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June 21, 2019

Via Electronic Filing (www.regulations.gov)

Nancy Potok
Chief Statistician
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Re: Comments on *Request for Comment on the Consumer Inflation Measures Produced by Federal Statistical Agencies*, 84 Fed. Reg. 19,961 (May 7, 2019), OMB-2019-0002

Dear Dr. Potok:

The undersigned State Attorneys General submit these comments in response to the Office of Management and Budget's Request for Comment on the Consumer Inflation Measures Produced by Federal Statistical Agencies. 84 Fed. Reg. 19,961 (May 7, 2019). For the reasons discussed below, the Attorneys General believe that using any of the alternative measures of inflation being considered by OMB would have a disastrous impact on our residents who are eligible now or in the future for a variety of federal and state benefit programs, and that adoption of such alternative measures would be unlawful.

The Official Poverty Measure ("OPM") is established by the U.S. Census Bureau and is the basis for the poverty guidelines that are promulgated by the U.S. Department of Health and Human Services. The poverty guidelines are a critical factor in determining eligibility for benefits, and the amount of benefits, under dozens of state and federal benefits programs. In the case of the Supplemental Nutrition Assistance Program, for example, most households are eligible to receive nutrition benefits if their income is at or below 130% of the poverty guidelines.¹ Thus, although the Census Bureau poverty thresholds are used for statistical purposes (e.g., to determine the number of persons in poverty), altering the calculation of those thresholds would have a direct impact on millions of Americans struggling to make ends meet.

¹ See U.S. Dep't of Agriculture Food & Nutrition Service, *Income Eligibility Standards*, available at <https://www.fns.usda.gov/snap/income-eligibility-standards>.

I. Although the Current Method for Calculating the Poverty Threshold Results in Thresholds That Are Artificially Low, Adopting One of the Alternative Measures Being Considered Would Exacerbate the Problem.

The Attorneys General note that there has been substantial research over the years that indicates that the OPM, as currently formulated under OMB Statistical Policy Directive 14, is flawed in that it results in thresholds that are too low to reflect true poverty rates. However, as set out below, switching the measure of inflation used to index the OPM to one of the alternative measures being considered by OMB would fail to address the flaws in the OPM formula. In fact, because the available research shows that the OPM is too low for many households, switching to a lower measure of inflation to calculate the OPM under the current methodology would exacerbate the problems that already exist.

A. The Current Method of Calculating the OPM is Flawed Because It Is Based on an Outdated Measure of Poverty That Results in Poverty Thresholds That Are Too Low for Many Groups.

The current OPM formula was developed in the early 1960's by a staff economist at the Social Security Administration.² The poverty thresholds associated with the OPM are intended to represent the minimum income levels that families of particular sizes and compositions need in order to be considered not poor. The OPM is currently defined as three times the cost of a minimum food diet in 1963 (to allow for expenditures on other goods and services), updated for inflation using the Consumer Price Index for All Urban Consumers ("CPI-U").³

By indexing the 1963 threshold to inflation, the OPM effectively attempts to keep the definition of poverty constant in real dollar terms.⁴ Except for minor changes in the number of different thresholds and the change in the price index for updating them, the OPM has not been altered since it was first adopted in 1965.

For many years, however, critics have detailed numerous flaws in the OPM's outdated poverty definition.⁵ These flaws include:

- The current OPM is based on very old data detailing a very narrow measure of expenses (i.e., it does not include expenses such as income and payroll taxes, child care and other work-related expenses, and out-of-pocket medical care costs);
- The current OPM fails to account for taxes;

² Nat'l Acad. of Sciences, *Measuring Poverty: A New Approach* 17 (Constance Citro & Robert Michaels, eds, 1995) available at <https://www.census.gov/library/publications/1995/demo/citro-01.html> ("*Measuring Poverty*").

³ *Id.*

⁴ Recent research indicates that this may not be the case, as described in Section I.B. below.

⁵ See *Measuring Poverty* at 24-31 for a detailed critique of the OPM formula. See also Benjamin Bridges & Robert Gesumaria, *The Supplemental Poverty Measure (SPM) & Children: How & Why the SPM & Official Poverty Estimates Differ*, Soc. Sec. Bulletin Vol. 75, No. 3 (2015), available at <https://www.ssa.gov/policy/docs/ssb/v75n3/v75n3p55.html#mn5>.

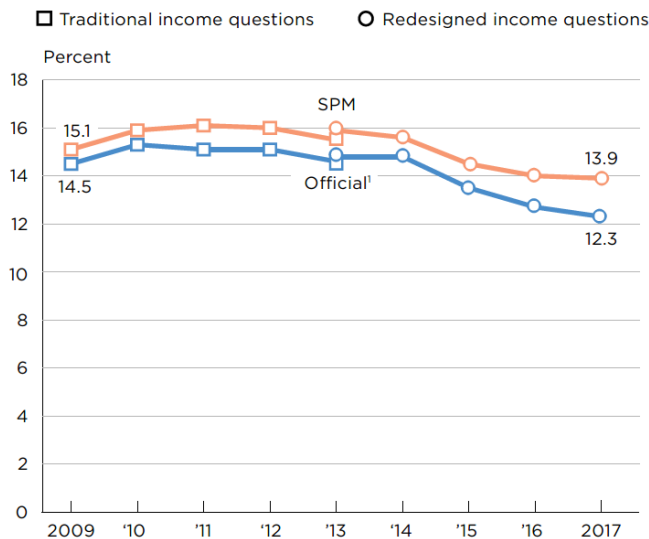
- The current OPM fails to adjust for geographical differences in cost of living; and
- The current OPM fails to account for changes in present-day household composition compared to the 1960’s (i.e., it assumes a nuclear family with one stay-at-home parent).

In response to criticisms of the OPM, a group of experts began working together to produce guidelines for a Supplemental Poverty Measure (“SPM”) in 2009. The SPM is designed to address many of the problems with the OPM and provide an improved statistical picture of poverty. The Census Bureau began releasing reports on the SPM in 2011.

Although the SPM is an experimental measure of poverty, it is a more accurate measure of poverty in modern-day America.⁶ When we compare the SPM to the OPM, it becomes clear that the OPM results in a poverty threshold that is systematically lower than the SPM for many groups.⁷ Notably, every year that the SPM has been calculated, the measure has resulted in a higher overall poverty rate compared to the OPM.⁸

Figure 1:⁹

Poverty Rates Using the Official Measure and the SPM: 2009 to 2017



¹ Includes unrelated individuals under the age of 15.
 Note: The data for 2013 and beyond reflect the implementation of the redesigned income questions.
 Source: U.S. Census Bureau, Current Population Survey, 2010–2018 Annual Social and Economic Supplements.

⁶ See *id.*

⁷ SPM poverty thresholds are higher than the OPM thresholds for older individuals, but lower than the OPM thresholds for children. *Id.* SPM poverty thresholds are higher than the OPM thresholds for renters and owners with mortgages, but lower than the OPM thresholds for owners without mortgages. Thersia Garner & Marisa Gudrais, *Alternative Poverty Measurement for the U.S.: Focus on Supplemental Poverty Measure Thresholds*, available at <https://www.bls.gov/pir/spm/alt-pov-spm-wp-510.pdf>.

⁸ Liana Fox, *The Supplemental Poverty Measure: 2017*, available at <https://www.census.gov/library/publications/2018/demo/p60-265.html>.

⁹ Source: U.S. Census, available at <https://www.census.gov/content/dam/Census/library/visualizations/2018/demo/p60-265/figure4.pdf>.

In sum, the OPM is based on an outdated measure of poverty from 1963, which is then indexed to inflation. This outdated measure fails to account for many of the additional sources of income and expenditures in modern-day America. As such, the OPM poverty thresholds are too low and systematically understate poverty in the United States.

B. The Current Method of Calculating OPM Is Flawed Because CPI-U Fails to Capture the True Level of Inflation Experienced by Low-Income Households – Resulting in Poverty Thresholds That Are Too Low.

The current OMB formula adjusts the 1963 poverty measure by CPI-U. The purpose of this adjustment is to ensure that the poverty measure stays constant in real dollar terms. But CPI-U is an aggregate inflation measure for all populations and may already understate the actual increase of the cost of living for low-income people.¹⁰

Recent research has shown that low-income populations experience inflation at rates higher than other populations and the aggregate CPI-U rates. Notably, economists have determined that annual inflation for low-income populations can differ dramatically from higher-income populations.¹¹ This research suggests that CPI-U understates inflation when compared to the actual costs of living for low-income populations.

One reason that CPI-U underestimates the actual increase of the cost of living for vulnerable populations is that the portion of all purchases (in dollar terms) that consists of necessities is greater for impoverished persons than it is for average urban consumers. Therefore, CPI-U, which is intended as a measure of the inflation faced by average urban consumers (not just impoverished consumers), underweights the impact of price changes of basic necessities when it is used as a measure of the inflation faced by impoverished people. Consequently, if the price inflation for necessities is greater than the inflation of other goods captured in the CPI-U, the CPI-U will understate actual inflation faced by people living in poverty.

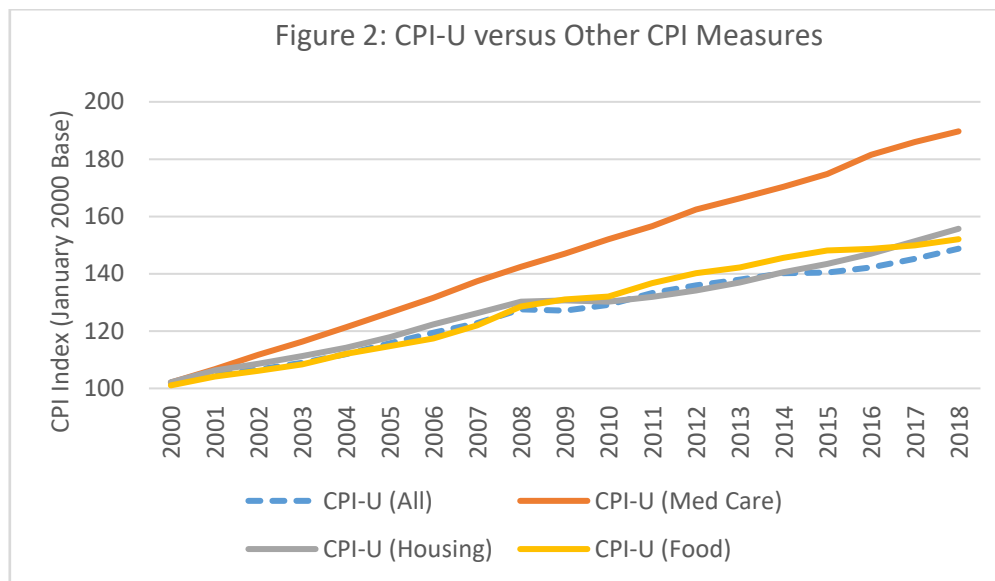
Figure 2 below shows the CPI-U (all items) versus several other CPI-U measures that can be considered representative of certain necessities.¹² These measures include the CPI-U for “Medical Care,” “Housing,” and “Food and Beverages.” Nondiscretionary categories of spending tend to make up a greater portion of the budgets of impoverished persons and therefore any underestimation of their actual costs disadvantages people living in poverty relative to the average person or family. Figure 2 demonstrates that, from 2000 to 2018, the CPI-U for all items

¹⁰ For instance, it is well established that the elderly population has different spending patterns and experiences different inflation compared to CPI-U. See *Consumer Price Index for the elderly*, available at https://www.bls.gov/opub/ted/2012/ted_20120302.htm.

¹¹ See Greg Kaplan & Sam Schulhofer-Wohl, *Inflation at the Household Level*, 91 J. Monetary Economics 19 (2017); David Argente & Munseob Lee, *Cost of Living Inequality during the Great Recession* (2015), available at https://www.economicdynamics.org/meetpapers/2015/paper_1372.pdf.

¹² This is as reported by the Bureau of Labor Statistics for 2000 to 2018. All CPI data used herein were obtained from <https://www.bls.gov/cpi/data.htm>.

predicts lower inflation (48.8%) than the other reported measures—89.7%, 55.7%, and 52.1% for Medical Care, Housing, and Food respectively. These data suggest that the CPI-U will indeed understate the actual inflation faced by low-income people.



C. Using Another Measure of Inflation Would Increase the Inaccuracy of the OPM by Resulting in Fewer Families Falling Below the Threshold.

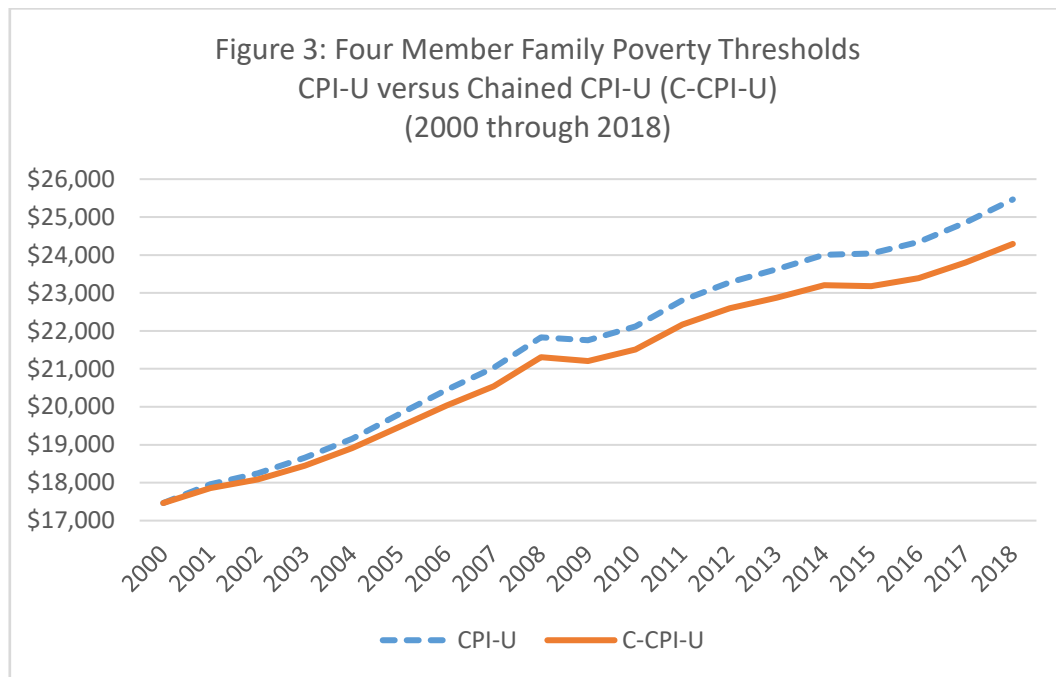
As noted, the poverty thresholds are measured using CPI-U as the mechanism for determining inflation. The primary alternative index on which OMB seeks comment is the Chained Consumer Price Index for All Urban Consumers (“C-CPI-U”).¹³ For the reasons discussed below, the Attorneys General believe that the use of C-CPI-U would result in an understatement of inflation relative to CPI-U and, therefore, an even further reduction in the number of struggling individuals deemed to be in poverty.

The C-CPI-U is not the appropriate measure of the annual increase in the cost of living for low-income families because there is no evidence that it more accurately measures those costs than CPI-U, and because there is evidence that it generally results in a lower estimate of inflation than CPI-U despite independent research that indicates that by more effective measures, more families live in poverty than are deemed impoverished under current thresholds. For example, from 2000 through 2018, the average annual increase in the CPI-U index was approximately 2.12% compared to 1.86% for C-CPI-U. This means that annual upward adjustments to poverty measures using C-CPI-U would be smaller than those using CPI-U, and

¹³ The Attorneys General restrict their analysis to OMB’s proposed metric of C-CPI-U because it appears that this is the primary index being considered by OMB, both because (1) OMB specifically requested comment on the suitability of the use of C-CPI-U for the production of official statistics, *see* 84 Fed. Reg. at 19,963; and (2) OMB also cited the use of C-CPI-U to index federal income tax brackets, as mandated under Public Law 115-97, *see* 84 Fed. Reg. at 19,961. However, the other main metric being considered by OMB, the Personal Consumption Expenditures Price Index (“PCEPI”), would have very similar effects to those discussed herein. (Indeed, it appears that low-income individuals would fare slightly worse under PCEPI than they would under C-CPI-U.)

thus fewer people would be considered impoverished using C-CPI-U (relative to CPI-U). Furthermore, even relatively small differences in annual CPI-U and C-CPI-U would compound over time, such that small differences in annual rates would create larger gaps in calculated poverty thresholds. For instance, while the average difference in increases in the CPI-U relative to C-CPI-U from 2000 to 2018 was 0.26 percentage points, the aggregate impact (of using C-CPI-U starting in 2000) in 2018 is a poverty threshold that is approximately 4.6% lower (relative to the threshold calculated using CPI-U).

To illustrate this dynamic, Figure 3 below shows the impact of using different measures of inflation to adjust the poverty threshold for a family of four beginning in January 2000 and continuing through December 2018. Over time, the gap between the two indexes grows as the updated thresholds using CPI-U increase faster than the thresholds updated with C-CPI-U. By 2018, the threshold using CPI-U is \$25,465 versus \$24,293 using Chained CPI—a difference of approximately 4.6%. Put differently, had C-CPI-U been used instead of CPI-U (since 2000), families of four making between \$24,293 and \$25,465 in 2018 would no longer be considered impoverished.



The problem with indexing the OPM to C-CPI-U is apparent. As described above, the OPM indexed to CPI-U results in poverty thresholds that are too low because the OPM is based on an outdated measure of poverty and because CPI-U understates inflation for low-income populations. Indexing the OPM to C-CPI-U would result in poverty thresholds that are even lower over time. In other words, indexing the OPM to C-CPI-U would have the effect of exacerbating the flaws inherent in the OPM formula, broadening the gap between the OPM and other more accurate measures of poverty such as SPM. As discussed below, the people who fall in the gap between these measures would be deprived of the benefits of numerous state and federal programs intended for low-income households.

The Attorneys General strongly urge OMB not to make the problems inherent in the OPM worse by indexing the poverty measure to C-CPI-U. Instead, the Attorneys General recommend that OMB maintain the status quo until such time that a superior measure of poverty such as SPM is ready to replace it.¹⁴

D. Using C-CPI-U Would Result in Ineligibility for, or a Reduction in Benefits for, Millions of Struggling Americans.

As discussed, the poverty guidelines on which eligibility for dozens of safety net programs are based are derived from the poverty threshold. *See* 42 U.S.C. § 9902(2). Thus, a reduction in the threshold – as described above – would result in a reduction in the poverty guidelines. The changes OMB is considering would therefore result in a reduction in benefits for millions of Americans. Additionally, portions of the population would become ineligible for the programs on which they currently rely, or may need in the future.

To illustrate this dynamic, one could compute the impact on 2018 poverty thresholds from using C-CPI-U as the measure of inflation beginning in January 2000. Using this hypothetical 2018 C-CPI-U threshold, we can calculate the number of individuals who would have lost their benefits if C-CPI-U had been used instead starting back in 2000. This analysis shows the dramatic impact a change to C-CPI-U would have had over time. We expect that C-CPI-U would have a similar impact going forward, resulting in an unjustified loss of benefits for many. As just one example, the State of Maryland had 87,720 families of four qualifying for Medicaid in 2018. Had C-CPI-U been used as the standard beginning in 2000, Maryland would have had 84,768 families of four qualified – a difference of 2,952 families. That is a 3.4% difference in the number of families qualified. Applying that difference across all Maryland Medicaid recipients in 2018 would mean that 28,708 low-income individuals would have been deprived of their Medicaid health benefits if the OMB’s proposed measure were the standard.

Medicaid is just one of many programs that would be affected by the OMB’s proposed change. A few of the more than dozen other examples include:

- The Children’s Health Insurance Program (“CHIP”) provides health insurance for children who live in households with a threshold level of income that is tied to the federal poverty guidelines. This program provides coverage for children whose household income is too high to qualify for Medicaid. It thus provides a critical safety net for a vulnerable population that might otherwise go uninsured.
- The Supplemental Nutrition Assistance Program (“SNAP”), the federal program formerly known as food stamps, provides benefits in the form of funds that individuals can use to cover the expenses associated with purchasing food. Eligibility is tied, in part, to household income level relative to the poverty guidelines.

¹⁴ OMB has assembled an interagency technical working group which has set a target of 2021 for making methodological improvements to SPM. *See* <https://www.census.gov/topics/income-poverty/supplemental-poverty-measure/library/working-papers/topics/potential-changes.html>.

- The Affordable Care Act (“ACA”) provides benefits to individuals who are not eligible for Medicaid but whose income is at or below a certain level relative to the poverty guidelines. Additionally, because the amount of benefits is also tied to individuals’ income relative to the poverty guidelines, even those who still qualified for subsidies would get a smaller amount of financial support if C-CPI-U were used.¹⁵

II. It Would Be Arbitrary and Capricious for OMB to Change the Index Used in Adjusting the Poverty Threshold.

In considering altering the methodologies that contribute to the poverty threshold, OMB should consider the fact that its choice of inflation measure would effectively be used to determine eligibility for various benefit programs. Yet OMB specified that it “is not currently seeking comment on the poverty guidelines or their application.” 84 Fed. Reg. at 19,963.

If OMB properly allowed comments on the implications of its proposal, it would learn that the poverty guidelines are actually too low and that, if anything, the guidelines should be adjusted upward to allow more individuals to qualify for financial assistance. Even with the various safety nets that are in place today, many Americans are struggling to make ends meet. For example, 15 million households faced food insecurity in 2017 (i.e., they had difficulty affording to buy food) and 1 million school children were homeless in the 2016-2017 school year.¹⁶

OMB has not advanced evidence, or even reasoning, to support its considered changes to the inflation measure used to adjust the poverty threshold. Agency action is unlawful if such action is arbitrary and capricious. *See* 5 U.S.C. § 706(2). If OMB did not properly consider the relevant facts before making a policy change, its action would necessarily be considered arbitrary and capricious. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983) (“[A]n agency changing its course must supply a reasoned analysis”) (citation omitted). In taking action, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Id.* at 43 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 158 (1962)). Agencies have failed to engage in reasoned decision-making when they “entirely fail[] to consider an important aspect of the problem” or “offer[] an explanation . . . that runs counter to the evidence before the agency.” *State Farm*, 463 U.S. at 43.

In this case, OMB has not advanced a basis for its considered changes. Indeed, OMB made clear that it intends to disregard relevant data. By declining to seek comment on the poverty guidelines and their application, OMB has artificially limited the scope of the information it would consider in determining the appropriate measure to use. The poverty

¹⁵ Under the ACA, the government provides premium tax credits for households that make between 100% and 400% of poverty guidelines. The exact amount of the premium tax credit depends on the household’s income. *See Explaining Health Care Reform: Questions About Health Insurance Solutions*, available at <https://www.kff.org/health-reform/issue-brief/explaining-health-care-reform-questions-about-health/>.

¹⁶ *See* S. Parrott, *Trump Administration Floating Changes to Poverty Measure That Would Reduce or Eliminate Assistance to Millions of Lower-Income Americans*, available at <https://www.cbpp.org/press/statements/trump-administration-floating-changes-to-poverty-measure-that-would-reduce-or->

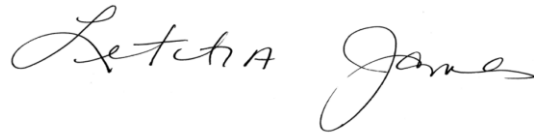
guidelines and their application are exactly the factors that should be considered in determining whether to change the way inflation is measured. If OMB were to take any action to change the poverty threshold without considering its effect on the poverty guidelines and the many government programs that rely on those guidelines to determine eligibility for benefits, such action would necessarily be unlawful. *See State Farm*, 463 U.S. at 43.

For the foregoing reasons, OMB should refrain from making any changes to the inflation measure.

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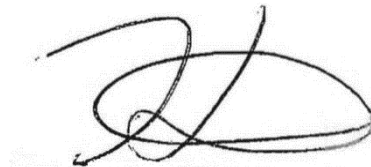
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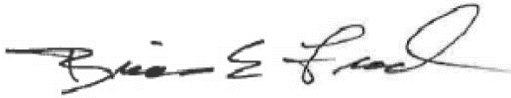
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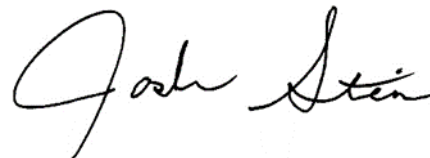
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