## Q's and A's on the "Promoting Innovation and Access to Life-Saving Medicine Act"

***Q: Why doesn't the bill require that biosimilar applicants always conduct clinical trials? Won't this expose patients to unpredicted adverse affects, including unpredicted immunogenicity?***

A. The bill gives FDA complete scientific discretion to determine what studies are necessary to establish that (a) a biosimilar is as safe and effective as the original product, and (b) a biogeneric is interchangeable with the original product. FDA can require the applicant to conduct clinical studies in both instances. Clinical trials are also not required in law for approval of original biotech drugs. (Section 351(a) of the Public Health Service Act.) FDA exercises its scientific discretion and does, in fact, require clinical studies for new biotech drugs. We expect that FDA will also exercise its scientific discretion to require clinical studies of biosimilar and biogeneric applicants for at least the next several years, or until such time as advances in our understanding of the effects of small changes in molecular structure and the technology to detect those changes makes reliance on clinical studies unnecessary, on a case-by-case basis.

Freezing into law our scientific understanding as it exists in 2009 would have two damaging consequences. First, it ignores, and would disincentivize, the potential for advances in technology designed to increase our understanding of how drugs work at the molecular level. According to the FDA, there have been "tremendous advances" in the basic science that would permit such technology, and that investments in developing such technology are urgently needed to lower the costs of drug development, by reducing the number of unnecessary clinical trials.[1]

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[1]According to FDA, incentives for these technological advances are urgently needed because drug development, which is reliant on clinical trials to discover safety and effectiveness problems, has become inefficient and unnecessarily costly. "The applied sciences needed for medical product development have not kept pace with the tremendous advances in the basic sciences. The new science is not being used to guide the technology development process in the same way that it is accelerating the technology discovery process. … Not enough applied scientific work has been done to create new tools to get fundamentally better answers about how the safety and effectiveness of new products can be demonstrated, in faster time frames, with more certainty, and at lower costs. In many cases, developers have no choice but to use the tools and concepts of the last century to assess this century's candidates. As a result, the vast majority of investigational products that enter clinical trials fail.… [T]he path to market even for successful candidates is long, costly, and inefficient, due in large part to the current reliance on cumbersome assessment methods…. The product development problems we are seeing today can be addressed, in part, through an aggressive, collaborative effort to create a new generation of performance standards and predictive tools. The new tools will match and move forward new scientific innovations and will build on knowledge delivered by recent advances in science, such as bioinformatics, genomics, imaging technologies, and materials science." FDA, Innovation/Stagnation, Challenge and Opportunity on the Critical Path to New Medical Products, at p. ii, iv. (March 2004, as amended) (online at www.fda.gov/oc/initiatives/criticalpath/whitepaper.pdf).

Second, at such time as clinical trials are not necessary for specific products, having a clinical trial requirement in law would result in unnecessary expense and would function as a barrier to competition. Conducting unnecessary clinical trials is also considered unethical because it exposes human subjects to unnecessary risks. Waxman-Hatch has functioned successfully for 25 years, and we believe that any pathway for approval of generic biologics must also have the scientific flexibility to function for many decades, as science evolves.

***Q: Will the exclusivity periods in the bill provide sufficient incentives for companies to continue to invest in new biotech drugs? Doesn't the biotech industry claim that their products require 14 more years of exclusivity to sustain innovation?***

A: The periods of exclusivity in the bill (5 years for innovative biotech drugs and 3 years for modifications of existing drugs, with up to 1 additional year for important new research) are consistent with the periods that have been provided to traditional drugs for 25 years under Waxman-Hatch. A recent paper from an economist at Boston University by Dr. Lawrence Kotlicoff points to the success of Waxman-Hatch in encouraging innovation. Some biotech companies have argued that biotech drugs require much longer periods of exclusivity because of differences between the markets for the two types of drugs. Specifically, they argue that the costs of developing biotech drugs are such that companies cannot "break even" until the product has been on the market for approximately 12-16 years. Dr. Kotlicoff points out that, based on their own data, there is no difference between traditional drugs and biotech drugs, in cost or time necessary to develop them. Therefore, because the Waxman-Hatch exclusivity periods have been associated with robust innovation and there are no significant differences between drugs and biologics there is no need for longer exclusivity for biologics. He also points out that excessive monopoly periods actually decrease innovation and would be harmful to advances in medicine.

***Q: Why does the bill not require the FDA to go through a public comment process before approving biosimilars?***

A: The FDA is not required to, nor does it, go through a public comment process before approving any other medical product, including original biotech drugs, original traditional drugs, generic versions of traditional drugs, or medical devices. No scientific reason for allowing public comment on approval standards for biosimilars, that distinguishes them from any other FDA-regulated product, has been offered. Such a process can permit the injection of non-scientific considerations into approval decisions and is likely to artificially delay the approval of biosimilars. For example, FDA announced many years ago that it would issue a guidance on approval standards for human growth hormone and insulin products. Though drafted, its issuance has been held up for several years, and FDA approved the first abbreviated application for human growth hormone only after being sued in federal court.

***Q: How does this bill compare to the new Eshoo-Barton bill and the Senate HELP consensus bill from the last Congress?***

A. The standards and procedures for approval of biosimilars and biogenerics in the Promoting Innovation and Access to Life-Saving Medicine Act are similar to the Senate consensus bill in

most important respects. Both bills give FDA discretion to determine what types of studies are necessary to determine whether a biosimilar is as safe and effective as the original product and whether a biogeneric is interchangeable with the original product. The only significant difference is that the Promoting Innovation and Access to Life-Saving Medicine Act also permits companies to make modifications of existing products (e.g., new dosage forms, new indications), while the Senate consensus bill does not. Neither this bill nor the Senate consensus bill require FDA to go through lengthy guidance and public comment procedures before it can approve a biosimilar or biogeneric. In contrast, the Eshoo-Barton bill requires FDA to go through such a process before approving each biosimilar and a second such process before approving an interchangeable (biogeneric) version of the biosimilar. The guidance process may be waived for the biosimilar, but is non-waivable for establishing interchangeability.

The patent provisions in the Promoting Innovation and Access to Life-Saving Medicine Act are also similar to the Senate consensus bill in that both impose the same penalties on brand name patent holders who refuse to resolve patent disputes in a timely manner. The only significant differences between this bill and the Senate consensus bill are in procedures to be followed for identifying which patents are to be litigated promptly. Eshoo-Barton imposes no penalties on patent holders for failure to resolve patent issues.

The exclusivity provisions of the Promoting Innovation and Access to Life-Saving Medicine Act differ significantly from both the Senate consensus bill and Eshoo-Barton. While this bill provides periods consistent with Waxman-Hatch (5 years for innovative biotech drugs and 3 years for modifications of existing drugs, with up to 1 additional year for important new research), the Senate consensus bill provides 12 years of exclusivity, and the Eshoo-Barton provides 12 years that can be extended up to 14 ½ years for new research. This bill also includes provisions designed to prevent companies from making minor structural changes to their products and gaining sequential exclusivity periods for essentially the same product ("evergreening"). Neither the Senate consensus bill nor Eshoo-Barton includes provisions to prevent evergreening.

***Q: How does this bill differ from the bill introduced by Waxman, Pallone and Emerson in the 110th Congress?***

A. The principal changes from the bill introduced in the 110th Congress are listed in a companion document.