN. I wish our problems were mainly the problems of some parts the administration might have with it. I think we have got problems outside that are going to be our biggest hurdles, frankly. But any rate, it is important that we clarify what the problems are internal to the administration, and I just wanted to clarify as to what that reference was to. For my own purposes, I was confused on it, and that helps, that clarification. Thank you.

Chairman THOMPSON. Let us go back to some of the concerns that I originally expressed this morning. First of all, I want to hit on a couple of areas, and this is just a matter of refocusing. Because I brought up some of these matters, for example, when Secretary Summers was confirmed, of some of the high-risk list items and so forth. He was obviously not even aware of what I was talking about.

And I guess, in a way, it was unfair to hit him with that, considering all of the things that he probably had on his mind at that time. But, clearly, in the briefing to that point, they were not a matter of sufficient concern to his people. I was on the Finance Committee, so I had a chance to try to bring these to his attention.

I want to re-emphasize a couple of things that I am sure that you already know. One has to do with these governmentwide, systemic problems that cause other kinds of problems. We are talking about the Government Performance Results Act and performance plans and so forth. In order for any of this to result in anything, you have to have reliable data. Although we have stated the importance of setting specific measurable goals for management, agencies do not have the systems in place to manage their performance. According to GAO's most recent analysis, few agencies appear capable of producing reliable performance data to provide a credible basis for their performance goals and measure their performance.

According to GAO, none of the 24 agency plans analyzed provide full confidence that their performance data will be credible. Twenty of the 24 agency plans provide only limited confidence that their performance data will be credible. On the issue of information management, the deputy director for management is the chairman of the Chief Information Officer's Council, as you well know. And people ask what the "I" stands for in OIRA. Well, that is "information." And that position should have the ability to effect change in the management of major information technology acquisition in the Federal Government.

GAO calls information technology management one of the government's major management challenges for the 21st Century. In a recent report, GAO wrote, "Billions of dollars have been wasted for computer systems that fail to deliver expected results. To the extent that billions in planned obligations for information technology is going to be spent more wisely, Federal programs will operate more efficiently with less costs."

Just a couple of underlying problems that have been there for a while that continue to haunt us. If we are going to have any good out of the Government Performance Results Act, we have got to do better.

I am going to go through, again, just from the standpoint of highlighting and bringing together in one place a few of the things that the GAO has found with regard to some of these departments that we have been working with for so long. We get them up here one at a time and talk to them, and criticize them, and they plan to do better and say they are on the case, and come back next year and nothing has changed for a decade, in some cases.

But I wrote to each of these departments and gave them GAO's assessment on their performance plans, and I have got some notes here from my letters I wrote them, which incorporates the GAO findings in many cases.

Let us take the Department for Defense. GAO found that the fiscal year 2000 plan for the Department of Defense had several key weaknesses. It seems that, more than any other agency in the government, DOD has been plagued by mismanagement. The GAO identified six high-risk areas that are specific to DOD: Inventory management, for example. GAO reports that "Of the $65 billion of

secondary inventory on hand, more than half is not needed to support DOD war reserve or current operating requirements. In fact, DOD has no demand for about $11 billion of this inventory and continues to purchase inventory for which it retains a more than adequate supply. As mentioned above, financial management problems continue to plague DOD. Weaknesses in DOD's financial management operations continue to hinder its ability to effectively manage its $250 billion budget."

GAO recently wrote that "DOD's biennial financial management improvement plan lacks critical elements necessary for producing sustainable financial management improvement over the long term."

There are about 50 open GAO recommendations made to improve the credibility of DOD's financial reporting. GAO evaluated the extent to which the plan contains specific performance goals to address the ten high-risk areas. DOD's plan contains such performance goals for five of the ten problem areas. So in half of the real problem areas, DOD's plan does not even address it.

Contract management at DOE. I am sorry. I have switched departments here. This is the Department of Energy. Contract management at Department of Energy has been on GAO's high-risk list since the inception of the list in 1990, almost a decade ago. DOE relies on contractors to perform about 90 percent of its work. Recently, the Department significantly increased its use of competition in selecting contractors to manage and operate its major facilities, but it should do more. In addition, DOE is still not competitively awarding contracts for environmental restoration work at its national laboratories, even though it does at other facilities. GAO has made 11 recommendations to DOE to improve its contract management. Four of those recommendations date back to 1994 and nothing has been done on them.

According to information provided to the Committee by the DOE's inspector general and GAO, there are a number of audit recommendations outstanding, 30 unresolved recommendations.

Over at HHS, the estimated annual error rate for Medicare fee-for-service payments has dropped dramatically over the last few years. But the error rate remains equally dramatic, amounting to $12 billion or over 7 percent of the total annual budget for fiscal 1998, as Medicare remains one of the single largest documented sources of waste and error in the Federal program.

Medicare fraud and error was included in the GAO's original 1990 high-risk list problem areas most vulnerable to waste, fraud, and abuse and mismanagement and has remained a high-risk program to the present. Since the beginning of fiscal year 1997, GAO has issued more than 50 reports and testimonies relating to different aspects of the Medicare program. There are about 50 open GAO recommendations that HHS has yet to fully implement. There are a number of open audit recommendations addressing other major management problems at HHS as well, 79 additional GAO recommendations on HHS major management problems, 26 of which are described in an enclosure that we sent over to HHS.

Over at HUD, there are a number of open recommendations by the inspector general. Many of these recommendations date back to 1992. It points out that the annual audit of HUD's financial state-

ments has identified eight material control weaknesses, most of which have been reported consistently for 6 or more years. For example, the IG reported HUD's control structure does not provide reasonable assurance that funding for rent and operating subsidies to housing authorities and multi-family project owners has been in compliance with applicable laws and regulations. Indeed, HUD itself estimates that excess rent subsidy payments totaled about $857 million in calendar year 1997.

GAO recently evaluated the extent to which HUD's fiscal year 2000 performance plans contain specific performance goals to address the 11 high-risk and other more serious management problems confronting the Department, the GAO and the IG for HUD has identified. According to the GAO evaluation, HUD's plan contains performance goals for only 3 of the 11 high-problem areas.

Department of Justice. GAO review of Drug Enforcement Administration strategies and operations in the 1990's, GAO findings indicate that while DEA's funding almost doubled and its staffing increased substantially over the past decade, the Agency achieved no demonstrable results. The supply and use of illegal drugs remains largely unchanged during the decade and persisted at very high levels. GAO said, "DEA has not developed measurable performance targets for disrupting and dismantling drug trafficking operations/organizations. Without such performance targets, it is difficult for DEA, the Department of Justice, Congress and the public to quantitatively assess, one, how effective the DEA has been using resources provided by Congress to achieve its strategic goals, and, two, the extent to which DEA's programs and initiatives have contributed to reducing the illegal drug supply."

It says, "Justice must develop good performance data, since, according to the GAO, there is little confidence that its current performance information is credible." GAO notes that "Justice has a strategy to deter illegal crossing at the southwest border, but lacks specific data and indicators to systematically evaluate the success of this strategy."

So I guess the best interpretation of this is that we have no idea whether or not this program is working. That is the best characterization you can put on it, I think. A problem area of particular concern is the management of forfeited assets by the Department of Justice and the Treasury Department. GAO designated forfeited asset management at both departments as a high-risk area in its original 1990 high-risk list. This problem has languished on the high-risk list ever since. Although it should have been resolved long ago.

According to GAO, there is no acceptable reason for the long delays in completing the actions necessary to remove this high-risk designation. Furthermore, Justice and Treasury Departments have refused to implement a GAO recommendation dating back to 1991 to consolidate the management and disposition of properties. Indeed, Justice and Treasury Departments maintain separate contractors to handle seized assets at some of the same locations. GAO found in 1991 and continues to believe that consolidation of asset management and disposition function could reduce programs' administrative costs and area duplication.

Fifty-seven unresolved recommendations by the IG, 28 additional open GAO recommendations. Only half of the IG open audit recommendations are addressed to computer security problems. I am sorry. Almost half of the IG's open audit recommendations are addressed to computer security problems. Computer security is a governmentwide high-risk problem area. It poses particularly serious potential risk at the Justice Department, in view of its many highly sensitive information systems.

An additional seven IG recommendations with regard to mismanagement and abuses of the naturalization process by the INS. All of the 28 GAO's audit recommendations relate to INS problem areas. Indeed, GAO recently testified that most of the Department's major management problems are found in INS. Many have persisted for years, and these problems are in need of what they call "urgent attention." Sixteen high-risk list areas. Justice's plan to do something about it addresses 8 of 16.

Department of Labor. With regard to their high-risk and other most serious management problems, Labor has no specific goals for measuring 12 of 13 problem areas. One area without specific goals or measures is the year 2000 problem. It is also on the GAO's high-risk list. Absence of goals for nearly all major problem areas.

Department of State. Like many other agencies in the Federal Government, the Department of State has been plagued by mismanagement. GAO and the IG's have identified major management challenges in numerous programs that are at high risk to loss from waste, fraud and abuse which apply to State. They are particularly concerned about outstanding recommendations in the area of information security, personnel operation and financial management.

Department of Transportation. The Department of Transportation did have a pretty good plan, I must say, according to GAO, as far as their plan. I think it was probably the best in terms of their intention. But as far as the systemic problems, there are still problems.

There are 22 open GAO recommendations related to systems architecture. FAA financial management was added to the high-risk list this year. According to the GAO and the inspector general, financial management weaknesses render FAA vulnerable to waste, fraud and abuse, undermine FAA's ability to manage its operations and limit the reliability of financial information provided to the decision-makers. FAA has been unable to pass financial audits, in part because property and equipment valued at almost $12 billion and inventory reported at $764—I believe that is million dollars—cannot be verified.

Another area of concern is failure to fully implement IG's recommendation to improve inspection of trucks entering the United States, something the IG has been onto them for a while now. According to the IG, only 1 percent of trucks entering the United States from Mexico were inspected, and 44 percent of those that were inspected, did not meet U.S. safety standards.

Secretary of Treasury. GAO found, "real progress is not evident" in correcting the weaknesses of the 1999 plan. Treasury is one of the three agencies that received the lowest quality ranking from GAO in all three core GPRA evaluation questions. On the high-risk

list, Treasury's plan has no specific goals for 12 of these 21 problems.

EPA. GAO found that the 2000 plan had no performance goals for mission-critical challenge of improving data management. GAO said the EPA needs to add goals for implementing the Clinger-Cohen Act. Now another year has passed, and the EPA's failure to include in its fiscal year 2000 plan any goals or time frames for the processes needed to make sound information technology investment decisions is a serious omission.

One problem area of particular concern at EPA is the Superfund program management. EPA has yet to fully implement several GAO recommendations related to this high-risk problem area that are detailed in the enclosure. One example is a GAO recommendation from September 1994 that EPA expedite the issuance of the regulation on indirect costs. The proportion of Superfund dollars devoted to administrative support, as opposed to actual clean-up activities, remains a problem and one that is growing worse. GAO recently reported that the share of total Superfund expenditures for contractor clean-up work declined from about 48 percent in fiscal 1996 to about 42 percent. At the same period, spending for "support activities" increased from about 51 percent to 54 percent of total Superfund expenditures. Nonsite-specific expenditures also increased from about 36 percent to over 39 percent. EPA officials could not explain these changes in detail because they had not analyzed Superfund costs in this manner and were unaware of this decline until GAO presented their findings.

NRC. NRC has been plagued by mismanagement. GAO has recommended that NRC develop strategies to act more aggressively on safety deficiencies when they are discovered.

I am skipping over a bunch of this. SBA, there are a number of open audit recommendations addressing major management problems at SBA. According to GAO evaluation, which is detailed in the enclosure that I sent them, SBA's plan has no specific goals for any of the ten problem areas.

So, Ms. Katzen, this is just, going through the highlights, do you come away from that with a feeling of optimism or does that concern you? I mean, what is your——

Ms. KATZEN. Do I still want the job? Is that what you are asking?

Chairman THOMPSON. I beg your pardon? Do you still want the job? [Laughter.]

Well, I guess that is a good question.

Obviously, it is a big government, and there are a lot of problems out there. And I know it is easy to highlight things. Some of these reports, by the way, some were better than others. And I did not do full justice to some of them. Some of them are making progress in terms of better reports in 2000 than in 1999.

But, obviously, governmentwide there are systemic problems that are costing billions of dollars that are threatening our national security, in terms of vulnerability in some of these information systems especially, becoming bigger, and bigger and bigger. The IRS alone has spent billions of dollars trying to get its computers to talk to one another. That is one thing. But when you see the departments and agencies doing very little or making just slight incremental changes so that we have got 20 massive problem areas,

and we addressed two in 1999, and this year we are going to address four, that is not good enough.

So you see, and I am sure you do not need to be told this. But I cannot emphasize too much that if you are confirmed, this is going to be an ongoing thing. I know you feel like we are being intrusive. We have not done, I do not think, a good enough job in overseeing a lot of this and bringing these things to bear. But I am telling you that this is viewed as a serious problem. And if you do not view it as a very serious problem and you are not willing to go in there and knock some heads together, then you are not the right person for this job. And I just need to tell you that and let you make any response that you want to.

Ms. KATZEN. I listened with interest. Many of the items that you had mentioned I have heard about, as I have been preparing for this. I am not in a position to do or say very much until I am confirmed. But I have been getting up to speed and learning a lot about these problems, reviewing the GAO reports, many of which I agree with completely.

I think there has been some progress made. I mean, there was a reference to a department's Y2K problems. OMB filed a report, I believe, yesterday with the Congress saying that 97 percent of mission critical systems are going to be Y2K compliant, something that nobody thought we would ever get close to a year ago. And this is, I think, some progress. Is there a lot more to be done? Yes, a great deal more has to be done.

Each year OMB has revised the GPRA guidance. I was there when they were preparing this year's guidance, particularly on identification of management issues. Mission-critical management issues should be a part of the agency's performance plans. The reliability of the data, we have not yet seen the first performance reports to see what kind of data will be presented. We know the data they are relying on for their performance plans, and we have specified in our guidance that we want to know exactly where, how, when and from whom they are getting their data and what testing they are doing to ensure them. Also, we have worked with the IG community to try to have the IG community help us in validating and verifying performance data for some of these agencies.

There is an enormous amount of work to be done. This is a very large enterprise, and the challenges are enormous. They are not, I do not think, overwhelming in the sense that we cannot make significant progress. And whether it is beating heads together, or trying to persuade, or a combination of the two, there should be some consequences.

And as I indicated in the answer to some of the questions that had been submitted, I look forward to—and I would hope that I could be confirmed to participate in this year's budget review for the 2001 budget—at which all of these issues will be at the table. I would like to be at the table to speak to these issues to make sure that we are not spending money in ways that do not make sense or that do not have the management structure that they need to have. For that reason, I have continued to study, and I have continued to look through these areas and make modest recommendations for approaches. I would welcome working with you, with the

other Members of the Committee, with the staff of this Committee, to bring forward some of the shared objectives that we have.

Chairman THOMPSON. Thank you. Senator Levin.

Senator LEVIN. Mr. Chairman, I would like to read from the GAO report to us on their high-risk analysis because it gives a somewhat different flavor than is projected by the focus just on the problems, which is accurate, by the way; the Chairman's reading of those problems is surely accurate.

But I think the GAO report gives a different flavor and a different balance to it, and I want to read from it. This is a January 1999 letter from the Comptroller General, David Walker, and this is what he says in his letter to the president of the Senate, Speaker of the House. "Since 1990, the GAO has periodically reported on government operations that we have identified as high risk because of their greater vulnerabilities to waste, fraud, abuse and mismanagement. This effort, which was supported by the Senate Committee on Governmental Affairs and the House Committee on Government Reform, brought a much needed focus on problems that are costing the government billions of dollars. To help, GAO has made hundreds of recommendations to improve these high-risk operations."

And then comes the next sentence, which surely gives a very different impression, I think, than what has been given in the report by the Chair this morning. Although, again, I have no quarrel with the accuracy of what the Chairman's statements were because they are, indeed, accurate. But here is what the GAO says: "Overall, agencies are taking these problems seriously and making progress in trying to correct them."

Now, I do not know how they can say that, given the litany of problems that remain. That is my first impression. Well, how do you say that? Well, I have not read the whole book yet, but that is their conclusion. That is the very same GAO which has identified the problems, that has told us, in their report to us, that, overall, agencies are taking these problems seriously and making progress in trying to correct them.

They also say, "While progress has been made in correcting high-risk problems, sustained attention by the Congress in overseeing agency efforts is needed to make further headway in producing lasting solutions. Overall," Mr. Walker told us, "as high-risk operations have been corrected and other risks have emerged, we have removed areas from the list and added new ones to keep the Congress current on areas needing attention."

And then the Executive Summary says this: "In our 1997 update to the 105th Congress, we reported that progress had been made in addressing the 20 high-risk areas being tracked at that time. We cautioned, however, that much more effort was needed to fully implement real solutions to these serious and longstanding problems."

"Also, in 1997, we added five areas: The Year 2000 computing challenge and information securities' governmentwide risks, the Supplemental Security Income program, Defense infrastructure, and the 2000 Decennial Census. Since 1997, agencies have focused on developing action plans and are trying to resolve weaknesses. The Congress has heightened its attention by reviewing agencies' progress and taking legislative action. Because of sustained tan-

gible improvement in one area, the U.S. Custom Service's financial management, we are removing its high-risk designation, making this the sixth area to come off the high-risk list since the GAO began this effort in 1990."

"In remaining areas, more needs to be done to achieve real and sustained improvements. In many cases, agencies have agreed with GAO recommendations, but have not yet fully implemented them. Also, many good plans have been conceived, but the more difficult implementation task of successfully translating those plans into day-to-day management reality lies ahead. It will take time to fully resolve most risk areas, most high-risk areas, because they are deep-rooted, difficult problems and very large problems in very large programs and organizations."

"Continued perseverance in addressing the 26 areas that are the current focus of our high-risk initiative will ultimately yield significant benefits."

Now, one of the ironies here is that I think the nominee is one of the persons, in the agencies' view, as being the head knocker. I think when you talk to agencies, some of whom come to us, going around OMB at times, and going around folks like Sally Katzen, come to us seeking relief, I have gotten the flavor pretty strongly that the nominee who is in front of us is the person who has aggressively been pursuing things like cost-benefit analysis. And she has, of course, as is probably endemic, run into resistance at the agencies, which she has had some success at least, I believe, in overcoming.

So it is kind of an irony here that Ms. Katzen, Sally Katzen here, has really, I believe, been a very strong advocate for some of the very approaches to government administration that we have so strongly been promoting in the Congress and has had, I believe, some very strong positive results. Will there always be resistance in the agencies? I think so. But it is surely better to have somebody who is strongly supportive of cost-benefit analyses, or risk assessment, as Sally Katzen is, at that table rather than to have somebody who is less strongly inclined in that same direction.

So I would hope that we would be able to confirm Sally Katzen. I hope that the material she will supply for the record and other material that will be gathered will be able to allow us to vote on her nomination one way or the other. But in any event, I want to, again, express my belief that she has indeed shown that she is willing to address issues that are important to us, maybe not as effectively as some of us would like in the federalism area, but I think that is an area which is going to require our continuing attention, as well as the attention of people inside of the OMB.

And I just hope that we can get our current federalism agenda adopted by our own Congress. That is going to require our continuing attention, and I hope we can do it because I think it is necessary that we have a federalism assessment, not just required by executive order. But given the history of the response of the agencies to those executive orders, at least in prior years, I think it is essential that we put that requirement into law, that is our responsibility.

So I would look forward to any additional responses or materials, that our nominee can submit and other materials which Members

here would put into the record. And hopefully we could have a decision made on this nominee as to whether we want it to go forward at the Senate or not. But we need somebody at that table in this position whom I think has proven to be the kind of experienced person and supporter of at least most of the issues that we have fought so hard for on this Committee.

Chairman THOMPSON. Thank you very much. Senator Voinovich, do you want——

Senator VOINOVICH. I have nothing more to say, except to say thank you very much. We put you through a pretty grilling experience, and I think you have handled yourself quite well. As I say, we just have a difference of opinion in terms of approach.

Ms. KATZEN. I hope we find some common ground. And I appreciate your indicating the areas, so that I can possibly address them to your satisfaction. So thank you very much for that, sir.

Chairman THOMPSON. I think you call it a frank and open discussion of the issues, as they say in diplomatic circles. [Laughter.]

But you are more than equal to the task of dealing with us, Ms. Katzen. And I compliment you on your many years of public service. And I think everyone on this Committee has the highest respect for you personally. Although we do disagree on some of the issues. But thank you for your being here today.

Ms. KATZEN. Thank you. Thank you, Mr. Chairman.

Chairman THOMPSON. The record will remain open for 5 days after the conclusion of the hearing. We will be in recess.

[Whereupon, at 12:20 p.m., the Committee was adjourned.]

APPENDIX

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

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

   Sally Katzen
   Sally Katzen Dyk

2. Position to which nominated:

   Deputy Director for Management
   Office of Management and Budget

3. Date of nomination:

   July 1, 1999

4. Address: (List current place of residence and office addresses.)

   Residence - **4638 30th Street, NW**
   Washington, D.C. 20008

   Office - **Office of Management and Budget**
   OEOB Rm. 260
   Washington, D.C. 20503

5. Date and place of birth:

   November 22, 1942
   Pittsburgh, Pennsylvania

6. Marital status:

   Married to Timothy B. Dyk

7. Names and ages of children

   Child: **Abraham B. Dyk – 17 years old**

   Stepdaughters: **Caitlin Shirer Palacios – 33 years old**
   Deirdre Lawrence Van Dyk – 35 years old

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

Taylor Allderice High School: 1954-1960; diploma (June 1960)

Smith College: 1960-1964; B.A., magna cum laude (May 1964)

University of Michigan Law School: 1964-1967; J.D., magna cum laude (May 1967)

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

Intern, Civil Rights Division, Department of Justice,
Washington, D.C.,
May 1965-August 1965

Clerk for Judge J. Skelly Wright, U.S. Court of Appeals for the District of Columbia Circuit, Washington, D.C.,
1967 – July 1968

Associate/Partner (as of 1/1/75), Wilmer, Culter and Pickering,
900 17th Street, NW & 1666 K Street, NW
Washington, D.C.,
August 1968 – March 1979

General Counsel/Deputy Director for Program (as of 10/80),
Council on Wage and Price Stability,
Executive Office of the President
Washington, D.C.,
March 1979 - January 1981

Partner, Wilmer, Cutler & Pickering
1666 K Street, NW & 2445 M Street NW,
Washington, D.C.,
March 1981 – May 1993

Adjunct Professor, Georgetown Law Center
Washington, D.C.,
Spring term 1986, Fall term 1990, Fall term 1992

Administrator, Office of Information and Regulatory Affairs,
Office of Management and Budget
OEOB Rm. 350
Washington, D.C.,
June 1993-Febuary 1998

Deputy Director, National Economic Council,
The White House,
OEOB Rm. 231
Washington, D.C.,
February 1998 – June 1999

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

Public Member, Administrative Conference of the U.S.
1988-1993

Member of Council and Vice Chairman, Administrative Conference of the U.S.
1993-1995

Member, Commission on the Bicentennial of the U.S. Constitution, U.S. Court of Appeals for the D.C. Circuit
1987-1990

Member, Judicial Conference of the District of Columbia Circuit
1969-1981; 1983-1992

*** Any other positions from 1993 to present would have been solely by virtue of my position at OMB.**

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None at present other than:
Limited Partner, Hempstead Village Associates
Limited Partner, Urban Village Associates
Member, Committee of Visitors – University of Michigan Law School

Recent Past:
Secretary and Director, TAS Corp. (a family corporation dissolved in 1996)
Partner, Wilmer, Cutler & Pickering (withdrew in 1993)

While in private practice, I served as an attorney/agent/representative/consultant for business clients of Wilmer, Cutler & Pickering. My primary clients for the last two years of private practice (1991-1993) were:
Capital Cities/ABC; Communications Satellite Corporation; Community TV Foundation of South Florida; Federal National Mortgage Association; Federal Home Loan Bank of San Francisco; IMAX Systems Corporation; International

Microwave Power Institute; Lewis & Roca (Council of Community Blood Centers); National Public Radio; Seattle Public Schools; Swiss Bankers Association; Trans-Alaska Pipeline Liability Fund; and US West.

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

Current memberships include:
American Bar Association
Member
Member, ABA Fellows
District of Columbia Bar
Federal Communications Bar Association
Women's Bar Association
Women's National Democratic Club
Cosmos Club
Forest Hills Citizens Association
Smith College Club of Washington
Smith College Alumnae Association
University of Michigan Law School Club of Washington
University of Michigan Law School Alumni Association
Temple Sinai

Current memberships through financial contributions:
National Women's Law Center
National Partnership for Women and Families
Children's Defense Fund
Friends of Washington Opera
Hadassah
Truro Conservation Trust
Truro Historical Society
WAMU

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

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

During 1992, I appeared as a spokesperson for the Clinton campaign at a program sponsored by the ABA Section of Administrative Law and

Regulatory Practice, and I did fundraising/advisory work for Jane Harman for Congress.
During November 1996, I appeared as a spokesperson for the Clinton/Gore 1996 campaign at several events in Western Pennsylvania.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

John Ray for Mayor	$100
The Kerry Committee	$50
The Kerry Committee	$50
Tim Johnson for Senate	$500
Democratic National Committee	$200
Democratic National Committee	$100
John Schmidt for Governor	$250
Anthony Williams for Mayor	$500
Democratic National Committee	$100

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

Abram W. Sempliner Memorial Award (University of Michigan Law School)

Junior Class Prize (University of Michigan Law School)

Editor-in Chief, Michigan Law Review

Order of the Coif

Excellent Pro Bono Award (Radio Station KNHC, Seattle Public Schools)

Outstanding Leadership Service and Commitment Award (Federal Communications Bar Association)

Distinguished Alumni Hall of Fame - Taylor Allderice High School

Federal 100, Federal Computer Week – 1994, 1995,1998

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

"Fifth Circuit Relies on Administrative Standards in School Desegregation Cases," 64 Mich. L. Rev. 340 (1965)

"Uninsured Casualty Losses are Within The Scope of I.R.C. Section 1231," 64 Mich. L. Rev. 735 (1966)

"Introduction to Symposium: Administrative Law Issues in Comprehensive Health Care Reform", 47 Admin. L. Rev. 373 (1995)

"Administration Perspectives on the 1995 Regulatory Reform Legislation", 48 Admin. L. Rev. 331 (1996)

Three copies of the above are attached (Att. 1).

16. Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

From June 1993 to February 1998, I testified before Congress 47 times in my capacity as Administrator of OIRA. A list of the testimonies is attached as Attachment 2. In addition, during this same period, I spoke on average twice a week, most of the time from talking points rather than text. Three copies of speeches (or talking points) that I have retained are attached (Att. 3).

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

No. However, I believe I was chosen on the basis of my professional and personal qualifications and experience.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For the last 6 years I have held senior government positions as the Administrator of the Office of Information and Regulatory Affairs (OIRA) and the Deputy Director of the National Economic Council. OIRA is one of the three areas overseen by the Deputy Director for Management. During my tenure as Administrator of OIRA, I had an opportunity to work closely with the Deputy Director for Management, not only in the specific areas within OIRA's jurisdiction but in related areas as well. In addition, I often attended and participated in many of the management organizations within the Executive Branch (e.g., the President's Management Council, the CIO Council, etc.). More generally, over the last 6 year I have dealt with many of the management and policy issues that has confronted the Executive Branch. This mixture of management and policy gives me a unique ability to integrate the M and the B in OMB. During the past 6 years, I have also been able to establish solid working relationships with many of the senior people in the government who bear management responsibility for their departments or agencies.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   I have already severed all connections with private sector employers.

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

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   None

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

   I currently have a qualified blind trust for my husband's and my investment portfolio other than U.S. Government securities and mutual funds. My husband is a partner of Jones, Day, Reavis & Pogue. Any potential conflict of interest raised by these or other matters is addressed in the attachment to my SF-278, which specifies that I will recuse myself from any particular matter in which my husband's firm has a financial interest or represents a party.

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

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

In my capacity as a lawyer for clients at Wilmer, Cutler & Pickering (before May 1993), I participated in discussions with congressional staff intended to influence the passage, defeat or modification of selected portions of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) and the Oil Pollution Act of 1990. Also much of the legal services I rendered was in an attempt to affect the administration and execution of law and policy. Specifically, I was in the regulatory/legislative practice area of the firm, and my major clients during the first few years of this decade are listed above in the response to question A .11. I worked on a variety of legal/policy matters for these clients, involving, among other issues, those relating to communications and administrative law.

As a member of the Administration for the last 6 years, I have been involved in a number of pending legislative matters and in the administration and execution of law or public policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

As indicated above, I have recused myself with respect to my husband's firm. A copy of my Blind Trust Agreement is attached (Att. 4).

Any other conflicts that arise will be resolved by recusal or other ethics undertaking as specified by the OMB ethics officials.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

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

   No.

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

   No.

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

   In the late 1970's, early 1980's, my husband and I, together with several other neighbors, brought suit in Virginia against an upstream neighbor who was interfering with the flow of water through our property. My husband and I sold the property in the mid 1980's.

   In the early 1980's, adjoining property owners brought suit before the D.C. Zoning Board alleging that construction on our property violated the zoning laws. My husband and I and another couple were constructing our houses on vacant land. The zoning issue related to the other couple's property. The case was ultimately settled.

   In the early 1990's, my husband and I brought an action in Massachusetts against tenants who had overstayed their lease, seeking possession of the property, unpaid rent and compensation for damages to the property. The defendants vacated the property, and the suit was dismissed without prejudice on June 26, 1998.

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

   No

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

   None.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

Financial Data - On file with the Committee on Governmental Affairs

AFFIDAVIT

SALLY KATZEN being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Sally Katzen

Subscribed and sworn before me this 8th day of July, 1999

Jessie M. Jones Nemer
Notary Public
Commission Expires: Aug. 14, 1999.

Pre-hearing Questionnaire from Chairman Fred Thompson
For Sally Katzen to be Deputy Director for Management,
Office of Management and Budget

I. Nomination Process and Conflicts of Interests

1. **Why do you believe the President nominated you to serve as Deputy Director for Management (DDM) of the Office of Management and Budget?**

I believe I was chosen on the basis of my professional and personal qualifications and experience.

2. **Were any conditions, expressed or implied, attached to your nomination? If so, please explain.**

No.

3. **What specific background and experience affirmatively qualifies you to be DDM?**

For the last 6 years I have held senior government positions as the Administrator of the Office of Information and Regulatory Affairs (OIRA) and the Deputy Director of the National Economic Council. OIRA is one of the three areas overseen by the DDM. During my tenure as Administrator of OIRA, I had an opportunity to work closely with the DDM, not only in the specific areas within OIRA's jurisdiction but in some related areas as well. In addition, I often attended and participated in many of the management organizations within the Executive Branch (e.g., the President's Management Council, the CIO Council, etc.). More generally, over the last 6 years I have dealt with many of the management and policy issues that have confronted the Executive Branch. This mixture of management and policy gives me a unique ability to integrate the M and the B in OMB. During the past 6 years, I have also been able to establish solid working relationships with many of the senior people in the Federal Government who bear management responsibility for their departments or agencies.

4. **Have you made any commitments with respect to the policies and principles you will attempt to implement as DDM? If so, what are they and to whom have the commitments been made?**

No.

5. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? Id so, please explain what procedures you will use to carry out such a recusal or disqualification.**

I currently have a qualified blind trust for my husband's and my investment portfolio other than U.S. Government securities and mutual funds. My husband is a partner of Jones, Day, Reavis & Pogue. Any potential conflict of interest raised by these or other matters is addressed in the

attachment to my SF-278, which specifies that I will recuse myself from any particular matter in which my husband's firm has a financial interest or represents a party. Any other conflict that may rise will be resolved by recusal or other ethics undertaking as specified by OMB ethics officials.

II. Overall Role

1. **How do you view the role of the Deputy Director for Management (DDM) at OMB?**

The DDM has two principal roles. One is external, providing government-wide leadership to Executive Branch agencies to improve program performance. This role involves working with the Departments and agencies as well as the President's Management Council, Chief Financial Officers Council, the President's Council on Integrity and Efficiency, the Chief Information Officers Council, the Joint Financial Management Improvement Program, Electronic Process Initiatives Committee, the Federal Credit Policy Working Group, the Procurement Executives Council, and the Inter-agency Alternative Dispute Resolution Working Group. This Administration has used these groups, many of which the DDM chairs, to cooperatively set objectives and undertake joint efforts to achieve them.

The external role also includes working closely with Congress on a variety of management issues. For example, the implementation of the Results Act requires OMB leadership to assist agencies in implementing the requirements of the law. To be effective, GPRA performance information must become useful and used in decision making by both the Executive Branch and the Congress in the normal course of business.

The second role is internal to OMB. As a member of OMB's senior staff, the DDM participates fully with the Director, the Deputy Director and other appointees in determining how OMB will carry out its duties. By virtue of the Chief Financial Officers Act of 1990, the three Statutory Offices (OIRA, OFPP and OFFM) report to the DDM. In addition, OMB 2000 expanded the responsibilities of the five Resource Management Offices (RMO) to more fully and aggressively address management issues. The DDM's role is to act as a coordinator of all such management activity within OMB and to assure active participation of all parts of OMB in dealing with management issues.

2. **What challenges currently face OMB? How will you, as DDM, address these challenges?**

OMB's challenge during an era of unified budget surpluses is to develop policy that will maintain fiscal discipline and allow important investments in the Nation's future. Another major policy challenge facing OMB is improving government performance in a balanced budget world. Congress has given us some tools, such as the Government Performance and Results Act, to assist this effort. If confirmed as DDM, I would work to assist the agencies to begin to use strategic plans and performance plans to help us make better decisions on policy, program, financial, management, procurement, and regulatory issues.

If confirmed as DDM, I would also work with the various councils described above to achieve the objectives these groups have developed with OMB participation. Furthermore, I would work with Congress to identify needed legislation that will improve management. This cooperative relationship with Congress produced landmark legislation such as the Government Performance and Results Act and the Clinger-Cohen Act. Meeting the challenges at OMB requires continuing this good working relationship.

3. **How do you view OMB's role (and yours as DDM) in communicating and working with Congress to improve management in the Federal Government?**

If confirmed as DDM, I would expect to establish a productive, bipartisan working relationship with Members and staff in both Houses of Congress and to keep them informed on Federal management issues.

4. **What should be the respective role of OMB and the National Partnership for Reinventing Government in promoting management improvement in government?**

The NPR's four major initiatives are highlighted in the President's FY 2000 Budget, as part of the Government-wide Performance Plan. OMB has worked closely with NPR since the first two phases of reinventing government when OMB and NPR staffs jointly conducted analysis, training, and encouraged implementation of initiatives. If confirmed as DDM, I would expect to continue a productive and useful working relationship with NPR, especially with the 32 High Impact Agencies that have the most interaction with the public.

III. Management Practices

1. **Given the many issues competing for attention of OMB staff, top leadership direction will continue to be an important factor in ensuring consistent guidance and continued concern for government-wide management issues. How will you ensure that OMB provides adequate attention to long-term management issues with the current management staff at OMB?**

OMB devotes substantial resources to understanding the long-term implications of current policies and programs. Over the last five years, OMB has presented a wide range of alternative scenarios for the budget in the long term, derived from an increasingly sophisticated model. Our attention to the future solvency of Social Security is another good example.

Ensuring attention to any long-term policy is always difficult with the crush of daily deadlines. Too often the urgent drives out the important. That is precisely why it is important for the DDM to provide leadership to address long-term issues, especially long-term management issues. If confirmed as DDM, I would plan to do so in at least three ways. First, I would place a strong emphasis on getting agencies to integrate GPRA and the use of performance measures into the annual budget process. Second, I would maintain OMB's attention to the Priority Management Objectives (PMOs), which include a number of long-term management issues. Third, as the

chair of a number of important interagency councils, I would provide leadership to see that they deal with long-term issues, including long-term management reform.

2. **How many OMB staff members are currently devoted full time to management issues?**

In addition to four positions in the immediate office of the DDM, 96 positions in the three Statutory Offices, four "matrixed" procurement positions in the RMOs, and several staff in the Budget Review Division work full time on management issues. But those numbers are by themselves very misleading. OMB 2000 expanded the focus of the "budget side" to more formally and aggressively address "management issues." Accordingly, the staff of the RMOs devote significant, albeit not full-time, attention to management issues. Consistent with the principles underlying the Results Act, "management" is about enabling and ensuring program results. It cannot succeed if it is done in isolation or if it is done for its own sake.

A good example of how OMB actually works on a day-to-day basis is the development of the Administration's list of PMOs, which was published for the first time in the President's Fiscal Year 1999 Budget and updated in the FY 2000 Budget. This list contains both crosscutting goals (e.g., Manage the year 2000 (Y2K) computer problem) and agency-specific goals. Each of these goals reflects the desire of the Administration to seek accomplishment of specific results during the remaining years of this Administration. The goals were developed by the RMOs and Statutory Offices in concert. The process for developing them, reviewing them and monitoring them is coordinated by the DDM with assistance from the Budget Review Division. The National Partnership for Reinventing Government has been a third part of this team. NPR's High Impact Agency commitments for improved results that Americans care about were coordinated by each RMO for its assigned agencies and in general by the DDM.

3. **Do you believe this level is adequate?**

Yes.

4. **Under your leadership, how much staff will you seek to be devoted strictly to management issues?**

For the reasons noted above, I believe that the DDM has sufficient staff resources from throughout OMB to accomplish its responsibilities with respect to management issues.

5. **The President's Commission to Study Capital Budgeting, the Congress, GAO and the administration have identified the need to improve capital asset planning, budgeting, and acquisition. Based on the experiences of Federal agencies in dealing with guidance OMB has provided to date:**

   a. **What do you think are the main impediments to implementing changes that would improve the performance of the agencies' capital decision-making practices?**

b. **How do you think these impediments could be alleviated?**

c. **What are your plans regarding the use of capital acquisition funds which OMB has previously suggested could help address issues regarding "spikes" in capital spending and incorporation of the full cost of capital into the budget?**

a. My understanding is that a number of areas that warrant continued attention are highlighted in OMB's *Capital Programming Guide*. The problem is that many of the management techniques are relatively new to the agencies, and it will take some time for the agencies to fully develop them.

b. The most important of the areas that warrant continued attention may be good planning. Like any other issue, there should be a clear identification of goals and objectives, and the amount and mix of resources needed to reach the objectives in the most efficient manner. To support better planning, efforts now underway to implement the Results Act (GPRA) should be continued and strengthened, including efforts to align GPRA plans with budget resources.

c. The primary purpose of the Capital Acquisition Funds (CAF) is to ensure that the cost of capital is charged to the program over the life of the asset, so that the value of the resources that the program uses can be compared with the results that it achieves. I am advised that OMB is currently meeting with a task force that has representatives from several agencies to work out the details of how CAFs might be implemented.

6. **Sustaining a management focus within OMB as currently organized relies on the capacity and expertise of the program examiners within the Resource Management Offices to address management issues. How do you plan to ensure that program examiners have sufficient training and expertise to effectively oversee financial management, information resources management, and procurement issues?**

OMB's program examiners are expected to perform analysis related to financial management, information technology, procurement, and program evaluation issues for their assigned agencies. These requirements are part of the job description and qualifications OMB uses to recruit and select examiners, as well as the performance standards that Branch Chiefs use to assess individual performance.

OMB's training program for new examiners includes sessions led by the Statutory Offices to ensure that examiners integrate agency management into their work. If confirmed as DDM, I would participate in new examiner training to emphasize the importance of such integration.

In addition to the annual training for new examiners, OFFM, OFPP and OIRA provide ad hoc training for RMO staff on significant requirements in their areas. For example, OIRA recently provided training for the RMOs on Business Continuity and Contingency Plans and on Computer Security. In addition, later this summer OMB will conduct a special training session devoted to

the Results Act. Developed and led by several of OMB's senior career staff (Deputy Associate Directors), this training will focus on how to better integrate GPRA into the budget process.

Statutory Office staff also serve as consultants to the RMOs and participate on teams reviewing significant issues, such as reviews of financial statements and major information technology investments.

7. **More specifically, given the increased emphasis on performance information and managerial cost accounting, would you encourage building the Resource Management Office staffs' capacity to effectively utilize this information? If so, how?**

I am committed to encouraging RMO staff development and enhancement of the skills and experience they need to use performance and cost accounting information to address the management and budget issues the Federal Government faces. The key to achieving greater use is to have this information integrated into the normal course of business by OMB, the President, and Congress when examining programs and making budget decisions, and by the agencies in managing their programs.

8. **OMB has an important role in leading and coordinating the implementation of numerous statutory management efforts, such as the Results Act, the Chief Financial Officers (CFO) Act, and the Clinger-Cohen Act. Describe your role and OMB's current approach to leading and coordinating such efforts. Do you propose changes to enhance OMB's coordination efforts?**

OMB relies on inter-agency groups to assist in developing certain policies and to identify and implement ways to better manage Federal resources. The groups meet regularly to exchange information, set priorities, recommend policy direction, initiate action, and undertake projects. They comprise senior officials who share common responsibilities or sets of objectives and concerns within their own departments and across agencies. The DDM chairs many of these groups (including the President's Management Council, Chief Financial Officers Council, President's Council on Integrity and Efficiency, and the Chief Information Officers Council). If confirmed as DDM, I would rely heavily on these groups and their members to continue to assist OMB in improving management in the Federal Government. At this time, I do not have any plans to change these coordination efforts.

IV. Addressing Major Management Problems

1. **We appear to be making little progress in resolving mission-critical management problems that impede program performance, waste countless billions of taxpayer dollars annually, and undermine public confidence in the Federal government. [General Accounting Office] (GAO) inspectors general tend to report on the same seemingly intractable programs year after year. What changes do occur are mostly adding rather than subtracting problems. The most obvious example is GAO's "high-risk" list, which grows each time it is updated and now stands at 26 problem areas. In your view, what will it take to generate real movement on these problems?**

I am encouraged, rather than discouraged, by the progress that has occurred over the last few years. As noted above, the Administration has identified 24 priority management objectives (PMOs). These are areas that are in need of real change and which receive ongoing attention from OMB's senior officials. The PMOs are published annually in the President's Budget, and OMB staff report monthly to the Director (and the DDM) regarding ongoing efforts, achievements, and planned next steps. I have been advised that most of the 26 mission-critical management problems discussed in GAO's "High-Risk Series" are addressed in the PMOs. Resolving each of the PMO objectives will require sustained commitment over many years. Nonetheless, I believe that OMB has developed an effective approach to ensuring that senior Administration officials remain focused on these objectives.

2. **What can OMB in general and you as Deputy Director for Management do to develop and implement an action agenda to get at these problems?**

As noted above, I believe that OMB has an effective approach to resolving mission-critical management problems in the Federal Government.

3. **What, in your view, can Congress do to help?**

Congress has supported many management reform initiatives through key pieces of legislation such as the Chief Financial Officers (CFO) Act of 1990, as amended by the Government Management and Reform Act (GMRA) of 1994, and the Government Performance and Results Act (Results Act) of 1993. These legislative initiatives have resulted in improved management practices throughout the Federal government.

Continued Congressional focus on management issues emphasizes Congress' desire to see issues addressed effectively and thus complements the Administration's efforts. In addition, I would encourage a dialogue with the Appropriations Committees about the alignment of results with appropriations so as to make performance plans more useful.

V. The Results Act

1. **Many agency officials (and others) tell us that OMB has not provided sufficient leadership and support to agencies in implementing the Government Performance and Results Act ("Results Act"). Do you believe OMB can and should do more in this regard?**

My understanding is that OMB has shown strong leadership on implementing the Results Act, which is reflected in the steady improvement in the scope, quality, and usefulness of Results Act plans. Executive branch agencies have accomplished much over the past two years, and I believe OMB's effort made a significant contribution to this accomplishment by providing guidance, reviewing plans, and giving advice.

If confirmed as DDM, I would continually assess how we might better carry out our responsibilities, and regularly solicit the agencies on how we can improve our interaction with

them. Ultimately, however, the Results Act plans and reports are the responsibilities of the agencies.

2. **In general, how would you describe OMB's responsibilities (as well as your own as DDM) with respect to Results Act implementation?**

OMB's Result Act responsibilities are largely defined by the statute. I understand that OMB has prepared and issued guidance and instructions on carrying out virtually every provision in the Results Act. Apparently this guidance was well crafted; no substantive changes were needed based on three years of experience in carrying out the Act. I am advised that in several instances, OMB amended the guidance to enhance several areas of particular Congressional interest.

Another major OMB Results Act responsibility is the preparation of the annual government-wide performance plan, which is part of the President's budget.

OMB is also responsible for designating several sets of pilot projects under this Act, and reporting to Congress on the results of these pilots, and on overall GPRA implementation. OMB is also charged with making determinations on whether to exempt certain small agencies from having to comply with this Act.

3. **In a report on agency FY 1999 Results Act performance plans (GAO/GGD/AMD-98-228, September 1998) GAO recommended that OMB "implement a concrete agenda aimed at substantially enhancing the usefulness of agencies' performance plans for congressional and executive branch decision-making." What has OMB done to act on this recommendation? What more, if anything, do you believe needs to be done?"**

OMB continues to work with the agencies on improving the annual performance plans. OMB's efforts have included changes to OMB guidance, greater review of draft plans, and continuing engagement with the agencies on making their plans more useful. OMB's efforts, in part, have contributed to solid progress. Most commentators have concluded that the FY 2000 annual plans are significantly better, overall, than their FY 1999 counterparts. At this time, I do not have any specific proposals in this area.

4. **What other specific steps can OMB take to assist agencies in developing detailed strategies for achieving their goals as the agencies revise their strategic plans and continue to prepare their annual performance plans?**

The long-term goals in a strategic plan, as well as the specific means and strategies that an agency applies to achieving its goals, must come from the agency. OMB can advise, assist and support agency efforts, but in the final analysis responsibility for managing an agency and its programs rests with the agency managers.

5. **Do you think that the Resources Management Offices need to be held more accountable for the quality of the agencies' Results Act plans? If so, how will you make them more accountable?**

To make OMB's RMOs 'accountable' for the quality of agency plans, rather than the agencies themselves, would likely distort and diffuse the very accountability these plans and reports seek to promote. If confirmed as DDM, I would work to help OMB continue to assure that the plans are compliant with the statute and consistent with OMB implementing guidance.

6. **What is OMB doing and what more can be done to enhance the integration of agency strategic and annual performance planning and performance review, and to ensure that budget decisions are made on the basis of program results?**

I understand that as agencies have responded to GPRA by providing more and better performance data, OMB has steadily increased its use of performance information in its review of agency budget requests. I am advised that in its review of the FY 2001 agency budget requests, OMB will be assessing how well the agency budget requests and performance plans are integrated. The Director's memorandum to agency heads transmitting this year's version of OMB Circular No. A-11 underscores this emphasis. If confirmed as DDM, such integration would be among my highest priorities.

7. **Can you provide specific examples of how OMB has used performance data from agency Results Act plans to make budget decisions?**

Performance information has always been used by OMB as one factor in making budget decisions. From what I am told, the advent of Results Act performance plans has significantly increased the quality and extent of this information, and performance information is steadily becoming an important factor in more decisions. I do not have first-hand knowledge of specific examples.

8. **How can OMB best continue to encourage the development and effective use of results-oriented performance results by agencies?**

In my view, the best encouragement comes from knowing that OMB is using this information in budget reviews, in preparing policy recommendations, and in assessing how well programs are being carried out.

9. **According to GAO, most agency FY 2000 performance plans suffer from the same three key weaknesses as the their FY 1999 plans; failure to address major management problems; failure to coordinate similar (cross-cutting) programs; and lack of credible performance data. GAO found that agencies established specific and measurable goals to address only 40 percent of their major management problems. Hardly any agencies had worked with others to establish complementary goals and measures for cross-cutting program activities. Perhaps most disturbing of all, GAO found that the plans of 20 of the 24 major agencies provided little confidence that their performance data will be credible.**

My understanding is that the annual plans for FY 2000 were markedly better, for most part, than their FY 1999 predecessors. OMB expects the FY 2001 plans to be even better still. I think everyone recognizes both that this process will take years and that we are making progress.

10. **Do you agree that agencies should, whenever possible, establish specific and measurable performance goals to address their mission-critical management problems for which they can be held accountable in their performance reports?**

Yes. I am advised that OMB guidance in Circular No. A-11 calls on agencies to do this.

11. **OMB's Results Act guidance already states that agency performance plans should contain goals to address mission-critical management problems. However, based on GAO's findings, agencies disregard this guidance over half the time. What steps can you and OMB take to ensure that they do better?**

The GAO findings were based on its review of the FY 1999 plans; the cited provision in the OMB guidance was added for the FY 2000 annual plans.

12. **As you know, the Federal government is rife with overlapping and potentially duplicative programs and activities. Do you agree that agencies should coordinate with each other to develop complementary performance goals for these programs and activities that, at best, reinforce each other and, at least, ensure that they do not work at cross-purposes?**

I understand that OMB guidance for both the strategic plan and annual performance plan instructs the agencies to coordinate on their cross-cutting programs, and identifies specific steps that agencies should follow.

13. **Do you agree that OMB is logistically positioned to lead such efforts?**

Every year, OMB prepares cross-cutting reviews of selected program areas. These are intensive assessments of resources, policy, and performance issues associated with these program areas across agencies. Of course, the responsibility for the management and execution of programs lies with the agencies.

14. **What is OMB doing, and what more can it (and you as DDM) do, to ensure that cross-cutting programs and activities are coordinated and made subject to complementary performance goals and measures?**

Before agencies engage in developing complementary goals for cross-cutting programs, they must first develop quality performance measures and goals for the agencies' programs that are part of any cross-cut effort. As the agency-specific information improves in quality, both OMB and the agencies will be in a position to more extensively engage in the development of cross-cutting goals.

15. **What steps will you take to ensure that agencies provide reliable performance data to you and Congress?**

OMB's guidance on the preparation and submission of annual performance plans and annual program performance reports provides instructions on describing the systems, processes, and practices for collecting and reporting performance information. In addition, I am advised that OMB has coordinated extensively with the agency Inspectors General on their prospective role regarding the verification and validation of reported data. At this time, I do not have any specific proposals in this area.

16. **Given the failure of agencies to address the three key weaknesses in performance plans discussed above (management problems, cross-cutting programs, and data reliability) despite consistent pressure by Congress and OMB, should the Results Act be amended to specifically require agencies to deal with these three issues?**

I understand that agencies have addressed these three areas in their most recent performance plans, and the GAO assessment of those plans indicates they have done so. OMB expects that, in the future, plans will continue to improve in these areas.

OMB is required by statute to report to Congress in March 2001 on the overall implementation of GPRA, including recommendations for amending this law. By March 2001, both OMB and Congress will have had the opportunity to review and use four sets of annual performance plans, two sets of strategic plans, and two sets of program performance reports. At that time, OMB will be in a much better position to evaluate overall progress and success in meeting the purposes of this Act.

17. **In a July 1 letter to Director Lew, I and other Members of Congress laid out a series of specific Congressional expectations for the first round of agency Results Act performance reports that are due next March. What is OMB's response to our expectations.**

I understand that OMB is presently preparing a response to this letter, and that OMB's recently issued guidance in OMB Circular No. A-11 on preparing and submitting program performance reports comports with views in your letter.

18. **To the extent that OMB shares our expectations, what will it (and you as DDM) do to ensure that the agencies fulfill them?**

If confirmed as DDM, I would work with the agencies to ensure that agency plans and reports are prepared consistent with OMB guidance.

19. **Are there areas of disagreement with our expectations? If so, can the Committee have your commitment to promptly advise us of them and work with us to resolve them?**

If there are areas of disagreement, I will advise you of them, and be pleased to work with you and other Committees to resolve them.

20. **How do you see the role of the DDM regarding agencies' use of program evaluation as a requirement of the Results Act?**

If confirmed as DDM, I would promote agency use of evaluation as an appropriate and often necessary means for determining whether goals are achieved. However, coordination with the agencies on the type and schedule of evaluations is best done by OMB's RMOs because of their direct familiarity with individual programs.

21. **Better understanding of what we are getting for the resources we are spending is a fundamental premise of the Results Act. In this light:**
    a. **Why have no performance budgeting pilots been designated to date, as required by the Results Act?**
    b. **What specific actions will you take to designate performance budgeting pilots called for by the Act and when will these actions occur?**
    c. **Will pilot agencies make alternative presentations described in the Act in the President's fiscal year 2001 budget?**

a. I am advised that OMB's May 1997 report to Congress on Results Act implementation included a copy of a letter to the Chair of this Committee indicating our reasons for delaying the start of these pilot projects. On July 1, in testimony before the House Government Reform Committee, the Acting DDM summarized recent efforts to begin these pilots. I am told that to this point, agencies have shown very little interest in becoming a pilot.

b. At the July 1 hearing, the Acting DDM committed to selecting performance budgeting pilot projects shortly, and to use performance information provided by these pilots in the course of the review of FY 2001 agency budget requests.

c. As the performance budgeting information from these pilots is not yet available, I am advised that OMB is still reviewing whether this presentation should appear as part of the FY 2001 or the FY 2002 budget.

22. **How do you plan to address GAO's recommendation (GAO/GGD/AIMD-99-68, February 1999) that OMB develop a concerted agenda to strengthen and clarify linkages between resources and results in agencies' performance plans? Aside from initiating performance budgeting pilots, what actions will you include in such an agenda?**