

November 1, 2023

Demetrios Kouzoukas  
Board Member, Board of Directors  
Clover Health Investments, Corp.  
3401 Mallory Ln., Suite 210  
Franklin, TN 37067

Dear Mr. Kouzoukas:

The Senate Finance Committee has scheduled a vote later this week on your nomination to be a Public Trustee of the Social Security and Medicare Trust Funds. I have profound concerns about the inherent conflict of interest that you will face if confirmed,<sup>1</sup> and raised this with you at your nomination hearing.<sup>2</sup> Specifically, you serve as a Board Member of Clover Health, which received over \$1 billion in revenue from the Medicare Advantage program in 2022.<sup>3</sup> For this role, you have personally received hundreds of thousands of dollars in compensation since 2021 — and are scheduled to receive hundreds of thousands of dollars in additional compensation in the coming year. But as a Public Trustee, you would have a duty to act in the interest of the American people while making projections and recommendations about the financial status of the Medicare trust funds.<sup>4</sup> There is an irreconcilable conflict between your role at Clover Health — which has richly rewarded you for your efforts to help the company enrich itself at Medicare's expense — and your role as a Public Trustee.

You recently provided my office with answers to Questions for the Record submitted after your nomination hearing. Those answers contain new information that raises additional concerns about the extent of your conflict and your understanding of the role of the Public Trustees.<sup>5</sup> Given these concerns, I am again reiterating my request that you commit to resigning from your position at Clover Health if you are confirmed. If you do not do so, you should withdraw your nomination.

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<sup>1</sup> Letter from Senator Elizabeth Warren to Demetrios Kouzoukas, September 27, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.27%20Letter%20to%20Kouzoukas.pdf>.

<sup>2</sup> U.S. Senate Committee on Finance, "Hearing to Consider the Nominations of Marjorie A. Rollinson, ... Patricia Hart Neuman, ... and Demetrios L. Kouzoukas..." September 28, 2023, <https://www.finance.senate.gov/hearings/hearing-to-consider-the-nominations-of-marjorie-a-rollinson-of-virginia-to-be-chief-counsel-for-the-internal-revenue-service-and-an-assistant-general-counsel-in-the-department-of-the-treasury...>.

<sup>3</sup> Securities and Exchange Commission, "Clover Health Investments, Corp.," Form 10-K, pp. 58 and 39, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1801170/000180117023000015/clov-20221231.htm>.

<sup>4</sup> Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) for Demetrios Kouzoukas, January 5, 2023, [On File with the Office of U.S. Senator Elizabeth Warren].

<sup>5</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, "Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas," provided to Senator Elizabeth Warren on October 27, 2023,

[https://www.finance.senate.gov/imo/media/doc/responses\\_to\\_questions\\_for\\_the\\_record\\_to\\_demetrios\\_kouzoukas.pdf](https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_demetrios_kouzoukas.pdf).

## **New Information about Your Financial Rewards from Clover Health**

First, your responses provide new information about the financial rewards you are expected to receive from Clover Health this year and next. This information was not included on the Public Financial Disclosure that you filed with the Office of Government Ethics in October 2022,<sup>6</sup> and at this time I am not aware of any instance in which you have publicly disclosed these payments. Specifically, you wrote that, for calendar year 2023, “I received \$70,000 and expect to receive approximately \$24,000. I also received 213,576 restricted stock units (including 36,585 units on a one-time basis) which would be considered income for 2024 upon vesting after a year of continuous service.”<sup>7</sup>

This revelation is significant for two reasons. First, it reveals that you received a vast trove of company stock this year — 213,576 shares. This was an order of magnitude more than you received in 2021 (25,608 shares) or 2022 (20,271 shares), and would be worth nearly \$200,000 at the stock’s value as of today.<sup>8</sup> It also appears that the company offered you this massive increase in compensation after you and other company officials became aware that you would be nominated for the Public Trustee position. And this stock would vest in 2024 — providing you access to the full value of this reward from Clover Health at the same time you would be serving as a Public Trustee.

## **New Information about Trustees’ Discussion of Medicare Advantage**

Second, in response to my specific question about whether your decisions as a Public Trustee could “cut into the profitability of Clover,” you dodged the question by stating that “to my knowledge, the Trustees Reports have not discussed topics like ‘overpayments’ to Medicare Advantage plans.”<sup>9</sup> But this is not correct. For example, the 2018 Trustees report states that:

Payment rates to private health plans are higher than projected in last year’s report beginning in 2018. This result is primarily due to higher risk scores and increased coding by plans than assumed in the 2017 report. The net effect of this and other minor modifications is a –0.08-percent change in the actuarial balance.<sup>10</sup>

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<sup>6</sup> Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) for Demetrios Kouzoukas, January 5, 2023, [On File with the Office of U.S. Senator Elizabeth Warren].

<sup>7</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023, [https://www.finance.senate.gov/imo/media/doc/responses\\_to\\_questions\\_for\\_the\\_record\\_to\\_demetrios\\_kouzoukas.pdf](https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_demetrios_kouzoukas.pdf).

<sup>8</sup> Clover Health Investments, Corp. Class A Commn Stock, <https://www.nasdaq.com/market-activity/stocks/clov>. The stock closed at \$0.9144 on October 30, 2023.

<sup>9</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023, [https://www.finance.senate.gov/imo/media/doc/responses\\_to\\_questions\\_for\\_the\\_record\\_to\\_demetrios\\_kouzoukas.pdf](https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_demetrios_kouzoukas.pdf).

<sup>10</sup> Centers for Medicare and Medicaid Services, 2018 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, p. 71, June 2018, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2018.pdf>.

Similarly, the 2023 report states that:

Benchmark growth for years 2024 and later is estimated to be slightly higher, in general, than the growth rate of expenditures for beneficiaries enrolled in Medicare fee-for-service, due in part to quality bonus payments that are projected to increase slightly for 2024 and later years and changes in risk scores that are projected to grow faster for the MA population.<sup>11</sup>

Indeed, the Trustees' reports in 2011, 2012, 2013, 2014, 2015, 2018, 2019, 2020, 2021, 2022, and 2023 all discuss Medicare Advantage payment rates, risks scores, or quality bonus payments — all issues that directly relate to overpayments and would directly impact Clover Health.

Your refusal to acknowledge this important component of the Trustees' report reveals that you are either unaware of the full scope of your conflicts of interest, or unwilling to acknowledge them. And if you are unable to identify or acknowledge your conflicts, they cannot be resolved.

### **New Information about the Role of the Trustees**

One way that you have attempted to address your conflicts is by claiming that the Trustees “do not make policy in any way.”<sup>12</sup> But here, you appear to be playing coy, seeking an important role as a Public Trustee of the Social Security and Medicare Trust Funds while insisting at the same time that you would merely be a mute observer in that role. But you cannot have it both ways: you cannot claim that the opportunity to be considered for “this important position” is “meaningful and humbling”<sup>13</sup> while insisting that you and others who fill the role will have no meaningful power or authority.

You are wrong to imply that the Public Trustees have no role in the policy process. As described by the Social Security Administration, the Trustees role includes “[r]eview[ing] policies followed in managing trust funds and recommend[ing] changes.”<sup>14</sup> Indeed, your own testimony notes that, while the Public Trustees are “independent of administering the programs day to day,” “[t]he work of the public trustees is essentially to help ascertain and publish the[] facts... includ[ing] witnessing the objectivity and integrity of the assumptions and calculations as well as participating in the associated internal dialogue and deliberations.”<sup>15</sup>

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<sup>11</sup> Centers for Medicare and Medicaid Services, 2023 Annual Report of The Boards of Trustees of The Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, pp. 161-162, June 2023, <https://www.cms.gov/oact/tr/2023>.

<sup>12</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023, [https://www.finance.senate.gov/imo/media/doc/responses\\_to\\_questions\\_for\\_the\\_record\\_to\\_demetrios\\_kouzoukas.pdf](https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_demetrios_kouzoukas.pdf).

<sup>13</sup> Written Testimony of Demetrios Kouzoukas to the U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas” September 28, 2023, [https://www.finance.senate.gov/imo/media/doc/0928\\_kouzoukas\\_testimony.pdf](https://www.finance.senate.gov/imo/media/doc/0928_kouzoukas_testimony.pdf).

<sup>14</sup> Social Security Administration, “Social Security/Medicare Trustees,” <https://www.ssa.gov/history/reports/trustees/historypt.html>.

<sup>15</sup> Written Testimony of Demetrios Kouzoukas to the U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas” September 28, 2023, [https://www.finance.senate.gov/imo/media/doc/0928\\_kouzoukas\\_testimony.pdf](https://www.finance.senate.gov/imo/media/doc/0928_kouzoukas_testimony.pdf).

Your answers to my Questions for the Record provide further detail on the role, indicating that “the public trustees are members of the public who serve the function of informing... policymakers and the public about the size of any trust fund deficits that would need to be resolved in order to avert program insolvency.”<sup>16</sup> You also described the role in an answer to a question from Chair Wyden, stating that the role of the trustees is “to help provide information and data regarding the fiscal and actuarial status and future of the programs.”<sup>17</sup>

What you are describing is a process in which you — a conflicted Trustee — would have special access to “participat[e] in... deliberations”<sup>18</sup> and “provide information and data”<sup>19</sup> to the Centers for Medicare and Medicaid Services (CMS), whose officials are responsible for policymaking on payments to Medicare Advantage plans and whose Administrator serves as Secretary of the Medicare Board of Trustees — while denying your role in the outcome. This is a textbook case of how conflicts of interest impact the policy process — and why you should not be put in such a position.

### Conclusion

The conflicts of interest between your role as a highly paid Clover Health board member and a Public Trustee cannot be reconciled. Given this conflict, I ask that you commit to leaving the Clover Board if confirmed, or withdraw your nomination. I also ask that you provide answers to the following questions no later than November 15, 2023, and, if your nomination is approved in the Senate Finance Committee, prior to any vote of the full Senate on confirmation:

1. Have you reported your 2023 income, and the expected income from the 2024 vesting of your stock awards, to the Office of Government Ethics?
2. Does your ethics agreement with the Office of Government Ethics reflect the 2023 income and 2024 stock vesting? If so, how are these conflicts addressed in that ethics agreement?
3. If you are confirmed later this year, and the value of Clover Health stock increases, will that make your stock holdings more valuable upon vesting? Conversely, if the value of Clover Health stock decreases, will that make your stock holdings less valuable upon vesting?
4. When did you become aware that you would be nominated as a Public Trustee? Did you discuss this pending nomination with any Clover Health officials?
5. When did Clover Health officials determine your 2023 compensation, including the 2023 stock award?

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<sup>16</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023,

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<sup>17</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023,

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<sup>18</sup> Written testimony of Demetrios L. Kouzoukas to the U.S. Senate Committee on Finance, September 28, 2023,


[https://www.finance.senate.gov/imo/media/doc/0928\\_kouzoukas\\_testimony.pdf](https://www.finance.senate.gov/imo/media/doc/0928_kouzoukas_testimony.pdf).

<sup>19</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023,

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6. Do CMS policy decisions on Medicare Advantage risk adjustment have a potential impact on Clover Health’s financial performance?
7. Do CMS policy decisions on Medicare Advantage bonus payments have a potential impact on Clover Health’s financial performance?
8. How do you intend to “participat[e] in the associated internal dialogue and deliberations”<sup>20</sup> surrounding the Trustees report? With whom will you be having a dialogue? With whom will you be deliberating, and what will you be deliberating about?
9. What “information and data regarding the fiscal and actuarial status and future of the programs”<sup>21</sup> will you be providing in your role as a Public Trustee? To whom will you be providing this data?
10. The responsibilities of the Public Trustees include “[r]eview[ing] policies followed in managing trust funds and recommend[ing] changes.”<sup>22</sup> Do you intend to fulfill this responsibility if you are confirmed? Do you agree that providing these recommendations would potentially have an impact on policies adopted by CMS?

Sincerely,

  
Elizabeth Warren  
United States Senator

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<sup>20</sup> Written testimony of Demetrios L. Kouzoukas to the U.S. Senate Committee on Finance, September 28, 2023, [https://www.finance.senate.gov/imo/media/doc/0928\\_kouzoukas\\_testimony.pdf](https://www.finance.senate.gov/imo/media/doc/0928_kouzoukas_testimony.pdf).

<sup>21</sup> Questions for the Record for Demetrios Kouzoukas, U.S. Senate Committee on Finance, “Hearing to Consider the Nominations of Marjorie A. Rollinson, Patricia Hart Neuman, and Demetrios L. Kouzoukas,” provided to Senator Elizabeth Warren on October 27, 2023,

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<sup>22</sup> Social Security Administration, “Social Security/Medicare Trustees,” <https://www.ssa.gov/history/reports/trustees/historypt.html>.